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## Facts and Figures

- Prices received by OECD farmers in 2002 were on average 31 percent above world prices. At market level in Australia and New Zealand, they were 10 percent higher in the US; 35 percent higher in the EU; and more than 100 percent higher in Iceland, Japan, Korea, Norway and Switzerland.
- The share of market price support/output payments and input subsidies remained at 76 percent of producer support in 2002, down from 90 percent in 1986-88. These measures are among the most production- and trade-distorting, as well as the least effective in transferring income to farmers or in targeting the provision of environmental benefits.
- Payments based on area planted or animal numbers have doubled since 1986-88 and now account for 14 percent of support to producers, while payments based on historical entitlements (past support, area/ animal numbers and yields) have remained at around 5 percent.

Source: OECD. *Agricultural Policies in OECD Countries – Monitoring and Evaluation 2003*.

## Developing Countries Defend Strategic Products in Agriculture Negotiations

WTO Members showed no spirit of compromise at their first negotiating session since missing the 31 March deadline for agreeing negotiating modalities. Their positions remain far apart on all key issues, including domestic and export support reductions, the formula to cut import tariffs and the scope for addressing non-trade concerns. Even the basis for further talks is bitterly disputed.

The latest attempt to move the process forward was the revision of the first draft modalities issued by the negotiations Chair Stuart Harbinson under his own responsibility on 18 March (Bridges Year 7 No.2, page 5). At the Agriculture Committee's 26 June - 1 July informal and formal negotiating sessions, the EU, Japan, Norway and Switzerland firmly rejected the 18 March draft as a basis for progress and called for a 'substantially different' document.

Many other countries, most with important caveats, are willing to use the draft as a starting point, if only because they see no alternatives. Developing countries generally concede that the draft's special and differential treatment provisions provide a basis for moving forward, although some consider that the tariff cuts it proposes for developing countries are too ambitious. The Cairns Group of agriculture exporting countries thinks that the draft does not go far enough in reducing support and cutting tariffs, but still supports using it as the basis for further negotiations.

Mr Harbinson noted that he could not produce a new document without fresh ideas emerging from negotiations between the Members themselves. He hoped, however, that his progress report to the 14-15 July meeting of the Trade Negotiations Committee (TNC) would be of "some help to start with" (see page 2). According to one developing country source, it is now up to the TNC to provide guidance on "where – if anywhere at all – we can go" before Cancun.

### Strategic Products, Special Safeguards and S&D

According to the Agreement on Agriculture, negotiations on further reform must take into account "non-trade concerns and special and differential (S&D) treatment to developing country Members."

The Harbinson draft proposes two specific measures to strengthen S&D in the negotiations:

- the creation of a category of 'strategic products' (SPs) of special importance to food security, rural development and/or livelihood security concerns, which would be subject to much lower tariff cuts than those required for other agricultural goods; and
- a special safeguard mechanism (SSM) that would protect developing country farmers against sudden import surges.

Developing countries support these proposals but disagree on their scope. Indonesia, India and China argue that they should be allowed to self-designate their strategic products, as well as those that would qualify for the special safeguard. Some countries have also proposed that all SPs should be totally exempt of tariff cuts and automatically eligible for special safeguard measures. The SSM should, however, cover a wider range products than SPs alone. Latin American Cairns Group members, as well as a several industrialised countries, insist on criteria for both mechanisms and warn that their indiscriminate use could affect South-South trade.

*Continued on page 2*

# Bridges

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## US Doubts about SPs Infuriate Developing Countries

The US told the Agriculture Committee's June-July meeting that it had not been "convinced" by the arguments advanced for the strategic products (SP) category, and suggested that developing countries' concerns could be addressed through the special safeguard mechanism (SSM) alone. The US also noted that S&D for developing countries would entail differentiation between countries, an approach that the most developing countries strongly resist.

These ideas drew instant fire from developing countries, with the Philippines making a spirited statement on the reasons to retain both instruments, arguing, *inter alia*, that "the SSM addresses the susceptibility of developing country markets to the peculiar perturbation of import surges, while SPs enable us to ensure the survival and nurture of our strategic agricultural sectors in an international trading environment jaundiced by trade distortions."

Defending the SP category in particular, the Philippines stated that the "survival and the preservation of whatever opportunities exist for our sectors that determine food security, livelihood and employment," as well as the right of developing country farmers "to diversify and fully express their competitiveness [were] far more robust justifications than those that have been advanced in allowing the persistence of trade distorting support, now under the skirt of the political policy parameters of the developed."

Another developing country delegate called the creation of the SP category a *sine qua non* for any further progress in the agricultural negotiations.

## Other Non-trade Concerns

While developing countries argue that food/livelihood security and rural development are legitimate non-trade concerns, the EU and other 'Friends of Multifunctionality' maintain that the Doha Round must accommodate their support measures aimed at enhancing food safety, animal welfare, rural development, and environmental protection. Other Members argue that some aspects of these are not even part of the negotiations, including in particular the precautionary principle and labelling, as well as the demand to strengthen protection for geographical indications for agricultural products. No progress has been made in reconciling views.

## Chair's Report under Conflicting Pressure

All these differences were reflected in Members' comments on the draft report that Mr Harbinson is to submit on his own responsibility to the Trade Negotiations Committee. Some developing countries wanted to strike out any mention of the possibility of not retaining the category of strategic products. Others objected to the notion of developing criteria for SPs. The EU, Japan, Norway and Switzerland wanted the report to reflect their opposition to using the revised Harbinson text as a basis for negotiations.

Concern was also expressed over too sketchy a presentation of discussions on Green Box criteria, particularly as it is expected that the EU's use of this category of support measures will vastly increase following the reform of the Common Agricultural Policy (CAP, see page 20). The Green Box refers to domestic support that is at the most minimally trade-distortive. There is no limit to the amount of Green Box subsidies, nor are they subject to reduction commitments.

Arguing that there was no mandate in the Doha Ministerial Declaration to address geographical indications or the precautionary principle in the agriculture negotiations, Australia deemed 'inappropriate' any mention of them in the report's section on "other market access issues" (i.e. non-trade concerns).

Delegates generally welcomed the African Cotton Initiative (see page 5) and the EU decision to reform the CAP (see page 20 for details).

The TNC will meet on 14-15 July and the Agriculture Committee is scheduled to hold one last negotiating session (16-18 July) before the General Council meets on 24-26 July to consider input to the Cancun Ministerial from various WTO bodies. It is not yet clear whether this will result in a formal draft Ministerial Declaration or some other form of communication.

# Reconciling Trade, Development and Non-Trade Concerns

Christian Haeblerli

There is an obvious, inherent conflict of interests between agricultural policies benefiting from various forms of support, and agricultural exporters especially in developing countries without any such support. In addition, non-trade concerns in these countries may also diverge: food security, for instance, has a different connotation and calls for different instruments in different countries. This article argues that some of these conflicts could be solved through gradual trade liberalisation, some concerns may be addressed through similar instruments, and that even 'supported' agricultures may offer new market opportunities through their internal reforms.

Free trade is good for you. Every economist knows that. The World Bank has calculated how much developing countries' GDP would grow without protectionism in industrialised countries. According to this ancient schoolbook wisdom, the WTO is a torch bearer for worldwide welfare!

And yet. Surprising things happen:

- Seventy-five countries, that is half of the WTO's membership and mostly developing countries, are against rapid liberalisation of world trade, advocating the "Uruguay Round"-formula rather than the more ambitious "Swiss" market access formula which was used in the Tokyo Round of the GATT for non-sensitive industrial goods.
- The World Bank has not only acknowledged that tariff preferences for the poorest developing countries also have negative structural consequences (such as mono-culture), but also that the loss of these preferences through WTO liberalisation would – at the least in the short term – make these countries even worse off.
- Egypt, a large cereal importer and beneficiary of export subsidies and food aid, advocates the elimination of export subsidies.

What do these developments mean? Having worked in Africa and Asia for eight years and for the last five years dealt with Swiss agricultural policy in the WTO and the EU, I cannot deny that there is an inherent conflict of objectives between development, trade and agricultural policy. I can, however, try to suggest how this conflict could be at least partially solved – without endangering food security in either developing or in developed countries. And, given the fact that the best is the enemy of the good, I would like to point out what can be done in terms of partial solutions.

First, I will respond to the criticism that international institutions such as the WTO, the IMF and the OECD regularly heap on Swiss agricultural policy. Second, I would like to examine the conflict of objectives between agricultural and development policy in the light of food security. In particular, the question arises whether the so-called "non-trade concerns" are all but a red herring meant to shield production in heavily protected agricultures from competition. To conclude, I will put forward a few personal reflections regarding a solution to this conflict.

## Swiss Agricultural Policy and the WTO

According to OECD calculations, Switzerland has the highest level of agricultural support in the world: 75 percent of farmer's income comes from the state either through direct payments, domestic and export subsidies or border protection.<sup>1</sup> Our agricultural policy is thus showcased in all country examinations, be it at the WTO, the IMF or the OECD. And this in spite of the agricultural reform launched in 1992 and in particular despite the fact that our export subsidies and market protection have been drastically scaled back during the last ten years.

Switzerland introduced direct payments in 1992. These have since become more and more decoupled from production and subject to environmental or animal-friendly practices, in order to conform to the new multifunctional role of agriculture inscribed in Article 104 of the Swiss constitution.<sup>2</sup> At the same time, all price guarantees were abolished and price and market subsidies were reduced. This change of support, namely from producer subsidies toward trade and production neutral support has not lead to significant losses of market share, that is, food

security through domestic production was not affected (more of this later).

Since January 2000, a new round of agricultural negotiations is underway at the WTO. What, according to the mandate laid down by the Swiss Government, is now negotiable?

Switzerland regards as negotiable all issues contained in Article 20 of the WTO Agreement on Agriculture. Simply put, this Article's commitment to the "continuation of the reform process" means that as of January 2000 the three main areas of the current Agreement on Agriculture (the 'three pillars' of market access, domestic support and export subsidies) must be simultaneously addressed, so as to achieve the progressive liberalisation of agricultural trade (which does not equal 'free trade'). However, during these negotiations the particular concerns of developing countries, as well as 'non-trade concerns' (called 'the multifunctional tasks of agriculture' by Switzerland and others) must be taken into account.

According to Swiss interpretation, two dossiers are not negotiable: the total elimination of agricultural support and multi-functionality, i.e. those agricultural goods and services demanded by society but which the market will not pay for.

The Swiss mandate in the WTO negotiations, therefore, consists of safeguarding multifunctionality as an objective, but not necessarily and forever through its present instruments. Indeed, multifunctionality (our "non-trade concerns" as they are called in WTO speak) is a policy objective that most other countries share to different degrees and in various ways. Whether or not these are in conflict with trade interests of other countries depends exclusively on the instruments used for their implementation.

*Continued on page 4*

The question whether our non-trade concerns become trade or non-trade concerns for developing countries nevertheless remains. For instance, could their food security be impaired, through our keeping out exports from efficient producers, or by our hindering their access to third party markets through the use of export subsidies? And which are the instruments developing countries have access to in order to ensure their own concerns?

### Swiss Agricultural Policy and Development Policy

To me it is quite clear: WTO rules alone are not sufficient to fully respond to the simultaneous demands of agricultural and development policy. Between Switzerland's agricultural and development policy goals there is a conflict of objectives: the protection and promotion of Swiss agriculture is at least partially contradictory to the export interests of agricultural producers in the South. Looking at the implementation level, this conflict occurs less as a result of financial support than through import tariffs, whose level according to the Swiss Law for Agriculture has to "take account of the sales potential for similar domestic products".

As a matter of fact, granting duty-free market access would provide developing countries with one of the best spurs for economic growth, and this not only with respect to industrialised country markets but also amongst themselves. Even the argument that WTO market opening would above all advance the interests of big producers in the EU and North America, as well as already competitive developing countries such as Brazil and Argentina, cannot justify a rejection of gradual agricultural market liberalisation on development policy grounds.

Further problems emerge in the short- and medium-term, even if market access were entirely free: many developing countries cannot compete against other suppliers (the price/quality ratio) and the export subsidies and market intervention measures of many industrialised countries. Mauritius and Cuba will not be able to supply sugar as long as the EU offers an export subsidy of 80 Swiss francs for each hundred-kilo bag. And Caribbean bananas will not reach us when the production of an island is too small to fill an entire refrigerated ship. Moreover, the ba-

nana example has shown how little the EU's tariff preferences accommodate the different development needs between and within the producer countries.

This being the case, it matters little that, during and after the Uruguay Round, Switzerland has eliminated tariffs for tropical products that do not directly compete with domestic production. And the duty-free access granted in 1992 to all least-developed countries will only fully benefit them once their products satisfy Swiss sanitary and phytosanitary norms, which are increasing gradually, for instance for animal feeds, fruit, vegetable and meat.

At first glance the proposal – put forward in the summer 2001 by several developing countries – seems obvious: to establish a 'Development Box', in which would be gathered all special and differential treatment (S&D) instruments that could possibly apply to agriculture. This initiative does, however, have the serious flaw of grouping all developing countries together in just one category that would send them – maybe on a permanent basis – in the opposite direction from the one industrialised countries are moving to: the 'S&D trap' strikes again! However, the 'Development Box' does contain several good proposals, whose chances of success would yet be greater if only those producers would obtain access to it that actually need them. Also, the still unresolved problem is a (verifiable) distinction between 'low-income/resource poor' farmers and those perfectly able to produce under market conditions.

For one important problem, however, no remedy has been found. I refer to the erosion of preferences brought about through general tariff reductions in the WTO. This is the reason why many of the 75 countries mentioned in the introduction oppose rapid market liberalisation. Nevertheless, the World Bank has calculated that the price increases that would result from a general, strong liberalisation, would at least partially compensate for this disadvantage.

### Agricultural Policy and Food Security

But what about food security in developing countries? This is an ill-defined concept, and I will therefore briefly summarise my understanding of the way to secure this typical non-trade concern, namely through a case-by-case flexible combination between three categories of measures:

- Domestic production – but not at any price. Food security in autarchy is no longer possible for any country. Nevertheless, I believe that countries less well endowed by their climatic and topographical situation have a right to a reasonable degree of self-sufficiency. Just think of the growing world population and the political dangers if sugar, for instance, were only produced by Brazil – an entirely possible scenario under a totally free trading system. There is, however, another side: no food security without trade. In Rwanda, this policy led to the collapse of potato prices in 1989 when an export ban prevented an exceptionally abundant crop from being profitably exported.
- Trade: I may be provocative when I assert that, with only a few exceptions, the agricultural exporting countries of this world do not suffer from hunger, even where export earnings mainly benefit the wealthy layers of population.
- Compulsory stockholding, as in Switzerland and elsewhere to compensate for internal crop and/or external supply fluctuations.

In other words, we are primarily dealing with a national task here, particularly as regards the weighting between these three elements – but a task which is to be achieved within certain international parameters. And these also include the export concerns of efficient agricultural producers, particularly in developing countries such as Brazil, which consider agriculture as the primary engine of their development. In such countries agricultural exports contribute to food security as they help finance other basic needs. Obviously, this only applies when other framework conditions are also fulfilled – just think of the present hunger in Argentina!

### Is There a Solution to the Conflict?

Despite its well protected borders, Switzerland today is the first or second importer of agricultural goods, on a per capita basis, and the eleventh in absolute terms. This being said, the still limited 'development friendliness' of Swiss agricultural policy will increase when export subsidies, border protection and market protection, for instance, decline due to the WTO agriculture negotiations. It is in the interest of all countries, and developing countries in particular, to



agree as soon as possible on the next step in the international agricultural reform: if export subsidies and other market interventions were to rise again, it would not be possible for developing country farmers to win this 'race of the finance ministers'!

Solutions open to developing countries themselves include tariff reductions among themselves, in order to promote regional trade. Today, there is a lot of informal cross-border trade happening in many developing countries, especially in Africa. To secure such trade would also be an excellent solution for their food security concerns – but one which takes courageous decisions if it is to guarantee trade also in production shortfalls. One must also consider in this context the still heavy domestic support meted out to competing producers in the North.

In the long term – and this is my personal opinion – the solution to this problem will necessarily require a considerable reduction of market price differences. Besides tariff reductions, export subsidies and similar instruments must obviously be reduced and eventually abolished, in order to stimulate local production and trade. Tariff escalation is a further case in point, and one which figures prominently on the negotiating agenda. And, finally, further tools such as safeguards must be drafted so as to provide sufficient comfort to liberalisers everywhere.

If the instruments and timeframes are well-chosen, this need not cause overwhelming disturbance anywhere. Especially some of the instruments to secure non-trade concerns outlined above could pave the way for more trade liberalisation. These include, for example, geographical indications and product labelling within carefully drafted parameters.

Within such a policy framework, Swiss and other producers could more convincingly face increased competition: If their contributions to environmental protection, for instance, were compensated, and if their particular performance in terms of standards and the quality of production methods were recognised in the market and guaranteed by the future WTO rules.

My conclusion is that all countries have various and different trade and non-trade concerns. While their objectives may be partly conflicting, all are legitimate. What matters in WTO terms, however, are not objectives but only and always the instruments for their implementation. In this perspective, both the Green Box and a future Development Box, but also other agreements such as TRIPs, TBT and SPS, may be seen as containing a number of tools in the pursuance of these objectives. And these are permanent tools, unlike the temporary “S&D trap” referred to above. Careful tool crafting matters enormously, and is an indispensable parameter for any further agricultural reform process, anywhere.

From the recent history of this negotiation it is quite clear that only comprehensive solutions are likely to meet consensus. Besides the classic GATT instruments of tariff reduction and subsidy limitation, they must permanently guarantee the appropriate instruments for addressing non-trade concerns of developing and developed countries alike. There is no way around this challenging task, even though this may take somewhat longer than envisaged by trade ministers in Doha.

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## ENDNOTES

<sup>1</sup> As regards border protection, only the most necessary steps have been taken, namely the tariffication and limited reduction of border measures according to WTO disciplines in 1995. Anyway: Who would willingly and irreversibly reduce their tariffs without gaining better access to foreign markets, for these and other goods or services?

<sup>2</sup> Article 104 of the Federal Constitution assigns agriculture two equal objectives: sustainability and market orientation. The main instruments to translate these goals into practice are:

- direct payments linked to ecological specifications;
- the promotion of nature-, environment- and animal-friendly forms of production;
- the labelling of the origin, quality, as well as the production and processing methods (PPMs).

## Cotton Initiative Draws Positive First Reactions

The Cotton Initiative launched by Benin, Burkina Faso, Mali and Chad has been generally well-received at the WTO, although detailed discussions are yet to take place. The four countries demand that the Cancun Ministerial Conference agree to a rapid elimination of all support for cotton production and exports, as well as to financial compensation to cotton producers in least-developed countries (LDCs) to offset income lost due to subsidised production during the phase-out period.

Very high subsidies in a few producer countries have pushed world cotton prices so low that export revenue is steadily decreasing for even extremely competitive cotton producers, such as West and Central African countries, where millions of people depend directly on cotton. At nearly US\$4 billion this year, the US is the most generous subsidiser, followed by China and the EU (Bridges Year 7 No.4, page 1).

Burkina Faso's President Blaise Compaoré presented the Cotton Initiative to the WTO's Trade Negotiations Committee on 10 June, and it was briefly discussed at the agricultural negotiating session on 1 July.

The US called the initiative “perfectly valid” but suggested that the cotton dilemma would best be solved through the elimination of export subsidies and substantial reductions of other trade-distorting support for *all* agricultural products. Many other countries, including Brazil, Canada, Cuba, Indonesia and the Philippines were supportive of the thrust of the initiative, but no country commented specifically on the proposal to compensate LDC cotton farmers until the subsidy elimination is complete.

The initiative's sponsors said they aimed to submit a follow-up proposal on how the compensatory mechanism could work to the Agriculture Committee's next meeting on 16–18 July.

## Reflecting Sustainable Development in the Doha Trade Negotiations: Implementing Paragraph 51 of the Doha Ministerial Declaration

Vicente Yu

Paragraph 51 of the 2001 Doha Ministerial Declaration provides a unique but ambiguous mandate for the WTO's Committees on Trade and Development (CTD) and on Trade and Environment (CTE). It requires that these two bodies "within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected." This mandate attempts to implement WTO Members' desire to ensure that the Doha Round trade negotiations promote the objective of sustainable development.

This objective is deeply embedded in the WTO framework. Explicit references to it can be found in the WTO's constitutional legal instrument – the Marrakesh Agreement to Establish the World Trade Organisation – and in subsequent WTO legal texts, such as the 1994 Ministerial Decisions on Trade and Environment and on Trade in Services and the Environment, and the 1996 and 2001 WTO Ministerial Declarations. The WTO Appellate Body in the *US – Shrimps-Turtle* dispute also stated that the objective of sustainable development recognised in the WTO Agreement's preamble "informs" all of the covered agreements.

The proper and effective implementation of the Paragraph 51 mandate could be the key to ensuring that the Doha trade negotiations result in a final outcome that promotes the sustainable development needs and priorities of developing countries and is consistent with the earth's long-term ecological carrying capacity from the local to the global level.

### Implementing the Mandate: NGO Suggestions

Some NGOs, such as the Center for International Sustainable Development Law and the Institute for International Sustainable Development, have suggested that the mandate can be carried out through conducting an assessment of the likely impacts of the negotiations using a methodology that integrates both environmental and developmental considerations. This could be done either by the Members themselves at the national level or by the CTE and the CTD, which should be equipped with the power to make recommendations to the different negotiating bodies for the purpose of ensuring that the results of the Paragraph 51 discussions in these committees are given effect.

The institutional set-up for carrying out the Paragraph 51 mandate has also given rise to some NGO suggestions, such as having the CTE and CTD hold joint meetings as the WTO's 'Committee on Trade and Sustainable Development' with input from other relevant stakeholders; or for the CTE and CTD to act as the fora in which the results of any national-level assessment of the environmental and developmental implications of the negotiations could be discussed. In terms of actual activities to implement the Paragraph 51 mandate outside the CTE/CTD institutional context, some civil society organisations have proposed the creation of an independent advisory group on sustainable development.

### Current Approaches in the CTE and CTD

These NGO suggestions notwithstanding, both committees have had difficulty in determining what approach to take. Even if Paragraph 51 has figured as a standing agenda item in their respective meetings, discussions in the CTD and the CTE have so far not yielded a clear understanding on how to implement the mandate.

In March 2002, the Committee on Trade and Environment started intensive discussion on how to structure the debate. Some Members suggested joint meetings of, or co-operation between, the CTE and CTD, while others proposed that the CTE focus on specific issues or scenarios within the context of the negotiations that could allow it to provide input to the negotiating bodies on how the sustainable development objectives can be met in the negotiations. By October 2002, the CTE had agreed as a preliminary step and as the basis for further discussions to invite WTO Secretariat staff to brief the CTE on what was going on in the other negotiating committees or groups.

To date, four such briefings have been held, covering the agriculture, services, market access (environmental goods), and WTO rules negotiations. On the basis of this input, substantive but still inconclusive discussions took place among Members. This approach as a first step towards implementing Paragraph 51 should be continued by the CTE. Unfortunately, however, the first draft of the CTE report to the Cancun Ministerial Conference does not contain any information on how it intends to carry forward the Paragraph 51 mandate after Cancun.

The Committee on Trade and Development has also discussed how to implement its own Paragraph 51 mandate, with suggestions from Members including the following:

- preparation of an overview paper by the WTO Secretariat that would be regularly updated and would show what was going on with respect to 'development' issues in other WTO bodies (such as the Integrated Framework, technical assistance, special and differential treatment, and the Doha working groups on trade and technology transfer and on trade, debt and finance, as well as the CTD special session on small economies);
- have the Chairs of the CTE and CTD regular sessions keep each other informed of progress in their respective fora regarding the implementation of Paragraph 51; and
- request the WTO Secretariat to provide the CTD with information on what the different negotiating groups are doing in relation to the development agenda, and use such input as the basis for future CTD discussions relating to the Paragraph 51 mandate.

To date, however, unlike in the CTE, there has not been much clarity or agreement on the approach that the CTD will take to implement Paragraph 51.

## Recommendations

Fully implementing the Paragraph 51 mandate requires both the CTE and the CTD to address two issues: (i) how the identification and debate of the environmental and developmental aspects of the Doha trade negotiations are to be done by these committees within their respective mandates; and (ii) how any outcomes of such identification and debate can be input into and reflected in the main negotiating areas.

### Identification and Debate of Sustainable Development Impacts

The requirement that both committees address Paragraph 51 ‘within their respective mandates’, implies that the focus of actions are limited to those that the CTE and the CTD, primarily through the Members’ representatives participating in these committees in Geneva, can undertake as part of their core work programmes.

The identification of the environmental and developmental aspects of the negotiations by Members’ representatives in the CTE and the CTD will, therefore, necessarily involve at least a multi-step process that would:

- require both bodies to first obtain relevant basic information regarding the progress of each negotiating area; then
- create an assessment tool for identifying environmental and development aspects in each negotiating area; and finally
- undertake a prioritisation exercise with respect to each negotiating area to allow Members to conduct the debate in a structured and organised manner.

After obtaining relevant basic information regarding the progress of each negotiating area from either the WTO Secretariat or the various Chairs of each negotiating body, the CTE and CTD can then proceed to identifying the environmental and developmental impacts of the negotiations.

This could be in the form of creating a checklist-type assessment tool that Members’ representatives in Geneva, as well as their capital-based trade, environment, and economic development officials, could use for purposes of determining, or at least obtaining a good picture of, the potential developmental and environmental impacts of possible outcomes in each specific negotiating area, especially with respect to such impacts for developing countries.

Paragraph 51 seeks to ensure that the objective of sustainable development is appropriately reflected in the Doha trade negotiations. This objective needs to be linked to various sustainable development-related international instruments such as the 1992 Rio Declaration, which recognise that giving special priority to the development needs and concerns of developing countries is a major principle in achieving sustainable development. Hence, the assessment tool should look at the potential impacts of the Doha trade negotiations on developing countries with respect to, among others:

- poverty reduction and human and economic development in developing countries;
- the effective operationalisation and implementation of the trade principle of special and differential treatment and the environmental principle of common but differentiated responsibilities in relation to developing countries’ international economic and environmental obligations; and
- environmental resource use, consumption, management, and conservation needs of developing countries.

This assessment tool could be developed with support from UNEP (for the environmental impacts of trade liberalisation, especially on developing countries) and UNCTAD (for the developmental impacts of trade liberalisation, especially on developing countries), based on these UN agencies’ extensive technical experience in these areas. The development of such an assessment tool should also benefit from Members’ contributions such as the sharing of their experiences with national-level sustainability and environmental impact assessments under Paragraph 33 of the Doha Ministerial Declaration. The input of civil society organisations should also be sought with respect to both the design and use of the assessment tool.

Once the assessment tool is established (including familiarising Members with its use) and used by Members individually (preferably through close collaboration between representatives in Geneva and their capital-based trade, environment, and economic development officials), the results could be collated by the CTE and CTD. Negotiating areas where the assessment shows relatively high negative environmental and/or developmental impacts could then be prioritised for debate by these committees.

The debate on how to address such impacts should be targeted at the objective of the exercise – i.e. that of ensuring that the objective of sustainable development is appropriately reflected in the negotiations. Hence, the focus of the debate should be on how to ensure that environmental and developmental considerations are taken into account and reflected in each negotiating area. This necessarily indicates that the outcome of the debate to be conducted in the CTE and the CTD has to be clear enough to be implemented by Members’ representatives in the course of the negotiations.

### Ensuring Effective Outcomes

Assuming the CTE and CTD embark on the assessment process described above, the form of the outcome of the debate is important for purposes of fully giving effect to the Paragraph 51 mandate for the entire duration of the Doha trade negotiations. The outcome should be clear and capable of quick translation by even resource-constrained developing country missions and governments for purposes of integrating the substantive outcomes of the debate into specific and concrete actions in the negotiating context.

Hence, the final outcomes of the debate could take the form of:

- clear and explicit guidelines or criteria that other negotiating bodies can use to integrate environmental and developmental considerations into the negotiations; and
- an overall sustainable development assessment report to be issued jointly by the CTE and the CTD both mid-term and at the conclusion of the Doha negotiations.

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### Sugar Dispute Update

Brazil's Agriculture Ministry announced in early July that Brazil, Australia and Thailand would request a panel at the July 21 session of the Dispute Settlement Body to rule on the cases they have initiated against the European Union's sugar subsidies. It was not immediately clear whether the panel request(s) would be made jointly or separately.

The complainants claim that the EU's subsidised 'C sugar' exports of approximately 1.6 million tonnes a year are distorting international prices, causing Brazil alone annual losses estimated at US\$900 million. Brazil (WT/DS265/1) and Australia (WT/DS265/1) initiated proceedings in September 2002, while Thailand filed its consultation request in March 2003 (WT/DS283/1).

According to Thailand, the EU's sugar regime grants export subsidies above its reduction commitment levels specified in Section II of Part IV of its Schedule of Concessions. Thailand has argued that sugar produced outside the 'A' and 'B' production quotas is guaranteed a high intervention price, whereas sugar produced in excess of these quotas (referred to as 'C sugar') may not be sold internally in the year in which it is produced: it must be exported or carried over to fulfil the following year's production quotas. "By virtue of the EC sugar regime, exporters of C sugar are able to export such sugar at prices below their cost of production," Thailand's consultation request states.

This dispute is particularly controversial because the EU's incriminated sugar regime is intimately linked with preferential sugar imports from the African, Caribbean and Pacific (ACP) Group states, fourteen of which have requested to join the consultations. Any changes in their preferential access to the EU would have a 'devastating impact' on their economies, these countries stated in November 2002 (Bridges Year 6 No.8, page 16). The ACP Group has also repeatedly blamed the EU for not defending their preferential access robustly enough "against repeated attacks from third parties."

## Procedural Roadblocks Beset Cotton Dispute

The US continues to block substantive proceedings in the upland cotton subsidy dispute it is defending against Brazil. The panel considering the dispute agreed on 20 June to the US request that it rule on 'whether Brazil may maintain any action based on provisions exempted by the 'Peace Clause' under the WTO's Agreement on Agriculture before even examining any of the specific claims put forward by Brazil as violations of the Agreement on Subsidies and Countervailing Measures (SCM). Brazil does not dispute that support covered by the Peace Clause cannot be challenged, but rather claims that US cotton subsidies now exceed the limit allowed under it.

The Peace Clause refers to Article 13 of the Agreement on Agriculture, which exempts most agricultural subsidies from actions based on subsidy/countervailing disciplines of the GATT and the SCM Agreement until 31 December 2003. However, Blue Box measures (i.e. support for production-limiting schemes) and Amber Box support (i.e. trade-distorting subsidies) for any specific commodity must not exceed that decided during the 1992 marketing year.

Brazil's panel request (WT/DS267/7) alleged that the US had "no basis" to assert a defence under Article 13, because the domestic support measures cited by Brazil "provide support to upland cotton in marketing years 1999-2001 in excess of the support decided by the United States in the 1992 marketing year," and the incriminated export subsidies "do not conform fully to the provisions of Part V of the Agreement on Agriculture, as reflected in the Schedule of the United States."

Instead of responding to these allegations, the US has requested the panel to "find that measures that conform to the Peace Clause are exempt from any action, including action under the Dispute Settlement Understanding (DSU), based on the corresponding provisions of the Subsidies Agreement and the GATT 1994." It further argues that the Peace Clause's phrase 'exempt from actions' means, *inter alia*, "not exposed or subject to a legal process or suit" or the 'taking of legal steps to establish a claim'. Therefore, Brazil cannot maintain any action – and the United States cannot be required to defend any such action – based on provisions specified in the Peace Clause since the US support measures for upland cotton conform to the Peace Clause."

The US brief quoted above provides no figures or other evidence that the support measures in question do indeed conform to the Peace Clause. At meetings of the Dispute Settlement Body (DSB), Brazil has complained about the reluctance of the US to provide information on its complex network of support programmes, which would allow the panel to determine whether they are consistent with the conditions laid out in the Peace Clause. To overcome this handicap, Brazil requested the DSB to appoint a facilitator to help it gather information on US cotton subsidies, which according to the predictions of the International Cotton Advisory Committee will reach US\$3.7 billion this year. The US rebuffed the request on the procedural grounds that since the cotton subsidies were covered by the Agriculture Agreement's Peace Clause, Brazil could not evoke the Subsidies Agreement, which requires the DSB to appoint a "representative to serve the function of facilitating the information-gathering process" at the complainant's request (Bridges Year 7 No.4, page 14).

Brazil argued that holding separate hearings and briefings on the Peace Clause prior to examining substantive claims would cause significant delays in the resolution of claims that do not implicate the Peace Clause, duplicate work and require additional human and financial resources. The US wrote in response that "the fulltime presence of Brazil's private-sector counsel in Geneva should alleviate some of the expense that extra meetings (which there is no reason to assume would be needed since the US measures conform to the Peace Clause) might entail. In any event, however, the United States finds it difficult to believe that Brazil would bring an action with claims under 27 different provisions of WTO agreements with respect to programmes under at least 12 US statutes and not expect that the resulting dispute would involve additional complications and all the accompanying demands for time and resources."



# Africa Emerges as a Pawn in US–EU Biotech War

The United States announced after its first consultation session with the European Union on 19 June that it will request a panel in the dispute it launched in May against the EU's approval and marketing procedures for genetically modified organisms (GMOs). While US arguments at the consultations centred on establishing that a moratorium on processing approvals exists, its public rhetoric on biotechnology crops and foods seeks a moral edge through depicting African countries as misguided victims of the EU's regulations, a charge that the EU strongly rejects.

## Claims and Counterclaims

During the consultations, Argentina and the United States sought to demonstrate that even if the EU had not legislated a moratorium on GMO approvals, the suspension of considering applications/granting approvals for biotech products constituted a *de facto* moratorium, which restricted their exports to EU markets. Both complainants attached annexes to their consultation requests detailing which biotech approval applications were currently pending, as well as the individual countries that maintain national marketing and import bans. The US and Argentina claim, *inter alia*, that these measures violate the GATT's provisions on most-favoured nation treatment, national treatment, administration of trade regulations and quantitative restrictions, as well as provisions on risk assessment under the Agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures. They did not, however, provide legal argumentation on these claims at the consultation meeting.

The EU called the decision to take the GMO issue to WTO dispute settlement “legally misguided, economically unfounded and politically unhelpful.”<sup>1</sup> It noted that new regulations on biotech approvals had been in place since October 2002, but admitted that “[s]ome individual EU Member States have adopted ‘safeguard’ measures with regard to specific varieties of GMOs on health and environment grounds.” This refers to Austria, France, Germany, Greece, Italy and Luxembourg, which have suspended approvals until new labelling and traceability requirements for GMO foods and feeds enter into force, probably before the year's end (the European Parliament approved the new GM Food and Feed Regulation on 2 July, see page 22).

Another point forcefully made by the EU was that “international co-operation is certainly more appropriate than a trade dispute as a means to build a sound international framework for addressing the GMO issue. That is essential to build public confidence on GMOs and achieve the full potential of biotechnology.”

The consultations were held jointly on the requests of Argentina (WT/DS293/1) and the United States (WT/DS291/1), whose claims are very similar. Australia, Brazil, Canada, Chile, Colombia, India, Mexico, New Zealand and Peru attended the meeting as third parties. Canada has also launched a separate dispute of its own (WT/DS292/1).

Contrary to expectations, Egypt – which was lined up for free trade talks with the US – did not request to join the consultations (nor did El Salvador or Honduras). This prompted the chair of the Senate Finance Committee Chuck Grassley to send a letter to Egypt's Foreign Minister Ahmed Maher reminding him that “[o]ne of the criteria that ought to be used to determine with whom the United States negotiates future FTAs is whether a country shares the same vision of the global trading system as does the United States.” The free trade agreement was subsequently put on hold, although the US administration did not formally link the suspension to the biotech dispute.

## Is Africa a Victim of EU Biotech Policy?

While precise legal arguments in the GMO dispute are still lacking, a propaganda war seems well underway.

At its newly-created biotechnology website<sup>2</sup>, the Office of the US Trade Representative explains that the US needed to act now because the “EU moratorium on agricultural biotech approvals has ramifications far beyond Europe. The spread of beneficial biotechnology is

slowing, and developing countries have already suffered negative consequences.” The USTR notes that last autumn, “some famine-stricken southern African countries balked at US food aid because of ill-informed health and environmental concerns, as well as fears that the countries' exports to Europe would be jeopardised by ‘contamination’ of local crops.”

It quotes a Kenyan scientist (who also happens to be the former Director of the International Service for the Acquisition of Agri-biotech Applications) as saying: “Europe has surplus food and has never experienced hunger, mass starvation and death on the scale we regularly witness in Africa. ... The African continent, more than any other urgently needs agricultural biotechnology.”

And, as if to cover all fronts, new US legislation authorising payments for AIDS programmes contains a ‘sense of Congress’ resolution stating, *inter alia*, that US food assistance (whether biotech or not) “should be accepted by countries with large populations of individuals infected or living with HIV/AIDS, particularly African countries” (see box on page 13).

President Bush has multiplied comments on the EU policy's harmful effects on Africa as well. In a speech on 23 June, he stated: “Acting on unfounded, unscientific fears, many European governments have blocked the import of all new biotech crops. Because of these artificial obstacles many African nations avoid investing in biotechnology, worried that their products will be shut out of important European markets. For the sake of a continent threatened by famine, I urge the European governments to end their opposition to biotechnology.”

EU Trade Commissioner Pascal Lamy called comments such as these “unacceptable” and said it was “totally inadmissible that the hun-

*Continued on page 10*

ger argument in poor countries should be used to promote the interests of a domestic constituency.” In a paper on the WTO dispute, the EU states that “every country has the sovereign right to make decisions on GMOs in accordance with the values prevailing in its society. [...] It is the legitimate right of developing countries’ governments to fix their own level of protection and to take the decision they deem appropriate to prevent unintentional dissemination of GM seeds.”<sup>3</sup>

The paper also notes that “[s]ome developing countries, including a large number of African countries suffering a shortage of food, have requested main donors of food aid to avoid providing GMO food, for a combination of reasons (human health concerns, environmental consideration, the risk of spread of transgenes into their own maize production, and the repercussion such a spread could have on regional and international trade and Intellectual Property Rights concerns). The EU finds it unacceptable that the legitimate concerns of those countries are used by the US as a means of propaganda against the EU policy on GMOs.”

“Food aid to starving populations should be about meeting the urgent humanitarian needs of those who are in need. It should not be about trying to advance the case for GM food abroad, or planting GM crops for export, or indeed finding outlets for domestic surplus, which is a regrettable aspect of the US food aid policy.”

The EU also dismissed US concerns about the pace of its GMO approvals affecting US corn exports, asserting instead that the exports were affected due to US refusal to “implement any measures to segregate and control the spread of different GM maize varieties”, which made 98 percent of US maize liable to contain GM varieties, some of which had not been approved in other countries.

At the earliest, a panel can be established at the Dispute Settlement Body’s August session.

#### ENDNOTES

<sup>1</sup> The WTO Case on GMOs. 17 June 2003. Posted at [http://europa.eu.int/comm/trade/issues/sectoral/agri\\_fish/sps\\_bio/pr170603\\_en.htm](http://europa.eu.int/comm/trade/issues/sectoral/agri_fish/sps_bio/pr170603_en.htm)

<sup>2</sup> <http://www.ustr.gov/new/biotech.htm>

<sup>3</sup> See footnote 1.

## No Decision on DSU Review before End July

WTO Members agreed on 10 June to hold consultations on how to proceed with the review of the Dispute Settlement Understanding (DSU) that was to conclude on 31 May. Disagreement prevails on the scope of amendments to current rules, as well as on how much additional time should be granted to the review. Members now hope to come to a consensus in time for the 24–25 July General Council to take a decision on the way forward.

### What to Amend?

On 28 May 2003, the Chair of the dispute settlement negotiations Ambassador Péter Balás of Hungary released a Chair’s Text that proposed numerous changes to 13 existing DSU articles, as well as the creation of three new articles (on the terms of reference for remand panels; determination of compliance and the award of litigation costs). The proposed amendments reflect proposals put forward by Members, but many of their more far-reaching suggestions were not included in the Chair’s Text due to the “absence of a sufficiently high level of support.” Among the principal omissions were accelerated procedures for certain disputes; improved panel selection procedures; increased Member-control on panel and Appellate Body reports; clarification of the treatment of *amicus curiae* briefs; and the right to collective retaliation in cases involving developing country complainants (for further details, see Bridges Year 7 No. 4, page 13).

In his report to the Trade Negotiations Committee’s (TNC) 10 June meeting, Ambassador Balás acknowledged that a number of delegations continued to emphasise the importance they attached to proposals not reflected in the Chair’s Text, and that Members were divided on whether to continue negotiations on the basis of the Chair’s draft alone or whether all proposals should be considered on the table. At this stage it seems unlikely that Members would accept Chair’s text amendments – even modified through further talks – as an ‘early harvest’ for Cancun. One reason is lack of consensus on the proposed changes, another that Members would have little incentive to seriously consider more controversial proposals once an initial package is agreed.

### New Mandate Needed?

In addition to disagreeing on substantive amendments, Members are concerned about procedural issues. Some advocate that the General Council simply authorise extra time to complete the talks, perhaps until the end of the year, or even May 2004. Other countries maintain that a new ministerial mandate would be necessary to extend the deadline.

While the original mandate with its May 31 2003 cut-off date was explicitly independent of the larger negotiations, several trade sources believe that prolonging the talks beyond Cancun would in fact make the DSU negotiations part of the ‘single undertaking’ Doha Round slated to conclude on 1 January 2005. This could serve the interests of certain Members, such as the EU, who seek to maximise possibilities for trade-offs between different negotiating tracks. In contrast, many developing countries, such as Malaysia, are reluctant to add another element to an already complex negotiating framework and a crowded schedule.

### Next Steps

To overcome this divergence of views, Members agreed that General Council Chair Carlos Pérez del Castillo should hold informal consultations, but it was also agreed that the pace of DSU-related meetings would be reduced in view of the heavy workload faced by smaller delegations in the final weeks before the Cancun Ministerial. Depending on the consultations under Ambassador Pérez del Castillo, the Dispute Settlement Body may meet in early July. Progress on the issue is likely to be addressed at the 14–15 July TNC meeting. It is expected that the General Council will formally decide at its 24–25 July session how to take the DSU review forward.

# TRIPs, Biodiversity and Traditional Knowledge

Issues related to biological diversity, patenting of life forms and the protection of traditional knowledge returned to centre stage at the 4–5 June meeting of the Council for Trade-related Aspects of Intellectual Property Rights (TRIPs), which for the past months had focused almost exclusively on health and geographical indications. While Switzerland and the European Union showed willingness to search for solutions, compromise still seems far off on the key issues that have divided the membership since the debate was launched more than four years ago.

Under Article 23.7.(b) of the TRIPs Agreement, WTO Members must provide patent protection to micro-organisms, as well as non-biological and micro-biological processes, while plant varieties must be protected either through patents or an “appropriate *sui generis* system.” The article further requires these provisions to be reviewed four years after the date of entry of the WTO Agreement, i.e. in 1999. That review has yet to conclude.

The essential elements of the debate are the following:

- whether life-forms (i.e. plants, animals, micro-organisms and non/micro-biological processes) should be patented at all; and
- whether the TRIPs Agreement should be revised to make it compatible with the requirements of the Convention on Biological Diversity (CBD) regarding access to genetic resources and the associated traditional knowledge, as well as the sharing of benefits arising from their use.

Members’ views diverged on both issues from the start. A large number of developing countries answered the first question by a *no* to patenting of life-forms and the second by a *yes* to revising TRIPs provisions, while most developed countries did the opposite. The Doha Ministerial Declaration instructed the Council for TRIPs to “examine, *inter alia*, the relationship between the TRIPs Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1.” The Declaration further noted that in undertaking this work, the TRIPs Council “shall take fully into account the development dimension.”

The Council’s June 2003 session was first since last September (Bridges Year 6, No.6, page 10) to see a significant discussion on issues related to biodiversity, the patentability of life-forms and traditional knowledge (TK), with new proposals tabled by Switzerland, the Africa Group and India on behalf of Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Thailand, Peru and Venezuela.

## Developing Countries Call for TRIPs Amendments

Both the Africa Group’s and the India-led submissions stressed the need for a multilateral solution to these issues in the TRIPs Council, while also noting that any efforts in the WTO would not preclude work on these issues in other fora. They highlighted the limited progress that has so far been made in WIPO’s Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and noted the limitations of national laws and contracts to prevent biopiracy at the international level.

The India-led paper (IP/C/W/403) reiterated a previous proposal from the signatory countries for amending the TRIPs Agreement to require patent applicants to (a) disclose the source of origin of the biological resource and associated TK; and (b) provide evidence of prior informed consent (PIC) and benefit-sharing. The submission also addressed a number of arguments against a proposal put forward by the US. By reiterating their proposal, the countries aimed to ensure that this item remains on the agenda and that the proposal would be discussed and adopted as part of the Doha round of trade negotiations.

Similarly, the Africa Group (IP/C/W/404) noted that “any protection of genetic resources and TK will not be effective until international mechanisms are found and established within the framework of the TRIPs Agreement,” and described other means such as access contracts and databases as merely “supplementary”.

The African submission (IP/C/W/404), however, went considerably further in its scope than the India-led proposal by calling for Article 27.3(b) to be revised so as to prohibit patenting of plants, animals and micro-organisms (least-developed countries made a similar call in their 12 June Dhaka Declaration, see page 19). On traditional knowledge, the Africa Group proposed to classify TK as a category of intellectual property rights and put forward a draft Decision on TK for adoption by the TRIPs Council.

Brazil, Colombia, Cuba, the Dominican Republic, Kenya, Peru and Venezuela were among developing countries that supported one or both papers. China highlighted the contribution of traditional knowledge and called for the TRIPs Agreement to incorporate the CBD principles of sovereignty over resources, prior informed consent and equitable benefit sharing.

In contrast, the US called for traditional knowledge to be removed from the TRIPs Council’s agenda. It again stressed that contracts would be more effective than the TRIPs Agreement in ensuring disclosure, PIC and benefit-sharing. While the EU welcomed the Africa Group’s flexible approach to *sui generis* protection of plant varieties and agreed that small farmers should have the right to re-use seeds, it nevertheless rejected the call for a ban on patenting of life forms.

## Switzerland Wants WIPO Solution

Switzerland proposed an amendment to WIPO’s Patent Cooperation Treaty that would enable countries to require patent applicants to declare the source of the genetic resources and TK in patent applications but would not oblige them to establish such legislation (IP/C/W/400). However, national law could “foresee that the validity of granted patents is affected by a lacking or incorrect declaration of the source, if this is due to fraudulent intention.” Swit-

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zerland also reiterated the “crucial importance” of databases to protect TK. On the relationship between the Convention on Biological Diversity and the TRIPs Agreement, Switzerland noted that the two “can and should” be implemented without conflict and that there was no need to modify the provisions of either

In an October 2002 ‘concept paper’, the EU – like Switzerland – maintained that Article 27.3(b) was flexible enough to accommodate disclosure of origin obligations (IP/C/W/383). The EU agreed to “examine and discuss the possible introduction of a system, such as for instance a self-standing disclosure requirement, that would allow Members to keep track, at the global level, of all patent applications with regard to genetic resources for which they have granted access.” The data to be provided by patent applicants “should be limited to information on the geographic origin of genetic resources or TK used in the invention, while such a disclosure requirement should not act, *de facto* or *de jure*, as an additional formal or substantial patentability criterion.” The legal consequences of non-compliance with disclosure requirements should lie outside the ambit of patent law, although compensation claims could be filed under civil law or fines be imposed for refusal to submit information or submitting false information (Bridges Year 7 No.3, page 15).

At the Council’s June meeting, the EU again signalled its readiness to discuss mandatory disclosure of origin requirements. It did not, however, specify whether the issue should be addressed in the WTO or in WIPO. Several other developed countries, such as Japan, Canada and the US, noted WIPO’s technical expertise in this area and proposed that the TRIPs Council await results of the ongoing consultations there.

While acknowledging that the Swiss proposal showed willingness to engage in discussions, one developing country trade source said that restricting the debate to WIPO was unsatisfactory as it would not oblige countries to address biopiracy through intellectual property rights. Several other developing country speakers stressed that work on access and benefit-sharing regarding genetic resources and traditional knowledge should be carried out in the WTO rather than left exclusively to WIPO.

These issues are not expected to figure prominently in Cancun, although some NGOs have launched a petition demanding that ministers adopt the Decision on Traditional Knowledge annexed to the Africa Group’s latest proposal. The Chair of the TRIPs Council will brief the Trade Negotiations Committee (scheduled for 14-15 July) on the discussions, and Members will have an opportunity to revert to this agenda item at the TRIPs Council’s November meeting.

### Geographical Indications: Informal Consultations Continue

Despite strong indications that the EU will continue to insist on linking the reduction of agricultural subsidies to the strengthening of protection for products named after their geographical origins under the TRIPs Agreement, geographical indications were hardly mentioned at the Council’s June meeting. WTO Director-General Supachai Panitchpakdi has admitted that the informal consultations he is conducting on the issue have so far yielded scant results. The EU, Switzerland and India, among many others, regard the extension of strong protection to other products than wines and spirits as an ‘outstanding implementation issue’ subject to the ‘single undertaking’ negotiations. This view is not shared by ‘new world’ countries such as Argentina, Australia, Chile and the United States (among others), which fiercely oppose GI extension. Dr Supachai is likely to report to the 14-15 July Trade Negotiations Committee on the results of his latest informal consultations.

### Non-violation Complaints: No Recommendation in Sight

Paragraph 11.1 of the Doha Decision on Implementation-related Issues and Concerns instructed the TRIPs Council to continue its study of non-violation and situation complaints and to make recommendations to the WTO’s fifth Ministerial Conference. At issue is whether or not to strike out Article 64 of the TRIPs Agreement, which allows Members to challenge through dispute settlement proceedings ‘non-violation’ cases, i.e. instances where no TRIPs provision has actually been breached but the complainant nevertheless considers that a measure ‘nullifies or impairs’ its legitimate expectations under the Agreement (see Bridges Year 7 No.2, page 3). No such complaints have ever been filed under Article 64 due to a dispute settlement moratorium set to expire at the Cancun Ministerial Conference. Nearly all Members agree that the Article should either be dropped, or the current moratorium be extended. The US, however, continues to advocate for ending the moratorium in Cancun.

As no consensus could be reached at the last scheduled session of the TRIPs Council before the General Council meets on 24 July to review progress towards Cancun, Chair Vanu Gopala Menon of Singapore concluded that it seemed that he would need to report to the General Council that the TRIPs Council was not in a position to make recommendations to the fifth Ministerial Conference at this stage. He added that this meant that further work might need to take place in the TRIPs Council context in the period between the General Council meeting and the Ministerial Conference.

## Access to Medicines Remains Blocked

The June meeting of the TRIPs Council made no progress in breaking the current deadlock on access to medicines. Deadlines were missed in December 2002 and February 2003 for reaching consensus on how countries without the capacity to manufacture pharmaceuticals could still take advantage of compulsory licensing to address public health crises. Despite the lack of measurable process, Members still hope that a solution can be found before the Cancun Ministerial Conference, which desperately needs development-friendly deliverables.

In paragraph 6 of the Doha Declaration on TRIPs and Public Health, ministers recognised that WTO Members with insufficient or no manufacturing capacity in the pharmaceutical sector “could face difficulties in making effective use of compulsory licensing under the TRIPs Agreement” and instructed the TRIPs Council to “find an expeditious solution to this problem and to report to the General Council before the end of 2002.”

### ACP Countries: Any Disease Restrictions Would Be Unacceptable

The African, Caribbean and Pacific (ACP) Group of States issued a statement to the TRIPs Council (IP/C/W/401) expressing disappointment at WTO Members' failure to agree on a draft text released by former TRIPs Council Chair Eduardo Pérez Motta on 16 December 2002 on paragraph 6 of the Doha Declaration on TRIPs and Public Health. The Group said the draft included "all the key elements" for a solution and reaffirmed its position that "any text that restricts the agreement to a set list of diseases, even involving the WHO in assessing public health concerns, would constitute an unacceptable attempt to restrict ACPs' use of compulsory licensing." It also rejected limiting the application of a paragraph 6 solution to national emergencies and other circumstances of extreme urgency.

The Group stressed that – particularly in view of the outbreak of new diseases such as SARS – finding a "straightforward and easy-to-implement" solution was now a matter of urgency. It urged developed countries to adapt their intellectual property enforcement policies according to the Declaration on TRIPs and Public Health, and stressed the need for assistance to ACP governments to integrate the TRIPs public interest safeguards into their legislation. The ACP also called on pharmaceutical companies "to ensure that their patent policies, practices and lobbying activities are compatible with the Doha Declaration."

### EU Focuses on Technical Assistance, Avoidance of Diversion

The need for technical assistance, in particular from the World Intellectual Property Organisation (WIPO), the WTO and the WHO, was also highlighted by the EU, which focused on the implementation of the Doha Declaration rather than on paragraph 6 (IP/C/W/402). Such assistance, the EU noted, was required for developing countries to make the necessary legislative, administrative or policy adjustments to implement the Declaration.

The EU also noted that while voluntary price reductions offered by manufacturers were "one of the most important means to supply low-priced medicines to the poorest populations", it was essential to prevent low-priced products from flowing back to high-price markets. Such trade diversion would "disincentivise companies to engage in differential pricing".

In related news, EU governments on 26 May approved a regulation aimed at encouraging pharmaceutical companies to sell cut-rate AIDS, malaria and tuberculosis drugs to poor African countries. The regulation requires the participating companies to sell the medicines at about a third of their original price. Pills should be in different colours, sizes or shapes from the full-price versions and packaging should be distinctive. The EU will prohibit re-importation of these products from 76 countries, including least-developed and low-income countries, as well as those where HIV/AIDS is particularly prevalent.

### US Moving Closer to Compromise?

In December 2002, the US was the only country to reject Ambassador Pérez Motta's draft text due to strong pressure from its pharmaceutical industry, which was concerned that the proposed solution's broad scope (the draft limits neither the diseases the solution would apply to nor the countries that could benefit) would mean losses of market share for patented medicines due to generics manufactured in countries such as Brazil and India.

At the June TRIPs Council meeting, the US again evoked its behind-the-scenes effort to 'build trust' between pharmaceutical companies and developing countries in order for a mutually acceptable solution to emerge. "But we're not there yet," US officials said and no (formal or informal) proposals have been tabled at the WTO so far.

However, at the 'mini-Ministerial' in Sharm El-Sheikh on 21-22 June, the US for the first time hinted that it could drop its insistence that the para. 6 solution be limited to HIV/AIDS, malaria, tuberculosis and "other epidemics of similar gravity." On the other hand, it could try to limit the number of countries allowed to issue compulsory licenses abroad. This possibility was implicit when US Trade Representative Robert Zoellick told Philippine Trade Minister

Manuel Roxas during bilateral talks last May that the US did not consider the Philippines eligible for a paragraph 6 benefits since it deemed the country to have sufficient manufacturing capacity of its own. Developing countries have until now steadfastly refused all solutions that would exclude any of them from benefits.

The TRIPs Council has authorised Chair Vanu Gopala Menon of Singapore to call a special meeting "at short notice if necessary" should ongoing informal consultations on paragraph 6 make progress possible.

On 27 May, President Bush signed into law the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act. The Act establishes a new fund within the US Treasury to provide assistance for improving health care delivery systems, hospice and palliative care programmes, and the provision of pharmaceuticals (including antiretrovirals and other pharmaceuticals for the treatment of opportunistic infections) and nutritional support. The US pledged US\$15 billion over five years towards the prevention and treatment of HIV/AIDS at the G8 Summit in early June.

The Act instructs the US Agency for International Development to provide food and nutrition to individuals suffering from HIV/AIDS and their caretakers. This injunction is supplemented by a 'sense of Congress', which notes that "a few of the countries object to part or all of [US food] assistance because of fears of benign genetic modifications to the foods" and states that "United States food assistance should be accepted by countries with large populations of individuals infected or living with HIV/AIDS, particularly African countries, in order to help feed such individuals." While non-binding, the sense of Congress findings' inclusion in the bill could provide a means to pressure governments to accept GM food assistance in return for US-funded AIDS programmes.

The Act also authorises the Treasury to pay US\$1 billion in 2004 to the UN-administered Global Fund to Fight AIDS, Tuberculosis and Malaria and "such sums as may be necessary" from 2005-2008.

## Rules Negotiations: No Predicting of Results Yet

Almost 130 papers have so far been submitted to the Negotiating Group on Rules, which is charged with ‘clarifying and improving disciplines’ under the Agreements on Anti-dumping and on Subsidies and Countervailing Measures, as well as existing WTO provisions applying to regional trade agreements. Most proposed changes concern anti-dumping/countervailing rules, in particular the lesser duty rule and the calculation of anti-dumping margins. Many Members have also suggested clarifications/improvements to subsidy disciplines, including explicit provisions for fisheries subsidies. By comparison, regional trade agreements have attracted little attention.

Unlike most other bodies dealing with mandates arising from the Doha Ministerial Declaration, the Negotiating Group on Rules has no interim deadlines prior to the conclusion of the ‘single undertaking’ on 1 January 2005, although it must report on progress to the WTO’s fifth Ministerial Conference in Cancun next September. Discussions so far have been free-ranging, and no shortlist has emerged on what improvements/clarifications could command consensus. The Doha mandate also contains the important caveat that the negotiations must preserve “the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives.”

### Fisheries Subsidies

The Doha Ministerial Declaration specifically mentions that in the context of these negotiations, “participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.” Despite resistance from Japan and Korea, proposals on how to tackle this mandate have grown steadily more specific and detailed.

In February 2003, the Friends of Fish group, which consists of Argentina, Chile, Iceland, New Zealand, Norway and Peru, proposed to start negotiations based on subsidies categories developed by other organisations (TN/RL/W/58), while the US suggested the expansion of prohibited subsidies under the WTO Agreement on Subsidies and Countervailing Measures to include fisheries subsidies that directly contribute to fleet over-capacity (TN/RL/W/77, Bridges Year 7 No.2, page 9).

In May, the European Union presented its long-awaited proposal advocating the prohibition of ‘capacity-enhancing’ subsidies, i.e. those destined for marine fishing fleet renewal and for permanent transfer of fish-

ing vessels to third countries (these were subsequently referred to as ‘red box’ subsidies). A separate ‘green box’ would be created for subsidies aimed at reducing fishing capacity and mitigating adverse social and economic effects of the restructuring of the fishing sector. These would include subsidies for scrapping vessels, retraining fishermen, early retirement schemes, economic diversification, temporary breaks in fishing activities, modernisation of fishing vessels to improve safety, product quality or working conditions, and for promoting environmentally friendly fishing methods, as long as output was not increased. Both boxes would be up for revision as necessary. ‘Green box’ subsidies would have to be notified to the Committee on Subsidies and Countervailing Measures on a regular basis, and made available to the public, perhaps through a ‘scoreboard’ maintained by the WTO Secretariat on notifications per Member and per type of programmes (TN/RL/W/82).

At the Rules Group’s latest meeting (18-19 June), Chile built on ideas presented in earlier papers, outlining a ‘red box’ of banned fisheries subsidies, and an ‘amber box’ of subsidies that would be allowed as long as notification requirements were fulfilled (TN/RL/W/115). The ‘red box’ would include all subsidies that promote over-capacity and overfishing, such as subsidies to: transfer a country’s ships to the high seas or the local waters of another country; purchase new or used ships; modernise the fleet; and reduce the costs of production factors. Subsidies in the form of positive discrimination in tax treatment or access to credit would also be banned. The ‘amber box’ would include all other subsidies not causing injury to other Members and duly notified. These subsidies would include social subsidies designed to assist small-scale fisheries and coastal communities, and to improve fisheries management to ensure sustainability. Notifications should be mandatory and complementary to existing schemes under other institutions, such as the FAO.

Only Japan and Korea – both of which maintain substantial capacity-linked subsidy programmes in the fisheries sector – oppose the entire direction of the debate. They claim that the depletion of global fishstocks is caused by poor resource management rather than fleet over-capacity, and that the Rules Group should only address trade-distorting subsidies without singling out the fisheries sector.

China has drawn attention to the contribution of aquaculture to the “protection of the world’s marine fisheries resources” and food supply and food safety (TN/RL/W/88).

### Non-actionable Subsidies for Development Purposes

Venezuela’s proposal to re-introduce in the SCM Agreement the notion of ‘non-actionable subsidies’ which would cover measures “aimed at legitimate development goals” has generated a lively debate (TN/RL/W/41, see Bridges Year 7 No.2, page 10). In response to a question from Egypt, Venezuela and Cuba explained in a 13 May document that they had added to the possible definitions under the currently expired SCM Article 8 “some legitimate development goals [...], such as regional growth, technology research and development funding, production diversification and development. In principle, and without prejudice of other relevant rules and obligations, measures taken by developing Members under those legitimate development goals should be considered as non-actionable subsidies.”

The two countries also said that in order to make the future application of Article 8 effective, Members could consider lowering the high level of thresholds indicated in each category of the



existing Article 8 and modifying its design for the benefit of developing countries. They added that while proposal TN/RL/W/41 was mostly about the inclusion of new categories of non-actionable subsidies of interest to developing countries, “other kind of alternatives could be explored, such as perhaps the creation of an indicative list of some specific of non-actionable measures to be identified by interested members, as a new annex to the Agreement on Subsidies and Countervailing Measures.”

### Prohibited Subsidies

Several Members have commented on the US proposal to considerably broaden the category on prohibited subsidies (TN/RL/W/78, Bridges Year 7 No.2, page 9). Venezuela directed a number of questions to the US (TN/RL/W/107), regarding in particular preferential natural resources pricing, identified by the US as a “source of considerable trade distortion and friction”, which should be more strictly disciplined. Venezuela also warned that within any additional notification requirements arising from new obligations “consideration should be given to incorporating the development dimension and the principle of special and differential treatment, including conditions of flexibility for the presentation of any new notification requirements, including technical cooperation, extended time-limits and incentives for the submission of full notifications by Members.” Korea in TN/RL/W/96 and Egypt in TN/RL/W/102 have also singled out natural resources and energy prices.

### Antidumping

A group of 13 developed and developing countries dubbed the Friends of Anti-dumping Negotiations<sup>1</sup> generally seek a result that would make it more difficult for WTO Members to conduct repeated or questionable investigations or to set higher countervailing duties than necessary to compensate for harm. The US leads the opposite camp, whose main aims are to ensure that Members’ rights to use trade remedies are not diminished and to strengthen rules to prevent circumvention of anti-dumping measures.

### Calculation of AD Margins: Zeroing

At the June meeting, the ‘Friends’ group proposed the prohibition of ‘zeroing’ in the calculation of dumping margins (TN/RL/W/113). Zeroing refers to a practice of calculating margins by attaching a positive value to goods that are sold in foreign markets below the home market price but conferring a zero – rather than negative – value to sales of the same good made above the home market price. The effect is to make the dumping margins – and consequent anti-dumping duties – higher. The EU, which has lost two disputes where it used ‘zeroing’, recently initiated proceedings against US use of the method. The US argues that zeroing is not explicitly prohibited by the Anti-dumping Agreement (and wants to keep it that way), but wants the issue to be addressed in negotiations, rather than in dispute settlement panels.

### Lesser Duty Rule

Momentum seems to be growing on making the ‘lesser duty rule’ mandatory rather than optional as is currently the case. This rule refers to Article 9.1 of the Anti-dumping Agreement, which encourages Members not to apply higher anti-dumping duties than those necessary to offset injury to domestic industry. Australia and the EU in June supported the ‘Friends’ proposal to make this practice mandatory (TN/RL/W/119), and noted that they already applied the lesser duty rule. The US stressed that such an approach did not reflect the increased burden to parties, including submission of data. Egypt, which generally shares the US position that anti-dumping itself rather measures to counter it is the problem (Bridges Year 7 No.2, page 9), agreed that the lesser duty obligation for developed countries only would be feasible. However, for developing countries, “the possibility not to be required to apply a mandatory lesser duty rule is essential” (TN/RL/W/110).

### Anti-circumvention

In the same submission, Egypt called for the establishment of “a common framework” for the adoption of anti-circumvention measures, which should, *inter alia*, prevent exporters and producers subject to anti-dumping measures from relocating the production of the product concerned for the sole purpose of evading the measures.

It also suggested that the Negotiating Group could improve Article 9.5 on ‘newcomer reviews’ by examining the circumstances in which the initiation of newcomer reviews can be requested, the newcomer review procedure and duration and the measures applicable to new exporters or producers while newcomer reviews are carried out.”

Egypt further called on the Rules Group to detail the factors that must be considered when determining whether or not protective actions are necessary to prevent material injury from occurring, identifying in particular “the potential impact of further dumped imports on the domestic industry concerned.”

### Sunset Reviews

Members have also addressed the so-called ‘sunset provision’ (ADA Article 11.3), which currently allows them to extend anti-dumping measures beyond five years if national authorities determine that their removal “would be likely to lead to a continuation or recurrence of dumping and injury.” In March, the Friends proposed that AD measures should automatically lapse after five years (Bridges Year 7 No.2, page 9). Korea recently supported this view (TN/RL/W/111). Egypt noted that “the inherent trade distortion resulting from sunset reviews could be reduced if the 12-month time limit set forth in Article 11.4 would also apply to sunset reviews.” Countries should, however, have

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Unless a definition of circumvention and rules governing the adoption of anti-circumvention measures are adopted, the principles set forth in the Anti-Dumping Agreement will not be fully enforceable. [...] The absence of commonly agreed principles also makes it impossible for parties found to have been circumventing anti-dumping measures to challenge the decision of investigating authorities before the WTO. It is only by inserting provisions similar to those governing the review of anti-dumping measures that the rights of all interested parties in anti-circumvention proceedings will be guaranteed.

*Egypt TN/RL/W/110*

the authority to “amend the level of the measures imposed following sunset reviews which concluded that injurious dumping was likely to continue or recur” (TN/RL/W/110).

### Standard of Review

In June, the US brought up one of its priority goals for the rules negotiations: strengthening the ‘standard of review’ that dispute settlement panels must use in assessing anti-dumping investigations (TN/RL/W/130). The US, which has lost many anti-dumping challenges at the WTO, has long argued that panels and the Appellate Body routinely ignore the injunction in the Anti-dumping Agreement’s Article 17.6 that when several interpretations of a provision are possible, the panel “shall find the authorities’ measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.” The US has also proposed that Members draw up guidelines for a ‘standard of review’ in the context of the review of the Dispute Settlement Understanding, but has not so far tabled any concrete suggestions for such guidelines.

### Regional Trade Agreements

Some trade officials have expressed concern about the lack of interest in regional trade agreements (RTAs) among WTO Members even if the number of bilateral and regional trade agreements concluded has risen sharply. One observer noted that all Members now participate in these treaties, making for a lack of *demandeurs* for addressing the issue. Japan, which used to be the main *demandeur*, has itself concluded bilateral trade agreements since 2001 and is currently involved in negotiations with Mexico and Association of Southeast Asian Nations (ASEAN) countries. While concerns have been raised about the most-favoured nation (MFN) principle being eroded through regional and bilateral treaties, they have not been seriously discussed in the Rules group.

The Group’s final pre-Cancun meeting will be held from 21-23 July.

### ENDNOTE

<sup>1</sup> Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Norway, Singapore, Switzerland, Taiwan and Thailand.

## At What Price LDC Accessions?

Despite guidelines adopted by the General Council in December 2002 on simplifying accession procedures for least-developed countries ‘taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members’, concern is growing about the pressure that powerful WTO Members exert on candidates in bilateral accession negotiations.

Cambodia is close to becoming the first least-developed country (LDC) to join the WTO since the organisation was established in 1995. Nepal is set to follow suit. According to several LDC sources, certain WTO Members, as well as the Secretariat, are keen to wrap up the negotiations in time for at least Cambodia’s accession to be confirmed by (or at) the Cancun Ministerial Conference, notwithstanding the candidates’ readiness to take on WTO obligations.

The terms of accession accepted by Cambodia in bilateral negotiations go well beyond the commitments required from LDCs under current WTO Agreements. For instance, while most LDCs have not bound their tariffs (i.e. agreed to ceiling that will not be surpassed), Cambodia has agreed to bind its import duties at an average level of 40 percent for agricultural products and 20 percent for industrial goods. It has also committed to not using export subsidies for agricultural products, and to open its services market in the areas of telecommunications, financial services, transportation and distribution.

While LDCs that were Members of the GATT during the Uruguay Round negotiations were granted a ten-year transition period for implementing the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), Cambodia and Nepal have accepted to implement the TRIPs Agreement by 1 January 2007, i.e. less than five years after their likely date of accession.

At a meeting of the WTO Sub-committee on Least-developed Countries last May, Bangladesh noted that in spite of the guidelines, requests that go beyond what is applicable to the existing WTO LDC Members were still being tabled in accession negotiations and requested the Chairs of accession working parties to assist LDCs in resisting them. Meeting in Dhaka from 31 May to 2 June, trade ministers of least-developed countries called for the “expeditious and full implementation of the guidelines for accession of LDCs adopted by the General Council.” They proposed that Members commit to exercising restraint in seeking concessions and commitments from acceding LDCs, as well as “ensure that acceding LDCs are not subjected to obligations or commitments that go beyond what is applicable to the existing WTO LDC Members” (see page 19 for other recommendations).

- WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDCs’ Members;
- acceding LDCs shall offer access through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs;
- special and differential treatment [...] shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession;
- transitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable acceding LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs; and
- commitments to accede to any of the Plurilateral Trade Agreements or to participate in other optional sectoral market access initiatives shall not be a precondition for accession to the Multilateral Trade Agreements of the WTO. WTO Members may seek to ascertain acceding LDCs interests in the Plurilateral Trade Agreements.

*General Council Decision on LDC Accession WT/L/508*

# No Signs of Explicit Consensus on Singapore Issues

Several meetings, both at the WTO and at other fora, have made it clear that WTO Members remain as deeply divided on launching negotiations on the Singapore issues as they were in November 2001. According to the Doha Ministerial Declaration, the fifth Ministerial Conference must decide 'by explicit consensus' whether to start negotiating new agreements on investment, competition policy, transparency in government procurement and trade facilitation, but all four WTO bodies working on the issues seem headed toward deadlock. Ongoing informal consultations led by the General Council Chair and the Chairs of WTO Working Groups are considered with suspicion by those opposed to launching negotiations in Cancun.

## Investment: Arguments Fail to Convince Opponents

At the last meeting (10-11 June) of the WTO Working Group on the Relationship between Trade and Investment before the Cancun Ministerial Conference, Canada, Costa Rica and Korea tabled a joint submissions arguing that after seven years of analytical work, the time was ripe to launch negotiations on a WTO Agreement on Investment (WT/WGTI/W/162). Introducing the paper to the Working Group, Canada said that a WTO agreement could complement the large network of bilateral investment agreements. While admitting that a multilateral framework would not guarantee investment flows, Canada felt it could contribute to an overall conducive framework, enhancing economic efficiencies and setting sustainable development priorities.

According to the paper, any WTO investment framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments, as well as their right to regulate in the public interest. Further, special development, trade and financial needs of developing and least-developed countries should be an integral part of any framework, enabling Members to undertake obligations and commitments commensurate with their individual needs and circumstances. Costa Rica stated that, as a developing country, it supported an agreement with builtin special provisions for developing countries.

Many of these views found support with the EU, the main *demandeur* for negotiations, as well as with the US, Japan, Norway, Switzerland, Australia and Hungary. Some developing Members, notably Chile, Chinese Taipei and Hong Kong also supported the launch of negotiations. Chile in particular called for negotiations as part of the 'single-undertaking'.

Several other developing countries including China, India, Malaysia, Indonesia and Kenya disagreed with the assumptions made in the Canadian submission. China, supported by India, Indonesia and Kenya, considered the work of the Working Group far from complete, as the Group had reached no agreement on definition, scope and many other complex issues for potential negotiations. Indonesia pointed out that the impact on developing countries was an area that required 'more study'. Indonesia also considered investment as beyond the scope of the WTO, while India felt investment was not part of the WTO's core competence.

Thailand said it had an open mind regarding negotiations, but expressed disappointment with proposals on the table. Stating that technical assistance on investment had been insufficient thus far, Thailand said special provisions for developing countries should be built into any agreement, and added that developing countries should be allowed to attach conditions to investment. Malaysia reiterated that developing countries need policy space in the area of investment, and that costs outweighed benefits for developing countries in a multilateral investment agreement. According to Malaysia, active discussions did not mean the Working Group was ready for negotiations.

## What Does Explicit Consensus Mean?

According to trade sources, one key reason for the deadlock was different perceptions among Members as to what exactly constituted 'explicit consensus' on modalities, the pre-condition for negotiations. The *demandeurs* of investment negotiations felt that a clarification of what constituted the key issues was a sufficient pre-condition. Most developing countries, on the

other hand, pointed either to the incomplete clarification process, or to a lack of convergence on some of the substantive aspects of these issues.

While Kenya stated that "the clarification of elements contained in paragraph 22 of Doha Declaration should lead to a convergence in understanding of the issues," the EU said that the mandate of the Group was "to clarify issues, not agree on them." One developed country delegate said that while the shape of any new agreement could not be predicted, some of the substantive aspects and disagreements with regard to the issues could only be worked out through negotiations.

Many developing countries feel uncomfortable about plunging into negotiations, while leaving wide divergences among Members on key issues such as definition and scope. They fear a loss control over the process – as had happened during the Uruguay Round negotiations on intellectual property rights.

## Competition Policy

Members were equally divided at the last pre-Cancun meeting of the Working Group on Interaction between Trade and Competition Policy on 26-27 May. Many developing countries, including Tanzania, Indonesia, Pakistan, Egypt, India and Nigeria, stressed that they saw no agreement on launching negotiations and questioned the benefits of such an agreement for developing countries. Thailand emphasised that developing country concerns had not been addressed so far, and noted that while compliance costs for developed countries would be minimal, implementing competition rules would be a burden in the developing world.

Members discussed a compliance mechanism for a possible WTO Agreement on Competition Policy, with submissions from several developed countries. The US, Japan, Korea and Australia supported a voluntary peer

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review system, while the EU preferred a combination of peer review and WTO dispute settlement. India continued to oppose dispute settlement. The Indian delegate cautioned that a peer review process would be used to pressure developing countries, and said that if such a process was put in place, it should be under the auspices of UNCTAD. The EU submitted a paper on special treatment for developing countries stressing that “the only substantive provision that we envisage would be an obligation for WTO Members to enact in their domestic competition law a ban on hard core cartels,” and suggesting “individualised” timeframes for developing countries in setting up competition regimes.

### Trade Facilitation: Why the WTO?

Para 27 of the Doha declaration provides that until the fifth WTO Ministerial Conference, the Council for Trade in Goods “shall review and as appropriate clarify and improve relevant aspects for Article V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries.”

At a WTO Goods Council meeting on 12-13 June, Members disagreed on how to frame trade facilitation measures. Many countries, mostly developing countries, resisted the idea of launching negotiations for an agreement that would be subject to binding dispute settlement. Other developing countries indicated more readiness to start talks, on condition that effective technical assistance and capacity building would be provided.

Proponents of talks on trade facilitation, mainly the EU, called for a “flexible but binding” broad framework of principles subject to dispute settlement. Many developing countries, notably China and Brazil, questioned the need for binding guidelines and proposed non-binding ones. Taking a stiffer line, India said that the matter was best left to Members for autonomous implementation, while Malaysia added that present rules were already adequate to deal with the matter. “Why have non-binding guidelines within a WTO when there are

other institutions such as the World Customs Organisation (WCO)?” was a question asked by many developing countries.

Pointing out drawbacks in existing conventions dealing with trade facilitation, Australia laid out the case for including trade facilitation within the WTO’s umbrella (G/C/W/466). The paper argued that, compared to voluntary agreements, the WTO had a sufficiently broad mandate and was capable of taking the comprehensive approach necessary to address various types of border controls. Recognising the importance of technical assistance, Australia said that a framework of WTO rules would ensure a coherent and targeted approach to the delivery of technical assistance and capacity building, consistent with Members’ obligations. The US said that an agreement on trade facilitation would be a ‘win-win’ outcome for Cancun.

Egypt said it could accept negotiations as long as there were clear commitments from developed countries for technical assistance and capacity-building. Others were more sceptical. One developing country trade diplomat questioned whether technical assistance and capacity-building would adequately address the lack of monetary resources in developing countries, which had other important and competing priorities.

### Transparency in Government Procurement

Members also held fast to previous positions at the meeting of the Working Group on Transparency in Government Procurement on 18 June. The EU outlined some positive effects of an agreement on transparency in government procurement and its implementation (WT/WGTCP/W/41). For instance, transparency would lead, among other things, to legal certainty and thereby enhance competition, lower prices, and enable procuring entities to get better value for money. While not eliminating corruption, transparency would help reduce it. Responding to developing country concerns on escalation in administrative costs that an agreement would entail, the EU said it was difficult to find any example of a country with a complete lack of rules in government procurement and even so, the savings obtained by introducing competition would outweigh the costs.

According to trade sources, Poland, Switzerland, and the US spoke out in favour of the EU submission while Brazil, Colombia, Peru, Thailand and Morocco were critical but did not outrightly reject the possibility of negotiations on transparency in government procurement. Malaysia, Philippines, Egypt, India, Nigeria and China on the other hand were critical of the EU proposal and did not see any benefits of an agreement within the framework of the WTO. One developing country delegate stated that the EU needed to come up with empirical evidence to prove its claim. Moreover, he said it was not the purpose of the WTO to combat corruption, and the task was best left to government authorities.

### Friends of the Chair Process Raises Concern

Members agreed at an informal meeting between the the WTO Director-General and Heads of Delegations on 6 June that the Chairs of the Singapore issues working groups and Chair of the General Council would conduct informal consultations in order to determine whether the General Council could make recommendations to the fifth Ministerial Conference. Some developing countries, including China, India and Malaysia, have expressed concern regarding the transparency of the ‘Friends of the Chair’ process. They fear that divergent views will not be adequately presented in a draft text that it is based on unrecorded consultation held by the Chairs with small groups of Members.

### Links between the Singapore Issues and Overall Negotiations

With talks in other negotiating bodies in limbo, consensus on launching negotiations on the Singapore issues seems far from imminent. Some developing country trade diplomats have explicitly stated that the lack of meaningful progress in the Doha Round, especially on agriculture, implementation issues, and special and differential (S&D) treatment for developing countries, negatively affects any movement on the Singapore issues. Countries also disagree on whether the issues could be moved separately rather than ‘bundled’ together, starting with trade facilitation and transparency in government procurement, considered relatively ‘easier nuts to crack,’ and tackling investment and competition policy along different timeframes.

## Least-Developed Countries Outline Cancun Objectives

Trade ministers of least-developed countries (LDCs) have reached a common position on their objectives for the WTO Ministerial Conference to be held in Cancun next September. They called for binding duty- and quota free access for all LDC exports, as well as compensatory mechanisms to offset the erosion of preferential margins due to general tariff reductions arising from the Doha Round. The ministers also expressed their “full solidarity with African LDCs that are affected by subsidies on cotton provided by developed countries,” and strongly supported the initiative to seek the rapid elimination of such subsidies in the agriculture negotiations.

At the conclusion of their meeting in Dhaka, Bangladesh, from 31 May to 2 June, least-developed country trade ministers adopted the Dhaka Declaration, which calls for the WTO’s fifth Ministerial Conference to agree on the following:

- a binding commitment on duty-free and quota-free market access;
- a binding commitment from trading partners guaranteeing a substantive and concrete increase in LDCs’ market share in world trade;
- resolving, by Cancun, all implementation-related issues and concerns, and all special and substantially expanding and binding special and differential treatment provisions;
- free access to developed country markets for temporary movement of natural persons, particularly unskilled and semi-skilled service providers by *inter alia* recognising professional qualification, simplifying visa procedures and dropping the Economic Needs Test requirement;
- allowing LDCs flexibility in undertaking commitments and obligations consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities;
- substantial increase in technical and financial assistance to LDCs for the development, strengthening and diversification of their production and export base, as well as for institution and capacity building;
- the strengthening of the Integrated Framework for Trade-related Technical Assistance, with enhanced funding, to meet the needs of the LDCs, particularly for overcoming their supply side constraints and for the diversification of their export base along with simplification of procedures to improve access to financial resources;
- the exemption of least-developed country exports from antidumping, countervailing and safeguard measures;
- devising appropriate compensatory and other mechanisms to fully address the erosion of preference margins due to lowering of MFN tariffs;

- expeditious and full implementation of the guidelines for accession of LDCs adopted by the General Council (see page 16);
- developing mechanism to help LDCs address the inherent problems of very small size, land-locked state, remoteness and extreme vulnerability;
- establishing an international mechanism to protect the genetic resources, traditional knowledge and farmers’ rights and ensure non-patentability for all life-forms; and
- a legally sound solution for least-developed countries who due to insufficient or low manufacturing capacity face difficulties in making effective use of compulsory licensing, in accordance with the Doha Declaration on TRIPs and Public Health without restricting coverage of diseases.

The Dhaka Declaration also calls for the fast-track elimination of developed countries’ agricultural export subsidies for products of export interest to LDCs, as well as substantial reductions in trade-distorting export and production support measures for such products.

For non-agricultural products, LDCs seek not only duty- and quota- free access to developed country markets, but also “realistic, flexible and simplified rules of origin,” which take into account their industrial capacity. To ensure that market access is not nullified by non-tariff measures, “developed and developing countries shall immediately impose moratorium on anti-dumping measures, and safeguard measures, against LDCs. There must also be a moratorium on imposition of other contingency measures on products from LDCs.” In addition, while LDCs should not be required to undertake tariff reductions, they should be given “maximum credit” for unilateral liberalisation.

With regard to the rules negotiations, the Declaration affirms that “subsidies required for development, diversification and upgrading infant industries and in particular industries with substantial poverty alleviation potential in the least developed countries shall be treated as non-actionable subsidy,” and that export subsidies applied by LDCs “shall be exempted from export competitiveness thresholds.”

On intellectual property issues, LDC ministers stated that the review process of TRIPs Article 27.3(b) should clarify that plants, animals and parts of plants and animals, including gene sequences and biological processes for the production of plants, animals and their parts must not be granted patents. In addition, Members “shall ensure” that the TRIPs Agreement is fully compatible with the provisions of the Convention on Biological Diversity and with the International Treaty on Plant Genetic Resources for Food and Agriculture. The protection of geographical indications “shall be extended to products of commercial interest to LDCs other than wines and spirits.”

The trade ministers further stated that negotiations on the Singapore issues would be premature. They called for the relevant bodies to continue their work including, *inter alia*, studies on:

- whether and how any multilateral investment agreement would facilitate flows of FDI or improve its quality in LDCs.
- ways in which possible international agreements on competition policy might apply to developing countries, including through preferential or differential treatment; and
- the depth and breadth of any possible agreement on transparency in government procurement, and how it would affect LDCs.

## Trading Partners Reserve Judgment on EU CAP Reform

'A very useful new credit line in the WTO negotiations, a new margin for manoeuvre,' was how EU Trade Commissioner Pascal Lamy described EU farm ministers' agreement on 'a fundamental reform' of the Union's Common Agricultural Policy (CAP) on 26 June. Trading partners have welcomed the decision as a 'step in the right direction' rather than an open sesame that will unblock the stalled agriculture negotiations, but stress that they are waiting to see how the reform package will translate into action. While the EU is widely expected to present a new proposal in Cancun, Commissioner Lamy has made it clear that its scope will depend on other countries' putting 'equivalent concessions on the table'.

For months, trading partners faulted the EU's delay in reforming its Common Agricultural Policy for holding up the WTO negotiations. At the June-July agriculture negotiating session (see page 1), many of them cautiously welcomed the reform agreed on 26 June but noted that it was primarily about domestic support and left unclear any effects on market access or export subsidies. Others complained that the reform shifted support between domestic support categories rather than committed to subsidy reductions.

The US said that it could only "work with the EU and others to advance the WTO negotiations at the next ministerial meeting" if the EU promptly translated the reform package into new and ambitious negotiating proposals at the WTO. In contrast, EU officials have stressed that changes in the US Farm Bill will be necessary to achieve progress.

### The Reform in a Nutshell

The main feature of the reform is to decouple most domestic support from production. Instead of receiving subsidies according to hectares under cultivation or number of livestock, as of 2005 EU farms will get direct 'single farm payments' based on the average amount of subsidies received between 2000 and 2002. The rationale is that this will discourage over-production, and – presumably – reduce the need for export subsidies to get rid of butter mountains and wine lakes. However, in a nod to France, ministers agreed that member states may delay the transition to single farm payments until 2007 at the latest. They may also maintain up to 25 percent of the current per hectare payments in the arable sector linked to production.

In line with the non-trade concerns defended by the EU in the WTO agricultural negotiations, the reform foresees additional incentive payments to farmers who participate in schemes "designed to improve the quality of agricultural products and the production

process used and give assurances to consumers on these issues." Seventy percent of marketing costs for products produced under quality schemes can be covered by public funds. For five years, farmers will be eligible for a maximum payment of 10,000 euros a year to assist them in "adapting to the introduction of demanding standards based on EU legislation not yet included in national legislation concerning the environment, public, animal and plant health, animal welfare and occupational safety."

The EU's proposal to treat as non-actionable compensation paid to farmers for applying high animal welfare standards has garnered little support in the WTO's agriculture negotiations. Nevertheless, the reformed CAP proposes an annual maximum payment of 500 euros by livestock unit to farmers "who enter into commitments for at least five years to improve the welfare of their farm animals and which go beyond usual good animal husbandry practice. Support will be payable annually on the basis of the additional costs and income foregone arising from such commitments."

While the new system will continue to favour large farms over small ones, holdings receiving direct payments in excess of 5,000 euros will see governmental manna cut by three percent in 2005, four percent in 2006, five percent in 2007 and another five percent between 2008-2013. The five percent reduction level is expected to result in savings of 1.2 billion euros, which will be spent on enhancing rural development.

Overall EU farm support is not likely to decrease significantly. It may, in fact, increase, at least in the short run. Ministers decided in October 2002 to freeze spending at whatever level prevails in 2006 until 2013 (Bridges Year 6 No. 7, page 18), but the fact that ten new countries – many of which are large agricultural producers – are set to join the Union in 2004 is likely to result in a higher 2006 agricultural budget than the present forty billion euros,

### CAP Reform and the WTO

With regard to the WTO, the most significant effect of the CAP changes will be to shift most EU subsidies to the Green Box under the WTO Agreement of Agriculture. Green Box subsidies are exempt from reductions as they are considered to be not or minimally trade-distorting. Among the contentious points of the current negotiations are proposals from the Cairns Group and others to develop stricter Green Box qualifying criteria, as well as establish a spending ceiling (see page 2).

### Civil Society Concerned about Development Effects

In their reactions to the freshly released compromise agreement, numerous European and international environment, development and consumer groups expressed their deep dissatisfaction with the decision made by EU agriculture ministers that they said would bring no benefits to developing countries. "These proposals confirm our worst fears," said Phil Bloomer, Head of Advocacy at Oxfam GB. "European agriculture will still be subsidised to the tune of GBP 30 billion creating vast surpluses that will be dumped on poor countries." Barry Coates, Director of the World Development Movement, noted that the reform package "falls short of what is needed to stop the agricultural dumping that destroys the livelihoods of small farmers in the poorest countries." For its part, Consumers International accused the EU of contradicting its commitment to development issues, describing the deal as "anti-development, anti-trade and anti-consumer".



## Latin America: Ministers Consider an 'FTAA Lite'

At an informal meeting in mid-June, ministers from key North and Latin American countries evoked the possibility of scaling back the ambitious scope of the Free Trade Area of the Americas (FTAA) in order to be able to conclude the negotiations on schedule by 1 January 2005. While the 'FTAA Lite' could still cover all nine broad negotiating areas, commitments and disciplines could be less far-reaching than the WTO-plus standards originally envisaged. For instance, an agreement on government procurement could be limited to transparency requirements (as is being proposed at the WTO, see page 17) rather than on market opening commitments. Similarly, investment rules could only cover post-establishment issues, while services negotiations could be limited to market opening and exclude rule-making. Decisions on scaling down ambitions are not expected until the FTAA Ministerial Meeting in Miami next November.

Agriculture remains a big stumbling block not least due to US reluctance to tackle subsidy issues in the FTAA context (it prefers the WTO). The US has also angered the Mercosur trade bloc by offering the four countries a much more modest tariff deal than those proposed to other Latin American regional groupings (Bridges Year 7 No.2, page 14).

### CAFTA to Focus on Tariff Bargaining, Textiles Preferences

After five rounds of more general negotiations, talks on a free trade agreement between Central American countries and the US (CAFTA) will now focus on forging tariff deals for individual products. While many products have already been assigned to different tariff cut 'baskets', many are still left in an indeterminate basket with no agreed cuts or timelines.

Regarding the important textiles trade, Central American countries have agreed to base rules of origin on the 'yarn forward rule', which requires foreign apparel makers to use either American or locally spun yarn to avoid a duty. In return the CAFTA countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) are demanding "robust" tariff preference levels for different textiles categories according to where/how the cloth was woven and cut, and the final product sewn.

Central American textile manufacturers are also likely to push for a broad list of products exempted from rules of origin requirements in the NAFTA, the African Growth and Opportunities Agreement and the Caribbean Basin Trade Preferences Act under so-called 'short supply' provisions. These provisions allow interested parties to request the US President to proclaim quota- and duty-free treatment for apparel articles assembled from a fabric or yarn that cannot be supplied by the domestic industry in commercial quantities in a timely manner. Such requests are, however, likely to run into stiff opposition from the US textiles industry.

Another important open question concerns Central American labour laws (or their enforcement), which are under scrutiny by the US Congress. The next negotiating session is scheduled for late July, and the free trade area is expected to be concluded by the end of this year.

## Africa: A Common Position for Cancun

African Union trade ministers met in Mauritius from 19 to 20 June to co-ordinate their positions towards the Cancun Ministerial Conference.

The ministers identified lack of progress in the negotiations on agriculture, TRIPs and public health, special and differential treatment and implementation-related concerns as the most critical issues, and called on WTO Members to "inject momentum in these negotiations in order to ensure that the Cancun WTO Ministerial Conference yields positive results for African countries and makes the Doha Work Programme a truly 'Development Agenda'."

They also noted with "deep concern" that the draft elements for modalities proposed by the Chair of the Negotiating Group on Market Access did not "take into account the specific vulnerabilities of African industries, especially in the textiles and clothing, leather and fisheries

sectors. [...] We urge that the modalities should take full account of all our concerns, in particular, the erosion of preferences. [...] While recognising the special needs of least-developed countries (LDCs), the proposed studies on LDCs should be extended to other African countries."

Like their LDC colleagues a few weeks earlier (see page 19), African trade ministers called upon the WTO to conclude work on special and differential treatment, as well as implementation-related issues before the Cancun Ministerial Conference. They also noted that negotiations on the Singapore issues should not be launched in Cancun.

African ministers also said that they anticipated "development-friendly WTO disciplines" arising from negotiations on regional trade agreements (see page 16).

Finally, the Grand Baie Declaration notes African countries' concern about the lack of transparency and inclusiveness in the WTO negotiations and decision-making processes and calls for "measures to ensure the effective participation of our countries in the processes leading to the fifth WTO Ministerial Conference, at Cancun and beyond."

### US, Southern Africa Start FTA Talks

The United States and countries of the Southern African Customs Union have held one formal meeting to set up the parameters of their free trade area negotiations. An August session is expected to continue work on logistics and structures, with more substantive issues likely to be addressed in October. A tentative timeline would have the talks conclude in 18 months, i.e. roughly at the same time as the WTO's Doha Round.

The talks are to cover the full complement of trade issues addressed in WTO Agreements, as well as investment, e-commerce, labour, the environment and government procurement.

The SACU side (Botswana, Lesotho, Namibia, South Africa and Swaziland) has identified agriculture and trade remedies as first priorities and would like to leave investment, labour, dispute settlement and intellectual property to a later phase. The US is keen to include investment in the first phase – likely to last until the end of the year.

## In Brief

The **Cartagena Protocol on Biosafety** – a protocol under the Convention on Biological Diversity (CBD) – will enter into force on 11 September this year after Palau became the 50<sup>th</sup> state to ratify it on 13 June. The aim of the Protocol is to control the transboundary movement of living modified organisms (LMOs) and the adverse effects their release into the environment might have on countries' ecosystems and human health. The Protocol, which is seen by many as the first operationalisation of the precautionary principle, establishes an advance informed agreement (AIA) procedure for import of LMOs. The Protocol does have trade implications, notably because it allows Parties to refuse LMO shipments on the basis of precaution (Bridges Year 7 No.4, page 16). WTO Members are in the process of negotiating the relationship between specific trade obligations in multilateral environmental agreements and WTO rules. While a number of WTO Members, such as the EU, will be Parties to the Protocol, the US, which has not ratified the CBD, will not.

The **Codex Alimentarius Commission**, the body charged with setting international standards related to food safety, has approved three risk analysis standards for biotech food, which had been forwarded by the Codex Ad Hoc Intergovernmental Task Force on Food Derived from Biotechnology in March 2003. The standards include references to the "tracing of products" and food labelling as risk management tools. Many observers believe that the agreement reached at the Codex meeting might mark a breakthrough in international negotiations on the use of traceability systems and at least partially vindicate the EU's insistence on introducing a labelling and traceability system for genetically modified foods (see opposite). This view assumes that 'tracing of products' and 'traceability' are synonyms. However, the US – supported by the food industry – has insisted that the two terms are not equivalent, arguing that 'product tracing' is limited to 'one step forward and one step back'. To date, there is no agreed Codex definition for either term.

## EU Parliament Approves New GMO Labelling Rules

The European Parliament endorsed new regulations on labelling and traceability of genetically modified organisms (GMOs) in food and animal feed on 2 July. EU officials hope that the long-delayed legislation can enter into force sometime next autumn, thus removing one of the major obstacles to restarting approvals of import applications for new genetically-engineered crop varieties. Such approvals have been frozen for five years due to six EU member states' insistence that labelling and traceability rules be in place before resuming them. The US, Argentina and Canada have already started WTO dispute settlement proceedings against the 'de facto moratorium' (see page 9).

The two new directives still need to be formally adopted by the EU Council of Agriculture Ministers, but this is considered a formality as the Council worked with the Parliament to shape the compromise text approved on 2 July.

After the new Regulation on GM Food and Feed enters into force, food products and animal feed containing GMOs have to be clearly labelled, including highly refined products (such as corn oil), which no longer contain genetically-modified DNA. These products must be labelled as 'containing genetically modified organisms' or as having been 'produced from genetically modified (name of organism)'. In addition, the GMOs in question must be authorised by European authorities.

However, products need not be labelled if "adventitious or technically unavoidable presence" of authorised GMOs is less than 0.9 percent. Such material may be present in minute traces in conventional food and feed as a result of contamination during cultivation, harvest, transport and processing even when producers and other operators have made efforts to avoid GMOs. With regard to the "adventitious or technically unavoidable presence" of non-authorised GMOs, the EU Parliament accepted a three-year transitional period during which a 0.5 percent presence will be tolerated without labelling, as long as the GMO in question has received a positive scientific risk assessment.

GMOs contained in animal feed, as well as food, will be subject to authorisation, which will depend on a scientific risk assessment by the European Food Safety Authority and a qualified majority of member states in a regulatory committee.

The new traceability rules are intended to make it possible to trace "genetically modified organisms, and food and feed produced from GMOs, with the objective of facilitating accurate labelling, environmental monitoring and withdrawals of products." All parts of the distribution chain will be obliged to "have in place systems and procedures to allow the identification, for a period of five years from each transaction, of the person from whom and to whom" food/feed products consisting of, containing, or produced from GMOs were made available.

Drafts of these regulations have been subject to intense scrutiny at the WTO's Committee on Technical Barriers to Trade, as well as the Committee on Sanitary and Phytosanitary Measures for years. The US and other biotech exporters have criticised them for being unnecessarily trade-restrictive and prohibitively costly to implement as they would require entirely separate production, handling and transport schemes for conventional and genetically engineered crops and derived products.

Importantly, the regulations allow EU member states to take (unspecified) "appropriate measures" to avoid unintended presence of GMOs in other products. This provision was critical for the Parliamentary vote to pass. Environmental groups' first reactions were largely positive, although some called for the adoption of a strict liability regime that would make biotech companies legally responsible for adverse environmental effects such as contamination.

## Civil Society Recommendations for LDCs

Meeting just before least-developed countries' trade ministers gathered in Dhaka to forge a common position for the WTO's Cancun Ministerial Conference, civil society organisations developed a 22-page Dhaka Declaration<sup>1</sup> of their own, recommending a number of priorities that LDC governments should focus on. Many of these are reflected in the Dhaka Declaration adopted by the ministers four days later (see page 17).

Highlights of the International Civil Society Forum's declaration include:

- The outstanding implementation issues in favour of LDCs should be resolved at the Cancun Conference. Special and Differential Treatment in favour of LDCs should be made effective and enforceable. A Framework Agreement on SDT should be accepted. LDCs' commitment to any future single undertaking should be conditional upon the full incorporation of SDT into the WTO. The SDT framework agreement should establish that the implementation of obligations would be modulated according to the level of development of each country and reviewed periodically, taking into account not only per capita GNP, and exports, but also human development indices and goals. LDCs should not be required to accept additional commitments nor enter into negotiations aimed at establishing obligations in new issues.
- The consolidation of such duty-free and quota-free treatment within a contractual instrument in the WTO is the first priority at Cancun, but this must be complemented by improved and simplified rules of origin. From Cancun onward, a moratorium should be adopted on anti-dumping, countervailing duties and safeguard measures against imports from LDCs. There should also be binding obligations to provide LDCs with the necessary measures, including technical and financial assistance, to enable them to overcome difficulties in meeting SPS requirements.
- Export subsidies, including export credits, on agricultural products that compete with those produced by LDCs, should be eliminated as a matter of priority, at the latest by the Ministerial Conference. Domestic subsidies which result in such products entering world markets at dumped prices should also be eliminated.
- Without expanded commitments in the areas of movement of natural persons (MNP) and temporary migration, LDCs will stand to gain nothing from the services negotiations. Commitments on MNP should be complemented by the ratification by all governments of the UN Convention on the Protection and Promotion of the Rights of all Migrant Workers and the Members of their Families.
- Enabling LDCs to compete would require the effective application of the access to technology provisions of Article IV of GATS, as well as operationalisation of the technology transfer provisions of Article 66 of the TRIPs Agreement, and paragraph 7 of the Doha Declaration on TRIPs and Public Health, through providing monetary incentives to the suppliers of technology.
- In the review of Article 27.3(b) of the TRIPs Agreement substantial revisions should be made (a) to protect the rights of farmers, indigenous people and local communities, including by the formulation of a *sui generis* system of protection of plant varieties, and (b) to prohibit patents on life forms.
- With regard to paragraph 6 of the Doha Declaration on TRIPs and Public Health, LDCs should press for a solution that honours the Doha Declaration, is automatic, and economically viable. There should be no restrictive list of diseases, which would in effect imply that the health of people in LDCs has a lower priority than of those in other countries. LDCs must resist pressure to adopt TRIPs-plus standards. They should make full use of their rights under the TRIPs Agreements.
- Acceding LDCs should be allowed to accede to the WTO under conditions no less favourable than those available to the existing LDC members. The accession process should be made less onerous with LDCs being automatically eligible for all SDT provisions.
- Capacity-building assistance should be made available not only for training and workshops but also for physical capacity-building to improve trading capacity of LDCs. The Cancun Ministerial Conference must draw an effective mechanism for this.
- LDC ministers should demand a democratic process of nomination of Chairpersons of the various Committees, Working Groups and the Trade Negotiations Committee.

<sup>1</sup> Dhaka Declaration of the Global Civil Society on the occasion of the Second LDC Trade Ministers Meeting; see [http://www.cpd-bangladesh.org/lcd\\_dhakafi.pdf](http://www.cpd-bangladesh.org/lcd_dhakafi.pdf)

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### Meetings of WTO Bodies

July 7 & 10	Council for Trade in Services, special session*
July 7-8	Committee on Trade and Environment; regular session followed by special session*
July 9-11	Negotiating Group on Market Access
July 10	Working Group on Trade and Tech. Transfer
July 14-15	Trade Negotiations Committee
July 16-18	Committee on Agriculture, special session*
July 21	Dispute Settlement Body
July 21-23	Negotiating Group on Rules
July 22-23	Council for Trade in Goods (trade facilitation)
July 24-25	General Council
Aug. 13-15	Negotiating Group on Market Access
Aug. 29	Dispute Settlement Body
<b>Sep. 10-14</b>	<b>WTO Fifth Ministerial Conference Cancun</b>

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

### Other Meetings

July 28-30 Montreal	'Mini-ministerial' in preparation for Cancun hosted by the Government of Canada
July 28-31 Brussels	ACP Senior Officials and Trade Ministers Meetings on the WTO Ministerial Conference and the EPA negotiations
July 28 New Orleans	Sixth negotiating session for a free trade agreement between Central America and the US

### New from ICTSD

Trade Negotiations Insights: From Doha to Cotonou The June 2003 issue of this bi-monthly publication contains articles on *The Survival of African Cotton between Negotiation and Dispute at the WTO* and *Preparing for EPA Negotiations: What Role for Sustainability Impact Assessments?*, as well as an update on the state of play of the EPA negotiations. To subscribe, contact ICTSD by e-mail at [subscribebridges@ictsd.ch](mailto:subscribebridges@ictsd.ch). *Disponible en français également.*

### Documents Circulated at the WTO

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