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Facts and Figures

- At the end of 2002, 176 regional trade agreements (RTAs) were in force and notified to the WTO, 17 more than at the end of the preceding year.
- Sixty-three percent of European citizens are favourable to globalisation, but 79 percent think that alter- or anti-globalist movements raise points that deserve to be debated.
- Nearly 90 percent believe that multinationals benefit most from globalisation, and the majority thinks that small- and medium-sized companies lose out.
- The majority also believes that the EU, the US, Japan, China and consumers benefit from globalisation.
- A third of those who oppose globalisation in Europe also thinks it does not benefit developing countries.

Source: European Commission. November 2003. *Flash Eurobarometer 151B*

After Cancun, Free Trade Area of Americas Talks Show Limits of the Single Undertaking

Western hemisphere trade ministers meeting in Miami on 20 November adopted a vaguely-worded declaration that allowed the Free Trade Area of the Americas (FTAA) to move forward along different tracks depending on the participating countries' willingness to take on new commitments. This outcome implied a recognition of the limits of the 'single undertaking' approach in bringing about the comprehensive regional agreement – described by some as 'NAFTA on steroids' – initially envisaged.

Profound differences in the priorities and objectives of the 34 countries involved in developing the FTAA had become apparent well before the Miami meeting. The region's largest economies, Brazil and the US, had squared off for months on agricultural subsidies, which the US insisted could only be addressed at the WTO. Brazil reacted by rejecting negotiations on far-reaching FTAA disciplines on intellectual property protection and services, as well as investment and government procurement.

Paralleling the (unadopted) final Cancun text, which essentially reflected a deal hammered out between the EU and the US, the Miami Declaration was based on a face-saving compromise draft worked out bilaterally between Brazil and the US prior to the event. While many participants complained that their inputs were ignored in Miami, the fact that the declaration left the final scope of the agreement wide open ultimately allowed them to sign off on it.

Single Undertaking vs Liberalisation à la Carte

At the outset, the FTAA negotiations were based on the 'single undertaking' model first used in the Uruguay Round, where countries negotiated on a large number of areas in parallel, and the end result was accepted by all as a 'package'. The underlying idea was that each would find its concessions in some areas balanced with gains in others. However, many developing countries in particular now consider that the Uruguay Round has not delivered commensurate gains in their priority areas, such as agriculture and textiles, in exchange for taking on onerous obligations in intellectual property protection and investment disciplines.

To set the stalled Doha Round back on track after Cancun, the EU and some others have floated the idea of abandoning the 'single undertaking' model for the most controversial topics in favour of plurilateral agreements within the WTO, but many Members – including some of the keenest, as well as the least keen, liberalisers – resist such an approach (see page 11).

The Scope of the FTAA Remains Open

Ministers reaffirmed their commitment to "the successful conclusion of the FTAA negotiations by January 2005, with the ultimate goal of achieving an area of free trade and regional integration." The means of reaching this goal were addressed in only the most general terms, which offer a great deal of flexibility but are open to interpretation.

For instance, ministers instructed negotiators to "aim at a balanced agreement that addresses the issue of differences in the levels of development and size of economies of the hemisphere" and recognised that countries might assume "different levels of commitments". They instructed the Trade Negotiations Committee (TNC) to "develop a common and balanced set of rights

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Bridges

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and obligations applicable to all countries. In addition, negotiations should allow for countries that so choose, within the FTAA, to agree to additional obligations and benefits. One possible course of action would be for these countries to conduct plurilateral negotiations within the FTAA to define the obligations in the respective individual areas."

Negotiations on the "common and balanced set of rights and obligations applicable to all countries", are to include "provisions in each of the following negotiating areas: market access; agriculture; services; investment; government procurement; intellectual property; competition policy; subsidies, antidumping, and countervailing duties; and dispute settlement." The only concrete instruction regarding these areas was that "the negotiations on market access [must] be conducted at a pace that will lead to the conclusion of those negotiations by September 30, 2004."

What Additional Obligations and Benefits?

In creatively ambiguous language, the declaration states that ministers "fully expect that this endeavour [i.e. parallel 'common' and plurilateral negotiations] will result in an appropriate balance of rights and obligations where countries reap the benefits of their respective commitments."

Here is the crux of the matter: what will be the scope of the "additional obligations and benefits" that may be negotiated within the FTAA? Does this possibility apply to all nine negotiation topics? Or could more ambitious plurilateral agreements be concluded just in investment, government procurement and competition policy, say, while 'core areas' such as agriculture and industrial tariffs would be covered by the "common and balanced set of rights and obligations applicable to all countries"? Would different levels of commitment (and resulting benefits) be acceptable in services and intellectual property protection? How about rules-related issues such as subsidies and antidumping/countervailing disciplines?

The Miami Declaration's language that 'this endeavour' will result in countries' reaping *the benefits of their respective commitments* neatly papers over seriously divergent views among participants – and not least between Brazil and the US – on these questions.

Ministers also instructed negotiators to include in the FTAA Agreement "measures in each negotiating discipline, and horizontal measures, as appropriate, that take into account the differences in the levels of development and the size of the economies, and are capable of implementation." Again, the vague wording leaves many different outcomes possible.

Provisions for Public Participation

FTAA trade ministers devoted six paragraphs to the topic of "transparency and civil society participation", a subject conspicuously absent in the WTO Ministerial drafts. They instructed the Committee of Government Representatives on the Participation of Civil Society to "make recommendations to the TNC on the means to broaden the mechanisms for disseminating information on the discussions, drawing upon the experiences of countries for distributing information to their civil societies." It will be interesting to see what transpires on this, as civil society organisations in the region have repeatedly complained about the difficulty in keeping abreast with developments in the negotiations. At any event, the third draft of the FTAA Agreement is available to the public on the official FTAA website.

The Limits of Flexibility

While the FTAA ministers' recognition that one size does not fit all is attractive in many ways, it does not provide a panacea. Admittedly, the final shape of the hemisphere-wide free trade area is still largely unknown, but eventual FTAA gains could prove relatively meaningless for those not party to the multiplying smaller – often more demanding – regional arrangements, particularly between the US and several Latin American countries, expected to be concluded before the end of the FTAA negotiations (see pages 13–14).

In finally, even those the most eager to liberalise agricultural trade seem to have resigned themselves to the view that WTO remains the only forum where subsidies can be meaningfully addressed – if indeed they can be addressed at all in the foreseeable future (see page 11).

Trade Rules, Processes and Negotiating Strategies: Has Cancun Changed Anything?

Gerry K. Helleiner

There has been a good deal of both official and media discussion about the implications of the breakdown of the WTO Ministerial Conference in Cancun in September 2003. Yet, fundamentally, the Cancun experience has changed very little, if anything. The fundamental questions are the same now, after the ministerial meeting, as they were before. The same is true of the FTAA meetings in Miami in November. Trade diplomacy, like nature, does not make great leaps.

Almost everyone agrees that it would be helpful to resume constructive discussions and negotiations in the WTO, though not necessarily on the basis of the text Minister Derbez presented in Cancun. How can one not believe in a strong multilateral rules system? The system we have is far superior to anything the world has previously been able to put together.

There is little merit in the panicky assessments that the system is in danger of collapse if the Doha Round isn't quickly completed. Rather than rushing – with feverish effort, clock-stopping and last-minute diplomatic bullying to achieve a patchworked compromise agreement in order to reach some preassigned deadline – is it not time for the WTO and other trade institutions to proceed more carefully and deliberately to bring purpose, order and credibility to the international trade regime, however long that may take?

Short and intense rounds of trade policy bargaining may have been appropriate for an earlier day, when the needs for liberalisation and rule-setting were more intense, and the returns from early agreement were, by universal consent, much higher. The 'bicycle theory' – that if trade diplomats don't keep peddling strenuously their system may crash – may also once have been broadly correct. However, neither the bicycle theory nor the intensive bargaining round approach fit the facts or the needs of the current global situation. What's the rush? Isn't it more important to get it right? In the broad sweep of history, short-term diplomatic deadlines and pressures fade into insignificance. And one would have thought that the creation of the WTO should have overcome the previous GATT mentality of 'rounds'. How many other international organisations undertake their business in this peculiar fashion?

Now, as before, those concerned with the future of the international trading regime face fundamental questions. Let me call attention to five of them, beginning at the highest level of generality and philosophy, and then working down to more specifics. They will be addressed from the standpoint of one who takes the 'development' of the so-called 'Doha Development Agenda' very seriously.

Objectives

What is to be the ultimate objective of the international system of trade (or market) rules? Is there, in fact, agreement as to where the system is trying to go? Can such agreement be reached, at least at the level of broad principle? This is not an idle or a purely academic question.

There are, at present, (at least) two fundamentally different visions of the purposes of the international rules system for global markets and therefore for the WTO.

The first seeks a predictable and liberal (if not necessarily totally free) regime within which market participants can interact fairly and in their mutual interest, thereby promoting the collective interest. As globalisation continues on its inevitable path – driven by revolutions in communications and transport technology – international efficiency and equity require increasing harmonisation of national rules, and the achievement of as 'level' a playing field as possible. 'Deep integration' is welcome and is to be 'rationalised' through a common system of rules. Relative freedom for market participants is both an end in itself and the means for global development. The purpose of the rules system, above all, is to provide stability and predictability for market participants, and reduce the risk of counter-productive governmental interfer-

ences. 'Success' can be measured by the consequent degree of expansion in international trade (and investment). Such income distribution problems as may arise within a free and deeply integrated global market system can and should be addressed via separate financial arrangements.

The second sees the rules system – and indeed international trade itself – as purely instrumental for poverty reduction, and economic development. Trade expansion, per se, is not a primary objective; poverty reduction and economic development are. Late-comers to economic development are likely to require special treatment, including increased 'policy space' within which to build their own approaches to poverty reduction and economic development. In order to have any hope of success such approaches must be 'locally-owned', not only by implementing governments but also by the broader populace. 'Standard' Northern rules for investment policies, trade policies and intellectual property may not be universally perceived as development-friendly.

To quote Dani Rodrik:

"Imagine a trading regime in which trade rules are determined so as to maximise development potential ... Instead of asking 'how do you maximise trade and market access?' negotiators would ask 'how do we enable countries to grow out of poverty?' In this vision, the WTO would serve no longer as an instrument for the harmonisation of economic policies and practices across countries, but as an organisation that manages the interface between different national practices and institutions... the trade regime has to accept institutional diversity, rather than seek to eliminate it, and... it must accept the right of countries to 'protect' their institutional arrangements."

Continued on page 4

Obviously, the first ('liberal') vision still dominates international trade negotiations in the WTO and elsewhere. As always, there remains a considerable gap between vision and reality; and hypocrisy abounds. Developing countries can nevertheless draw upon it as they seek to overcome Northern protectionism in agriculture and textiles, as well as tariff escalation with the level of processing. Eventually – although this still seems in some distant future – they may use it in support of more liberal flows of labour or, in the arcane language of trade diplomats, 'movement of natural persons'. 'Rule deepening', if truly feasible, could generate immediate pay-offs for developing countries. On the other hand, it threatens their future capacity to deploy policy instruments that others have found useful in their pursuit of development, and takes no special account of their particular or country-specific needs.

But support for the second vision has been growing; and the potential for developing countries' influence in the WTO (much greater than in the IMF or the World Bank) offers some ground for optimism on their part that there may be more.

As yet, there is little sign of developed country support for such a new vision of the objectives of the international trading rules system – indeed, some rumblings in the US and Europe suggest that if developing countries' influence in the WTO becomes too great (the 'UN-isation of the WTO'), they may abandon it. But the phraseology (if not yet the substance) of the 'Doha Development Agenda' and the summit-level dec-

larations around the FTAA, as well as the Cotonou Agreement at least nod in the direction of the second vision.

Developing countries' formal voting strength in the WTO and elsewhere, the nascent G-20 (or however many they now are), recent 'successes' over pharmaceutical patents, and the prospect of progress with the cotton problem, all suggest some change. And, after all, even the IMF, which for years proclaimed that it was not a development institution, now feels it necessary to highlight its role in poverty reduction objectives at least at a rhetorical level.

Should there now be a serious push for a much more consciously development-oriented and less harmonisation-oriented rules system for global markets, and a reoriented WTO (and FTAA), such as has been suggested by the UNDP among others? What would such a system look like? Rather than merely 'waivers', delayed obligations and increased 'technical assistance' within an unchanged and rigid system, can one instead imagine a looser and more 'rolling' rules system, in which the emphasis is upon development, monitoring, evaluation and learning?

Or is this all still 'pie in the sky', likely to engender US accusations of 'ideological approaches', if promoted too vigorously by developing countries, and de facto abandonment of all forums in which such demands are made?

Breadth of Coverage

How broad should be the coverage of rules to be included in any single set of so-called 'trade' negotiations or 'trade' agreements or 'trade' institutions?

Under the GATT, trade negotiations rarely intruded upon domestic policy questions. There is a logic – the logic of deep integration and harmonisation – in the inclusion of all manner of national policies, not even any longer ostensibly 'trade-related', in international 'trade' agreements. There is also, of course, a long history of linkage between trade or other diplomatic agreements and the provision of finance, both governmental and private. Today, the finance offered by the IMF, the World Bank and aid donors can be far more effective inducements for trade liberalisation, tightened intellectual property laws, and encouragements to foreign investment than any rules or agreements negotiated in the WTO.

Can or should trade negotiations be kept distinct and separate from other elements of diplomacy? Or is that just the luxury of teachers of international economics?

Is it too late to attempt to return to a focus in 'trade' negotiations upon border transactions, trade in the narrowly defined sense? Many now concede that the inclusion of intellectual property provisions in the WTO was mistaken. There remains profound divergence as to the inclusion within the Doha Round of the so-called Singapore issues, particularly government procurement, competition and investment. (Trade facilitation may be easier to agree on.) Labour standards (and migration), environmental standards, capital account convertibility issues, 'realistic' exchange rates all are frequently on the 'trade' negotiating agenda as well. But should they be? Other international agreements and institutions exist for them all.

What, then, is the optimal size of negotiation packages? How large should 'single undertakings' be? What is the appropriate role of 'issue linkages'? How does one sensibly address the issue of 'side payments' for acquiescence in 'trade' agreements? What kind of 'grand bargains' can make sense?

These are large questions. Obviously, there can be no universal answers. Individual countries' interests will differ. For the present, in the aftermath of the Cancun meeting's collapse, the only feasible immediate way forward for 'single undertakings' in the WTO would seem to be a significant narrowing of the (still primarily Northern-driven) agenda – to trade and market access matters upon which consensus exists or might soon be negotiated. The negotiation of plurilateral agreements, involving less than complete WTO-member participation, for investment, competition, government procurement, and some services may accompany the Doha

Should there now be a serious push for a much more consciously development-oriented – and less harmonisation-oriented – rules system for global markets, and a reoriented WTO (and FTAA) as has been suggested by the UNDP among others? What would such a system look like? Rather than merely 'waivers', delayed obligations and increased 'technical assistance' within an unchanged and rigid system, can one instead imagine a looser and more 'rolling' rules system, in which the emphasis is upon development, monitoring, evaluation and learning?

process. Broader deals – probably including the provision of increased finance – may also be possible in the context of the FTAA, the emerging Cotonou regime with its ‘economic partnership agreements’, other regional agreements and in bilateral agreements; although debate will undoubtedly continue as to their desirability.

Approaches to Political Constraints

How much should be taken as a ‘given’ external political constraint? How much should be conceded on the basis of such ‘political realism’? In what circumstances should the objective become the destruction, however difficult or slow, of such external political ‘constraints’? And over what time horizon should such calculations be made? (It goes without saying, however annoying it may be, that political considerations within smaller and weaker trading nations are afforded little importance in international negotiations.)

In the current circumstances, US and EU agricultural policies are obviously front and centre. Does it make sense for the G-20 to hold out for significant changes – which are called for whatever one’s vision of the objectives of the rules system – but which may not be forthcoming? Or should they concede, on grounds of realism concerning Northern political constraints, that primary G-20 objectives in agriculture will not be attained, take what little they can get, and move on, with the advantage of ‘high moral ground’, to other negotiating matters?

The same goes, of course, for US antidumping and countervailing policies. Canadian experience in negotiations with the US over many years suggests that these matters are simply unmovable. But how does one really know? In the long run, everything may be changeable. Consider, for instance, the pharmaceutical lobby in the US, which played a major role in the introduction of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) to the WTO: the lobby is, of course, still there and it is still powerful but it could not prevent a significant erosion in international patent arrangements as they relate to developing countries during the past year. Similarly, the financial services lobby has lost considerable ground in recent years in its push for universal capital account convertibility, so much so that it has lost much of its prior interest in WTO services negotiations.

Would a new administration in the US, from 2005 onward, or 2009 onward, adopt a ‘softer’ approach towards trade and other negotiations in the WTO and, more generally, with developing countries? If so, there would be good sense in some further stalling on the part of developing countries. (International trade negotiations will in any case stall during the 2004 US election year.)

Potential for Positive Sum Games

At a more practical level, is still possible to devise specific quid pro quo agreements, within the trade sphere, such that the result is seen by all countries (if not always all interests within them) as a positive sum game? Similarly, within nations, can one construct positive sum agreements between exporting and import-competing interests so that nationally-owned trade ‘offers’ can be made?

Traditionally, within the GATT/WTO context, this has all been seen primarily in mercantilist terms – as a matter of trading market access for market access. But all trade analysts recognise that domestic import liberalisation can be (though it isn’t always) beneficial to the ‘conceding’ country (if not to its import-competing industries); and hard-pressed economic decision makers, facing domestic political pressures, may welcome the economic consequences of their own concessions. Many (more in the WTO and the World Bank than in UNCTAD) go so far as to say that the primary benefits to developing countries both from the Uruguay and the Doha rounds will come from their own trade liberalisation. Good trade analysts also recognise, however, that the adjustment costs of potential ‘losers’ from import liberalisation must be seriously addressed, and that in countries purportedly gaining the most, such adjustment costs can be high. The best analysts know furthermore that the real exchange rate (the relative price of tradeables) is usually a far more significant determinant of trade performance in individual countries than tariffs and trade barriers.

It should be possible, at a minimum, to devise some concrete first steps – down payments on the DDA – to restore confidence in the WTO negotiating process. For instance, time-specific targets for the reduction of domestic and export subsidies and trade barriers in developed country agriculture; specific reforms in the cotton sector; and the dropping from the agenda of all of the Singapore issues except for ‘trade facilitation’; would together almost certainly permit the resumption of talks with developing countries on the traditional market access issues.

Sustainable Coalitions

Where will each country find its most useful and appropriate allies in negotiations? On what principles or common objectives can stable coalitions be formed? Should coalitions be constructed that are specific to issues or negotiating arenas? In what negotiating arenas can the bargaining power of coalitions or countries be maximised?

If anything is new post-Cancun, it is in this sphere. The future roles (including potential strategy and tactics) of the G-20 and the ACP and least-developed groups, and the difficulties in holding them together, now deserve and will undoubtedly receive intensive analysis and diplomatic attention.

What are the pros and cons of bilateral deals, particularly those with the US, in which access to its huge goods and financial markets seem to many to be worth trading off against liberalised domestic policies on imports, services and investments and tightened intellectual property laws? If these continue to proliferate, it is important to understand their potential longer-term costs as well as their more obvious short-term benefits.

A final point for reflection: is there still underexploited opportunity for further regional agreements, in which common approaches and policies may be agreed without the pressure of more powerful external actors with interests of their own to protect?

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EU Trade Preferences: A Dispute with Vast Systemic Implications

In early December, the WTO was expected to circulate a panel report upholding India's complaint against an EU Generalised System of Preferences (GSP) scheme that grants enhanced trade preferences to developing countries combating illicit drug production.

The case has important systemic ramifications. GSP schemes operate under the Enabling Clause,¹ which allows developed countries to give non-reciprocal trade preferences to developing countries, but requires such preferences to be non-discriminatory. Most GSP schemes are frequently used to advance other policy objectives and, due to their unilateral nature, riddled with conditionalities. The Indian challenge stemmed from the EU's granting Pakistan preferential textiles tariffs under the drug-control scheme following President Musharraf's co-operation with the US-led coalition in Afghanistan in the wake of the September 11 attacks.

In the short term, the ruling could affect the illegal drug eradication incentives given by the US to Bolivia, Colombia, Ecuador and Peru under the Andean Trade Preferences Act, but its long-term consequences could be much wider. Paraguay, for one, has long called for new GSP rules that would make all conditionalities illegal, including those on labour or the environment (Bridges Year 6 No.5, page 14). While such an outcome would no doubt contribute to more equal treatment, the obligation to extend any GSP benefits to all developing countries could make developed countries less willing to use the Enabling Clause at all.

Claims and Counterclaims

India's primary claim was that the special tariff preferences were inconsistent with the GATT's most-favoured nation (MFN) obligation, which requires WTO Members to automatically extend to all other Members any advantage, favour, privilege or immunity granted to one Member's imports.

The panel also agreed with the Indian claim that the tariff preferences violated provisions of the Enabling Clause. In addition to call-

ing for the establishment of "non-reciprocal and non-discriminatory preferences" under GSP schemes, the Enabling Clause requires preferences to be designed so as to "facilitate and promote the trade of developing countries" and to "respond positively" to their development, financial and trade needs.

Article XX Justification Rejected

The EU argued for an exception from WTO rules on the grounds that the drug preferences were 'necessary' to protect human life and health within the EU, as allowed under GATT Article XX(b). It stated that the GSP preferences complemented other measures such as technical and financial assistance to promote alternative economic activities in countries where illegal drug cultivation and trafficking was rife. It contended that this approach was in line with 1998 UN recommendations, which expressly encouraged members to provide greater market access to imports from such countries. The EU stated that it was not aware of less trade-restrictive alternatives that would be equally effective in providing market access to their products.

In its January 2003 initial submission, India had also challenged tariff preferences granted to developing countries upholding certain environmental and labour standards. The EU maintained that its special incentives responded to internationally-recognised objectives aimed at the promotion of sustainable development. In March 2003, India withdrew the challenge on tariff preferences granted under the GSP's environmental and labour clauses, but served notice that it would file disputes against those provisions if they threatened its commercial interests.

Discrimination between Developing Countries Challenged

According to India, the incentives for combating drug-production and trafficking did not comply with three conditions that a developed country GSP had to meet. First, the Enabling Clause justified only those preferences that did not discriminate between developing countries. The preferences granted under the 'drug-window' were discriminatory as they had been only conditionally extended to twelve EU-selected developing country Members. Second, the Enabling Clause only covered preferences that were beneficial to all developing countries. Third, such preferences should respond positively to their development needs. India asserted that the EU preferences were designed to respond only to its own needs.

The EU responded by contending that India had misconceived the relationship between the Enabling Clause and Article 1.1 of the GATT. The Enabling Clause did not require preferences to be granted to all developing countries on an unconditional basis and in any event the drug preferences were 'unconditional'. Differing treatment of developing countries that had different economic needs was not discriminatory. Moreover, by supporting sustainable economic alternatives, the tariff preferences provided an appropriate response to the drug problem and hence to the special development needs of the countries affected by that problem.

According to many trade sources, the conditionality clauses in the EU's GSP scheme could have been saved had it sought a waiver from the WTO, as the EU reportedly planned to do with regard to the drug-control scheme but did not proceed with due to the possibility of objections. At the 2001 Doha Ministerial Conference, WTO Members granted such a waiver to the Cotonou Agreement, which grants preferential market access to more than 70 African, Caribbean and Pacific countries (Bridges Year 5 No.9, page 15).

After the report's release, the EU will have 60 days to decide whether to appeal the ruling.

In the next issue of Bridges, Robert Howse will present a legal analysis of the ruling and its likely effects on the future of GSP schemes.

¹ GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries of 28 November, 1979.

When the Peace Ends: The Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge

Richard H. Steinberg and Timothy E. Josling

Article 13 of the WTO Agreement on Agriculture known as the 'Peace Clause' precludes most WTO dispute settlement challenges against a country that complies with the Agreement's liberalisation commitments. When the Peace Clause expires in 2004, many commodity-specific EC and US agricultural subsidies will be vulnerable to legal challenge under the WTO Agreement on Subsidies and Countervailing Measures.

Although the WTO Agreement on Agriculture required a reduction of existing domestic subsidies and banned new export subsidies, it left the EC and the United States free to maintain annual agricultural government support at a combined level of about US\$150 billion per year. When the Peace Clause expires in 2004, legal challenges are likely to emerge under provisions of the GATT 1994 and, in particular, Articles 6.3(a)-(c) and 6.4 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Acknowledging that there is uncertainty about the interpretation and application of relevant law, this article assesses the relative strength of the main legal theories likely to be used in challenges to EC and US agricultural subsidies after the expiry of the Peace Clause.

The Peace Clause and the legal implications of its expiry

The Peace Clause is structured to limit the application of various potential remedies against subsidies under the WTO agreements, with limitations varying according to the type of subsidy programme in question. During the peace period, Green Box measures (i.e., domestic support measures considered the least trade-distorting and conforming to Agriculture Agreement Annex 2) are non-actionable for the purposes of imposing countervailing duties, initiating WTO dispute settlement cases based on the GATT/WTO subsidy disciplines and challenges under a non-violation nullification or impairment theory. Amber Box and Blue Box measures (i.e., all other domestic support measures) that conform to the subsidy reduction commitments are provided similar but reduced protection from actionability. Export subsidies, which are given more protection than Amber Box and Blue Box measures in WTO subsidy cases, may face countervailing duties during the peace period, but they are non-actionable for cases that otherwise might be based on the subsidy disciplines.

Upon expiry of the Peace Clause, the ordinary meaning of various WTO texts, applied principles of interpretation of international law, and some past WTO panel and Appellate Body decisions suggest that GATT 1994, the Agriculture Agreement, and the SCM Agreement will be relevant to analysis of the legal vulnerability of EC and US agricultural subsidies; provisions of these agreements might serve as a basis for legal action. WTO jurisprudence and the ordinary meaning of these agreements indicate that they should be read cumulatively, with various elements of all three agreements applying to agriculture simultaneously so as to create a coherent, integrated system upon expiry of the Peace Clause.

Some US and EC diplomats have asserted that only the Agreement on Agriculture (AoA) is relevant to agricultural subsidies issues.¹ This position runs up against the ordinary meaning of AoA Article 21.1, which provides that the 'provisions of GATT 1994 and of other Multilateral Trade Agreements shall apply subject to the provisions of this Agreement', suggesting that the AoA was not intended to apply exclusively. Moreover, the position cannot explain why the Peace Clause would specify provisions of the GATT 1994 and the SCM Agreement that may not serve as a basis for legal action until 2004 – and so presumably might serve as a basis for legal action upon expiry of the Peace Clause. Neither can it explain numerous cross-references in and between the Agriculture and SCM agreements.

There are five implausible or insufficient legal theories for challenging agricultural subsidies after the expiry of the peace period.

Illegality under SCM Agreement Article 3

The position that the SCM Agreement Article 3 prohibition on export subsidies will apply to agriculture upon expiry of the Peace Clause is based on a reading of the Peace Clause and its interaction with SCM Article 3, which provides that all export subsidies are prohibited 'except as provided in the Agreement on Agriculture'. The Agriculture Agreement, in turn, exempts agriculture export subsidies from actions based on SCM Agreement Article 3 during the peace period. The inference is that while the SCM Agreement exempts agricultural export subsidies to the extent established in the AOA, the Agriculture Agreement itself removes that exemption at the end of 2003.

This argument is flawed because it ignores Agriculture Agreement Article 8, which provides, 'Each Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule'. The interaction of this language with the agricultural export subsidy exception to SCM Article 3 suggests that agricultural export subsidies are not illegal under Article 3 so long as they conform to the Agriculture Agreement, particularly with regard to its reduction commitments.

Non-violation nullification or impairment

After the expiry of the Peace Clause, some believe that EC and US agricultural subsidies might be vulnerable to a non-violation nullification and impairment claim under GATT 1994 Article XXIII: 1(b). This theory is unlikely to be successful particularly because of the development of the doctrine of reasonable expectation. While Article XXIII does not mention the doctrine of reasonable expectation, since 1950, panels have consistently required a successful non-violation claimant to demonstrate that at the time it negotiated for the benefit that was subse-

Continued on page 4

quently impaired, it had no reasonable expectation of application of the measure that caused impairment. It is hard to see how a WTO Member could argue that at the time the Uruguay Round agreements were concluded, it had no reasonable expectation that the EC or US would subsidise agriculture after expiry of the Peace Clause.

The Countervailing Duty Strategy

Some trade lawyers have suggested the possibility of attacking agricultural subsidisation after the expiry of the Peace Clause by filing countervailing duty claims against the imports of subsidised agricultural producers. The limited utility of this approach is suggested by the low frequency of such actions initiated during the peace period.

'More than equitable share of world trade'

Three difficult problems could be encountered in a challenge brought under this provision. First, under the doctrine of specificity, the subsidising Members could argue that Article XVI: 3 is no longer effective, having been superseded by the more specific provisions and pervasive scheme of the Agriculture and SCM Agreements. Second, if the complainant were to prevail on the question of the continued applicability of GATT Article XVI:3, debate would ensue over the scope of subsidies disciplined by the provision. Third, in showing that a subsidising country has attained a 'more than equitable share', panels have consistently demanded a successful complainant establish that the challenged subsidy caused displacement of the complainant's share of world trade. This challenge is particularly difficult because of the requirement to demonstrate causation across the world market, not simply an individual country market.

Injury caused by subsidised imports: a claim under SCM Agreement Article 5(a)

A Member could claim injury to its domestic industry resulting from exports of EC or US subsidised agricultural products under SCM Agreement Article 5(a). Even if causation could be shown under this provision, a claim based on Article 5(a) would be harder to sustain than a claim based on Article 5(c), which speaks of 'serious prejudice to the interests of another Member' rather than 'injury to the domestic industry of another Member'.

The most plausible legal theory: "serious prejudice" under SCM Agreement Article 5(c) via operation of Articles 6.3 (a)–(c) and 6.4

Upon expiry of the Peace Clause, a claim that EC or US agricultural subsidies were causing 'serious prejudice' within the meaning of SCM Agreement Articles 6.3(a)–(c) and 6.4 would appear to stand a greater chance of success than any of the legal theories considered above. By the terms of SCM Agreement Article 5 cross-reference to the Peace Clause, actions against any type of agricultural subsidy based on SCM Agreement Articles 5 and 6 are precluded until the end of the peace period (provided these subsidies conform to specified caps and reduction commitments). But after the Peace Clause expires, action could be taken by application of the SCM Agreement Article 5 cross-reference.

SCM Agreement Article 5(c) provides that '[n]o Member should cause, through the use of any [specific subsidy not excepted by the Agreement], adverse effects to the interests of other Members, i.e. . . . serious prejudice to the interest of another Member.' Circumstances under which 'serious prejudice' may arise are elaborated in Article 6.3(a)–(c). Footnote 17 may be read to suggest that Article 6.3(d) may not be applied to agricultural products. Article 6.3(a)–(c) provides:

Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

- the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidising Member;
- the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;
- the effect of the subsidy is a significant price undercutting by the subsidised product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market.

In the absence of the above-mentioned circumstances, the existence of 'serious prejudice' may still be determined on the basis of all information submitted to the dispute settlement panel.² SCM Agreement Article 7.8 provides that a Member maintaining a subsidy that causes serious prejudice 'shall take appropriate steps to remove the adverse effects of the subsidy or shall withdraw the subsidy'.

Article 6.4 potentially makes it easier than otherwise to establish a *prima facie* case under subparagraph 3(b). Article 6.4 provides that 'displacement or impediment of exports includes any case in which . . . it has been demonstrated that there has been a change in relative share of the market to the disadvantage of the non-subsidised product'. Indeed, a *prima facie* case based on SCM Agreement Article 6.3(b) 'arguably' might be made by showing only a correlation between subsidisation and market share.³

Despite demonstration of the effects described in SCM agreement Article 6.3 (a)–(b), 'serious prejudice' may not be found to have arisen under any of the six circumstances enumerated in SCM Agreement Article 6.7 during the relevant period. These provisions help rule out cases where conditions other than subsidies can affect market shares. However, to have such legal effect, these circumstances 'must not be isolated, sporadic or otherwise insignificant'.⁴

Furthermore, in applying SCM Agreement Part V (which includes Article 6), the SCM Agreement's definition and characterisation of types of actionable subsidies must be used – not the Agriculture Agreement's. Hence, only those agricultural subsidies that meet the definition of a 'subsidy' in SCM Agreement Article 1, and that are 'specific' within the meaning of SCM Agreement Article 2, would be actionable. Subject to those requirements, SCM Agreement Articles 5 and 6 potentially may be applied to all types of agricultural subsidies addressed in the Agriculture Agreement.

Importantly, in applying the tests under SCM Agreement Article 6.3(a)–(c), the complainant may aggregate specific, actionable subsidies from the subsidising country, which could make it easier than otherwise for the complainant to establish a *prima facie* case that the aggregate

subsidy caused serious prejudice. It is well established in WTO cases that aggregation of various forms of subsidies for like products is permitted in a case challenging subsidisation.⁵

The problem of causation

To establish a *prima facie* case, the complainant will bear the burden of establishing that the respondent's specific, actionable agricultural subsidies are causing one of the effects described in SCM Article 6.3(a)-(c), perhaps by operation of Article 6.4. A claim based on either Article 6.3(a) or (b) requires showing that the 'effect' of the subsidy is displacement or impediment of the imports or products of the complainant in the market of the subsidising country or in a third country market respectively. Article 6.3(c) also would appear to require demonstrating causation - complainants must show that subsidies caused price undercutting.

Of course, the subsidising Member will try to defend against these claims by showing that the subsidies are not having the asserted effects or are not responsible for the effects. GATT Article XVI: 3 cases suggest factors other than subsidies that might explain displacement of non-subsidised imports. Moreover, establishing a *prima facie* case under subparagraph (a) or (b) would require showing either the absence of circumstances listed in Article 6.7 during the period in which adverse effects are alleged, or that the effects of the Article 6.7 circumstances were 'insignificant'. Any meaningful challenge under SCM Agreement Article 6.3(a)-(c) or 6.4 would likely also require showing that *particular types of subsidies* have caused the effects enumerated in those subparagraphs in order to fashion an appropriate remedy.

While in a strong Article 6.3(a)-(c) or 6.4 case a robust correlation between introduction of a subsidy and reduced market share or prices of non-subsidised product would serve as an ideal starting point for an argument that the subsidy caused an adverse effect, such a correlation alone would not be enough to establish the causation necessary to establish a *prima facie* case and fashion an appropriate remedy. In particular, agricultural trade poses two difficulties for establishing the requisite causal relationship.

First, an observed correlation may be spurious. In GATT/WTO cases demanding establishment of a causal relationship between agricultural subsidies and displacement of sales of non-subsidised products, correlation typically has been insufficient due to the fact that respondents have been able to raise factors other than subsidies that might have caused displacement. In those cases, panels concluded that complainants had not been able to establish a *prima facie* case. Second, in the world of agriculture trade, correlations between subsidies and adverse effects may be hidden or weakened by the predominance of other factors affecting trade.

Hence, the need to show causation for a successful case based on Article 6.3 poses a challenge. This challenge, however, can be surmounted by the use of economic analysis which offers two useful tools for showing causation in such circumstances: the use of regression analysis on subsidy and trade data and the simulation of the effect of subsidies by models.

Employing models and regressions in WTO cases

The WTO dispute settlement system is increasingly employing and encouraging the use of quantitative approaches. There are examples of using simple economic analysis in older panel cases, but modelling and regressions have become more widely used in agricultural policy analysis since the mid-1980s. More recently, every WTO arbitration under DSU Article 22.6 since the first one in *EC-Bananas* has made extensive use of partial equilibrium analysis.

There are good reasons why WTO dispute settlement panels have been considering quantitative analyses in recent years. In the case of agriculture, they offer the only effective means of distilling whether subsidies are in fact causing 'serious prejudice'. Without using these techniques, the problem of hidden or spurious correlations would render Article 6.3 virtually useless in its application to agricultural subsidies.

Regression analysis of causation of displacement in the subsidising Member's market and in third country markets – Article 6.3(a) and (b) cases respectively – confirmed hypothesised causal relationships between EC and US subsidies and displacement, and established correla-

tions between subsidies and displacement with 95 percent or better confidence. The use of models in the SCM Agreement Article 6.3(c) case, also established a relationship between subsidisation and price.

Implications for WTO law and agricultural policy

The application of WTO law to agricultural subsidies after the expiry of the Peace Clause has important implications for WTO law and agricultural policy. First, upon expiry of the Peace Clause, the legal standard for agricultural subsidies boils down to whether specific, actionable subsidies have caused 'adverse effects' on trade resulting in 'serious prejudice' (identified in SCM Article 6.3(a)-(c)) to the interests of another WTO Member. The difficulty faced by complainants, which is showing causation, can be solved by using models and regression analysis.

Second, some may be concerned that potential cases against the EC and US may overwhelm the WTO dispute settlement system. One solution to this problem would be to consolidate all complaints against a particular Member's subsidies on a particular commodity. The bigger potential problem is that large subsidising Members might simply ignore adverse dispute settlement decisions and choose to face the sanctions that might be imposed on them following an unsuccessful defence of an agricultural subsidy.

Third, in the context of the Doha negotiations, if expiry of the Peace Clause threatens the legal viability of the subsidy policies of major countries, then non-subsidising countries are likely to bargain in the shadow of its expiry to get agreement on further subsidy reduction.

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Quantitative analyses offer the only effective means of distilling whether subsidies are in fact causing 'serious prejudice'. Without using these techniques, the problem of hidden or spurious correlations would render Article 6.3 virtually useless in its application to agricultural subsidies. Such studies are expected to prove decisive in WTO rulings on Brazil's challenges of US cotton and EU sugar subsidies (see page 9).

Our analysis shows that the Peace Clause does have teeth and so the prospect of its expiry may drive countries to protect farm incomes through tariffs-and-decoupled-payments systems, which are less likely to cause the displacement and price effects associated with the current system and are arguably non-specific. Such a shift may also be agreed upon in the current negotiations as a *quid pro quo* for extending the Peace Clause. In either case, all participants in the trade regime could gain substantially from the reduction of the distortions to trade that agricultural subsidies appear to cause.

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ENDNOTES

¹ See Didier Chambovey, 'How the Expiry of the Peace Clause (Article 13 of the WTO Agreement on Agriculture) Might Alter Disciplines on Agricultural Subsidies in the WTO Framework', 36(2) Journal of World Trade 305 (2002), at 305–52. This interpretation is based partly on the specificity principle: the SCM Agreement and the GATT 1994 subsidies provisions do not apply to agricultural subsidies because the more specific Agreement on Agriculture does so. Moreover, the agriculture negotiations took place separately from those on other sectors, and the final deal on agriculture was independent of other WTO agreements, conferring upon the Agreement on Agriculture a status akin to *lex specialis*. Chambovey describes this legal stance, but he does not state that it is correct.

² SCM Agreement, Article 6.8.

³ WTO Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry* ('*Indonesia – Autos*'), WT/DS54/R, WT/DS55/R, WT/DS64/R, 2 July 1998, para 14.28 at 330.

⁴ SCM Agreement, fn 18

⁵ See, e.g., Panel Report, *Indonesia – Autos*, above n 2, paras 2.2-3, 2.31-32, 14.155, and 14.207 – 14.234.

The EU's New WTO Strategy

After nearly three months of internal reflection, the European Commission released a Communication on the orientation of the EU's post-Cancun trade policy on 26 November. After discussions with trade ministers and the European Parliament on 2 December, the EU General Affairs Council is expected to adopt new WTO negotiating instructions for the Commission on 8 December.

The Commission confirmed that the EU still considered the multilateral approach as the cornerstone of its international trade relations. Highlights of the paper include:

Singapore Issues: The Community should no longer insist on each issue being treated identically. It should explore the potential for negotiating some, or even all four Singapore issues, outside the Single Undertaking, and to the extent necessary on the basis of participation in negotiations and adoption of the final results on a voluntary basis, by interested Members only. Following this, the Commission will have to assess, based on the level of interest and number of countries wishing to take part, whether such negotiations would provide real added value.

Agriculture: The EU should call for substantial reductions from bound levels in the amber box, the most trade distorting form of support that is linked to production or prices. The *de minimis* threshold should also be reduced. In addition, the EU should support specific disciplines, including a cap (five percent of total agricultural production) on blue box support. Green box support cannot be subject to any capping or reduction. Special treatment for developing countries in the area of domestic support should be targeted particularly to the poorer, less competitive developing countries as opposed to the most advanced. The EU's offer to eliminate export subsidies on a list of products of interest to developing countries still stands.

Market Access: Modalities for resumed non-agricultural market access negotiations must ensure that the concept of "less than full reciprocity" does not equate to non-participation of developing country Members in the liberalisation process. When negotiations resume, the Community should insist on an approach that maintains the justifiably high levels of ambition set out in the Doha mandate, and which ensures that all Members contribute to this process according to their level of economic development and capacities. This approach should remain anchored to a simple, single, non-linear tariff reduction formula applied to all tariff lines, and result *inter alia* in the elimination of tariff peaks and significant improvements in tariff bindings. The Community should maintain its proposal to negotiate, over and above the agreed tariff formula, further reductions in textiles and clothing tariffs to as close to zero as possible, on a reciprocal basis.

Cotton: In the framework of the agriculture negotiations, an initiative on cotton should contain three key elements: an explicit commitment to grant duty- and quota-free market access for cotton exports from least developed countries; substantial reductions of the most trade-distorting forms of domestic support; and elimination of export subsidies within a stated timeframe.

Environment: The EU cannot accept the extinction of trade and environment negotiations in the Doha Development Agenda. Given the dynamics in Geneva, it seems useful to focus more on the political principles for the moment, and to explore whether these could provide the foundation for progress. A focus on governance principles could also have the advantage of providing an "opening" to a dialogue on ways to improve the dispute settlement mechanism for MEAs through *inter alia* better and clearer environmental input from experts, which has been a long-standing issue on the agenda of the WTO Committee on Trade and Environment.

Geographical Indications: The EU cannot accept proposals to abandon this part of the negotiating agenda agreed at Doha, either in the context of IPRs as such, or in the context of agriculture. Concrete results must be obtained on the multilateral register and the extension of IPR protection for other GI products, as well as rolling back of certain GI use in countries where the GI was not originated (i.e. the list of 41 items, *ed.*); this is provided for in the TRIPs Agreement, but has so far been pursued in bilateral and not in multilateral negotiations.

Slim Chances for Doha Round Revival in December

No great breakthroughs are expected in the stalled Doha Round negotiations at the 15 December 'senior-level' General Council meeting. Consultations on key issues have not yielded enough progress for the Council Chair to issue a new draft on which to base further talks, particularly in agriculture where the gaps between Members' positions show no signs of narrowing. Some officials have even suggested postponing the meeting.

The Cancun Ministerial Declaration instructed the Chair of the General Council "to convene a meeting of the General Council at Senior Officials level no later than 15 December 2003 to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations." However, the value of convening the meeting in December is increasingly questioned, and some trade officials have suggested that Members aim for agreement on the way forward sometime in the first quarter of 2004 instead.

At the time of this writing, two rounds of informal consultations had resulted in no perceptible progress in four key areas: agriculture, market access for industrial goods, the Singapore issues and how to proceed with the Cotton Initiative. Instead, most Members have stuck to the pre-Cancun pattern of holding on to long-standing positions while waiting for others to indicate what concessions they would be prepared to make.

On 26 November, the European Commission at last proposed a new negotiating strategy to member states, but – despite significant flexibility on the controversial Singapore issues – the set of proposals is unlikely to break the deadlock (see page 10). Other major players have not communicated what new flexibility – if any – they could bring to the table.

'Yes But' Acceptance of Derbez Text Means Little

A revised draft Ministerial Text – spelling out the framework for continuing the Doha Round negotiations – was tabled by Mexico's Foreign Minister Luis Ernesto Derbez close to the end of the Cancun meeting, but the document was never adopted. Although most Members have now said they are ready to use it as a basis for further work, they have surrounded that consent by so many caveats that the agreement means little. As they pick over and amend portions of the text – while demanding that other parts be dropped altogether – there is a distinct possibility that the Derbez text will add nothing to other proposals that were rejected by Members before Cancun.

Agriculture

General Council Chair Pérez del Castillo tried to orient his second round of consultations on the substance of the Derbez text, i.e. the framework for negotiating modalities in Annex A, but no common ground emerged. The EU and the US have essentially reverted to their joint pre-Cancun position, which was rejected by developing countries for perpetuating domestic and export subsidies, and for giving too little in tariff reductions and quota expansion (Bridges Year 7 No.6, page 11). In contrast, the G-20 group of developing countries, which includes heavyweights Brazil, China and India, continues to seek much more far-reaching developed country commitments on subsidies and market access than those in the Derbez text, as does Australia. A number of Members have expressed concern about even discussing substantive elements in the Derbez text prior to the 15 December General Council meeting.

Singapore Issues

The EU's new approach may temper some of the acrimony surrounding the launch of WTO negotiations for new WTO disciplines on investment, competition policy, transparency in government procurement and trade facilitation. Before the EU's announcement, Chair Pérez del Castillo proposed to proceed on the basis of a 'two plus two' formula, where trade facilitation and transparency in government procurement would be negotiated, and investment and competition policy would be sent to working groups for further clarification. Many Members rejected this approach, and later consultations focused in particular on their views regarding negotiations on trade facilitation, which seems the only Singapore issue on which consensus could eventually be found.

According to the European Commission's Communication, the EU has not completely given up on WTO agreements on at least some of the Singapore issues, but is ready to take a plurilateral approach independent of the 'single undertaking'. The views of other Singapore issue proponents, such as Costa Rica, Switzerland and – in particular – Japan and Korea on this change of tack were not known at press time. On the other hand, many Members, including several African countries, India and Canada, strongly oppose the idea of plurilateral agreements.

Market Access

Industrial tariff reductions is an area where Members seem to be heading toward greater rather than less divergence. India continues to insist that developing countries should not be required to cut their tariffs according to a formula as proposed by the Derbez text. Like many other developing countries, India contends that tariffs are one of the rare policy tools that governments can use to encourage domestic industrial development. Several countries also worry about the erosion of their preferential margins under GSP schemes if WTO Members lower their tariffs significantly on an MFN basis. The US, and the now the EU as well, seek a market access deal that goes well beyond that proposed by the Derbez text, particularly with regard to developing country commitments.

Cotton

It has become crystal clear that Members will only discuss the elimination of cotton subsidies in the context of the agriculture negotiations, and even there it is doubtful that a special, accelerated schedule for cotton alone would be accepted. Talks about compensating least-developed country producers while subsidies are being phased out have led nowhere. While the four African countries that launched the Cotton Initiative have requested that the issue be kept on the General Council's agenda, litigation offers an alternative avenue to tackling subsidies. Unfortunately, this solution promises no short-term relief either (see page 12).

Cotton Dispute Gets Down to Substance

The dispute settlement panel hearing Brazil's complaint against US cotton subsidies will hold its second meeting on 2–3 December. The panel informed the parties in October that it would not issue a preliminary decision on whether the case could be brought at all as the US had requested. Instead, its report expected next May will rule on both procedural and substantive issues put forward by the parties.

At the outset of the dispute, the US insisted that its cotton subsidies conformed to the Peace Clause under the Agreement on Agriculture and thus could not be challenged at the WTO. On 20 June, the panel agreed to rule on whether “any action” could be maintained based on provisions exempted by the Peace Clause before examining the specific claims put forward by Brazil as violations of the Agreement on Subsidies and Countervailing Measures (SCM). Brazil, however, did not dispute that support covered by the Peace Clause could not be challenged. Instead, it alleged that US domestic and export subsidies for cotton exceeded their 1992 level, and thus were not covered by the Peace Clause exemption. The US also used procedural arguments to block Brazil's request for a WTO-appointed facilitator to help it gather information on the subsidies, which according to the predictions of the International Cotton Advisory Committee will reach US\$3.7 billion this year (Bridges Year 7 No.5, page 8).

Proof of Injury Dominates Present Hearings

For the time being, the case essentially revolves around econometric data involving baselines and methods of calculating the effects of US subsidies. At the last panel hearing in October, for instance, the US strongly argued that Brazil had failed to establish a *prima facie* case that “the challenged US subsidies [had] caused the effects complained of”, i.e. that they were responsible for depressed cotton prices. It maintained that other factors, such as China's large cotton stocks and competition from man-made fibres contributed to low prices while Brazil focused on demonstrating that without government support US cotton growers would have gone out of business instead of increasing acreage under cultivation. The US countered that production costs in the country had actually decreased in recent years due, *inter alia*, to the adoption of biotech cotton, which required fewer pesticide applications, and to pest eradication, which had brought new, low-cost areas under cultivation. The first least-developed countries to involve themselves in a WTO dispute, Benin and Chad – two of the Cotton Initiative's four co-sponsors – are among the 12 Members that have reserved third party rights in the dispute.

In related news, the Washington-based non-profit Environmental Working Group released a study on 4 November on the US ‘Step 2’ cotton subsidy programme, which showed that over the past eight years that programme alone paid US\$1.68 billion to only a hundred export or milling companies that buy cotton grown in the United States. Bobby Greene, Chairman of the National Cotton Council said the programme was vital for the industry to compete overseas: “Despite the presence of the competitiveness programme, most foreign growers of cotton still manage to undercut US cotton prices in international markets. This programme better enables our industry to respond to aggressive pricing by our competitors.”

Cotton Initiative Tried to Address Case through Negotiations

The dispute has taken on a heightened importance after the Cotton Initiative failed to spark WTO action in Cancun, where Benin, Burkina Faso, Chad and Mali had placed it on the Ministerial agenda. They requested the rapid elimination of all cotton subsidies, as well as compensation to affected least-developed country producers during the phase-out. Their claim that subsidies had driven market prices so low that even the most efficient producers could no longer export cotton at profit elicited much sympathy, but – largely due to US opposition – the initiative ultimately yielded no results (Bridges Year 7 No.7, page 11). As this issue of Bridges went to press, WTO Director-General Supachai Panitchpakdi was leading a second round of consultations on how to proceed with cotton post-Cancun. The initiative's co-sponsors are fighting to keep it on a separate track, but developed country Members seem adamant that cotton subsidies can only be addressed as part of the negotiations on agriculture (see page 11).

Disputes in Brief

- **US: Steel** On 1 December, the DSB is expected to adopt an Appellate Body report condemning US steel tariffs set to run until 2005. At press time, the US had not revealed what action it intended take despite notices from the EU, China, Japan, Norway and South Korea that they would establish retaliatory duties on a wide range of US exports – amounting to US\$2.2 billion in the case of the EU – five days after the report's adoption.
- **EU: GMOs** Three months after the DSB agreed to a panel on the EU's approval processes for genetically modified organisms (GMOs; Bridges Year 7 No.7, page 13), the US, Argentina and Canada still have not asked WTO Director-General Supachai Panitchpakdi to appoint the panelists who will hear the case.

Meanwhile, US biotech, farming and grocery manufacturing industries have requested the government to launch a second case, this time against the EU's new regulatory framework for GMO trade (see page 17). The government will decide sometime next spring at the earliest.

- **EU: Sugar** Panelists are also yet to be appointed to hear Brazil's, Australia's and Thailand's complaint regarding EU export subsidies to sugar. Sources close to the case say the delay is due to the complexity of the dispute and the need for panelist to be well-versed in econometrics. The DSB agreed to establish the panel on 29 August (Bridges Year 7 No.7, page 13).
- **EU: Beef Hormones** At the DSB's 7 November meeting, the US and Canada flatly rejected the EU claim that the adoption of Directive 2003/74/EC on growth hormones in beef brought it in conformity with WTO rules (Bridges Year 7, No.7, page 13). The US said it could not understand how the new directive could amount to compliance, as it neither removed the ban, nor presented an “appropriate risk assessment” as a basis for it. EU authorities are now assessing whether to request a compliance ruling. The alternative consists of accepting continued US and Canadian trade sanctions worth US\$117 million a year.

Labour Provisions Could Scuttle CAFTA Approval

The last round of negotiations for a free trade area between the US and five Central American countries (Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua) is scheduled for 8-16 December, when the most controversial issues regarding textiles and agriculture are expected to be resolved. However, US Congressional approval for the agreement may be compromised due to opposition to the agreement's labour provisions.

US Trade Representative Robert Zoellick acknowledged in November that getting the Central American Free Trade Agreement (CAFTA) past Congress next year would be a "tough battle" due to opposition from labour groups and Democratic lawmakers.

Mirroring labour provisions in the Chile-US and the Singapore-US free trade treaties, CAFTA negotiators have agreed that the pact should commit members to enforcing existing legislation rather than require improvements in the laws themselves. US officials have asserted that Central American laws are generally in line with the International Labour Organisation's (ILO) core conventions, although their enforcement leaves to be desired. However, three House Democrats in November sent a stinging letter to the USTR, alleging that "none of the five countries [were] in compliance with the basic labour standards, particularly with respect to freedom of association and the right to bargain collectively." They requested the Administration to "expediently provide" Congress with a labour rights report, specifying that submitting one just prior to Congressional consideration of implementing legislation would be "unacceptable".

Environment: As the text stands, CAFTA members would not be required to enact new environmental laws but to enforce what they already have. This has angered many US trade unionists and environmentalists concerned about competing with countries where lower standards contribute to lower production costs. Senator Max Baucus recently proposed to tighten environmental standards in CAFTA, *inter alia* through the inclusion of a NAFTA-like petition process for citizens and non-governmental groups that could lead to a factual investigation by an environmental commission of whether a country is effectively enforcing its environmental laws.

Textiles: Among major open questions is 'cumulation', i.e. extending preferential access to US markets for CAFTA members' textile exports that contain elements from other countries that have free trade agreements with the US. Prior to the last round, the US position was that cumulation arrangements would only be possible for countries that have bilateral free trade agreements with all CAFTA partners, which would limit the practice to Chile and Mexico. Central American countries had hoped to extend the arrangement to all countries with which the US has preferential trade agreements. Another unresolved issue is the 'short supply' exception, which Central American countries are seeking to apply to nearly fifty textiles components from third countries. Products containing agreed short supply items can enter the US as originating in the free trade area (Bridges Year 7 No.7, page 16).

Negotiators must also decide how to deal with tariff preference levels (TPLs), which Central American countries hope will allow them to export duty-free a certain amount of apparel that does not qualify for CAFTA rules of origin. A large number of US Congressmen have requested the US Trade Representative not to include TPLs in the agreement.

Agriculture: Both sides have agreed to handle imports of 'sensitive' commodities through tariff-rate quotas (TRQs, i.e. the quantity that can be imported duty-free). The December negotiations are expected to consolidate the lists of CAFTA members' commodities under TRQs. The US generally regulates trade in sugar, beef, dairy products, peanuts, rice, cocoa and cotton through TRQs rather than tariffs.

Tariffs on agricultural goods not covered by the TRQs will be cut in four different bands or 'baskets', the contents of which are to be finalised in December (Bridges Year 7 No.7, page 16).

Sugar is a major issue. While Central American countries are seeking to more than double the current US sugar TRQ, US sugar producing states are pressing the Administration not to lower

tariffs or expand the duty-free TRQ, which they say would mean a "death sentence" for domestic sugar growers. Should the US take sugar off the table, Central American countries would most likely only offer it minimal access on rice, poultry, pork, grain and dairy products, but such import restrictions would not make up for increased sugar exports.

In Central America, concern has been raised over farmers' ability to compete against subsidised US products. For example, Guatemala's maize, beans and rice production could come under pressure due to competition with the US in terms of price and quality. One solution proposed by Central American negotiators is a safeguard mechanism that would apply to import surges in any US commodity that receives domestic subsidies. The US has so far dismissed this approach.

Other Issues: The basket approach also applies to industrial goods. About 99 percent of Central America's products are to gain immediate duty-free access to the US. For the latter the corresponding figure is around 80 percent. Tariffs for the remaining products are to be eliminated between five and ten years with the most sensitive goods back-loaded to the end of the transition period.

Regarding US pressure to open its telecom sector, Costa Rica has warned that union opposition to such a move could "bring the government to a halt". Differences also remain with regard to intellectual property laws, where the Central American countries fear that US corporations will claim exclusive property rights on resources such as medicines from the region.

The parties have already agreed on investment rules, reportedly modelled after those in the US-Chile free trade agreement.

The last formal negotiation session is scheduled for 8-16 December. In early 2004, the US will start negotiations with the Dominican Republic with the aim of eventually integrating the country into the CAFTA.

Andean Community

At the FTAA Ministerial in November, the US announced the launch of bilateral negotiations with Bolivia, Colombia, Ecuador and Peru with a view to establishing a free trade area with the Andean Community (excluding oil-producing Venezuela). Talks will start in the second half of next year with Colombia and Peru, with Bolivia and Ecuador following after they have completed preparatory work. Separate negotiations with Panama are slated for the second half of 2004.

CAN – Mercosur

The Andean Community (CAN) also aims to finalise a free trade agreement with Mercosur (Argentina, Brazil, Paraguay and Uruguay) in December 2003.

CAN countries are still seeking greater ‘asymmetrical treatment’ than Mercosur is willing to concede. For instance, they propose that CAN members, as well as Paraguay and Uruguay, should be given four more years to phase in tariff reductions than Argentina and Brazil. In addition, the six countries should be allowed to make on average 15 percent lower initial tariff reductions, as well as include 10-15 percent fewer tariff lines in the general phase-out schedule.

There are also differences regarding asymmetry in the protection of sensitive products and the ‘historical heritage’ trade advantages negotiated prior to the Mercosur-CAN pact. Other areas where negotiations must still be finalised include rules of origin, pharmaceuticals, the automobile sector and agricultural safeguards.

CAN – EU

A Political Dialogue and Co-operation Agreement between CAN and the European Union, to be signed in December 2003, foresees the possibility of negotiating a “mutually beneficial Association Agreement, including a Free Trade Agreement”, which would “build upon the outcome of the Doha Work Programme”. At present, most CAN industrial goods and a list of agricultural and fishery products enter the EU duty free under the Special System of Andean Preferences (Andean GSP), which includes a drug window similar to the one recently ruled illegal by a WTO panel (see page 6).

Mercosur, EU Revive FTA Talks

By October 2004, Mercosur countries – Argentina, Brazil, Paraguay and Uruguay – and the EU aim to wrap up negotiations that have proceeded in fits and starts since their launch in June 1999. Last November, trade ministers from both sides established a ‘credible’ work programme, although EU Trade Commissioner Pascal Lamy admitted that Mercosur demands for greater access and larger quotas for crops, beef and other agricultural products remained a “highly sensitive” issue. Mercosur has conditioned consideration of an EU proposal that both blocs eliminate all tariffs on industrial goods within 10 years on market access for agricultural goods other than chicken and sugar products.

The EU has signalled willingness to increase import quotas for sensitive agricultural products, but for Mercosur business representatives this alone will not suffice. They want the EU to reduce both ‘ad valorem’ tariffs, which may amount to 150 percent of the product’s value, and specific tariffs, such as the US\$3,000 per tonne the EU levies on beef imports.

The future agreement is to cover trade in goods, services, government procurement and investment, as well as rules and standards in food safety, an agreement on wines and spirits, and provisions on competition and intellectual property rights.

US and Australia Put on Finishing Touches

When this issue of Bridges went to press, Australia’s Trade Minister Mark Vaile was meeting with US Trade Representative Robert Zoellick to iron out outstanding differences ahead of the December negotiating session that is to lead to the signing of a free trade agreement, most likely in mid-January 2004.

Among the main issues holding up agreement is agricultural market access, where Australia is seeking a better deal in particular for beef, dairy and sugar, on which the US is insisting on lengthy transition periods for phasing out tariffs.

A large number of Australians are also worried about potential dismantling of the Pharmaceutical Benefits Scheme (PBS), under which the government purchases about 90 percent of all prescription drugs in Australia and sets subsidised reference prices for them. US pharmaceutical companies claim that the PBS forces them to lower prices in order to maintain any volume of sales. According to Minister Vaile, his government has made it “abundantly clear [that the PBS] is unique to Australia, it provides affordable medicine [...] and it is the market here.”

On the US side, there are concerns about Australia’s quarantine regime for agricultural imports, aspects of which have been repeatedly challenged at WTO. Echoing its Doha Round position with regard to state trading enterprises, the US is also seeking to include provisions governing the Australian Wheat Board in the FTA. Both sides have also acknowledged differences regarding investment, the audiovisual sector and government procurement rules.

Regarding the latter, Australia has raised the issue of the US Jones Act, which forbids the use, sale or lease of foreign-built vessels for US river and coastal water operations. The WTO is currently considering an extension to the Jones Act waiver (Bridges Year 7 No.7, page 15). There are also concerns about access to the US government procurement market, because individual states are not bound by concessions negotiated by the federal government.

Civil Society Mobilisation

These issues have mobilised farmers, trade unionists, politicians, small businesses and welfare organisations against the deal in the making. Besides agricultural market access and the PBS issue, they cite concerns about the US ‘digital agenda’, which they claim is aimed at creating a distinct category of products delivered through digital technology – “untaxed, unregulated, yet with strict copyright protection”. In addition, they maintain that the free trade agreement would require the Australian government to surrender its power to set local content rules on TV programmes, which would mean “the death-knell of the local TV and film industries.”

Development in the Information Age: The Importance of Copyright

Ruth L. Okediji

The commercialisation of information communication technologies has been widely recognised as an important tool for economic growth. Not surprisingly, the associated benefits of information technology have been under-realised in most developing countries and LDCs. The persistent 'digital divide' reflects disproportionate access to the most fundamental tools of this new economy, which includes digital content. Two copyright treaties, negotiated shortly after the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), establish minimum terms of a global framework for access and use of creative work in the digital environment.

The Internet Treaties

The World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, together commonly referred to as the WIPO "Internet Treaties," entered into force in 2002. The first of these extends copyright protection to authors of literary and artistic works;¹ computer programmes and;² to compilations of data.³ It specifically provides for a right of distribution, right of rental and right of communication to the public,⁴ as well as other Berne Convention rights incorporated by reference.

In addition to these traditional copyright rights, the WIPO Copyright Treaty (WCT) introduced ancillary principles to the international copyright system. Article 11 obligates members to provide protection against the circumvention of "effective technological measures" used by authors in connection with the exercise of their rights under the Berne Convention or the WCT. This provision requires members to sanction efforts to circumvent technological protections used by owners to control access or use of protected works. For example, encryption of protected digital content or password protections of such content each constitutes "effective technological measures." Providing a user with directions to decrypt the content, or software that allows a user to bypass the password screen are examples of acts of circumvention prohibited under Article 11.

Article 12 further requires remedies against persons who tamper with rights management information (RMI) knowing or having reason to know that such tampering will induce, enable or facilitate copyright infringement. RMI is defined by the Treaty as information which identifies the work, including the author, the owner of a particular right in the work, or information concerning terms of use of the work.⁵ Such information is generally intended to facilitate identification of owners and payment/permission to use the work. In the digital environment RMI is an important tool for owners to monitor, control and enforce copyright interests. From an author's perspective, RMI is particularly beneficial in countries where domestic laws permit use under a compulsory license regime, or recognise certain defences for users, when owners are difficult to locate.

The WIPO Performances and Phonograms Treaty (WPPT) deals with performers and producers of phonograms. Performers⁶ are accorded moral rights for live aural performances or performances fixed in phonograms; the right to authorise broadcasting and public communication of unfixed performances and to fix their unfixed performances; the right to authorise reproduction of their fixed performances; the right to authorise distribution to the public of their fixed performances; the right to authorise the commercial rental to the public of original and copies of their performances; the right to authorise making available to the public their performances fixed in phonograms by wire or wireless means. Producers⁷ of phonograms enjoy the exclusive right of authorising reproductions of their phonograms; the right of authorising distribution to the public of their phonograms; the right of commercial rental to the public of their phonograms; and the exclusive right to make phonograms available to the public by wire or wireless means. Both performers and producers of phonograms enjoy a right to remuneration for commercial broadcasting or any communication to the public.⁸ The WPPT contains the same member obligations as the WCT with respect to circumvention of technological measures and protection of RMI.⁹

The Internet Treaties and Development Policy

The WIPO Internet treaties essentially extend and upgrade the Berne Convention for the information age. The "para-copyright" provisions – the anti-circumvention and RMI clauses – have proven the most controversial, particularly as they apply to the opportunities for public access to digital works. Specifically, under the implementation model of the Digital Millennium Copyright Act (DMCA)¹⁰ adopted by the United States, traditional access mechanisms such as fair use or fair dealing exceptions have been constrained. Rather than facilitate prospects for diffusion and access to works, the copyright regime has been co-opted to consolidate social gains associated with new technologies and to transform these gains into economic opportunities for owners.

The important balance between access to copyrighted works and protection for authors is vital for developing countries and LDCs. Despite provisions for limitations and exceptions to the rights granted to authors/owners of protected works, the WIPO treaties represent minimum standards from which countries can deviate only by providing greater rights than required as the United States has done under the DMCA. The maximalist approach to interpreting the available scope of permissible limitations and exceptions is reinforced by the similarities between TRIPS Article 13, and Articles 10 and 16 of the WCT and WPPT. The similarities suggest that it is not improbable that interpretations of the Internet treaties can be influenced by the ideology of the TRIPS Agreement. Consequently, public welfare interests will require explicit limitations and exceptions that at a minimum facilitate access and use of digital works for study, research, and educational purposes.

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It is ironic, however, that the majority of countries that have ratified the Internet treaties are developing countries. Political pressure through bilateral trade agreements and other foreign relations priorities may account for this anomaly. Ironically, however, most of these countries have extremely low Internet access or penetration rates; thus widespread infringement of digital content is not a viable prospect in the immediate future.

Consequently, membership of the Treaties in the absence of the technological infrastructure to access and use – much less infringe – digital works simply transforms these countries into subsidisers of the global copyright system. These countries are providing protection for works to which they have little or no opportunity of access, at least in the short term. Low Internet use and penetration already supplies a layer of access barriers for the public in developing countries; adding extra copyright obligations to existing technological challenges unjustifiably and preemptively raises the cost of access to copyrighted works. In the regional context, this expansive protection for digital works also has implications for how protected works may circulate between high income developing countries where access may be more probable, and low-income developing countries where access rates are negligible. Given the unprecedented availability of literary and artistic works on the Internet, it is highly prejudicial for developing countries and LDCs to adopt copyright laws that make access to this vast resource space more difficult or costly.

Development Opportunities and the Information Age

Strategies to utilise information technology for development priorities and prospects vary from sector to sector, and from country to country. However, the possibility of exploiting the comparative advantage of many developing countries in the creation, production and distribution of popular music has attracted significant attention. There are several important benefits information technology offers for domestic music industries, particularly with respect to penetrating the global music industry. Developing countries can adopt a staged approach, corresponding to levels of available technology, to enhance the music supply chain and to generate new markets for distribution of domestic music.

A variety of price and distribution models are available to facilitate producer to consumer sales between artists in developing countries and the global audience. Existing practices utilised by Internet auction and trading sites can be explored to determine methods of payment for digital transactions. In addition to sales and distribution, information technology also enables advertising and promotion through digital communities. In sum, the disintermediation occasioned by the Internet in the context of goods and services, also offers important opportunities for producers of cultural products to penetrate the global market.

Another important area positively affected by information technology is public education in developing countries and LDCs. Many developing countries have identified education as a development priority for the information age, and many of these countries assume that the Internet will play an important role in accomplishing this goal. Institutional alliances between developed and developing countries using distance education offers a real prospect of educating a vast number of the world's poor. Copyright legislation in many developing countries may need to be modified to legitimate policies that seek to use the Internet to access educational materials available in digital format. Traditional copyright rights that include the right to reproduce, distribute or communicate works to the public must be balanced by limitations that would make educational uses permissible. Developing countries must consider these issues in multilateral or bilateral negotiations that urge expansive copyright protection at the expense of important development goals. Specifically, developing countries must carefully evaluate negotiations for a webcasting treaty for its effect on educational uses of protected works, particularly as webcasts supplement (and eventually may replace) traditional broadcasting media.

It should be noted that the possibility of using computer networks to promote cultural industries requires copyright protection of such cultural goods, particularly music. The point of urging cautious deliberation is not that copyright is unnecessary or ill-advised as a development tool. Consider, for example, the Open Source model for software development; it is *precisely* the proprietary right that facilitates the imposition of conditions which require contributors to license their contributions on open terms. The argument is that development interests require an effective system of protection, balanced by robust limitations to encourage competition and socially beneficial uses. Copyright protection should not be offered as an instrument of private monopoly at the expense of public welfare.

Some Policy Considerations

It is vitally important that developing countries and LDCs appreciate the pervasiveness of copyright in defining the structure, terms and conditions of access to the basic tools of the information age and, consequently, the prospects for effective and successful use of information technologies to advance development goals. When considered in conjunction with other emerging proprietary models such as business method patents or database protection, copyright law is clearly a central mechanism for extending additional costs and uncertain benefits of foreign creative endeavour in developing regions. In summary, a few factors should be considered for development oriented policies:

- Exploiting the potential of the Internet to facilitate development objectives requires access to hardware (computers), software and content. Intellectual property agreements have important implications for access to software. Developing countries need to explore alternatives to proprietary regimes, the most important being the Open Source model which has proven to be a dynamic and, in some instances, more effective model of software development. For developing countries and LDCs, the Open Source model is also valuable for the opportunities it offers to facilitate training of domestic software engineers, and the relatively low cost of complementary technologies.
- International copyright agreements have a significant and unavoidable impact on access to creative works in the digital age. Developing countries must insist on the possibility of enacting domestic limitations, including the application of compulsory licenses, which encourage access and use of digital works. They should eschew interpretations of copyright treaties that extend the negotiated minimum standards, and resist incorporation of these agreements in TRIPS.

Unbalanced Copyright Regimes Diminish Public Interest Values

The information age offers new opportunities to increase productivity in all countries regardless of the level of development. As a strategic matter, the more developing countries and LDCs participate in post-TRIPS copyright regimes, the easier “TRIPS-plus” standards can be advanced as the ineluctable paradigm for copyright protection in the information age. Such a result can limit the potential of the Internet for broad diffusion of information and creative works generally. Importantly, unbalanced copyright regimes diminish the importance of a socially beneficial culture that values public interest as an important welfare function of a proprietary system for creative works. Nonetheless, copyright protection in developing countries and LDCs is important for domestic creative efforts particularly for cultural industries. Such protection should foster, protect, and promote creation and use for the mutual benefit of authors and consumers.

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ENDNOTES

¹ See TRIPS Art. 3 (requires Contracting Parties to apply Art. 2-6 of the Berne Convention). Note that the TRIPS Agreement requires Members to comply with Articles 1-21 of the Berne Convention, including the Berne Convention Appendix.

² See Art. 4.

³ See Art. 5.

⁴ See Articles 6, 7 and 8. The TRIPS Agreement makes explicit reference only rental rights (see Art. 11). WCT Art. 7 parallels this TRIPS provision, except with regard to rental of phonograms. Under the WCT, the right belongs to the author of the work embodied in a phonogram. Under the TRIPS Agreement, the right is ascribed to “producers” of phonograms, and other right holders in phonograms as determined by domestic laws of member countries. See TRIPS Art. 14 (4).

⁵ See Art. 12 (2).

⁶ See WPPT, Art. 5-10.

⁷ See WPPT, Art. 11-14.

⁸ See WPPT Art. 15(1).

⁹ See WPPT, Art. 18-19.

¹⁰ Digital Millennium Copyright Act of 1998, 17 U.S.C. §§ 1201 -1203 (2000).

China, US Engage in ‘Bra Brawl’

China has reacted with outrage to the 17 November US decision to invoke safeguards against knit fabric, brassieres and dressing gowns and robes from China following petitions filed by the US textile industry. A special provision of China’s WTO accession agreement provides WTO Members with the authority to impose temporary quotas on textile imports from China in the event those imports are found to cause ‘market disruption’. Once a Member has invoked the textile safeguard, it must pursue a negotiated resolution with the Chinese government.

Chinese officials have claimed that the US action violate “the WTO’s principles of free trade, transparency and non-discrimination” and said the country retained “the right to appeal to relevant WTO agencies to protect the rights and interests of Chinese industries.”

The China Chamber of Commerce for Import and Export of Textiles said the US textile sector had only itself to blame for slumping production. While attributing the growth of Chinese exports to “the changing nature of the industry”, it reminded Washington that China’s textile imports from the US had surged by 148 percent in the first nine months of this year compared with the same period last year.

In contrast, a US industry group estimated that since 2001 China’s exports of dressing gowns had grown by 905 percent, bras by 382 percent and knit fabrics by 28,000 percent. The goods in question make up about five percent of US textiles imports from China.

The ‘bra brawl’ is only the latest signal of powerful trading nations’ unease with China’s rising share of world trade. Visiting Beijing in late October, both EU Trade Commissioner Pascal Lamy and US Trade Representative Robert Zoellick strongly criticised China’s record on curbing counterfeit software, CDs and DVDs, as well as widespread copying of luxury trademark goods. They also tried to induce the Chinese government to raise the “unfairly low” value of the yuan, which they blamed for domestic job losses. Chinese officials countered that a key driver for booming exports to the United States was US companies’ investment in Chinese factories to serve their customers back home.

EU to Vote on GMOs

On 12 December, an EU Regulatory Committee is to vote on whether to approve imports of a variety of genetically-modified maize, which received a favourable scientific risk assessment more than five years ago. Under the EU’s weighted voting system, the vote must pass with a qualified majority of member states.

The European Commission is eager to demonstrate that the approvals process – challenged at the WTO by the US, Canada and Argentina (see page 12) – is back on track.

Approving GMOs for import but not for cultivation would allow the Commission to bypass the divisive question of ‘co-existence’, i.e. preventing contamination between GM and conventional crops. Austria and Luxembourg still insist that EU-wide rules aimed at preventing adventitious GMO presence in conventional crop seeds must be in place before resuming approvals, but current legislation leaves it up to member states to establish measures to ensure that contamination does not occur. Products with an adventitious presence above 0.9 percent must be labelled as containing GMOs.

Civil Society Participation in National Trade Policy Design in Uganda and Kenya

Davis Ddamilura and Halima Noor

To date, public awareness of the role of the WTO has largely focused on the protests surrounding its biannual ministerial meetings, most notably in Cancun and Seattle. Outside the ministerials, where a number of both developing and developed country governments have included NGO representatives on their official delegations, a less visible process of dialogue between civil society and trade policy makers is developing at national level.

The stakeholders in this process include non-governmental organisations (NGOs) working with poor and marginalised communities. The aim of the exercise is two-fold: involving a wide group of stakeholders in policy design should lead to trade policies that better reflect the needs and interests of the public, and encouraging more widespread ‘ownership’ of national trade policies should help avoid damaging splits between governments and the organisations of the poor.

Two leading examples of stakeholder involvement are to be found in East Africa – in Uganda and Kenya. In both, the government has set up multi-stakeholder advisory committees on trade policy and the WTO, with a range of civil society organisations, including NGOs.

Uganda

Participation in the WTO process both at national and international levels has helped civil society in Uganda to learn and understand more about the global trading system and its influence on ordinary Ugandans.

In 2001, the process of government consultation with different stakeholders on trade policy took a step forward when the Ministry of Tourism, Trade and Industry set up the Inter-Institutional Trade Committee (IITC), with an extended mandate covering all trade negotiations (not just the WTO).

The ministry is responsible for organising most IITC meetings, which take place once a month on average. However, due to the lack of adequate government funds, preparatory meetings for the WTO ministerial conferences tend to take place close to the time of the event itself.

The IITC was instrumental in giving civil society the opportunity to influence public

policy on trade but it lacks formal status. Gaining legal recognition would allow the IITC to run not just as a project, slated to end in a few years, but to create a platform for continuous dialogue and development of required expertise in handling increasingly complex trade issues. This would also give it the status required for it to be supported by government funding.

Within the IITC, NGOs have found it easier to make their contributions and influence positions at sub-committee level, since this provides an early opportunity to make serious amendments to policy positions/papers before they are presented to the IITC plenary.

There are relatively few NGOs in Uganda working actively on trade issues. In 1999, they set up a national network known as the Food Rights Alliance (FRA) to spearhead advocacy on trade and food security. By early 2003, the FRA had 46 member organisations. The FRA set up a parallel process in which key policy advocacy concerns are discussed, and proposals drawn up for incorporation into the national position. These are then presented for discussion in the IITC sub-committees or plenary.

FRA members co-ordinate efforts to minimise duplication of activities. Members have mainly focused on issues like TRIPS, the Agreement on Agriculture or the GATS, in addition to discussions on regional trade agreements like the ACP-EU, and the East African Community. The strength of working together, speaking with one voice and sharing different experiences on trade and the WTO negotiations among Ugandan civil society organisations has led to continuous reviews of strategies, narrowing down to more specific areas of lobbying. Trade advocacy work at national level has also incorporated recent components of other international campaigns such as Oxfam’s “Make Trade Fair” campaign, the need for corporate regulation, access to medicines, and the proposal for a ‘development box’ in the Agreement on Agriculture.

Apart from using the IITC to influence the WTO process, civil society in Uganda put in place a public information campaign on the WTO through both the media and public dialogues.

Civil society now needs to move beyond an “events-based” culture, whether at national or international level. The way to influence outcomes is through a strategy of continuous engagement. Most hard-core decisions on negotiations take place in between the high-profile events and this is when an opportunity should be utilised to influence the agenda, thinking and directions of key decisions and processes. NGOs should make greater use of the media and network with other decision makers like parliamentarians.

NGO representatives were invited to form part of the Ugandan national delegation to the Seattle, Doha and Cancun ministerials. This was partly due to their contribution to defining the national position before the conferences. Moreover, some NGOs had the advantage of financial resources to enable them and even some government officials to participate. At the ministerials, there was some initial mutual suspicion between government and NGO delegates, but these misunderstandings were resolved and trust for civil society once again restored. NGO delegates were able to attend most meetings.

The relationship between civil society and government in Uganda has mainly been influenced by civil society’s credibility within the consultative process in terms of expertise, resources and

profile. At times, however, civil society organisations have lost opportunities to influence government policy through not responding fully to requests for policy analysis.

Kenya

In 1997, the government of Kenya set up the National Committee on the WTO (NCWTO), with a clear mandate and a wide representation of stakeholders, including government ministries, trade unions, private sector organisations, academics and non-governmental organisations.

The NCWTO currently has 45 members and is chaired by the Permanent Secretary of the Ministry of Trade and Industry. On average, it meets once a month either as a full committee or through the sub-committees it has established on agriculture, services, TRIPs, trade in goods and other topics.

The NCWTO is regarded as the think-tank of the government relating to WTO issues and is charged with advising on key decisions and positions. It makes recommendations and once the Ministry of Trade has considered and approved them, they are forwarded to the Kenyan delegation in Geneva, unless the matters are of a sensitive nature, in which case the Minister's approval must first be sought.

While the NCWTO is a committee within the government, it has no legal mandate. This has led to two shortcomings: first, the Treasury is not obliged to allocate funds to it and, second, its role is purely advisory.

Successes and Shortcomings

According to the NCWTO's own analysis, its achievements include:

- as a result of 19 meetings, two national retreats and four videoconferences, Kenya successfully generated a negotiating paper, which the negotiating team used at regional consensus-building meetings and at the Doha Ministerial Conference in 2001;
- it commented effectively on the draft Doha Ministerial Declaration and influenced the final text; and
- Kenya has submitted timely negotiating proposals to the on-going negotiations in agriculture, services and TRIPs and public health.

The same study identifies several shortcomings, including:

- some of the sub-committees have not met since the Doha Ministerial;
- insufficient knowledge of the multilateral trading system among NCWTO members; and
- lack of legal status for the NCWTO.

Trade officials acknowledge the effectiveness of some NGO participation, especially in the sub-committees on agriculture and services. The advantages of NGOs include their access to financial resources with which to fund research, their international networks and their role in raising public awareness. NGOs' weaknesses include a failure to carry out serious analysis of the impact of different trade policies on the poor.

Since the Doha ministerial, there has been some fall in civil society participation in the NCWTO, both among the private sector and NGOs. This is partly due to disillusionment over the manner in which external actors (e.g. powerful governments) manage to influence ministers to change their mind and ignore positions crafted by the NCWTO. NGOs have also become demoralised by the high turnover of government officials due to transfers within ministries. Much depends on the personal attitude of trade policy officials who are often initially hostile to NGO participation. This has been reflected in a poor flow of information on issues and meetings.

The National Committee on the WTO has in turn influenced the work of NGOs by encouraging them to be more proactively engaged and interested in WTO matters. Increasingly, Kenyan NGOs appreciate the international dimension to their work and the need to engage actively in policy change across a broad range of issues.

Participation in WTO Ministerials

NGO relationships with government have varied with time. NGOs were members of the official Kenyan delegation at the WTO Ministerial Conferences in Seattle, Doha and Cancun. In Seattle, Action Aid (Kenya) was part of the government delegation and a number of other NGOs went as observers. At that conference, the relationship between the Minister of Trade and Industry and civil society was relatively good, with the Minister reportedly highly impressed with the depth of knowledge of civil society on a number of issues.

Doha was more difficult, partly because the Minister heading the delegation was under external pressure, having previously attended meetings in Brussels and Washington. The Kenyan delegation was concerned to learn that the Minister had toned down the Kenyan position from that previously agreed by all the stakeholders. In one meeting, he was heard loudly questioning the participation of civil society delegates with the words "what are these people doing here?"

To move forward, the NCWTO should seek a legal mandate so that it becomes eligible for government funding and its recommendations acquire binding force. A training programme for members of the NCWTO on the WTO agreements, new issues and the art of negotiation should be organised with the assistance of the ITC, UNCTAD and the WTO. The NCWTO also needs a clear work programme, with objectives, targets and time frames.

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"The disadvantaged groups in this country like small farmers are ultimately affected by the public policies – economic policies and trade policies – that are formulated. It is through the continuous engagement of civil society in this process, through shaping national positions and backing government officials that go to the negotiations, that the voice of these groups will be heard."

Ugandan government official, Ministry of Trade, Tourism and Industry

Lessons for the Future

The Ugandan and Kenyan case studies provide useful lessons, both in terms of what they share, and in how they differ. The processes in both cases suffer from the lack of formal legal status, depriving them of government funding and influence; NGOs in both are overstretched and crying out for increased capacity on trade policy issues (credible research is essential to gaining credibility with government); in both, success or failure all too often hinges on personalities – the attitude of both ministers and civil servants towards inclusive dialogue can be as crucial as formal structures in determining success or failure. In both countries, involvement has enriched civil society organisations, helping them understand better how the global trading system impacts on the lives of the poor.

On the government side, Uganda has, at least until the recent change of regime in Kenya, been more consistent and committed to involving civil society in policy design. The Ugandan committee's remit is wider, covering all trade policy (Kenya's covers only the WTO negotiations), and the involvement of NGOs seems more sustained.

This may be linked to a second difference between the two countries. In Uganda, the NGOs have come together to form a single coordinated network, the Food Rights Alliance, which interacts with government on trade issues, whereas in Kenya, NGO involvement remains more *ad hoc* and sporadic.

As the Doha Round grinds on, along with numerous other bilateral and regional trade negotiations, there is a growing recognition that civil society participation in trade policy-making is essential if it is to generate good policies that reflect the interests of the public, rather than vested interests, whether domestic or foreign. Policies made in this way carry greater conviction. It is surely no accident that Kenya and Uganda have proved two of the most effective small developing countries in the WTO, both in Geneva and at the ministerials.

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South Africa Announces New AIDS Treatment Plan

On 19 November, the South African government announced a new plan aimed at bringing antiretroviral treatment (ART) and other services to the more than five million people estimated to be HIV positive in the country. Between 400,000 and 600,000 of these are thought to have full-blown AIDS, and the daily death toll averages 600.

The initiative will involve drastic improvements in South Africa's health care delivery system, including the training of thousands of doctors and nurses, and the setting up of a network of district 'service points'. The first goal is to have at least one such centre in operation in each of the country's 56 districts within a year, reaching an estimated 50,000 HIV/AIDS sufferers. By 2009, the government aims to have a service point administering the ART programme in every locality.

The cost of the programme is colossal, rising from US\$44 million next year to US\$666 million in 2009. More than half of the money will go toward strengthening the national health system, including training professionals, upgrading the drug delivery and laboratory systems, and emphasising prevention through the promotion of "healthy lifestyles".

The government said that one of factors making the new plan possible was a "continuing fall in prices because of new opportunities to manufacture some drugs in South Africa and successful negotiations with drug companies." According to the official communiqué announcing the programme, the plan "provides for a system of drug procurement that will secure drugs at prices well below today's best international prices." While adding that "in time South Africa will have its own production facilities for these drugs", the communiqué provides no details on whether the government plans to rely on voluntary price reductions by pharmaceutical companies or resort to compulsory licensing (see also last paragraph below). In October, one South African and three Indian generic drug manufacturers struck a deal with the Clinton Foundation to make antiretrovirals available at US\$140 a year/per patient for distribution in Africa and the Caribbean.

A Change of Heart Spurred by Civil Society

Despite a steadily rising infection rate, the South African government took its time to respond to one of the world's most acute AIDS crises. Instead of the public health system, for many years those on the forefront of providing care and bargaining with patent-holders were activists, health care professionals, trade unions and even the private sector.

The Treatment Action Campaign (TAC) called the government decision "a wonderful day for all in South Africa" and a reward for "what we have all been working so hard for." While warmly welcoming the announcement of ARV therapy through official channels, it called for better prevention programmes, better treatment of opportunistic infections and greatly improved work conditions for health-care professionals. TAC officials said that while the organisation would assist with service delivery through focusing much of its energy at the District Health Service, it would also "keep up pressure through mobilisation and demonstrations when needed."

In related news, the Brazilian government continues to obtain significant price reductions through menacing to make generic copies of AIDS drugs under patent. In November, Bristol-Meyers Squibb agreed to a 76 percent cut for its antiviral drug Atazanavir, and Merck & Co. agreed to reduce the cost of Efavirenz treatment by 25 percent. The government is still negotiating for a 30-40 percent reduction on Nelfinavir made by Roche Holding AG and Abbott Laboratories' Lopinavir. Alexandre Grangeiro, who directs Brazil's internationally-recognised AIDS programme, has said he is prepared to override patents if no accord is reached by mid-December. So far, Brazil has never actually broken a patent; the threat to do so combined with the domestic industry's manufacturing capacity seems to have sufficed to bring the desired results.

Flirting with Flawed Patent Law Amendment, Canada May Undermine Welcome 'Access to Medicines' Initiative

Richard Elliott

In November 2003, Canada moved to introduce compulsory licenses to authorise the production of generic pharmaceuticals for export to countries lacking sufficient manufacturing capacity. While the government's draft legislation is positive in some respects, it also contains several serious flaws. These can be easily fixed if the Canadian government has the political will to do so.

On 30 August 2003, the WTO General Council unanimously adopted its decision on "Implementation of paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health" (IP/C/W/405). The decision is supposed to solve the difficulties faced by WTO Members lacking sufficient pharmaceutical manufacturing capacity "in making effective use of compulsory licensing under the TRIPs Agreement".

At the end of September 2003, in response to calls from Canadian civil society organisations and from Stephen Lewis, the UN Special Envoy on HIV/AIDS in Africa, the Government of Canada announced it would change Canadian patent law to implement the WTO decision. Following the announcement, Canadian civil society organisations engaged in extensive discussions with government officials, with a view to ensuring that the government fully implements the WTO decision, in all its flexibility, so as to assist developing countries in making effective use of compulsory licensing in responding to their public health problems.

The government introduced a bill in Parliament on 6 November 2003. Bill C-56 would amend the Patent Act to provide for the issuance of compulsory licenses allowing generic pharmaceutical manufacturers to make and export generic versions of patented pharmaceutical products to countries lacking their own manufacturing capacity. Although the bill was not passed before Parliament ended its session on 12 November 2003, it is anticipated that it will be re-introduced in the next session, in early 2004.

Canadian civil society organisations welcomed the introduction of the legislation. The bill does not contain any restricted list of diseases or health conditions for which compulsory licensing may be used to obtain pharmaceuticals. Nor does it limit the use of compulsory licenses to only supplying countries facing an "emergency" or other circumstances of extreme urgency. These sorts of restrictions had already been rejected in multilateral negotiations leading to the WTO decision of 30 August 2003. Civil society had called on the government not to unilaterally re-introduce such restrictions in Canada's approach to implementing the WTO decision.

However, several serious concerns remain about the legislation. Canadian civil society organisations strongly support the initiative to allow compulsory licensing for exporting lower-cost generic pharmaceutical products to countries in need. But the flaws in Bill C-56, as it is currently drafted, will undermine this objective. Therefore, the legislation needs to be changed in several key respects before it is enacted.

Provisions permitting anti-competitive action by patent-holders to block licences for generic manufacturers

As introduced in Parliament, Bill C-56 creates a "TRIPs-plus" entitlement for Canadian patent-holders, permitting anti-competitive action that would block generic manufacturers from obtaining licences to produce and export pharmaceuticals.

Bill C-56 sets out a process whereby a generic manufacturer wishing to produce a patent-protected product for export must notify the Commissioner of Patents of its intent to apply for a compulsory licence. The notice must set out the name of the product, the quantity to be produced, the country to which it is to be exported, and the terms and conditions of the contract between the generic manufacturer and the government of the country in question.

The notice must also include either a declaration that the product is not patented in the destination country or, if it is patented there, a written statement from the country that it has granted or intends to grant a compulsory licence in accordance with Article 31 of TRIPs. In the case an importing country that belongs to the WTO, the document submitted must be the notice in writing that the country has provided to the TRIPs Council, in accordance with the General Council's decision of 30 August 2003.

That notice must then be sent to the holder of the Canadian patent for the product, and the patent-holder then has 30 days to decide how to respond. The patent-holder is given the right to take over contracts negotiated by generic pharmaceutical manufacturers with developing country governments. In order to do so, the patent-holding company must meet the terms of the contract negotiated by the generic manufacturer with the developing country purchaser.

Not only does the patent-holder get to assume the would-be competitor's contract, if it does so, this (a) relieves the patent-holder from any obligation to negotiate the terms of a voluntary licence for the generic manufacturer, and (b) also prevents the Commissioner of Patents from issuing a compulsory licence to the generic company (with "adequate remuneration" payable to the patent-holder to be fixed by the Commissioner). The result is that no licence, either voluntary or compulsory, is obtained by the generic manufacturer.

In a few initial cases, this process could secure a lower price on a particular medicine for a developing country that has negotiated a contract with a generic manufacturer, by requiring the patent-holder to meet the contractual terms. However, under such a

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legislative scheme, generic manufacturers would quickly lose any incentive to even negotiate such contracts in the first place. The company holding the patent would be able to repeatedly block the generic manufacturer from obtaining the licence needed to make the product and fulfil the contract. In short order, there would be no potential competition from generic manufacturers and there would be no reason for the brand-name company holding the patent to lower its prices.

Such provisions will frustrate the stated objective of implementing the WTO decision of 30 August 2003. That decision is aimed at enabling countries lacking pharmaceutical manufacturing capacity to make effective use of compulsory licensing to obtain less expensive pharmaceutical products. Giving Canadian patent-holders another means of blocking generic companies from getting licences runs directly counter to this objective.

Civil society organisations have identified these provisions as ‘TRIPs-plus’ since they go beyond the requirements of TRIPs. They give a further entitlement to patent-holders that will be used to preclude generic manufacturers from obtaining the necessary licences to manufacture and export pharmaceutical products to developing countries with which they have negotiated supply contracts.

Under Article 31(b) of the TRIPs Agreement, the patent-holder is entitled to benefit from the requirement that, before a compulsory licence can be issued, the patent-holder must be engaged in negotiating a possible voluntary licence for the generic producer “on reasonable commercial terms.” If those negotiations do not succeed “within a reasonable period of time”, a compulsory licence may be issued by the appropriate authority, which then fixes the “adequate

remuneration” to be paid to the patent-holder. Either way, however, the generic producer may obtain a licence and the patent-holder receives some compensation.

Currently, Canada’s Bill C-56 would create an added benefit for patent-holders: by taking over a contract negotiated by a generic manufacturer, the patent-holder can block the generic manufacturer from obtaining any licence at all, whether voluntary or compulsory. In this fashion, the bill goes beyond Canada’s obligations under TRIPs to protect intellectual property rights, to the detriment of efforts to respond to public health problems in developing countries.

Limited list of pharmaceutical products

The bill includes a limited list of pharmaceutical products for which a compulsory license may be obtained. The bill consists of those products on the WHO Model List of Essential Medicines that are patented in Canada. The bill also states that the Cabinet of the Government of Canada may authorise the addition (or removal) of any other “patented product that may be used to address public health problems”, and that the Cabinet may establish an “advisory committee” to advise it on products to be added (or removed) to the approved list.

Civil society organisations have objected to the inclusion of a limited list of products and have expressed concerns about the potential failings of the process for adding products to the list. A limited list of products would represent a step backward from the multilateral agreement reflected in the WTO decision of 30 August 2003, in which all WTO member countries endorsed an approach that is not restricted to just specific medicines or other products.

Civil society organisations have, therefore, put forward proposals to improve this aspect of the bill. The objective is to ensure that the Canadian legislation is responsive to the needs of developing countries addressing public health problems, and also respects the right of sovereign developing countries to determine, for themselves, which problems warrant the use of compulsory licensing to obtain less expensive pharmaceutical products.

Denial of benefit to some non-WTO developing countries

Under the current scheme proposed in Bill C-56, all countries recognised by the United Nations as “least-developed countries” (LDCs) may benefit from the export of generic pharmaceutical products from Canada, regardless of whether they belong to the WTO or not. However, in the case of other developing countries, which are not “least-developed” countries, Bill C-56 only recognises those countries that are WTO members. Developing countries that do not belong to the WTO are unable to benefit from the possibility of importing generic pharmaceuticals from Canada.

There is no sound basis for excluding such countries from potentially benefiting from the legislation. Civil society organisations have called on the government to correct this exclusion and to ensure that all developing countries may benefit. WTO membership should not be the price paid for being able to import lower-cost medicines from Canadian suppliers.

No provision for NGOs to procure generic medicines

Currently, Bill C-56 only contemplates that a government, or an “agent of that government”, could enter into a contract with a Canadian generic manufacturer to purchase a pharmaceutical product. Non-governmental organisations and other private-sector entities providing treatment in a developing country are not “agents” of government, and may not be covered by the bill. It would be a stretch to interpret the phrase “agent of that government” as encompassing non-governmental organisations. There is nothing in the WTO decision of 30 August 2003 on compulsory licenses for export that limits the use of the system to governments and their agents, nor is this required under TRIPs. This limitation should be removed.

Under the proposed ‘TRIPs-plus’ provisions, generic manufacturers would quickly lose any incentive to negotiate contracts with developing countries. Giving Canadian patent-holders another means of blocking generic companies from getting licenses runs directly counter to the objective of the WTO’s General Council decision on 30 August 2003.

Richard Elliott is Director of Legal Research & Policy with the Canadian HIV/AIDS Legal Network, an NGO undertaking research, education and advocacy on legal and policy issues related to HIV/AIDS. The Legal Network is a founding member of the Global Treatment Access Group, an affiliation of Canadian civil society organisations collaborating to realize the human right to health. The text of Bill C-56 and additional analysis of the bill can be found at www.aidslaw.ca.

GANs: A Governance-response to Globalisation

The very structure of organisations and societies inhibits achieving sustainable development, which requires an over-arching organisational framework that integrates values such as equity, transparency, accountability, participation and efficiency. A new type of organising approach called global action networks (GANs) holds promise to respond to this challenge.

Unlike traditional NGO campaigns and coalitions, business lobby groups and international government processes, GANs are formed by stakeholders in an issue joining together to develop solutions to a particular problem. They are 'meta-organisations' emerging in the vacuum of effective global approaches – evident in the increasing poverty and environmental crises – to make globalisation work for all and produce sustainable societies. Rather than being a *governmental* response, they are a *governance* response.

Networks are particularly potent vehicles to address public policy issues for a variety of reasons. They can mobilise and combine diverse resources; the different perspectives they that they embody can bring can produce innovative solutions and action; they enable broad dissemination of ideas and activities; and they are usually much less expensive to run than traditional bureaucracy created for the same purpose.

GAN-Net

In November, ICTSD participated in the second stakeholders meeting of a new network of GANs called GAN-Net. A joint project between ICTSD and other members, GAN-Net aims to deepen understanding of trade and sustainable development and lead to high leverage interventions to overcome structural impediments in the trade and sustainable development domain. GANs represented at the November meeting included the Global Reporting Initiative (GRI), the Global Compact, the Forest Stewardship Council (FSC) and the Global Water Partnership (GWP). These organisations share five key characteristics:

- a global strategy;
- a focus upon a public interest issue;
- a *systems-building* approach rather than a project-level one,
- working to bridge many divides such as North-South, practitioner-expert-citizen, rich-poor; and
- deep change work that involves reconfiguring civilizations' core systems – the economic, political and social as represented by business, government and civil society.

Together they represent a large range of stakeholders: GRI participants include businesses, activist NGOs, labour and research organisations; the FSC includes environmental organisations, businesses and social development NGOs; and the Global Compact includes business, the UN and NGOs. None of the participating organisations on their own can address the challenges the GANs are tackling. The resources of all of them are needed, and together they can offset weaknesses inherent in their structures such as businesses' social and environmental impact.

At the November meeting, a typology of GANs was presented in terms of the way business, government and civil society interact to create a GAN control structure. However, the GAN leaders' discussion revealed that their unifying base is a common set of values. Acceptance of these meta-values such as transparency, accountability and equality in the way GANs function is critical (but certainly not easy) to finding ways to overcome power and goal differences between the diverse organisations participating in GANs. However, rather than trying to 'manage' or even 'co-ordinate' action of participant organisations to address the GAN issue, the GAN aims to create *coherent* action on its issue. It attempts to spur experiments, and transform the resulting knowledge into consensual large scale change action.

* "GAN" is a term coined by GAN-Net Lead Associate Steve Waddell. It grew out of work on Global Public Policy Networks (GPPNs). GPPNs were the focus of a report to Kofi Annan in the year 2000 titled "Critical Choices: The United Nations, networks, and the future of global governance" by W. Reinicke, and F.M. Denk. For more information on GAN-Net, visit www.gan-net.net.

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

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

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Meetings of WTO Bodies*

- Dec. 8 Sub-Committee on Least-developed Countries
- Dec. 10-12 Textiles Monitoring Body
- Dec. 15-16 General Council (with additional day possible on 18 December)

**The WTO meeting calendar for 2004 was not yet available at press time. Negotiating sessions were still postponed until further notice on agriculture, services, market access, special and differential treatment, WTO rules (subsidies/countervailing, anti-dumping and regional trade agreements), the environment, and the multilateral registry of geographical indications for wines and spirits. Negotiations continue (but were not scheduled) on eventual changes to the Dispute Settlement Understanding, which have a separate May 2004 deadline.*

Other Meetings

- Dec. 1-2 Ninth Conference of the Parties to the UN
Milan Framework Convention on Climate Change
<http://unfccc.int/cop9/index.html>
- Dec. 1-5 Second Meeting of the Ad Hoc Open-ended
Montreal Working Group on Access and Benefit-sharing
under the Convention on Biological Diversity
<http://www.biodiv.org/>
- Dec. 8-9 Sustainability in the Coffee Sector: Exploring
Geneva Opportunities for International Co-operation:
Assessment and Implementation
Contact: Jason Potts, IISD, tel: (1-514) 814-1967; fax: 527-0612; Internet: <http://www.iisd.org/trade/commodities/>
- Dec. 8-10 World Forum on the “Digital Divide, Global
Geneva Development & Information Society”
Contact: World Forum Secretariat; tel: +763-689-2963; e-mail: wfis@irfd.org; Internet: www.irfd.org/events/wf2003/intro2.html
- Dec. 8-16 Last Negotiating Round for the Central
Washington American Free Trade Area
<http://www.ustr.gov/new/fta/cafta.htm>
- Feb. 9-20 Seventh Meeting of the Conference of
Kuala Lumpur of the Parties to the Convention on
Biological Diversity
<http://www.biodiv.org/meetings/cop-07/>
- Feb. 23-24 Sustainable Development in the WTO:
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