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Facts and Figures

- The US public prefers farm subsidies much narrower than those at present. If majority preferences were followed, the current obstacle in trade negotiations would be largely removed. The majority also favours limiting subsidies to bad years over providing them on a regular annual basis.

US Public Support for Farm Subsidies

For Farms under 500 Acres	In Favour	Opposed
Farm States	81%	16%
General sample	77%	19%
For Large Farming Businesses	In Favour	Opposed
Farm States	31%	64%
General sample	31%	64%

Source: *Americans on Globalization, Trade and Farm Subsidies*, Program on International Policy Attitudes, Univ. of Maryland, January 2004

Testing Political Will on Agriculture

The 22–26 March ‘agriculture week’ will put to test the premise that the stalemate in negotiations can be broken if Members negotiate with each other rather than the Committee Chair.

The purpose of the event is to restart negotiations on ‘modalities’, or the broad framework within which Members will later negotiate binding figures for subsidy reductions and tariff cuts. While there is no mandated deadline, mid-July 2004 has been informally targeted for reaching preliminary agreement.

When this issue of Bridges went to press, informal meetings between different alliances and individual Members were just getting underway. Chair Timothy Groser of New Zealand adopted the format in hopes that direct bargaining among Members would bring about a consensus after the failed pre-Cancun process, which left it to the Chair to draft compromise proposals while Members largely restated their positions in formal meetings. Ambassador Groser stressed that he would only attend the March meetings between Members “upon invitation and strictly as an observer” and would not draft the framework text himself.

There were some signs of renewed political will to break the deadlock. The EU’s Agriculture Commissioner Franz Fischler was in Geneva to meet with representatives of key coalitions and the US Chief Agriculture Negotiator Allen Johnson. The G-20 group of developing countries was to hold separate talks with the EU and – for the first time since Cancun – with the US. The latter two were also scheduled to meet with the 33-member developing country Alliance for Strategic Products and Special Safeguard Mechanism spearheaded by Indonesia. Several G-20 members also belong to the Alliance.

Much of the positioning prior to the March meetings was clearly geared to create maximum pressure on the EU to agree on a ‘date certain’ for the elimination of export subsidies. US Trade Representative Robert Zoellick, the Cairns Group of developed and developing country agriculture exporters, as well as the G-20 repeatedly stressed that such agreement was a prerequisite for progress. Mr Zoellick also announced that the US was ready to accept capping the level of the most trade-distorting (‘Amber Box’) domestic subsidies on a product-specific basis “if we can get the Europeans and the Japanese to come down.” This was both a (conditional) concession to the G-20 and a major departure from the 13 August joint EU-US text, which only agreed to a cap at the aggregate level and would have left countries much more leeway to shelter their most sensitive sectors. In addition, Mr Zoellick said that were the EU to agree on export subsidy elimination, the US would eliminate the export subsidy element of its export credits.

Despite these signals of convergence, a breakthrough is unlikely, not least because to move on export subsidies EU negotiators would need a new mandate from member states. If this was hard to come by before, it will be much more so – at least in the short term – after ten new countries join the Union on 1 May.

The EU Strikes Back

In a speech in early March, Commissioner Fischler berated the US and others for portraying the EU as the main obstacle to progress: “To be perfectly honest, it takes quite a lot of gall to stand there and say that our export subsidies should go, but other forms of trade-distorting export support should stay. The Doha mandate was clear in its intention to discipline all forms of

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export support, whether it be classified as 'export refund', as in the EU, 'export credit guarantees' or 'food aid for surplus disposal' as in the US, 'single desk sellers' in the Cairns Group, or 'differential export taxes' in Argentina." The most the EU has thus far offered on export subsidies is to consider eliminating them on specific products of interest to developing countries, none of which have taken up the invitation to table lists of such products.

Mr Fischler also made clear that while the EU agreed to the capping of the Blue Box, "we will not accept a further reduction in it. Distinguishing between the most and least trade-distorting support is a fundamental principle on which the WTO Agreement on Agriculture was based and the Doha Declaration confirmed." Stressing the positive contribution of the EU's Common Agricultural Policy (CAP) reform, which will partially decouple domestic support from production, Commissioner Fischler put the US on notice that "a strategy of hiding behind the EU is doomed to fail. All players have to address their weak spots. We did not agree that the EU would do all the work whilst others sat back and put their feet up."

Differences also remain on non-trade concerns such as compensation for high animal welfare standards and addressing protection for geographical indications in the agriculture negotiations.

Market Access

While it has moved closer to developing country positions on export subsidies, the US continues to condition domestic subsidy reductions on improved market access, particularly with regard to large developing countries that maintain high tariffs. On the other hand, G-20 member India and many other developing countries maintain their opposition to the 'blended' tariff reduction formula proposed in the 13 September Derbez text. The formula would oblige developing, as well as developed, countries to cut their highest agricultural duties more deeply than lower ones. India argues that the formula would require developing countries, whose tariff level is generally high, to make much greater efforts than industrialised countries. In addition, many developing countries consider tariffs the only policy tool at their disposal to protect domestic producers who do not benefit from subsidies.

Strategic Products and Special Safeguards

Another difficulty centres on the G-33 demands for a category of 'strategic products', on which tariffs would be at the most minimally reduced. According to the G-33, developing countries should be free to self-select the products in question based on their food security needs and the need to protect resource-poor farmers. The strategic products should also be protected by a special safeguard mechanism that would be simple to evoke in cases of import surges.

The concept of 'strategic products' has largely been accepted by WTO Members, but positions vary widely on the number of such products and the way they would be designated. Brazil and Argentina, which only reluctantly endorsed the concept in the run-up to Cancun, have repeatedly emphasised that tariff exemptions and special safeguards should be limited to a small number of products to avoid hampering South-South trade.

Overlapping Alliances

The agriculture groupings present several paradoxes. The G-33 Strategic Products Alliance comprises several large G-20 members, such as Indonesia, Nigeria and Zimbabwe. India also supports the cause, and South Korea, whose positions are usually close to those of the EU, is a formal member. On the other hand, about half of the G-20 members – including Brazil, Argentina and South Africa – belong to the Cairns Group, which advocates both subsidy elimination and drastic tariff cuts. It was no co-incidence that the first G-20/Cairns Group meeting on 17 March focused on export support and domestic subsidies, on which Brazil WTO Ambassador Luiz Felipe de Seixas Correa reported "a great deal of convergence." However, Canadian and Australian officials stressed that much work remained to be done in bridging positions on market access.

It will be a challenge for the new negotiating format to accommodate these contradictory pressures. A meeting of the Trade Negotiations Committee, tentatively scheduled for the week of 19 April, will take stock of progress in agriculture and other post-Cancun negotiating sessions.

LDC Accession to the WTO – Learning from Nepal, Cambodia and Vanuatu

Ratnakar Adhikari and Navin Dahal

Nepal and Cambodia are the only least-developed countries (LDCs) to have been offered WTO membership since the organisation was created in 1995. Vanuatu completed its accession negotiations in October 2001, but the government subsequently requested a 'technical delay' and the matter remains in a limbo. This article looks into whether the three countries received the special consideration promised to LDCs in their accession process.

Article XII of the Marrakesh Agreement Establishing the World Trade Organisation states: "Any State or separate customs territory [...] may accede to this Agreement, on terms to be agreed between it and the WTO." The Article does not, however, give any membership criteria. Neither does it define the "terms to be agreed" or the negotiating procedure.

In Doha, WTO Members confirmed that LDC accession remained a priority for the organisation and agreed to "facilitate and accelerate negotiations with acceding LDCs." They also instructed the Secretariat to reflect this priority in its annual technical assistance plans.

Official consideration of LDC accession procedures concluded with a 10 December 2002 General Council decision, which stated *inter alia* that

- "WTO Members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members";
- acceding LDCs should offer access "through reasonable concessions and commitments on trade in goods and services commensurate with their individual development, financial and trade needs"; and
- "Special and Differential Treatment, as set out in the Multilateral Trade Agreements, Ministerial Decisions, and other relevant WTO legal instruments, shall be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession."

From Theory to Practice

In practice acceding LDC are requested to make concessions that are not only way beyond their capacities and stage of development but also beyond WTO requirements. Developed countries extract such concessions due to two main reasons: first, they want to set a precedent for a high level of commitments from acceding Members and, second, they have nothing to lose as they are not required to make any concessions in return.

Market Access

[Nepal](#) faced a major problem regarding binding its tariffs, in particular for agricultural products. Nepal's current agricultural tariffs range from zero to ten percent, but it has been amply demonstrated that the low tariffs have resulted in a flood of imports that have triggered displacement of farming communities. Nepal therefore tried to create a policy space for protecting this sector through binding tariffs at 60 percent, but ultimately had to accept 42 percent.

Nepal also accepted to open up 70 services sub-sectors, including commitments in audio-visual, distribution, retail and wholesale services. In contrast, neighbouring Bangladesh, which is a founding WTO Member, has only opened up two services sub-sectors.

[Cambodia](#) stood its ground regarding the right of LDCs to grant export subsidies to industrial sectors (allowed under Article 27 of the Agreement on Subsidies and Countervailing Measures), but lost the battle on retaining the right to introduce agricultural export subsidies. Just because it does not presently have such subsidies, a door was closed on a potential future tool to protect its extremely vulnerable farming sector.

Cambodia also agreed to open its audio-visual and distribution services markets although none of the incumbent LDCs have undertaken any commitments in these areas.

[Vanuatu](#) was requested to make major market access concessions. For one, the US demanded that it lower its simple average tariff from 49 to 25 percent, but eventually accepted Vanuatu's offer. Vanuatu also agreed to provide duty-free access to more than 160 tariff lines under the Zero-to-Zero Tariff Reduction Initiatives and the Information Technology Agreement. No LDC – and only a limited number of developing country WTO Members – participate in these tariff agreements. In addition, Vanuatu accepted to replace tariff escalation in 'sin goods' (alcohol, tobacco and weapons) with excise taxes, and to bind alcohol tariffs at their applied rate.

Vanuatu faced market opening requests in 18 services sub-sectors, which is more than four times the average for existing LDC WTO Members. Pressure from the US and the WTO Secretariat led Vanuatu's negotiators to agree on the opening of its retail and whole-sale services to foreign investment. There is widespread speculation that the government's unexplained last-minute request for a 'technical delay' was due to this concession, which had not been cleared by the capital.¹

Vanuatu also undertook major commitments in agricultural market access. It had hoped to protect its potato production – considered a key rural development project – through the right to special safeguard measures (SSG) under Article 5 of the Agreement on Agriculture (AoA) once current seasonal quantitative restrictions were replaced by tariffs. Vanuatu also tried to retain its price support programme for copra – the rural sector's most important cash economic activity – as AoA Article 15 exempts LDC Members from any reduction commitments. Under pressure from neighbouring Australia and New Zealand, Vanuatu agreed not to evoke the SSG for either product, as well as to discontinue price support for copra.

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TRIPs-plus Requirements

Nepal: According to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), LDCs have until 1 January 2007 to implement the Agreement. However, Nepal was asked to provide both national treatment and most-favoured nation treatment right from the date of accession. The Working Party report made no mention of the 2001 Doha Declaration on TRIPs and Public Health in relation to the patentability of pharmaceutical products.

Nepal was also asked to join the International Union for the Protection of Plant Varieties (UPOV), but due to NGO pressure, the US finally accepted that Nepal would only “explore the possibility of joining” various WIPO conventions, including UPOV, at a future date “taking into account its national interests.”

Cambodia was asked to introduce data protection immediately after its accession, which is ahead of both the 2007 deadline for TRIPs compliance and the extended compliance period (until 2016) for pharmaceutical patenting obligations agreed in Doha.

Unlike Nepal, Cambodia accepted to enact UPOV-compliant plant variety protection legislation as part of its obligations under TRIPs Article 27.3(b). That article allows Members to protect plants through patents or effective *sui generis* systems, but developed countries argue that UPOV is the only effective *sui generis* and press hard to impose this model on each acceding country.

The US rejected out of hand Cambodia’s request for binding technical assistance in the implementation of the TRIPs, Customs Valuation, SPS and TBT Agreements.

Vanuatu eventually agreed to apply TRIPs “no later than two years after the date of its accession.” (The US also sought WTO-plus commitments in government procurement, requesting Vanuatu to join the plurilateral Agreement on Government Procurement although existing WTO provisions do not require Members to adhere such agreements.)

‘Other Duties and Charges’

GATT Article II.1(b) allows Members to maintain “other duties or charges” (ODCs) than tariffs provided these do not exceed

the level prevailing at the time of accession; nothings is said about having to reduce them. In practice, however, all acceding countries have been forced to bind ODCs at zero. This creates an unfavourable precedent for any country – even an LDC – which tries to maintain its existing ODCs.

Nepal ultimately gave in to the demand to bind its ODCs at zero and phase them out between two to ten years, although the phase-out is expected to have devastating effects on its economy.² Under tremendous pressure, Cambodia also agreed to bind its ODCs at zero upon accession.

Reality Bites

The examples above show that acceding countries do not receive what they deserve but what they negotiate. Indeed, other LDCs in the process of accession are facing similar problems despite the fact that paragraph 9 of the Doha Declaration commits Members to “accelerating the accession of LDCs.”

Acceding LDCs had pinned their hopes on the LDC Ministerial Conference – held in Dhaka in June 2003 – coming up with some path-breaking recommendations that could then be pushed at the WTO’s Cancun Ministerial. That hope was shattered when the Dhaka Declaration only referred to the “expeditious and full implementation of the guidelines for accessions of LDCs adopted by the General Council.” This language failed to drive home the real message, i.e. that acceding LDCs should not be required to take on a higher level of commitments than those made by LDCs who joined the WTO in 1995. In fact, hardly anyone in the trade community believes that the General Council’s guidelines are the least bit helpful in facilitating fast-track accession, not least because of their non-binding character.

The Way Forward

The following recommendations should be seriously pursued at various international fora, including – but not limited to – the WTO:

- Article XII of the Marrakesh Agreement should be interpreted with clear guidelines detailing transparent accession criteria, and a provision should be included specifically stating that LDCs seeking accession do not need to conduct bilateral market access negotiations;
- acceding LDCs should be asked to make commitments commensurate with their level of economic development, capacity and their trade and financial needs;
- acceding LDCs should not be required to undertake higher levels of commitment than those made by the founding LDC Members of the WTO. Neither should they be asked to make commitments on any plurilateral agreements or to participate in optional sectoral market access initiatives;
- special and differential treatment, including – but not limited to – transitional periods or arrangements, should be applicable to all acceding LDCs, from the date of entry into force of their respective Protocols of Accession;
- special and differential treatment must be made mandatory and legally-binding, as well as subject the WTO’s dispute settlement system (including notification requirements and the inclusion of these commitments in the country schedules);
- developed Member countries should provide technical assistance to acceding LDCs to implement the commitments they were asked to make during their accession negotiations; and
- given the economic importance of agriculture – in particular its role in human development, food security and rural development – LDCs should not be required to make commitments on subsidies and tariffs. They should also have access to a simplified safeguard mechanism.

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ENDNOTES

¹ See Michiko Hayashi. February 2003. *Arrested Development: Vanuatu’s Suspended Accession to the World Trade Organization*. Case Study Prepared for the International Commercial Diplomacy Project.

² Nepal currently imposes ODCs under the following headings: agriculture development fees; LDF; special duty; cigarette and alcohol fee; and cigarette and alcohol control fee.

Trade Facilitation: A Development Necessity Trapped by Trade Negotiations

Cheikh Tidiane Dieye

Like other Singapore issues, trade facilitation meets with resistance whenever it is evoked at the WTO. However, at the national level or in other institutional settings the issue is much more easily accepted. Whether embodied in 'good governance' or considered as a major instrument for further integrating developing countries into the multilateral trading system, considerable means are deployed daily to help these countries undertake economic reforms aimed at simplifying border procedures, reducing administrative formalities and facilitating cross-border movement of goods.

This paradoxical situation is partly due to the fact that it has become virtually impossible to raise the question of trade facilitation in the current WTO negotiating context separately from the other Singapore issues, i.e. investment, competition policy and transparency in government procurement, which were 'bundled' together at their introduction to the WTO in 1996. While launching negotiations on the entire package is controversial for political as well as strategic reasons, taken separately the four areas do not present anywhere near the same level of 'danger' to developing countries. The opposition of their governments, as well as civil society, is mainly built around the investment issue, perceived as one of the most powerful instruments of 'neoliberal imperialism' aimed at dispossessing national governments of their profitable economic sectors to the benefit of foreign multinational companies.

If it is indeed the link and 'bundling' with the other Singapore issues that have hampered progress on trade facilitation at the WTO, we could be tempted by the technically simplest solution, i.e. taking it out of the WTO. That would equal to renouncing the establishment of multilateral disciplines on trade facilitation. This would leave governments the ability to pursue the reforms already underway at the urging of international financial institutions (the World Bank and the IMF) to facilitate cross-border movement of goods. But is this the only option?

Trade Facilitation: Why and for whom?

Although the WTO was invited to examine trade facilitation more in depth only at the Singapore Ministerial Conference, the topic was already included in the institution's legal framework in the GATT 1947 (notably in Articles V, VII, VIII and X), as well as in the agreements on customs evaluation, pre-shipment, rules of origin, technical barriers to trade, and sanitary and phytosanitary measures.

Defined as the 'simplification and harmonisation of international trade procedures', trade facilitation did not land in the debate out of nowhere. The volume of goods crossing borders has grown exponentially as a result of the global integration of production and delivery systems, and new forms of electronic commerce.¹ International efforts aimed at improving the transparency of international trade and reducing tariff barriers have also had significant effects in recent years. It was therefore logical to consider tackling non-tariff barriers and their impacts on the economy and trade of a country.

In developing countries, and in Africa in particular, discussions and action on trade facilitation emerged well before the current debate in the WTO. These followed the wind of economic liberalisation blowing in Africa since the 1980s, bringing structural adjustment programmes, market opening and good governance in its wake. At a general level, the IFM and the World Bank placed liberalisation and good governance at the heart of their intervention framework. The latter term has served these institutions well, as it has allowed them to sidestep the statutory limitation prohibiting them from engaging in political action. By referring to technical norms rather than the political connotations of 'state reform', 'good governance' has been used to justify rigid governmental programmes in numerous countries.

By the end of the 1990s, the liberalism advocated by international financial institutions (IFIs) had boiled down to quasi dogma. As the only providers of funds to states bankrupted by economic mistakes, as well as grand-scale corruption and financial mismanagement of their

leaders, the IFIs conditioned their aid, *inter alia*, on further liberalisation and the removal of tariffs and non-tariff barriers, including the elimination of administrative red tape. Prior forms of economic and political management based on national development strategies protecting national and local interests against foreign competition were actively discouraged.

More specifically, trade facilitation was perceived as an indispensable instrument of market opening. At the end of the Uruguay Round, the unprecedented collapse of customs duties and the ever-faster circulation of merchandise worldwide led to new requirements for speed in cross-border trade. The cumbersome and ambiguous customs regulations of many developing countries were no longer acceptable. In several cases, losses incurred by enterprises due to border delays, as well as complex governmental documentation requirements, have been estimated to exceed the amount of customs duties.² Indeed, several recent studies show that trade facilitation could reduce transaction costs by up to 15 percent.³

In the current international economic environment, simple and predictable customs formalities are increasingly regarded as an essential stimulus for economic growth through national participation in international trade. Studies have shown that speedy and efficient customs procedures increase the participation of domestic enterprises in world markets and can have a considerable effect on the competitiveness of nations through encouraging investment and industrial development. They also allow a greater number of small and medium-size enterprises to participate in international trade⁴ while significantly reducing the potential for corruption, which is multiplied by the lack of transparency often inherent in bureaucratic administrations.

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Despite such strategic considerations, customs offices in many developing countries lack the material, human and institutional means to perform their trade facilitation mandate efficiently. As a consequence, almost all of them are riddled with corruption, bribery and favouritism, which – added to long and complex administrative procedures and inappropriate regulations – have made customs offices into obstacles rather than facilitators of trade.

Seen from this perspective, trade facilitation reform cannot be considered only as a conditionality imposed by external institutions; it is also a national necessity. Such reform must be integrated in national macro-economic and sectoral anti-corruption strategies. It is vital for developing countries to see trade facilitation as an important factor in the modernisation and rationalisation of their economies. For public authorities, reform would permit increased customs revenues thanks to properly collected legitimate duties and taxes, as well as greater efficiency in controls aimed at the protection of the state and citizens. Economic actors would also reap benefits from simplified procedures that would save time while simultaneously reducing both legitimate transaction costs and the potential for illegal transactions. Even civil society organisations working on governance, corruption or economic and social rights recognise that elements of trade facilitation can be powerful levers for the promotion of economic justice as long as their purpose is only to safeguard national interest.

In light of the above, no country can deny the necessity of facilitating the entry and exit of goods to and from its territory on technical grounds. To the contrary, in accordance with what they are doing elsewhere – under pressure or voluntarily – they all seem committed to it. The divisive question is whether trade facilitation rules should be developed by a multilateral body or by national governments.

Why Is the WTO a Problem?

Judging by the number of written proposals on trade facilitation submitted to the WTO Council for Trade in Goods, developing countries have remained passive,⁵ although some have noted their preference for implementing trade facilitation in an autonomous fashion. This is a legitimate

position as – contrary to the EU and other OECD countries – they are not *demandeurs* of a multilateral WTO agreement on trade facilitation.

In Cancun, the both the proponents and the opponents of negotiations on trade facilitation used paragraph 27 of the Doha Declaration to press their case, with the latter requesting an ‘explicit consensus’ among Members before launching negotiations. At an informal November 2003 meeting on the Singapore issues, developing countries remained sceptical about the ‘two-plus-two’ formula, which proposed opening negotiations on transparency in government procurement and trade facilitation, while continuing the ‘clarification process’ on investment and competition policy. The African Group maintained its pre- and post-Cancun position that clarification should continue on all four issues, and ‘explicit consensus’ should be obtained before any negotiations could be launched. In December, positions had already evolved enough to indicate a forthcoming consensus on trade facilitation.

WTO Members largely agree on the arguments in favour of accelerating the movement, release and customs clearance of goods, including procedures for goods in transit. Rather than opposing the principle of trade facilitation, many developing countries question the advisability of defining multilateral rules in this field, particularly at the WTO. Most of them are in any case signatories of the Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, and many have started their ratification processes.

In addition, trade facilitation and the Singapore issues as a whole provide developing countries with a potential trade-off to push developed countries for concessions in other areas. It is thus unrealistic to expect significant progress on the Singapore issues in the short term without measurable progress elsewhere, and in particular in agriculture and development.

While remaining the least ‘sensitive’ of the four Singapore issues, trade facilitation at the WTO does not appear to hold as great benefits as it does outside the multilateral trading system. Two explanations are possible. The first is the association of trade facilitation with the Singapore issues, which have evolved from technically important factors of international trade and development into strategic policy pawns between developed and developing countries. The second is that trade facilitation can provide an entry point for addressing at the WTO questions that governments – particularly in the South, considered rightly or wrongly as the most corrupt – are unwilling to discuss. If they can accept addressing ‘good governance’ and corruption under ‘obligation’ from international financial institutions or in the non-threatening context of the Kyoto Convention, they are not in a hurry to be regulated by the WTO where – at least in principle – they have the same weight as other Members.

On the other hand, trade facilitation is the only subject where developing countries have nothing to lose. They could thus envisage launching negotiations on this topic – without prejudging their outcome.⁶ In agreeing to negotiations, they would show ‘flexibility’ and ‘good will’ in the eyes of developed WTO Members while only conceding on a ‘minor’ point. The ball would then be in the developed country camp.

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ENDNOTES

¹ World Customs Organisation

² World Trade Organisation

³ A.J. Nanga, *Le rôle de la douane en matière de sécurité et facilitation du commerce*.

⁴ World Customs Organisation

⁵ Nine written communications were presented to the Council in 2003; six by developed country Members; two by observers – the OECD and the WCO; and one by the Secretariat (G/C/W/463). Documents G/L/637 et G/L/665 summarised the work of the Council.

⁶ This would obviously be subject to the conditions listed by least-developed and developing countries in the note submitted to the WTO on 12 December 2003 (WT/GC/W/522).

Stage Is Set for Substantive Hearing on Sugar Dispute

Both sides have now tabled their initial submissions in the sugar subsidy dispute pitting Brazil, Australia and Thailand against the European Union. The complainants argue that the EU's export subsidies for sugar exceed their 1992 level in violation of the Agreement on Agriculture. They also allege that raw sugar imported from African, Caribbean and Pacific states under preferential arrangements is subsequently exported at subsidised prices.

The EU's sugar regime involves a quota system (A and B quotas) that supports local producers through an intervention price for refined sugar and a minimum price for sugar beet; high import tariffs (but preferential access to sugar from the African, Caribbean and Pacific (ACP) Group of States, as well as India); and export refunds – making up the difference between EU and world prices – for all sugar refined in Europe whether sourced domestically or overseas.

Brazil argued in its first submission that all sugar produced in excess of the A and B quotas – called 'C sugar' – was subsidised and exported. Regarding ACP sugar imports, Brazil accused the EU of refining the imported raw sugar, treating the resulting white sugar as national domestic surplus and, with the aid of direct subsidies, re-exporting this sugar to third countries. Brazil further alleged that the EU did not include these sugar exports in its calculation of exports subject to reduction commitments.

The EU dismissed the claim that it was subsidising surplus sugar for export beyond its WTO-agreed limit. It also rejected the argument that it was illegally exempting sugar imported from ACP countries from its export subsidy reduction commitments, arguing that the complainants did not object when the EU first claimed the exemption during the Uruguay Round of trade talks which formally ended in 1994.

EU Attacks Legal Basis of Brazil's Claim

The legal basis of Brazil's claim that the EU's treatment of 'C sugar' constitutes an export subsidy within the definition of Article 9.1(c) of the Agreement on Agriculture, is the WTO's Appellate Body's ruling in a case brought by the United States against Canada's dairy export regime (*Canada-Dairy*). The Appellate Body held, in that case, that the higher prices fetched for dairy products in Canada's supply-managed domestic market effectively financed the sale of exported milk products at a price which was lower than the average total cost of production, thus constituting an export subsidy. According to the EU, the *Canada-Dairy* case does not apply to the sugar dispute as the Canadian dairy and EU sugar regimes are fundamentally different: the Canadian dairy regime involved a government-managed scheme, whereas the sale of 'C sugar' is done at the discretion of sugar producers without assistance from Brussels. Furthermore, the EU argues that while the Canadian scheme was set up after the conclusion of the Agriculture Agreement, the EU regime dates from 1968. Thus, if trading partners had any objections to the alleged cross-subsidisation, they should have made them known during the Uruguay Round negotiations on agriculture. The EU added that if the complainants' claims were upheld, the implications could be enormous for any country providing domestic support to its farmers. "Even the use of tariffs, which raises the price of local farm goods, could be considered a form of cross-subsidisation for export under the interpretation offered by the complainants," the EU argued.

Why ACP Countries Are Concerned

Ambassador Isikeli Mataitoga of Fiji, the leading advocate for the 12 ACP third parties in the sugar dispute, has warned that should the panel decision go against the EU, the latter's intervention price for sugar would most likely be much reduced. This in turn would mean severe price reductions for sugar exports from Fiji and other ACP countries (the EU currently imports, at guaranteed prices, specific quantities of cane sugar from ACP states under the ACP-EU Sugar Protocol). Arguing that their aim was to address distortions in the EU's pricing system rather than to erode ACP sugar exporters' market access, the complainants earlier suggested the EU reduce domestic production instead of restricting ACP exports. ACP countries, however, remained sceptical about the complainants' motives (Bridges Year 6 No.8, page 16).

The first panel hearing is scheduled for 30 March – 1 April. At the meeting Brazil and the other complainants will present their case, and the EU will have a chance to comment, as will third parties. The parties will provide written rebuttals towards the end of April. The panel will hold its second hearing the week of May 10 – 14.

DSU Review Update

The latest negotiating session on amendments to the Dispute Settlement Understanding (DSU) lasted only an hour and focused organisational matters.

While Chair David Spencer of Australia enjoined Members to negotiate among themselves as a way of bridging positions, some developing countries noted that the option had always been available but had not yielded any results. There was thus a need for a Chair as an impartial arbiter in the negotiations. Some Members suggested limiting the scope of the talks so as to allow for an early harvest. This idea was rejected by some developing country groups, which did not want to compromise the potential for a thorough DSU revision that would resolve the constraints they face in accessing the dispute settlement system.

Members are now considering whether to further extend the DSU review's current deadline of 31 May 2004. As reasons for the lack of progress some delegates point to stalled talks on agriculture and other key components of the Doha Round, despite the fact that negotiations on the DSU are separate. Others cite a lack of political will and complex proposals tabled by Members.

The next session will be held on 25 March on the basis of a compilation of proposals (TN/DS/9) issued by former Chair Petér Balás on 28 May 2003.

Disputes in Brief

- **EU: GMOs** On 4 March, WTO Director-General Supachai Panitchpakdi appointed the three panelists who are to arbitrate the dispute on the EU's approval processes for genetically-modified organisms (GMOs) brought by Argentina, Canada and the US (Bridges Year 7 No.7, page 13). The panel will be headed by Christian Haeblerli of Switzerland, who will be assisted by Akio Shimizu of Japan and Mohan Kumar of India. The panel report is expected in September at the earliest.
- **EU: GIs** Panelists have also been appointed in the dispute brought by the US and Australia against the EU's legislation on the protection of geographical indications (GIs). The complainants allege that the EU's reciprocity requirement for granting strong GI protection violates the WTO's national treatment obligation (Bridges Year 7 No.3, page 9). Miguel Rodriguez Mendoza of Venezuela, Seung Wha Chan of Korea and Peter Kam-fai Cheung of Hong Kong are expected to issue their report in August at the earliest.
- **US: Byrd** The arbitrator's report on the amount of trade sanctions the EU and other complainants can impose in the anti-dumping dispute involving the Byrd Amendment is expected in late March 2004. The Appellate Body ruled in January 2003 that the distribution of anti-dumping duties to affected industries under the Byrd Amendment was WTO-inconsistent, as it provided double benefits to petitioning industries: first the relief provided by the antidumping measure itself and then a financial reward through a share of the duties collected by customs (Bridges Year 7 No.1, page 9). In related news, the US Congressional Budget Office has issued a report arguing that the anti-dumping and countervailing duty laws underlying the Byrd Amendment harm the US economy by forcing companies and consumers to pay more for imports than they otherwise would.
- **EU: GSP** The Appellate Body will issue its report on India's challenge of the EU's Generalised System of Preferences on 17 April (Bridges Year 8 No.1, page 7).

Cotton Dispute Nears Conclusion

The panel report in the precedent-setting cotton dispute opposing Brazil to the US is likely to be issued in May 2004 after nearly a year of deliberations beset by procedural hurdles. The key issues before the panel are whether US subsidies have caused injury to Brazil's cotton exports, and whether US support between 1999 and 2003 was protected by the Peace Clause.

In its first submission to the panel, the US argued that the relevant test for the applicability of the Peace Clause was "to compare the product-specific support 'decided' during the 1992 marketing year versus the product-specific support that challenged measures currently in effect grant." It further maintained that as the level of support granted to upland cotton producers was far lower in 2003 than that 'decided' in 1992, the support was covered by the Peace Clause and thus could not be challenged at all. The panel first agreed to issue a preliminary ruling on the Peace Clause issue but later decided to handle both substantive and procedural claims in a single report (Bridges Year 7 No.8, page 12).

The Data Quest

Since then, the US has focused on faulting the methodology used by Brazil to demonstrate the effect of US subsidies on world cotton prices and Brazilian exports. Brazil, on the other hand has repeatedly requested the US to provide more detailed data on its cotton support programmes in an effort to prove that 'product-specific' US support indeed did exceed commitments under the Agreement on Agriculture and was thus subject to general WTO subsidy disciplines. The panel instructed the US to provide specific data on farm-level support, such as producer flexibility payments, market loss assistance, counter-cyclical payments and direct payments by 3 March (Bridges Year 8 No.2, page 7). As the US had previously refused to supply information about the planting history of individual cotton farms on the grounds that the US Privacy Act of 1974 only allowed such information to be released with a farmer's prior consent, the panel asked the US to provide aggregate values of farm-specific information which would protect the identity of individual farmers.

US Produces Cotton Info, Disagrees on Implementation Period

On 3 March 2004, the US finally submitted eight data files to the panel. It noted that the files were the result of efforts to identify any farmers who would not have protectable privacy interests under the Privacy Act of 1974. The US said it had problems meeting the panel's request for information on 'base acreage' – i.e. the amount of acreage devoted to a given crop – on soybean and peanut farms as both crops for the relevant period were 'producer-based' rather than 'farm-based.' Information on payments made to other farms apart from cotton would serve to prove or disprove the element of 'specificity'. Under Article 2 of the Agreement on Subsidies and Countervailing measures (SCM), a crucial factor in determining the existence of a subsidy is whether the support at issue is specific to a particular industry.

The US and Brazil have also discussed how long the former should be given to comply with an adverse ruling. Article 4.7 of the SCM Agreement requires prohibited subsidies to be withdrawn 'without delay'. In Brazil's interpretation this would mean terminating the 'Step 2' programme within 90 days. Step 2 supports export/milling companies that buy US cotton (Bridges Year 7 No.8, page 12). The subsidy component of export guarantees should be eliminated within six months. The US has argued that a country should be granted a 'reasonable period' of at least 15 months to withdraw measures that require legislative changes.

In a related development, officials from the Quad Group of countries – the United States, the European Union, Japan and Canada – as well as China will meet with counterparts from 30 African countries in on March 23-24, for a workshop to discuss development issues related to cotton such as technological capacity, product diversification and technical assistance. An EU official insisted that the workshop was not intended to deflect attention away from the subsidy issue and that domestic support for cotton producers would still be addressed in Geneva as part of the Doha Round negotiations.

The Debate Is Launched on Declining Commodity Prices

According to a recent UNCTAD report, commodities lost half their purchasing power in terms of manufactured goods between 1997 and 2001. The decline was particularly steep for non-fuel primary commodities of importance to Sub-Saharan Africa, where many countries export just one or two products such as coffee, sugar or cotton. The WTO Committee on Trade and Development also focused on declining commodity prices at its February session.

The UNCTAD report on *Economic Development in Africa: Trade Performance and Commodity Dependence* notes that adverse terms of trade and loss of market share have caused serious damage to economic development in Sub-Saharan Africa, leading to low savings and investment. They are also the principal factors contributing to Africa's high indebtedness. Further, OECD countries' agricultural subsidies and domestic support for such products as cotton, groundnuts and sugar caused an estimated revenue loss of up to US\$300 million in 2002 for African cotton industry. This was US\$70 million more than the total debt relief approved in the same year by the World Bank and the IMF for nine cotton-exporting West and Central African countries. The report also cites International Coffee Organisation figures showing that coffee-producing countries currently earn just US\$5.5 billion of the US\$70-billion value of retail sales, compared to about a third of the US\$30-billion value of retail sales in the early 1990s. In other words, the commodity trap has essentially become a poverty trap.

After briefly surveying previous national and international measures taken to address the commodity 'problématique', the report moves on to consider possible future measures that may be adopted to overcome these problems. In particular, it calls for a compensatory financial mechanism for African producers to meet short-term price shocks and declining incomes, as well as a 'diversification fund' to support the diversification of production structures in African economies. The report also advocates for new international commodity initiatives and greater institutional capacity in developing countries in areas such as research and training, transport infrastructure, information management and quality control, and the management of rationalisation schemes. Finally, it calls on the international trading system, and the WTO in particular to accelerate negotiations on reducing and phasing out distortive agricultural subsidies in advanced economies and strengthening technical assistance in areas such as quality control and health and safety requirements.

WTO Members Disagree on Where to Address to Question

At the 18 February 2004 session of the Committee on Trade and Development (CTD), Members discussed an East African initiative to put commodity prices on the WTO agenda. Kenya said it would submit a paper before the Committee's next meeting on 11 May outlining its expectations of CTD action on the issue. The paper reportedly will elaborate on and add detail to a May 2003 submission by Kenya, Uganda and Tanzania (WT/COMTD/W/113), which highlighted the need for urgent action to deal with the crisis caused by the long-term price decline of primary commodities. Kenya noted that declining terms of trade had many dimensions, including those related to tariff peaks, technology transfer and agricultural subsidies. As each of these issues was already under the purview of a WTO body, Kenya suggested that substantive discussions could be held either in CTD special sessions or transmitted to the relevant committees for examination. Another African delegate stated that aspects of the commodities issue should be discussed in other WTO bodies, which could report to the CTD.

Most developing countries, including India, Pakistan and Brazil, supported Kenya's intervention. Pakistan, however, expressed concern about diffusing the issue within different committees. Many speakers suggested inviting experts from other organisations to join the discussions. In keeping with its long-standing position, the US stated that problem was market-related – pointing to issues such as competitiveness, horizontal and vertical diversification and investment – rather than a question of supply management. Rather than being addressed in the WTO, the US felt that the commodity price decline needed to be handled by 'market-based' instruments such as commodity-risk derivatives. The EU highlighted the importance of damage verification in countries affected by declining commodity prices, and greater access to finance and capacity-building.

Referring to calls for 'diversification' made by some WTO Members, Uganda and Tanzania remarked that the same degree of emphasis was not being given to removing the various market access barriers that developing countries faced.

Para. 52 Suggestions Anyone?

CTD Chair Trevor Clarke asked Members to submit new ideas on how to operationalise paragraph 51 of the Doha Ministerial Declaration by the next CTD meeting. Para. 51 instructs the CTD to "act as a forum to identify and debate developmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected." The CTD has already heard reports from the groups negotiating non-agricultural market access, agriculture and services. Reportedly, the 'development' aspects in these reports were mainly focused on developing country proposals relating to market access and special and differential treatment. At the meeting, the CTD was briefed on the development aspects of the review of the Dispute Settlement Understanding. The Negotiating Group on Rules and the Special Session of the Committee on Trade and Environment have yet to brief the CTD.

Discussions on the work programme for 2004 began, and the Chair asked Members for additional proposals. Members are also set to discuss if, and how, to continue work on e-commerce at the next CTD meeting.

The next regular CTD session is scheduled for 11 May.

S&D Talks to Resume on 1 April

Intense negotiations on improving special and differential (S&D) treatment provisions in WTO Agreements yielded scant results in the run-up to the Cancun Ministerial Conference (Bridges Year 7 No.6, page 14). Faizel Ismail, the new Chair of the negotiations, will look for innovative ways to reinvigorate the process at the CTD's first post-Cancun special session on 1 April.

Rules Negotiations off to a Timid Post-Cancun Start

The Negotiating Group on Rules resumed meetings on 16 March. The group's mandate is to 'clarify and improve disciplines' under the Agreement on Anti-dumping and the Agreement on Subsidies and Countervailing measures, as well as WTO provisions on regional trade agreements. The Doha Ministerial Declaration further specifies that the negotiations shall address WTO disciplines on fisheries subsidies.

So far, Members have made more than 150 submissions but reached no consensus on any possible changes. No real movement is expected until progress is made in key areas such as agriculture.

At the 16 March meeting, Members discussed a new proposal from Japan, Brazil, Colombia and eight other 'Friends of Anti-dumping Negotiations' on the definition of 'affiliated parties' in the calculation of dumping margins (TN/RL/W/146). The 'Friends' sought to tighten this definition, so that the only transactions to be included in the calculation would be those relating to affiliates and subsidiaries in which an exporter had at least a 50 percent stake based on voting rights. According to the 'Friends', a loose definition of 'affiliate' may lead incorrect information that in turn may inflate dumping margins. The US said the paper's approach was too narrow and legalistic, and that a tighter definition of affiliates was problematic in such cases as family-owned businesses and unlisted subsidiaries. In addition, the 'Friends' had overlooked the real problem, i.e. the use of artificial prices for tax purposes. The EU generally welcomed the proposal, but echoed US concerns about basing the definition of affiliates on voting rights.

The next rules session, scheduled for 26-28 April, will mainly consist of informal consultations. According to Chair Eduardo Pérez Motta, such discussions would help Members gain a greater understanding of the large number of highly technical proposals.

Limited Market Opening Offered in Services

Services offers are still only trickling in and, according to Chair Alejandro Jara, those submitted so far consolidate existing openness rather than present real new business opportunities.

Almost a year after the expiration of the Doha-mandated deadline of 31 March 2003, some 24 WTO Members¹ have submitted initial services market opening offers in response to requests from other Members.² The offers are evenly split between developed and developing countries (11 each), and two have been tabled by economies in transition. The low number of submissions, as well as their cautious approach to liberalisation, are largely due to many Members' determination to advance negotiations on agriculture and services in parallel. A number of developing countries also perceive services liberalisation as something that will essentially benefit advanced economies. More generally, during the first phase of WTO market access negotiations all Members dream of giving little away and getting much in exchange.

The table opposite provides a partial but representative view of the *new* commitments in the initial offers by selected WTO Members, but does not necessarily reflect their overall liberalisation. The following trends can nevertheless be observed:

- Most new commitments seem to consolidate existing autonomous liberalisation already undertaken in national legislation, but not yet scheduled at the WTO.
- Some countries have offered few sectors, but made relatively deep commitments within those sectors. Japan, for instance, added cross-border trade (Mode 1), consumption abroad (Mode 2) and commercial presence (Mode 3) in telephone and courier services to its telecommunications sector offer. Others have chosen to offer a broad range of sectors but keep certain limitations on market access. India and Thailand, for example, will continue to maintain a 49 percent ceiling on investment allowed under Mode 3 (commercial presence).
- Cross-border supply and consumption abroad are most frequently offered, both in market access and in national treatment. In contrast, few new commitments have been offered under commercial presence, which is one of the key outcomes sought by most developed countries. This reflects caution by developing countries, as well as possible trade-offs regarding 'presence of natural persons' (Mode 4) or other issue areas.
- Many countries (the US was a notable exception) offered temporary stay in Mode 4 as a horizontal commitment to highly skilled and educated professionals.

Policy Safeguards

India and Thailand have been particularly careful to include certain public policy safeguards in their initial offers. India's offer contains a horizontal market access limitation regarding "Scheduled areas and Tribal areas," which the president can designate under the constitution. While market access is not prohibited *per se* in these scheduled areas, it can be denied. The provision aims to protect the special character and culture of predominantly tribal populations. Thailand limits market access through a 49 percent ceiling on equity acquisitions in many sectors.

Potential Sustainable Development Benefits

Several of the offered sectors may lead to limited sustainable development gains. With regard to the environment, developed countries have taken small steps in the right direction with the US opening up its noise/vibration abatement services and nature and landscape protection services, while the EU has offered horizontal commitments to environmental services in Mode 4.

Many developing countries continue to open up their education sectors. Provided that adequate regulations are in place, such commitments can have positive sustainable development effects as they allow investment into an often undersupplied sector. Many new horizontal commitments allow the entry of highly educated professionals, who can help train nationals and thus contribute to the growth of a more permanent professional class in developing countries.

The next issue of Bridges will report on the first post-Cancun negotiating session on services, scheduled for 2 April 2004.

Main New Commitments in Initial Services Offers by Selected WTO Members³

Offers	India	Thailand	Guatemala	United States	European Union	Japan
New Horizontal Commitments regarding Mode 4 Market Access	No limitations for the following: employees of foreign-based companies who travel to India for up to 1 year; service contracts for engineering, computer, hotel and travel agency services, independent professionals for up to 1 year. (See <i>Policy Spaces Safeguards below for further horizontal commitments.</i>)	Allows entry of business visitors, intra-corporate transferees, managers, executives and specialists. (See <i>Policy Spaces Safeguards below for further horizontal commitments.</i>)	Allows entry of company managers, directors, administrators, supervisors or general executives. (See <i>Policy Spaces Safeguards below for further horizontal commitments.</i>)		Allows entry of intra-corporate transferees, graduate trainees, business visitors, scientific and technical consulting services, environmental services, and equipment repair services. Contracts must be obtained in one of the following activities: architecture, engineering, computers, management consulting and translation.	Allows entry of legal accounting or taxation service suppliers, technological workers, engineers, advanced level economists and business managers.
New Sectoral Market Access Commitments	Medical and dental services (Modes 1, 2, & 3*); computer services (Modes 1, 2, & 3*); construction work for civil engineering (Modes 1 & 2); money brokering (Modes 1 & 2); provision and transfer of financial information and data (Modes 1 & 2); hospital services (Modes 1, 2 & 3*); hotel services (Mode 2); travel agency services (Mode 2); maritime auxiliary services (Modes 2, 3 & 4); and maritime transport services (Modes 1, 2 & 3) * up to an equity ceiling of 79%	Software training services (Modes 2 & 3); scientific and technical consulting services; oil and gas exploration (Modes 2 & 3); international and technical educational services (Mode 4); higher education services; foreign language tuitions services; and other education services (Modes 2, 3 & 4).	Allows for legal services (Modes 1, 2), computer services (Mode 2), environmental services (Modes 1, 2 & 3); reinsurance and retrocession (Mode 3).	Allows for executive search and placement services (Modes 1, 2 & 3); noise and vibration abatement (Modes 1, 2 & 3); circus amusement park services (Modes 1, 2 & 3); freight and passenger transport (Modes 1 & 3). Some States have been excluded from the offer. (See <i>Offered Sectors with Potential Sustainable Development Impacts below for more offers.</i>)	Pharmaceutical services and retail distribution of pharmaceutical goods (Modes 2 & 3, with access offered by only 2/3 of member states); postal and courier services; maritime transport services (Modes 1, 2 & 3); maritime auxiliary services (Modes 2 & 3); groundhandling (Modes 2 & 3 – depending on size of airport); construction and related engineering services (Mode 3); franchising (Modes 1, 2 & 3); and freight forwarding services (Modes 1, 2 & 3).	Allows for investigation services (Modes 1, 2 & 3); telephone answering, duplicating, and mailing services (Modes 1, 2 & 3); courier services (Modes 2 & 3); general construction services (Modes 2 & 3); higher education services (Mode 2); adult education services (Modes 1, 2 & 3); maritime services (Modes 1, 2 & 3); and maritime auxiliary (Mode 2)
New National Treatment Commitments	Offered sectors are the same as those offered in Market Access	Same as Market Access except for international and technical educational services.	Committed for transfer of financial information (Mode 1). Everything else is the same as Market Access.	Offered sectors are the same as those offered in Market Access.	Postal and courier services (Modes 1, 2 & 3); maritime transport services (Modes 1, 2 & 3 – limited commercial presence); maritime auxiliary services (Modes 2 & 3); ground-handling (Modes 2 & 3 – depending on airport size); franchising (Modes 1, 2 & 3); waste water services (Modes 2 & 3); and freight forwarding services (Modes 1, 2 & 3).	Same as Market Access except maritime auxiliary is allowed (Modes 2 & 3).
Sectors with Potential Sustainable Development Impacts	Dental and medical services; engineering services, nurses and physiotherapists.	Education	Environmental and computer services.	Nature and landscape protection services, and protection of biodiversity (Modes 1, 2, 3 & 4); office support personnel, supply services of nursing personnel (Modes 1, 2 & 3).	Pharmaceutical services (only committed by some EU member countries).	
New Policy Spaces Safeguards	The main market access limitation (under horizontal commitments) relates to "Scheduled Areas and Tribal Areas". Instruments include performance requirements regarding technology transfer; approval of foreign investment in certain areas; taxation; subsidies; and special treatment to scheduled castes, tribes and weaker sections of society.	Foreign equity is limited to 49 percent (horizontal commitment). This still allows for more investment in: database access services; online information processing; teleconferencing and videotext; domestic leased circuits; and auxiliary insurance services.	Mode 4 – Market Access: At least 90 percent of the workers hired by any employer must be Guatemalan and they must be paid at least 85 percent of average company wages (under horizontal commitments).			Presence of natural persons must be within framework of Immigration Control and Refugee Recognition Act.
Potential Opportunities for Developing Countries	New horizontal commitments in Mode 4: Midwives, nurses and physiotherapists could enter the country for work.	New horizontal Commitments in mode 4: Foreign nationals could work on gas and oil exploration; software training; and higher education services, etc.	New horizontal commitments in Mode 4: Allows for entry of entertainment services (Modes 2 & 3); and travel agency and tour operator services (Mode 2).	Foreign nurses may enter the country for temporary work, admittance of circus workers from abroad.	New horizontal commitments in Mode 4: Scientific and technical consulting services; and maritime transport services.	New horizontal commitments in Mode 4: Telephone answering services; maritime services.

ENDNOTES

¹ Counting the EU as a single entity.² The requests are made bilaterally from one Member to another but any resulting market opening will apply to all WTO Members on a most-favoured nation (MFN) basis.³ Mode 1 refers to a service supplied by one Member and consumed in another (such as outsourcing or architectural drawings); Mode 2 refers a situation where the service is consumed abroad (by a tourist or a patient, say); Mode 3 means the establishment of a commercial presence, such as a branch office, in the territory of another Member; and Mode 4 refers to individuals (such as nurses or engineers) who provide services in the territory of another Member.

TRIPs Council Addresses Health, Biodiversity

Members remain divided over how and when to convert the 30 August 2003 Decision on access to generic medicines into a permanent amendment of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Meeting on 8 March, the TRIPs Council also discussed a new developing country submission proposing a checklist for moving forward on biodiversity-related discussions.

Paragraph 11 of the Decision on TRIPs and Public Health instructs the Council to elaborate an amendment to the TRIPs Agreement based on the Decision, which spells out the conditions under which countries without pharmaceutical manufacturing capacity can import generic versions of drugs still under patent. The amendment should be adopted by end-June 2004.

On 8 March, outgoing TRIPs Council Chair Vanu Gopala Menon reported on his informal consultations on carrying out this mandate, but Members did not formally discuss the issue.

The US and the EU generally favour concluding the talks by next June, but some developing countries have proposed extending the deadline in hopes that the 30 August deal can be 'improved' based on experience gained with its implementation.

Regarding the content and legal form of the amendment, the US is advocating a

simple footnote to the TRIPs Agreement referring to the Decision and the accompanying Chair's statement. The EU would prefer an amendment to TRIPs Article 31 on the use of patented subject matter without authorisation of the right holder. The Secretariat's legal division said it would look into the legal implications of a footnote and in particular how it would affect the legal status of the Chair's statement, but stressed that it was up to Members to clarify the issue. Chair Joshua Law of Hong Kong will continue to hold informal consultations.

Renewed Calls for Moving Ahead on Biodiversity

Brazil, Bolivia, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela renewed their efforts to speed up discussions on resolving potential conflicts between the TRIPs Agreement and the Convention on Biological Diversity. To focus the discussions, they proposed a checklist of question regarding three issues raised in previous submissions, namely: disclosure of origin of the biological resource/traditional knowledge (TK) used in the invention; evidence of prior informed consent; and evidence of benefit-sharing related to the genetic material and TK.

Despite reservations with regard to some of the issues, the EU said it was willing to pursue discussions along the proposed lines. It also stressed that in order to avoid duplication, the TRIPs Council's work on TK should await the outcomes of the WIPO Intergovernmental Commission on Intellectual Property Rights and Genetic Resources, Traditional Knowledge and Folklore. Switzerland and Norway also signalled their openness to discussions. The US, however, opposed the checklist, arguing that there was no conflict between the TRIPs Agreement and the CBD and that the CBD should not be enforced through patent law. The US and Japan called for the discussions to take place in WIPO. In response, the India-led group, supported by other developing countries, insisted that discussions should continue in the TRIPs Council pursuant to the mandate set out in para. 19 of the Doha Declaration.

Balancing Act: Trade Concerns in Biodiversity Agreements

Never before have trade considerations been so explicitly and extensively present in formal discussions on the Convention on Biological Diversity (CBD) as at the Conference of the Parties held in February in Kuala Lumpur. The Meeting of the Parties to the Cartagena Protocol on Biosafety appeared less affected by the trade constraints that plagued the treaty's negotiation, perhaps because no major biotech exporter has yet ratified the Protocol.

Trade concerns regarding the CBD were most overtly raised in the context of a draft decision on providing 'positive incentives' for the conservation and sustainable use of biodiversity, as well as removing/mitigating 'perverse incentives' that encourage practices leading to degradation and loss of biodiversity. Echoed by Australia and Brazil, Argentina repeatedly expressed concern about WTO Members' using the proposed language to justify agricultural subsidies. As a result, Parties sent the proposals back to the CBD's scientific body (SBSTTA) for further discussion. All references to positive incentives in other decisions were also dropped.

Argentina registered reservations on 18 paragraphs in the incentives decision, which should be given special attention by SBSTTA, and stressed that before advancing on positive incentives, measures should be taken to eliminate – rather than just mitigate – perverse incentives.

In addition, agriculture was effectively excluded from the Addis Ababa Principles and Guidelines for Sustainable Use of Biodiversity adopted at COP-7 with a request to SBSTTA to "explore the applicability of these principles and guidelines to agricultural biodiversity" before COP-9. Reflecting dissension at the previous CBD Conference of the Parties (COP-6), member countries also failed to bridge disagreements over alien invasive species (see box on page 13).

Negotiations of the ABS Regime Underway

Delegates mandated the Ad hoc Open-ended Working Group on Access and Benefit-sharing to "elaborate and negotiate an international regime on access to genetic resources and benefit-sharing", based on broad terms of reference. Significantly, the regime also explicitly includes traditional knowledge, innovations and practices in its scope, thereby broadening the mandate

provided by the World Summit on Sustainable Development. Given the significant overlap between these and other issues to be discussed at the Working Group with debates in other fora, notably the WTO (see opposite) and WIPO, disagreements over the appropriate venue are likely to intensify, as each country tries to focus the debate in the forum that best suits its interests. COP-7 already gave a flavour of what is to come when references to the role of WIPO in the ABS discussions proved among the most difficult issues to resolve.

Filling in the Cartagena Framework

Parties took the first step towards establishing an operational framework for implementing the Biosafety Protocol. Many delegates and observers, including the usually critical non-governmental groups, welcomed the agreement, while the US and other biotech exporters criticised the outcomes for failing to take into account trade implications.

On labelling of living modified organisms (LMOs) for use in food and feed and for processing, governments took a step beyond what was required of them by calling for the voluntary inclusion of additional information on the organism's name and transformation event or unique identifier in the documentation. They also expanded on documentation requirements for LMOs for release into the environment by elaborating on the already stringent documentation requirements. These decisions could give important backing for requirements already included in EU legislation on unique identifiers (see Bridges Year 8, No.1, page 17).

Procedures and institutional mechanisms for compliance proved to be one of the main sticking points in the negotiations. While delegates managed to overcome their disagreements at the eleventh hour, they left the contentious issue of how to address repeated non-compliance – for instance through the use of trade sanctions – for Parties to decide at their 2006 meeting. Some observers noted that delaying the decision by two years might provide an incentive for countries to ratify the Protocol in time to influence the debate, while still being able to await the outcomes of the labelling discussions, which for many biotech exporters will be the determining factor when deciding on whether to ratify.

Also significant was progress on liability, which African countries clearly identified as their priority issue. While a decision on this question was left to a later date, the Kuala Lumpur meeting set the process in motion by establishing a working group charged with elaborating options for elements of rules and procedures by 2007.

On the Sidelines: NAFTA Documentation Template Raises Alarm

NAFTA partners Canada, the US and Mexico – the only one of the three to have ratified the Cartagena Protocol – offered their trilateral agreement on LMO labelling and documentation as a template for further discussions among Parties, who still need to finalise documentation requirements under the Protocol. The trilateral agreement sets a five percent threshold below which shipments are excluded from being labelled as 'may contain' LMOs. The information will be provided in the invoice accompanying the shipment and no other documentation will be required. The unintentional presence of LMOs will not trigger any labelling requirements (by comparison, the EU 'adventitious or technically unavoidable presence' labelling threshold is 0.9 percent). Civil society groups were quick to attack the deal, which they saw as an attempt to pre-empt decisions of the Parties. Other Latin American countries are said to have been approached to join the agreement, raising concerns that it might lead to a domino effect across the entire American continent, in particular in the context of ongoing FTAA negotiations. While the direct impacts of the deal appeared limited at Kuala Lumpur, the trilateral agreement is likely to come up again more explicitly as countries get down to negotiating the details of documentation requirements for LMO commodities in the working group.

The next Meeting of the Parties to the Cartagena Protocol (MOP-2) will be held in the second half of 2005 at a location to be determined. The eighth Conference of the Parties to the Convention on Biological Diversity (COP-8) is scheduled for the first half of 2006 in Brazil. Documents of the Kuala Lumpur meetings are available at: www.biodiv.org. For more in-depth reporting see www.ictsd.org/biores.

Alien Invasives Revisited

Discussions on the Guiding Principles for the prevention, introduction and mitigation of the impacts of alien species, which continued on the sidelines of COP-7, highlighted the continued tensions between trade and environmental interests. At COP-6, Australia had opposed the adoption of the Principles due to concerns that the language on the precautionary approach and references to socio-economic and cultural considerations in the context of risk management could provide an excuse for countries to implement measures inconsistent with WTO rules. Ironically, the EU has launched a WTO challenge against Australia's own stringent quarantine rules – partly intended to guard against the introduction of alien species (Bridges Year 7 No.3, page 9).

Despite valiant efforts by COP-6 President Hans Hoogeveen, countries could not reach a compromise on the precautionary language, which Australia would like to see limited to references to the Rio Declaration's Principle 15. The EU, which insisted on also referring to the CBD's preamble, saw this as an attempt to redefine precaution in the context of the CBD. Such a redefinition could have impacts beyond those of alien species, notably on biosafety – of particular significance in light of the ongoing dispute between the US-Argentina-Canada and the EU over the *de facto* moratorium on biotech approvals, in which precaution is likely to come up as a key argument.

At the request of Australia, the COP-7 President will hold information consultations in the lead-up to COP-8.

On a more positive note, COP-7 took an unprecedented step in its involvement in trade discussions by inviting WTO bodies to take into consideration the risks of alien invasive species in their deliberations. The invitation is a rare example of an environmental forum making an active effort to bring its interests to the attention of a trade institution, rather than just accommodating trade concerns in its deliberations. It remains to be seen how WTO Members will respond to this invitation.

The Future of Patentability in International Law According to CAFTA

Jean-Frédéric Morin

While discussions stagnate at the WTO over access to medicines, protection of indigenous knowledge and technology transfer, the United States and other developed countries multiply bilateral 'TRIPs-plus' treaties with developing countries. This article compares patentability provisions under the recently-concluded US-Central American Free Trade Agreement (CAFTA) with those of Article 27 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Arguably, bilateralism allows the United States to bypass the dead-end debates at the TRIPs Council and to consolidate key elements of multilateral intellectual property (IP) treaties.¹ A closer look at the differences between the CAFTA and the TRIPs Agreement gives a good indication of the possible evolution of international IP law and of the additional weight bilateral negotiations confer to the United States when compared to multilateral approaches.

Although most of the provisions of the controversial Article 27 on patentability are integrated without changes in the CAFTA, we have identified five significant changes:

- the industrial application requirement is defined;
- a grace period for inventors is added;
- the plant protection regime is reinforced;
- the non-discrimination rule is omitted; and
- a ceiling to the disclosure requirement is introduced.

The industrial application requirement is defined

The TRIPs Agreement stipulates that an invention is patentable "provided that it is new, that it involves an inventive step and that it is capable of industrial application". However, these requirements are not defined and their interpretation therefore differs from one country to another. The CAFTA is one of the first agreements to specify that: "Each Party shall provide that a claimed invention is industrially applicable if it has a specific, substantial, and credible utility".

US case law is usually less rigorous when interpreting the industrial application requirement: "All that the law requires is that the invention should not be frivolous or injurious to the well-being, good policy, or sound morals of society".² In comparison,

the language "specific, substantial, and credible utility" is more restrictive and is likely to close the door to the patentability of several inventions, especially in the field of biotechnology. In this sense, it is undoubtedly more acceptable to Central American countries, generally in favour of stricter patenting limitations than the traditional understanding resulting from US jurisprudence. Nevertheless, the CAFTA definition is drawn from the US patent regime. It was not elaborated by Congress or the courts, but is rather contained in the *Utility Examination Guidelines* adopted on 5 January 2001 by the US Patent and Trademark Office to guide patent examiners. Curiously, the CAFTA propels this administrative definition into international law.

Although adopted in a bilateral context, the definition of the requirement for industrial application must be read in the light of the multilateral negotiations conducted at the World Intellectual Property Organisation (WIPO). Indeed, for some months, negotiators of the upcoming Substantive Patent Law Treaty have debated a harmonised definition of "industrial application". By exporting its own definition through a bilateral treaty, the United States is building alliances in view of the multilateral negotiations at WIPO.

A grace period is added

Contrary to the TRIPs Agreement, the CAFTA provides a grace period to inventors:

Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure was (a) made or authorised by, or derived from, the patent applicant and (b) occurs within 12 months prior to the date of filing of the application in the Party.

The United States is one of the few countries that offer a grace period of twelve months prior to the filing of a patent application during which an inventor can use, sell and disclose his or her invention without compromising its "novelty". During this period the inventor may search for financing or test the market for his/her invention before initiating the costly and complicated steps to patent the invention. In most countries, any disclosure annuls the novelty characteristic of an invention. If a US inventor wants to obtain protection abroad, s/he cannot take advantage of the grace period offered under US law and must only publish his/her invention after filing a patent application. To make the US approach more effective, the United States must export its norm abroad, as it has done through the CAFTA.

The plant protection regime is reinforced

According to Article 27.3(b) of the TRIPs Agreement, WTO members can exclude plants and animals from patentability but "shall provide for the protection of plant varieties either by patent or by an effective *sui generis* system or by any combination thereof". At the TRIPs Council, African countries, on the one hand, are seeking to modify this provision to exclude plant varieties (and other living organisms) from patentability on ethical, environmental and agricultural grounds. The US, on the other hand, considers that even the *sui generis* exception is useless and that plants should be patentable in order to create incentives for biotechnological innovation.

The CAFTA represents a compromise between TRIPs Article 27.3(b) and the US proposal for its review. It encourages – but does not impose – plant patents: "Any Party that does not provide patent protection for plants by the date of entry into force of the Agreement shall undertake all

reasonable efforts to make such patent protection available”. Besides, the CAFTA provides for a mechanism that prevents any back-sliding: “Any Party that provides patent protection for plants or animals as of, or after, the date of entry into force of this Agreement shall maintain such protection”.

CAFTA countries are still free to exclude plants from patentability. In such a case, plant varieties must be protected “by an effective *sui generis* system” as provided by the TRIPs Agreement and reiterated in the CAFTA. However, WTO members still disagree on the meaning of this language. The system in force in most OECD countries is that of the International Union for the Protection of New Varieties of Plant (UPOV Convention). UPOV certainly is an “effective *sui generis* system” but is it the only acceptable one? Could a WTO member design a system better adapted to the needs of small farmers?

The CAFTA resolves this debate by requiring all the signatories to accede to the 1991 UPOV Convention before 1 January 2006, with three exceptions. The first exception grants Costa Rica, which has already drawn up draft legislation on the protection of plant variety, an additional year to join UPOV 1991. Nicaragua, which acceded to a previous version of the UPOV Convention to meet the requirements of an earlier bilateral treaty signed in 1998 with the United States, is granted a delay of four years. The third exception provides that countries, which follow the US example and accept the patentability of plants, shall only “make all reasonable efforts” to accede to UPOV 1991. In other words, the countries that first conform to the US position subsequently benefit from longer transition periods.

The non-discrimination rule is omitted

Article 27.1 of the TRIPs Agreement introduced a new rule in the international patent regime: “Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced”. The CAFTA, like most US bilateral treaties, omits this rule of non-discrimination.

How can one explain this omission? One possible explanation resides in the fact that US law contains several measures that could be considered *de facto* or *de jure* discriminatory by an international panel of arbitration. These include the procedures of the US International Trade Commission pertaining to foreign inventions; the fast-track examination procedures for biotechnologies; the exclusion of oral communication outside the United States in considering prior art; and the exceptional rights granted to pharmaceutical inventions.

It must also be said that the omission of the non-discrimination rule seems to reflect not only the US position but also a latent consensus among negotiators of the international patent regime. Indeed, many WTO Members discriminate according to the place of origin of the invention, the field of technology, or as to whether or not the product is imported or of national origin. In addition, a tactical game of reciprocal threats prevents the application of the non-discrimination rule by the WTO’s dispute settlement system. For example, when the United States asked for the establishment of a panel to rule on the discriminatory nature of Brazilian patent law, Brazil immediately retorted by filing a request for consultation in connection with US law. A few weeks later, the United States and Brazil announced that they had reached an agreement on these issues. The omission of the rule of non-discrimination in the CAFTA thus sanctions the ineffectiveness of this TRIPs provision.

A ceiling to the disclosure requirement is introduced

In exchange for their exclusive marketing rights, patent holders must fully disclose their inventions. This classic requirement is contained in every national IP law and in the TRIPs Agreement. However, none of the bilateral treaties signed by the US prior to 2004 reiterates this obligation. It reappears, substantially modified, in the CAFTA: “A disclosure of a claimed invention is considered sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation [...]”. This wording is more consistent with US law than the original provision of the TRIPs Agreement. For instance, the expressions “to be made and used” and “without undue experimentation” are directly imported from US law.³

Contrary to the provision of the TRIPs Agreement, the CAFTA equivalent seems to have been drafted to limit disclosure requirements rather than for ensuring full disclosure. Indeed, it appears to forbid countries from asking for more than “information that allows the invention to be made and used” in order to accept a disclosure as sufficiently clear and complete.

Biodiversity-rich countries, such as those of Central America, see mandatory disclosure of origin of genetic resources as a tool for monitoring the sharing of benefits arising out of the use of genetic resources. While some European countries support the idea of mandatory disclosure of origin, the United States remains firmly opposed to any multilateral treaties requiring – or even explicitly allowing – the disclosure of origin of genetic resources. Through the CAFTA, the US seems to have been able to limit the ability of Central American countries to require the disclosure of the origin of genetic resources used in the development of biotechnological inventions.

The ceiling on disclosure provided in the CAFTA could also have some effects on US law. Indeed, US law requires that a patent application disclose not only how to make and how to use the invention, but also “the best mode contemplated by the inventor of carrying out his invention”. However, the business and IP communities have been questioning the usefulness of this ‘best mode’ requirement for some time. In 1992, the *Advisory Commission on Patent Law Reform* even recommended its elimination. By establishing a new ceiling to the disclosure requirement, the US Administration has opened the door to an amendment to US patent law.

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Conclusion

Our comparative analysis shows that bilateralism allows the US to consolidate existing multilateral treaties, such as the TRIPs Agreement and the UPOV Convention, and to strengthen its negotiating position for future multilateral treaties, such as the WIPO Substantive Patent Law Treaty. These dynamics between bilateralism and multilateralism are also observable in other bilateral treaties recently concluded by the United States.

Most provisions included in US bilateral treaties are TRIPs-*equivalent*, that is to say literally duplicated from the TRIPs Agreement. Others, such as the definition of the industrial application requirement, go beyond TRIPs provisions and can be described as TRIPs-*plus*. These are mostly copied from US law – or even on US Patent and Trademark Office policies not yet submitted to Congress – and exported to trading partners. Only a few provisions, like the omission of the non-discrimination rule, can be labelled as TRIPs-*minus*! Be that as it may, for those who oppose patents on genetic material in Central America, the CAFTA is a bad trip.

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ENDNOTES

¹ Jean-Frédéric Morin, 'Le droit international des brevets: entre le multilatéralisme et le bilatéralisme américain', *Études internationales*, Vol. 34, No 3, December 2003, p. 537-562.

² *Lowell v. Lewis*, Circuit Court, D. Massachusetts, 1817. 15 F.Case 1018

³ United States Code, Title 35, Section 112. See also *In re Vaack*, 947 F.2d 488, 495 (Fed. Cir. 1991).

The Dominican Republic and the US concluded bilateral FTA negotiations on 15 March. The agreement is modelled on the CAFTA and will eventually be 'docked' in the subregional pact, which already counts Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua as members. The Dominican Republic essentially accepted all CAFTA disciplines, (see Bridges Year 8 No.2, page 13).

US-SACU Talks Hit Snag on Services

Fundamental differences with regard to services market opening have emerged between the five-member South African Customs Union (SACU) and the US in their free trade agreement negotiations. Other unresolved sticking points include agricultural subsidies and trade remedy rules.

The two sides are scheduled to meet on 4-8 May to discuss services, as well as investment, intellectual property, government procurement, and labour and the environment. The US continues to insist on a 'negative list' approach under which all services sectors except those explicitly carved out would be opened to competition. In contrast, SACU wishes to retain the 'positive list' approach used in the WTO's General Agreement on Trade in Services (GATS), which includes only those sectors that are explicitly offered. Reflecting its sanguine attitude to opening services markets, the US routinely imposes the negative list approach in bilateral services negotiations, in which it usually most aggressively targets the insurance, banking, telecommunications and express delivery sectors.

Civil society organisations such as the Treatment Action Campaign and the AIDS Law Project have raised several concerns about the areas to be addressed in May. For instance, they have warned that the FTA could undermine the financing and provision of health care services in SACU countries, stressing that "the investment chapter would provide the back door for a pharmaceutical company, for example, to sue a SACU member state for failing to amend its legislation in line with the chapter on intellectual property". They have also noted that "rules on procurement may unfairly preclude necessary and urgent action, such as procurement of essential medicines for dealing with a health emergency, such as a cholera outbreak".

Major differences also remain on 'first phase' topics such as agricultural subsidies and trade remedy provisions (i.e. anti-dumping and countervailing rules). SACU countries would like to address both issues in the FTA negotiations, but the US has so far remained adamant that they can only be dealt with in the WTO. In addition, South Africa continues to have important reservations about tariff elimination in sensitive industrial sectors.

After the May meeting, negotiations will take place at six-to-eight week intervals, with a final 'super round' starting on 18 December in hopes to meet the proposed year-end deadline for closing the deal after only 18 months of negotiations.

FTAA Negotiations Still Suspended

Hopes for the conclusion of the Free Trade Area of the Americas negotiations by next January were further dimmed when 12 vice trade ministers from the region decided in early March to postpone reconvening the full Trade Negotiations Committee (TNC) until late April.

The vice ministers met in Buenos Aires to explore flexibilities in view of resuming the TNC meeting suspended in February due to insurmountable differences over the scope of common obligations and plurilateral agreements (Bridges Year 8 No.2, page 15.) It soon became clear that a TNC meeting in late March would fail. Mercosur and the US continued to square off on domestic agricultural support, with the US resisting any FTAA disciplines and Mercosur calling for "mechanisms to neutralise the distorting effects of domestic agriculture programmes" in the core obligations. Some progress was made in bridging the divide on tariffs, but the two sides still disagree on whether the 'entire tariff universe' should be covered by the common set of obligations or whether countries participating in plurilateral agreements could also benefit from higher tariff cuts.

The twelve countries were to meet again in late March with a view of resuming the full TNC session on 22-23 April in Puebla, Mexico.

US, Morocco Conclude Free Trade Agreement

On 8 March, President Bush notified Congress of his intent to sign the free trade agreement concluded between Morocco and the US on 2 March after thirteen months of talks. The agreement includes the stringent intellectual property protection, investment and government procurement provisions, as well as the standard environment and labour clauses, that have become the hallmarks of recent US trade pacts.

US Trade Representative Robert Zoellick called the Morocco deal the “best market access package negotiated yet with a developing country in a US bilateral free trade agreement.” Tariffs will be eliminated on 95 percent of industrial products traded between the two countries when the agreement enters into force, and remaining duties will be phased out over nine years.

Agriculture

Quotas and tariffs will remain in place for some products of interest to small subsistence farmers in Morocco, where 47 percent of citizens live in rural areas. US tariff-rate quotas (TRQs) for poultry and beef are set to increase gradually, and the wheat TRQ will be adjusted according to Morocco's domestic yield. The arrangement puts the US on par with European wheat exporters. The US committed to phasing most of its farm tariffs in 15 years, although an agricultural safeguard will be available in the event of significant price decreases for certain horticultural products. The recently concluded CAFTA and Australia FTAs also include special safeguard provisions intended to cushion various agricultural or textile sector against import surges and price erosion.

Textiles

The agreement requires apparel qualifying for duty-free entry to be made of either US or Moroccan yarn and fabric. It does, however, establish a temporary import quota of 30 million square meters for apparel containing third-country inputs. Although Morocco had hoped to obtain higher import quotas for such textiles, officials said they were nevertheless satisfied with the deal considering that the textiles industry represents about 15 percent of the total value of Moroccan processing industries.

Intellectual Property Rights

The agreement considerably expands the scope of intellectual property rights (IPR) protection required under the WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). It ensures strict protection for copyright owners, authors and composers, including the exclusive right to make their work available online. Patenting provisions mirror those in the CAFTA. According to the USTR, the agreement “ensures that government marketing-approval agencies will not grant approval to patent-infringing pharmaceuticals.” Test data for agricultural chemicals and pharmaceuticals is protected against “unfair commercial use” for ten and five years respectively, and patents can be extended to compensate for delays in approval processes. In addition, inventors are given a 12-month grace period during which they can use, sell or disclose their inventions without losing their claim to ‘novelty’, and protection for “newly developed plant varieties and animals” is reinforced (see related article on page 14). The agreement applies the principle of “first-in-time, first-in-right” to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it. See also enforcement below.

Investment

Like the NAFTA and most US bilateral FTAs, the US-Morocco agreement establishes an investor-state dispute settlement system that allows companies to sue the host government directly (in contrast, the WTO and the US-Australia FTA rely on a government-to-government system). Intellectual property is included under ‘investment’. The investment chapter also contains provisions on expropriation and does away with any local content requirements.

Tough Enforcement Requirements

The agreement criminalises end-user piracy and counterfeiting, and requires both statutory and actual damages under Moroccan law for IPR violations. In addition, each government must

maintain criminal and other penalties for bribery in government procurement

Mr Zoellick hailed the agreement as “a vital step in creating a mosaic of US free trade agreements across the Middle East and North Africa.” He also stressed the advantage to US economy from the FTA's high IPR protection standards, and Morocco's services and government procurement commitments. Mr Zoellick dismissed as ‘unfounded’ Human Rights Watch allegations that the TRIPs-plus requirements of the FTA would harm Morocco's rights under the WTO.

Australia, CAFTA Deals Notified

President Bush notified Congress of his intent to sign the Australia FTA on 13 February and the CAFTA a week later. However, Congressional debate on the latter will be delayed until mid-June at the earliest due to the Dominican Republic's joining the agreement on 15 March (see box on page 16).

As of the date of the letter of intent, Congress disposes of a three-month period to review the agreement in question. After that, the president can sign it and implementing legislation can be sent to Congress. Under the president's Trade Promotion Authority, Congress can only approve or reject negotiated agreements but not modify them.

Thailand to Join FTA Network

Negotiations on a free trade agreement will start between the US and Thailand in June 2004 despite a request from the International Intellectual Property Alliance to delay the talks until Thailand addresses piracy concerns in optical discs such as DVDs and CDs. The United Auto Workers have also warned against lowering the current 25 percent US tariff on light trucks. An impact assessment by the Thailand Development Research Institute and the American Chamber of Commerce predicts that lowering tariffs and non-tariff barriers under a bilateral FTA would increase Thai exports to by 3.4 percent and boost the country's total GDP by up to 1.3 percent a year.

Expand Trade, Protect the Environment and Promote Sustainable Development

Zhang Xiangchen

With economic development and growing concern about environmental issues, most developing countries are enhancing their environmental protection capacities to avoid the mistakes and distortions of the 'remedy comes after destruction' model that characterised the development patterns of industrialised countries. To meet this challenge, the Chinese government has adopted a new approach emphasising sustainable development as the overall goal of continued economic growth.

Contrary to common belief, developing countries are not against environmental protection or harmonisation between the trade and environmental regimes. They are willing to recognise – in principle – reasonable environmental standards and measures of other countries, despite the potential impacts of such measures on their exports. However, they cannot accept standards that are set too high or are obviously unreasonable.

When advocated without consideration of a country's social and economic development levels, such standards can impede the long-term sustainable development potential of developing countries. It is therefore key to ask the following questions: first, how can we assess whether an environmental standard is too high or not? And second, how can environmental and economic policies be harmonised when countries are at different levels of development?

Addressing the Trade and Environment Nexus

It is obvious that the relationship between trade and environment cannot be fully addressed from either the perspective of market liberalisation or that of the environment alone. We need to find the right balance between the two to ensure that both environmental standards and trade measures contribute to enhancing development capacity and potential.

At the 1992 UN Conference on Environment and Development in Rio, representatives from 178 countries including many developing countries jointly adopted the Rio Declaration on Environment and Development, which set the principles on how to harmonise the relationship between trade and environmental goals. These common principle represent an important consensus and continue to guide the discussions on trade and environment. They strongly en-

courage addressing cross-border and global environmental issues through consensus-building rather than unilateral trade measures, and recognise that developing countries need more technical assistance and capacity-building in order to participate effectively in trade and environment policy-making.

Twelve years after Rio, it is disappointing that there still is no concrete framework for reconciling conflicts between trade, environment and development. Talking about the relationship between trade and environment in the abstract will not help solve the real problems, not least because no one would oppose environmental protection or the promotion of trade and development in principle or in theory. Since every environmental standard or measure is specific and thus has a different impact on trade and development, individual measures need to be examined to see if they are reasonable.

Even if this cannot be achieved at the general policy level, surely some basic principles could be drawn from practices and debates up to date to assist us in this examination. For example, does the measure aim to address global environmental concern or is it just an attempt to restrict trade for environmental purposes? If the trade measures does target a global environmental issue, does it represented a consensus based on full consultation? And finally, has the disparity in economic development levels – or financial and technical capacity – been taken into account?

It should be recognised that many of the concerns of the developing countries are reasonable. Due to low economic development levels, they are often the victims of developed countries' trade-restrictive measures allegedly taken for environmental protection reasons. For instance, in the *Shrimp-Turtle* WTO dispute, developing countries such as India and Malaysia did not oppose the protection of sea turtles but the US practice of restricting imports through discrimination between shrimp imports according to fishing methods. This is a typical example of using economic strength to force other countries to change their environmental standards. The WTO Appellate Body recognised that the trade measure was implemented in a discriminatory fashion. The ruling did not, however, require the US to change its environmental law or to lift the shrimp import ban entirely.

In addition, even when developing countries wish to adopt measures to alleviate reasonable environmental concerns, they are often restrained by lack of technology and information. Labelling requirements for GMO food are a case in point. Recently, a lady named Zhu Yanling sued Nestle in China because the company did not put a GMO label on one of its products called "QiaoBanBan". The case – yet to be settled – illustrates that much work needs to be done to help consumers in developing countries obtain the same right to information as consumers enjoy in developed country markets.

The WTO's Doha Round work programme on environmental products and services also contains many uncertainties. According to a 2002 UNCTAD report, liberalisation of environmental goods can help developing countries acquire environmentally friendly technologies and gain market access to developed countries for environmentally friendly products, including organic agricultural and horticultural products. But it cannot be guaranteed at present that preferential market access for environmental products will not lead to trade barriers based on process and production methods (PPMs), or that such negotiations will not be undertaken to

pressure developing countries to open markets where are not ready yet, including sensitive sectors such as forestry, fisheries and shipping services.

Developing countries also face domestic dilemmas. For instance, UNDP research on China's cotton sector shows that trade liberalisation has positive, as well as negative impacts on the environment. On the one hand, due to import liberalisation the area planted with cotton has decreased by more than one percent (or 92,000 hectares), and chemical pesticide and fertiliser use has declined accordingly. On the other hand, water consumption and contamination have escalated due to the increase in textile production that relies on imported cotton. As a consequence, the revenue generated by the increase in textile exports is offset by the cost in resource depletion and environmental destruction. Research by Chinese experts shows that on the whole China's accession to the WTO will help build a healthier and more environment-friendly economic structure in the country. However, this conclusion still needs to be tested in practice.

Despite these concerns and uncertainties, developing countries should not remain on the defensive in the trade and environment debate. Rather, they should enhance their capacity to participate in the negotiations, and obtain as much information as possible in order to play an active and effective part in international rule- and standard-making.

China and the WTO Trade and Environment Negotiations

While some trade experts question the value of bringing 'the environment' into WTO negotiations, I think that it is the principles we should use to guide such discussions – rather than the venue – that really matter. If we can only talk about trade issues in the WTO and environmental issues at multilateral environmental fora, where can the relationship between the two regimes be addressed? As the establishment of a World Trade and Environment Organisation is unlikely at best, WTO principles remain a double-edged sword that can either advance or thwart environmental protection. Environmental regulations have a similar role in either hindering or promoting trade and development.

China's position on trade and environment debate in the WTO is clear. We believe that the relationship between the two can be mutually supportive, and that negotiations should contribute to the further facilitation of trade with the purpose of achieving sustainable development. We are against trade protectionism under the disguise of environment protection.

Trade, Environment and Sustainable Development After Cancun

For developing countries, including China, it is not only necessary but also achievable to expand trade and promote development while simultaneously protecting the environment. Most importantly, we need to reinforce the weight of the development dimension in international discussions on the relationship between trade and environment. Development implications should be fully considered in evaluating the validity of any international agreement. In other words, the essential question is: will the agreement enhance the sustainable development capacity and potential of developing countries?

Ironically, while the environment is getting worse, the rich produce more pollution while the poor suffer the most. And yet it is the rich that seem to care more about environmental issues. Even though developing countries appear at a disadvantage in the current trade and environment debate, they should remain not passive. Instead, they should actively bring forward their own thinking on how to harmonise trade and environment and promote development. This would reinforce their arguments about distinguishing justifiable environmental policies from disguised protectionism. Only through full participation can the goal of promoting development be eventually achieved.

The relationship between trade liberalisation, environmental protection and social development lies at the core of the sustainable development debate. The sustainability of environmental resources is critical to the social development of humankind, and trade policy should be an

important instrument to achieve sustainable development and alleviate and eliminate poverty. We should make joint efforts to ensure that the policies of today do not diminish the development potential of the next generation, and that development today will not be at the cost of development tomorrow.

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WTO Environment Negotiations

The Committee on Trade and Environment (CTE) will hold its first post-Cancun negotiating session on 14-15 April 2004. So far, Members have made minimal progress on any of the Doha mandates (see below). Regarding the relationship between multilateral environmental agreements (MEAs) and trade rules, Members have focused on defining what constitutes a 'specific trade obligation' (Bridges Year 7 No.4, page 15). Discussions on the identification of environmental goods and services are still at an initial stage, and the question of criteria for observer status is likely to remain blocked until the General Council resolves the larger political debate around the issue.

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

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

UNCTAD's Trade Policy Role Divides Governments

The role of the UN Conference on Trade and Development in guiding economic and trade policy has emerged as the key issue in the run-up to the organisation's eleventh ministerial conference to be held in São Paulo next June.

The quadrennial ministerial conferences form UNCTAD's highest decision-making body. They set the priorities and guidelines for the organisation's work and provide an opportunity to debate key economic and development issues. The overall theme of the 2004 ministerial event (UNCTAD XI) is "enhancing the coherence between national development strategies and global economic processes towards economic growth and development, particularly of developing countries."

Negotiations on the draft Final Declaration for UNCTAD XI are currently at a virtual standstill, mainly due to stark differences in visions, agendas and perspectives between the G-77 and China on the one hand, and developed countries – led by the US, the EU, Canada and Switzerland on the other. Many of these developed countries are the leading donors for UNCTAD. The main line of division concerns two of the conference's sub-themes, i.e. "assuring development gains from the international trading system and trade negotiations" and "development strategies in a globalising world economy."

Country Positions

Broadly speaking, developed countries would like to avoid negotiations at UNCTAD XI on issues under negotiation

in the WTO. The US, for example, has proposed to delete 18 paragraphs from the section on UNCTAD's work related to trade negotiations in areas such as special and differential treatment, agriculture, trade in services, market access, and sanitary and phytosanitary measures. Rich countries are also keen to remove language that is overly critical of globalisation or the World Bank and the IMF, shunning references to, for example, 'heavily indebted poor countries'. Many European countries view the conference as an opportunity to streamline the scope of UNCTAD's work towards a focus on technical assistance for national governments. A number of these 'friendly donors' are also pushing for institutional reform and the restructuring of the secretariat. These efforts are aimed at aligning UNCTAD's work with the broader UN reform agenda set out by UN Secretary-General Kofi Annan.

Despite differences among developing countries, the G-77 and China have thus far presented a broadly united front. Resisting calls from the US, the EU, Canada and Switzerland for a more limited UNCTAD mandate, developing countries are more interested in strengthening the Bangkok Declaration adopted at UNCTAD X and in extending UNCTAD's coverage to areas such as the impacts of new bilateral agreements on developing countries and WTO accession. In their view, UNCTAD should play a monitoring and advisory role and help identify relevant development perspectives in these new developments. They are also alarmed by developed countries' insistence on 'coherence' and on strengthening UNCTAD's collaboration with the Bretton Wood institutions and the WTO. A number of developing countries privately admit to misgivings about the potential domination of donor interests in setting out UNCTAD's agenda.

Host country Brazil appears to have largely taken a backseat during the preparatory process – primarily focusing its efforts on issues related to the international trading system/negotiations. Some have attributed India's relative restraint to its wish to succeed Brazil at the helm of UNCTAD after Secretary-General Rubens Ricupero's departure in June.

Policy Spaces

Beyond the role of UNCTAD in relation to international finance and trade regimes, member countries are debating the controversial concept of 'open nationalism' introduced by Mr Ricupero in paragraph 44 of his submission to UNCTAD XI. Developing countries emphasise the need to preserve 'spaces' for development policies that serve legitimate national interests and would enable a more sequenced integration into the world economy. Developed countries have so far been reluctant to engage substantively on these 'policy space' discussions.

Civil Society Criticism

As with UNCTAD X, which took place just months after the WTO's Seattle breakdown, civil society interest in UNCTAD XI is fuelled by the Cancun collapse and the fact that the São Paulo meeting will be the largest event to be held on trade and development at the intergovernmental level in 2004. Civil society groups have expressed concern over what they see as attempts to limit and even undermine the independence and integrity of UNCTAD and its work (see box). They have also been dismayed by the limited involvement of civil society in the preparatory process. In response to civil society requests, the UNCTAD IX Preparatory Committee has agreed to hold another (third) hearing for civil society and the private sector on 22 April. NGOs have suggested a change in format to encourage more interaction at the hearing.

With UNCTAD XI only two months away, small negotiating groups have been convened by a number of governments outside the formal preparatory sessions in hopes that more informal settings will allow convergence in perspectives to emerge. However, at present the divergence in vision and agendas point to a bumpy road to São Paulo, paved with protracted negotiating sessions and further disagreements.

UNCTAD's contribution is critical to the understanding and analysis of development policies, international systems, structures and processes, as well as their impact on development and the developing countries.

If UNCTAD is robbed of its independence and integrity as an institution as envisaged by the developed countries, then our inputs today and after to make UNCTAD work for development will be in vain.

Goh Chien Yen of the Third World Network at the Civil Society Hearing on UNCTAD XI on 23 February 2004.

Nutrition and Technology Transfer Policies

John H. Barton*

The most important policy issues in the context of nutrition and technology transfer are related to intellectual property rights; competition issues in the seed, food processing and marketing sectors; biosafety questions; and trade and macroeconomic considerations.

Humans obtain food through two fundamentally different ways. One is relatively self-sufficient subsistence farming in which a small economic unit, typically a family, produces its own food. The other is production of food for a market and the consumption of purchased goods.

The task for technology transfer in a smallholder economy is to improve the subsistence farmer's standard of nutrition. In a market economy, technology transfer has a double objective: first, to enable the production of larger quantities of marketable products; and second, to improve the movement of food from the farm to the consumer. Reflecting the increasing degree of urbanisation worldwide, subsistence farming is steadily losing ground to the market economy. This trend poses serious challenges for nutrition and technology transfer policies. Recent World Bank figures show that current food production levels are clearly too low to satisfy the Millennium Development Goal of halving the proportion of people suffering from hunger by 2015.

Technology Transfer Processes in Nutrition and Agriculture

There are two economic mechanisms of supporting the development and transfer of agricultural technology, one based on the public sector and the other on the private sector.

With respect to public sector agricultural research, the lead institutions in breeding new varieties during much of the last three decades were those of the Consultative Group on International Agricultural Research (CGIAR), which co-ordinates a series of research centres throughout the world to meet developing world agricultural research needs. Middle-income developing countries have also established their own national agricultural research institutes.

With public sector budgets shrinking, private sector agricultural research is becoming increasingly important in developed and middle-income developing countries. Only a small part of this research is currently spent on developing country needs, although huge markets such as Brazil, China and India might receive increasing attention in the future. As yet, the poorest nations have not been able to benefit from private sector research and related technology transfer.

Key Policy Issues

The market/small-holder production patterns, and the private/public technology transfer patterns define a two-by-two matrix, as shown below.

Form of agriculture	Form of Technology Transfer		
		Private	Public
	Market	Private sector, market agriculture quadrant	Public sector, market agriculture quadrant
	Small-holder	Private sector, small-holder quadrant	Public sector, small-holder quadrant

The private sector and market agriculture quadrant

Policy issues may arise in particular in the contexts of intellectual property (IP), competition, biosafety and trade and macroeconomics.

With respect to IP, the primary challenges exist in the seed sector. The main question is whether the UPOV Conventions provide sufficient incentives for private sector research for field crop varieties, or whether such research is better accommodated through the regular patent system.

Under UPOV, plants into which a gene has been introduced through genetic engineering may be used by third parties for breeding purposes. This possibility may be denied under patent law. Depending on national implementation, it would be a patent infringement to insert a patented gene into another plant or to use such a transgenic plant for breeding purposes. This stronger form of monopoly right arguably enables private sector researchers to better recoup the costs of their investment, as illustrated by the significant increase of private sector research in the developed world after the introduction of patents to the biotech sector in the late 20th century. Therefore:

- Based on factors such as market size and research capability, a developing nation should decide whether to adopt a UPOV style system in minimal compliance with TRIPs or instead to adopt a stronger biotechnology-oriented patent system.
- Depending on their attitudes toward biotechnology, poor nations should consider ways to make themselves more appealing to private biotechnology research, for instance through integrating the seed markets of several nations followed by adoption of appropriate intellectual property rights.
- Research is needed on how major a role will be played by intellectual property rights in the global agricultural export sector and in the supermarket revolution, and on what might be the reasonable response for the developing world.

With respect to *competition issues*, the main challenge arises from the possible concentration of multinational biotech companies in developing countries and consequent negative price effects. On the other hand, such companies are likely to provide considerable technology transfer to the host country. Therefore:

- Nations with limited private sector competition in the seed industry should ensure that public sector varieties are available in competition with private sector ones.

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- Middle income developing nations should develop appropriate competition law principles and bureaucratic structures for reviewing multinational acquisitions of local firms.
- These nations should also seek to participate effectively in international competition law negotiations in order to ensure that they are not harmed by global-level declines in competition.

In the area of *biosafety*, developing countries are concerned about losing European export markets if they engage in research and production of genetically modified food. Therefore:

- Developing nations should seek a way in which the biosafety uncertainties of genetically modified agriculture can be resolved, so that these nations can make appropriate decisions to encourage or regulate the private sector's interests in using these technologies.

As to *trade and macroeconomics*, developing countries should ensure that at the national level, tax regimes and investment policies are conducive to the transfer of agricultural technology from abroad. In the international context, developed countries' agricultural subsidy schemes pose a considerable challenge to exporting developing countries. Therefore:

- Developing nations should carefully consider their positions vis-à-vis international negotiations on agricultural trade and agricultural product standards, with the goal of ensuring that their agricultural sectors face competition conditions that encourage the adoption of economically-desirable new technologies.

The public sector and market agriculture quadrant

Generally, there is only a limited need for public means of technology transfer in an efficient market-based agricultural sector. Nevertheless, the public sector should remain available as a counter-balance to anti-competitive moves in the private sector. In addition, certain broad societal needs are not addressed by the private sector and thus require basic public sector research. Therefore:

- Public sector research institutions should seek ways to carry out and support basic research of value to both people and the

environment in developing countries and to co-operate with the private sector in a way that encourages the application of this research as new requirements affect world agriculture.

The private sector and small-holder agriculture quadrant

Private sector research is almost irrelevant for subsistence farmers, because the latter are unlikely to have the financial means to purchase private research products. One major challenge subsistence farmers are exposed to in the area of private sector research is plant breeders' rights. Under the 1991 UPOV Convention, seed saving may be permitted, but seed exchange is prohibited (Article 15). However, such prohibition is not mandated by the TRIPs Agreement. Therefore:

- In the developing world, seed law and plant breeders' rights law should be tailored to take into account the needs of small-holder farmers.

On the other hand, the private sector does offer important opportunities to small-holder farmers. It could, for instance, make advanced seed varieties at low cost available to subsistence farmers, while recouping its expenses through sales to market-economy farmers at market prices. Therefore:

- The public and private sector should co-operate to develop public-private licensing arrangements and partnerships designed (a) to bring new technologies to subsistence farmers under terms that allow them to reap benefits from research while permitting the private sector to obtain appropriate economic compensation in the market sector, and (b) to help small farmers enter the agro-industrial sector.

The public sector and small-holder agriculture quadrant

In this quadrant, it is important to define the appropriate tasks for public sector research:

- How should public sector agricultural research be refocused to deal effectively with the now highly diverse areas of rural poverty? What should be its relation to the private sector? Should the public sector commit itself to biotechnology research?

Another challenge for public research consists of the increasing patenting of "research tools", possibly causing researchers to be held liable for patent infringements. This leads to the following questions:

- How serious is the research tool patent problem in agriculture and can it be resolved? Are the various proposed collaborations likely to be successful? How might their likelihood of success be improved?

Finally, with respect to contextual and macroeconomic conditions needed for farmers to use new technologies, the following issues will have to be addressed:

- How much does the adoption of new agricultural technology depend on the broader matrix of rural economic policy? Should those policies, including subsidy policy and support for agricultural extension services, be modified to contribute to adoption of new technologies? If they should, then how? And lastly, how should the agricultural policy analysis/decision-making and the broader economic development policy-oriented analysis and decision-making be brought into dialogue with each other?

General implications for developing nations

Many of the issues highlighted above arise not only in the particular context of one of the four quadrants, but also in a more general sense. In particular, more expertise and research is needed in the areas of

- agricultural technologies and IP issues;
- competition law;
- biosafety and biotechnology;
- trade law; and
- the future design of public sector activity and research policy.

* Christoph Spennemann, Research Associate of the ICTSD-UNCTAD Project on IPRs and Sustainable Development, wrote this executive summary of a study on 'Nutrition and Technology Transfer Policies' authored for the project by Professor John Barton of Stanford Law School. The complete study is available at <http://www.iprsonline.org/unctadictsd/projectoutputs.htm#casestudies>.

ICTSD Programme on Trade in Services and Sustainable Development

The General Agreement on Trade in Services (GATS) negotiations are complex, technical and highly politicised. After covering the different facets of the debate through its publications and informal meetings over the last three years, ICTSD launched a work programme on Trade in Services and Sustainable Development in 2003. The programme aims at empowering developing country policy-makers and influencers through information, dialogue, capacity-building, and well-targeted research to influence the international service trading system such that it advances the goal of sustainable development.

The programme has four broad strategic objectives:

- to identify the most important links between trade in services and sustainable development issues;
- to stimulate innovative thinking and pro-sustainable development positioning in trade in services;
- to increase understanding of policy-makers and influencers of possible policy consequences of current GATS commitments and potential outcomes of services negotiations; and
- to bridge knowledge gaps through a wide dissemination of project outputs.

Among highlights of ICTSD's initial work on these objectives is a *Report on Subsidies, Services and Sustainable Development*. Subsidies are a important policy tool for assuring the provision of essential services, as well as for maintaining viable public services sectors. Under their current mandate, WTO Members "shall aim to complete" negotiations on services subsidies prior to the conclusion of market access negotiations. A huge challenge for WTO Members arises from these negotiations: how to address trade distortive subsidies while keeping public policy spaces for addressing sustainable development concerns. In order to facilitate understanding on the consequences of these negotiations, ICTSD held a Geneva Roundtable on Subsidies in Services in March 2003 and commissioned a study on subsidies, services and sustainable development (expected to be completed by mid-2004).

A *literature survey* was carried out in 2003 to identify knowledge gaps in the current debate. This survey consisted of a list of books, articles and papers on GATS-related issues as well as policy, systemic and sectoral issues relevant for trade in services discussions. In order to assist the implementation of current and future activities and assure wide dissemination, ICTSD has also compiled a comprehensive list of experts, services negotiators and other relevant stakeholders.

Future Work on Trade in Services

ICTSD has commissioned a group of leading experts in the field to write a *policy paper on trade in services and sustainable development*. The main objective of this paper is to compile, organise and update existing analysis and to generate new ideas on existing or potential interlinkages between trade in services and sustainable development. The idea is to create a simple tool with a wide coverage for policy-makers and influencers allowing a broader understanding of the interlinkages identified. This output is expected to be ready by early 2005.

In addition, three *country studies* will be prepared with the objective of analysing the relevance of the service sector for the selected developing against the background of the ongoing GATS negotiations. These case studies are expected to be ready in draft form by spring 2004. The studies will focus on the following aspects:

- opportunities associated with liberalising home-country conditions for service import;
- the negotiation process and role of national stakeholders in the formulation of trade in services policy; and
- shedding light on the national interests and the formulation of a strategy for promoting trade in services.

GATSonline.org: A new portal on Trade in Services and Sustainable Development will be created. Building on the literature review and the mapping of stakeholders, it will gather in one single place the most relevant resources, news, reference documents, links and list of events.

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.

BRIDGES regional editions:

PUNENTES

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Co-publishers: Centro Internacional de Política Económica para el Desarrollo Sostenible, San José, Costa Rica

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Co-publisher: ENDA – Tiers Monde, Dakar, Senegal

Web: <http://www.enda.sn>

BRÜCKEN

Zwischen Handel und Zukunftsfähiger Entwicklung

Co-publisher: Germanwatch, Bonn, Germany

Web: <http://www.germanwatch.org>

Other ICTSD periodicals:

BRIDGES Weekly Trade News Digest

A weekly electronic news service on trade, sustainable development and the WTO.

Editor: Malena Sell

BRIDGES BioRes

Co-publisher: IUCN – The World Conservation Union

A bi-weekly electronic news service on trade, sustainable development and biological resources.

Editor: Marianne Jacobsen

TRADE NEGOTIATION INSIGHTS

Co-publisher: ECDPM

Bi-monthly publication with a particular focus on Africa and ACP countries, the multilateral WTO negotiations and the Cotonou process.

Editors: Christophe Bellmann, Sanoussi Bilal and David Primack

ECLAIRAGE SUR LES NEGOTIATIONS COMMERCIALES

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Publication bi-mensuelle sur les enjeux des négociations multilatérales à l'OMC et le processus de Cotonou pour les pays d'Afrique et ACP.

Rédaction: Christophe Bellmann, Sanoussi Bilal et David Primack

PASSERELLES SYNTHESE MENSUELLE

Co-publisher: ENDA – Tiers Monde

Publication électronique mensuelle sur les questions de commerce et développement durable d'importance particulière à l'Afrique.

Rédacteur: El Hadji Diouf

For subscription details, visit <http://www.ictsd.org> or send an e-mail to achardonnens@ictsd.ch

Meetings of WTO Bodies

April 2	Council for Trade in Services Special Session*
April 7	Council for TRIPs Special Session*
April 14-15	Committee on Trade and Environment Special Session*
April 16	Committee on Trade and Environment
April 20-23	Committee on Anti-dumping Practices
April 20	Dispute Settlement Body
April 22-23	Dispute Settlement Body Special Session*
April 27	Council for Trade in Goods
April 29-30	Committee on Subsidies and Countervailing Measures
May 11	Committee on Trade and Development
May 11	Dispute Settlement Body Special Session*
May 25-27	WTO Public Symposium on Multilateralism at Crossroads

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

Other Meetings

April 2-3 Brussels	Annual EU-LDC Network Conference on Multilateralism at Risk: Beyond Globalisation http://www.eu-ldc.org
April 14-30 New York	UN Commission on Sustainable Development http://www.un.org/esa/sustdev/csd/csd12/
April 19-30 Paris	OECD Workshop on Illegal, Unreported and Unregulated Fishing Activities http://www.oecd.org/media/upcoming.htm
April 20-23 Ouagadougou	UNEP-GEF Sub-regional Workshop on the Development of National Biosafety Frameworks for Francophone Africa http://www.unep.ch/biosafety/
April 24-25 Washington	2004 Spring Meetings of the World Bank and the IMF http://www.imf.org/external/am/
May 12-13 Paris	OECD Ministerial Council and a multi-stakeholder Forum 2004 on Health of Nations http://www.oecd.org/media/upcoming.htm

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