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Facts and Figures

- The decline in commodity prices exercises a permanent pressure on the foreign exchange earnings of African countries. Today, the value of retail sales is US\$70 billion, while producers receive only US\$5.5 billion.

Source: *Economic Development in Africa. Trade Performance and Commodity Dependence*. UNCTAD, 2003.

- In 2001, cotton represented 75.6 percent of Chad's total exports. The figure was 66.7 percent for Benin, 56.6 percent for Burkina Faso and 38.1 percent for Mali. That same year, the world market price for cotton declined by 20.9 percent.
- The price for coffee, the main export of five heavily indebted poor countries, fell by 28.5 percent in 2001. From 2001 to 2002, world prices fell by 20.3 percent for sugar and 9.6 percent for bananas.

Source: *Trade and Development Report*, UNCTAD, 2003.

Ministers Inject Momentum in Doha Talks

After ministerial-level discussions in London and Paris, and a WTO General Council meeting in Geneva, hopes have revived for an agreement on negotiating frameworks in agriculture and non-agricultural market access by late July. However, large gaps between Members' positions would have to be bridged or accommodated in a vaguely worded text for a consensus to emerge.

One of the factors that helped generate a renewed sense of momentum was a formal confirmation that the EU was ready to negotiate on the total elimination of agricultural export subsidies. The EU's offer is, however, contingent on an "acceptable outcome" in market access and domestic subsidies, as well as "full parallelism on all forms of export competition including export credits and state trading enterprises." In addition, the EU specified that the overall agriculture package must "ensure that our non-trade concerns are adequately addressed." These proposals were made in a letter sent by EU Trade Commissioner Pascal Lamy and Agriculture Commissioner Franz Fischler to all trade ministers of WTO Member countries on 9 May (see page 18). They were consequently discussed at two informal ministerial gatherings in Paris. The first test of how far the political signals of flexibility translate into concrete progress will come when the Agriculture Committee resumes negotiations on 2 June.

G-20 under Pressure to Produce Tariff Proposal

Market access currently presents the greatest hurdle in the agriculture negotiations, although positions seem somewhat less polarised after an informal meeting on 14 May between ministers and high-level officials from 28 countries. In the face of continued opposition to the 'blended formula' for tariff reductions they developed prior to the WTO's Cancun Ministerial Conference, the EU and the US have called on the G-20 group of developing countries and the Cairns Group of agricultural exporting nations to draft a counter-proposal before the next negotiating session in the first week of June. The G-20 has indicated that its members favour an approach that would divide tariffs into tiers according to their importance, and require the highest tariffs to be reduced most steeply (Bridges Year 8 No.4, page 1).

At the 17 May WTO General Council meeting, Brazil, supported by Australia, proposed that Members work together to come up with a new formula for market access in agriculture, rather than the G-20 and the Cairns Group developing an alternative formula of their own (see page 12).

Domestic Subsidies

Relying on its ongoing reform of the Common Agricultural Policy (CAP), the EU has averred that it is "in a position to offer steep cuts (70 percent) in trade-distorting domestic support", and called on other subsidising Members to match that level of reductions. It has also proposed the elimination of the *de minimis* rule, which allows WTO Members to use even the most distorting forms of support for five percent of their total agricultural output. Some countries, and the US in particular, are likely to find the total elimination of *de minimis* support unacceptable, while nearly all Members have great difficulties accepting exemptions from disciplines for the EU's non-trade concerns, such as animal welfare.

Export Support

The EU's insistence on "full parallelism" on reducing all forms of export competition will require much detailed and controversial technical work. While the US is willing to eliminate

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Bridges

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the export subsidy component of its export credit and food aid programmes, the EU is seeking parallelism in 'budgetary outlays', i.e. matching spending cuts. Canada remains staunchly opposed to the stricter disciplines the EU and the US are seeking on state trading enterprises. Many Members, and developing countries in particular, are also likely to resist the EU's and Japan's plan to eliminate export subsidies to different commodities over different timeframes, with the sectors enjoying the largest support likely to benefit from the longest phase-out periods.

Another EU-US conflict looms over the Commissioners' proposal for "early action" on cotton, including "the elimination of all forms of export support, to provide free and unfettered market access and to significantly reduce and if possible eliminate the most trade-distorting subsidies" (see related article on page 7).

Non-agricultural Market Access and Singapore Issues

Like in agriculture, WTO Members remain divided along North-South lines over the formula to use for reducing import tariffs for industrial goods. Nevertheless, if an acceptable way forward is found for agriculture, most commentators expect that the industrial market access modalities, also to be agreed by July, will be modelled on text tabled by Minister Derbez in Cancun. It is, however, likely that the language will be less precisely worded to take into account the concerns of a large number of developing countries (see page 11).

A quasi-consensus has been reached to include negotiations on trade facilitation in the Doha Round, although the modalities and timing are yet to be agreed (see page 15 for the position of least-developed countries). In their letter, Commissioners Lamy and Fischler confirmed that the EU was ready to drop the other three Singapore issues – competition policy, investment and transparency in government procurement – from the single undertaking.

Differential Treatment for G-90 Raises Alarm

The most controversial feature of the Lamy-Fischler letter was the proposal that, on agriculture and industrial market access, "least-developed countries and other weak or vulnerable developing countries in the same situation – essentially the G-90" should in effect have the Round for 'free', i.e. they should not have to open their markets beyond existing commitments, and "should be able to benefit from increased market access offered by both developed and advanced developing countries."

The proposal would create a new, enlarged category of WTO Members entitled to easier terms of market liberalisation. Many developing countries have strongly objected to singling out the G-90, which consists mainly of least-developed countries and developing countries in the ACP Group, most of which are former European colonies and already enjoy preferential access to EU markets. Chile's WTO Ambassador Alejandro Jara expressed concern over "the attempt to create new categories of countries, consolidate preferential tariff regimes and establish an equivalence between poverty and inability to make commitments to trade liberalisation." Argentina's Ambassador Alfredo Chiaradia said that the EU was "proposing an act of generosity toward a group of developing countries with our money." Malaysia and Egypt have also signalled difficulty over giving a special exemption to the G-90, and many developed and developing country officials have argued that the EU's offer could send a wrong signal on the need for reforms to the poorest nations.

Low Profile for Other Development Concerns

With the exception of the G-90 proposal, development concerns as a specific issue area have been largely absent from recent debates. Informal consultations continue in the Committee on Trade and Development on how to address special and differential treatment (S&D) for developing countries, and a formal negotiating session is scheduled for 19 July (Bridges Year 8 No.4, page 13). Commissioners Lamy and Fischler noted in their letter that the EU was "open to the proposal of some developing countries to have a negotiating group on some of the outstanding S&D and implementation requests tabled by Members."

See page 12 for summary of the 17 May General Council discussions on the Doha Round.

Barking Up the Wrong Tree: Agricultural Subsidies, Dumping and Policy Reform

Timothy A. Wise

Are US farm subsidies responsible for the alleged 'dumping' of US corn in Mexico at prices below US farmers' costs of production? According to a series of new studies, agricultural dumping is indeed occurring, but Mexico's small-scale maize farmers are unlikely to benefit much from subsidy reductions in the United States unless there is a more sweeping reform of both US farm policy and the way the international community addresses agricultural dumping.

World trade talks have foundered recently, in part due to developing country demands that industrialised countries reduce their large farm support programmes to allow poor farmers in the global South to compete more fairly. But are subsidies really the problem? For some crops – most notably cotton and sugar – Northern subsidies clearly *are* a root cause of low international prices and unfair competition. In its victorious WTO claim against US cotton subsidies, Brazil showed that eliminating subsidies would reduce US production 29 percent, US exports 41 percent, and this would lead to a rise in international prices of 13 percent.

But it would be a mistake to generalise this to all crops. In fact, even though US corn subsidies are higher than those for any other crop, studies show that their elimination would do little to improve the plight of small corn farmers in Mexico drowning since NAFTA in a flood of US corn exported at prices below the costs of production. Behind the confusion lie misunderstandings about the definition and measurement of subsidies and some predictable overselling of the benefits of trade liberalisation.

What Are Subsidies?

Part of the problem relates to the widely varying interpretations of the term 'subsidies.' The OECD, which estimates agricultural subsidies, uses a very broad definition that includes any government policy that distorts the market such that prices do not reflect marginal costs. So a tariff on corn imports, which taxes consumers by raising the price of imported corn to benefit producers, is a subsidy, just like a direct payment to a corn farmer.

This is not the common understanding of subsidy, however, nor does it seem to be that chosen by policy-makers. Their definition is narrower, referring only to government payments that allow prices to remain below marginal costs. Some are direct, such as payments to farmers; others are indirect, such as government support for irrigation infrastructure, which allows producers to exclude that cost from their prices. But tariffs or prices supports are definitely excluded.

The distinction became quite public recently when EU Trade Commissioner Pascal Lamy criticised WTO Director General Supachai Panitchpakdi for using misleading figures to justify the call for steep cuts in rich country agricultural support. Lamy correctly pointed out that Supachai's figure of US\$300 billion in annual rich country farm subsidies includes many categories of support the public would not generally consider subsidies. He said the true subsidy figure is closer to US\$100 billion.

This semantic distinction is only the most visible part of a larger debate on the measurement of agricultural support programs and their impact. The figures come from the OECD, which is responsible for estimating agriculture support for trade negotiations under the Uruguay Round Agreement on Agriculture.

The Producer Support Estimate (PSE) uses the broad definition of subsidies (including tariffs etc.) but quantifies only specific support to producers (as opposed to agriculture generally). This is the most widely referenced producer subsidy estimate; it totaled US\$234 billion in 2002. The PSE is the source for the frequently quoted statement that the average European cow gets more than two dollars a day in subsidies, a number derived from the OECD's estimate of the EU's dairy subsidies under the broad definition.

There are several important flaws in the application and interpretation of the PSE. These can cause particular problems in measuring the levels of farm support in developing countries whose economies may not be fully integrated with the world economy. First of all, two-thirds of the PSE come not from subsidies – government payments or direct support to producers – but from 'market price support' – an estimate of the non-subsidy support for producers. This most commonly includes tariffs, price supports, and quotas. Even though none are true subsidies, the OECD is charged with trying to establish the dollar-value 'subsidy equivalence' of such support. The estimate is derived directly from the difference between the international 'reference price' and a higher domestic price, the assumption being that in fully functioning markets domestic prices will align with international prices. If they don't, the difference is assumed to be a good estimate of 'market price support' measures by the government, that is, policies such as tariffs, quotas, and price supports that impose higher prices on consumers to the benefit of producers.

So one problem is semantic, but substantive. When the WTO's top official calls for reductions in rich countries' farm subsidies, it turns out he's not just talking about payments to farmers, even though this is what most of us think he means.

Beyond this important distinction, there are a variety of more subtle flaws in the OECD's calculations of the PSE. Reference prices are often very low, even below farmers' costs of production. This makes the PSEs of other countries appear unfairly high. For developing countries that are less fully integrated into the world economy, domestic prices often do not align with international prices, for reasons that have nothing to do with gov-

Continued on page 4

ernment support policies. *For these countries, the PSE methodology can produce the perverse result that higher farm support in an exporting country, if it leads to lower international prices, raises not only the exporter's PSE but that of other importing countries.*

Mexico's Maize Farmers

Such is the case for Mexico's PSE for maize. Following the implementation of NAFTA in 1994, Mexico eliminated most of the government policies that would constitute market price support. Yet the OECD's PSE figures for Mexico show consistently high market price support despite the absence of support policies. This results in a PSE – 43 percent of maize farm income from 1998-2001 – that exceeds that of the US for its highly subsidised corn farmers.

What could explain this absurd result? According to a new study by the Institute for Agriculture and Trade Policy (IATP), during that same period US corn was exported at a price 20-33 percent below the true costs of production.¹ We recalculated Mexico's maize PSE, adjusting the US export price to correct for this 'dumping margin.' Because this raised the reference price in the calculation of market price support (to a presumed non-dumping level), the price gap between US exports and domestic prices in Mexico was dramatically reduced, cutting the PSE from 43 percent to just 16 percent for the 1998-2001 period.

The data suggests, in fact, that Mexican producers are not being subsidised by such market support policies but are instead *subsidising consumers*, as farmers drive down their own prices in an attempt to compete with under-priced US exports. Anyone who has spoken with small corn farmers in Mexico will recognise this as a much more accurate description of reality than the PSE-driven suggestion that these farmers are receiving support on a par with US farmers.

Do Subsidies Cause Poverty and Low Farm Prices?

But this still leaves us with the question we began with: Will eliminating subsidies raise chronically low agricultural commodity prices and address the resulting poverty in the developing world? Predictably, those advocating deep trade liberalisation have claimed such sweeping benefits.

In preparation for WTO negotiations in Cancun, there was a flurry of research using complex economic models to assess the impact of trade liberalisation and subsidy reduction. In perhaps the most widely quoted study, the World Bank modeled the impacts of reductions in both developed and developing country agricultural tariffs (to 10 percent and 15 percent respectively), the elimination of export subsidies, and the 'decoupling' of domestic subsidies from production. The authors projected over US\$500 billion in additional world income by 2015, with US\$350 billion going to developing countries. The number of people living on less than US\$2 per day was projected to drop by 144 million people.²

The implied connections were clear: liberalisation improves farm prices, reduces dumping, and thereby cuts rural poverty. But developing country agriculture is in fact only a small source of such presumed benefits, only 6 percent (US\$20 billion) of the US\$350 billion comes from agricultural liberalisation. As with most such models, the bulk of the presumed benefits are for consumers through 'own country' reforms that lower consumer prices generally. Of course, low agricultural prices are precisely what prompted developing country farmers to demand subsidy reductions in the first place, so lower consumer prices are more the problem than the solution to dumping.

Other studies were more careful (and transparent) in trying to project the impacts of specific agricultural trade liberalisation measures, including subsidy reductions, on production and prices for specific commodities. Overwhelmingly, they show that such reforms are unlikely to raise producer prices to a sufficient degree to bring relief to Southern farmers from alleged agricultural dumping. For corn, none of the models suggests that subsidy reduction will reduce overproduction and thereby increase prices to levels that could eliminate dumping margins estimated as high as 20-33 percent. One study found only a three percent price rise over 15 years.³ A US Department of Agriculture study found that agricultural prices overall would rise by only 2 percent if all rich country agricultural subsidies were eliminated.⁴

Why don't prices automatically rise when subsidies go down? Farmers often do not respond to lower prices by taking land out of production. They sometimes switch to other crops, but they rarely allow the land, their most valuable asset, to lie idle. And if they go bankrupt, the land is generally taken over by larger farm interests and kept in production. If production does not go down, prices do not rise and dumping margins remain untouched.

Policy Reforms

One alternative policy blueprint suggests that government policies should return to recently-abandoned models of supply and stock management in an effort to take land out of cultivation, reduce production, and raise farm prices.⁵ This analysis identifies the source of low prices not in subsidies but in the oligopolistic nature of agricultural trade. In corn, for example, two firms, Cargill-Continental and Archer Daniels Midland, control 70 percent of US corn trade. This gives them tremendous market power to keep producer prices low. In the end, they, and the firms that use corn as an ever-cheaper input in their operations (feedlots, corn sweeteners, etc.), are the largest beneficiaries of US corn subsidies.

Subsidy reduction in the US may help Brazilian cotton farmers, but it is unlikely to reduce economic pressures on Mexican maize producers from below-cost US exports. Nor are such measures in other rich countries likely to improve the economic prospects for similar small-scale farmers growing food primarily for subsistence and the internal market. Some developing country farmers will benefit from subsidy reduction in the North, notably those farming cotton, sugar, and perhaps rice and a few other crops. But the poverty-reducing potential of subsidies reduction is not nearly as large as its promoters have suggested.

Instead of focusing narrowly on subsidies, policy reforms should focus on ending agricultural dumping. Whether its source is Northern subsidies or corporate oligopolies, there is no reason the international community should tolerate the dumping of products on international markets at below the costs of production. In the North, policy reforms should aim to reduce global commodity overproduction in key crops. This would require greater, not less, government intervention to reduce the structural tendencies toward overproduction and price depression. Finally, measures need to be taken internationally to reduce the market power of agribusiness

conglomerates. One simple proposal calls for the WTO to apply the same transparency measures to private firms that it does to state trading enterprises. Such disclosures are intended to reduce undue market power by state agencies. They could similarly cut into the enormous market power wielded by large agricultural traders.

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ENDNOTES

¹ Ritchie, M., Murphy, S. et al. 2003. *United States Dumping on World Agricultural Markets*. Minneapolis, MN, Institute for Agriculture and Trade Policy.

² World Bank. 2003. *Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda*. Washington, World Bank.

³ IFPRI (2003). *Impact of Alternative Agricultural Trade Policies on Developing Countries*. Washington D.C., International Food Policy Research Institute (IFPRI).

⁴ Diao, X., A. Somwaru et al. 2001. A Global Analysis of Agricultural Reform in WTO Member Countries. *Agricultural Policy Reform in the WTO – The Road Ahead*. M. Burfisher, Economic Research Service: 25-40.

⁵ See Ray, D., D. de la Torre Ugarte, et al. 2003. *Rethinking US Agricultural Policy: Changing Course to Secure Farmer Livelihoods Worldwide*. Knoxville, Tenn., Agricultural Policy Analysis Center, University of Tennessee: 59.

Differentiating Tariffs in the Banana Trade – Towards Sustainable Production?

James Harrison and Liz Parker

A system of tariffs that are differentiated according to social, environmental or economic criteria could provide an important incentive for producers to improve conditions in the banana industry. This article considers what such a system would look like and whether it is compatible with current WTO rules.

The race to the bottom in the banana industry is now well documented. Wages and working conditions across Latin American and West African plantations are being eroded as the handful of multinationals controlling the international fruit trade relocate their production or sourcing to countries with the lowest labour and environmental standards in order to supply 'cheaper' bananas to consumers.

Since the inception of the European single market in 1993, the European Communities (EC) has controlled its banana imports through a complex system of tariffs, licences and quotas, designed in part to protect exports from its former colonies in the African, Caribbean and Pacific (ACP) group of countries from cheaper bananas from large monoculture plantations in Latin America. All that is about to change as the EC moves towards a tariff-only banana regime, prompted by a decision of the WTO Appellate Body in 1997.

ACP countries will continue to get preferential tariff treatment under a waiver agreed at the WTO Doha Ministerial Conference in 2001. The waiver allows ACP bananas tariff free market access until 2008 when the new WTO compatible trading arrangements between the EC and the ACP countries will come into force. However, by 2006 the EC must remove its import quotas, which have limited the volumes of bananas that can be imported over its borders. Without the protection of quotas, it is likely that working conditions will be driven further down in plantations and that more small producers that dominate the Caribbean industry will be forced out of the banana market, joining the 15,000 Windward Island farmers who have already gone out of business in the past ten years. For small island developing states such as Dominica, which rely upon bananas for nearly 50 percent of their export earnings, it is nothing short of disaster, unless the growing fair trade market proves viable in the long term.

Until now, most of the discussions on the new European banana regime have centred on the level of the tariff. However, the real challenge is for policy-makers to take a step back and see how they can marry sustainable production, fair trade and ethical consumption with international trade policy.

Indeed, this is increasingly what consumers are demanding. Fair trade banana sales across Europe are growing and the multinational banana companies are responding with their own

social and environmental codes of conduct. However, voluntary schemes will not halt the race to the bottom. What is needed is an innovative trade policy solution that prioritises sustainable development over the supply of cheap yet unsustainable bananas.

Standards and Verification

A system of differentiated tariffs could take the form of a single level of tariff reduction or a multiple tier of standards, providing an incremental incentive to countries and companies to improve their social and environmental policies and terms of trade. For example, bananas produced according to fundamental ILO labour standards could be subject to a 50 percent tariff reduction from the most-favoured nation level and bananas produced according to fair trade criteria might benefit from duty-free treatment.

Designing such a scheme entails a number of difficult political decisions about what standards to use, how to monitor and verify them, the levels of tariff reduction and how to ensure that the workers and farmers at the end of the banana chain do not bear the costs of any system.

In the case of bananas, it is clear that simply limiting additional tariff benefits to state

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entities ‘certified’ to uphold certain standards would have an undesirable effect. Such a scheme would mean that *all* banana imports from a ‘certified’ state would be eligible for tariff reductions, but *no* bananas from a non-certified state would qualify, including those by Fairtrade producers who would easily meet, and may even exceed, the social, environmental and/or economic criteria. Therefore, it would make sense to apply the preferential tariffs to qualifying individual shipments, as well as entire states. Under such a system, individual shipments of bananas could apply for tariff reductions even if the country itself does not meet the criteria as a whole (the US already allows shipment-based, as well as state-based, differentiation for shrimp imports in order to encourage the use of turtle excluder devices in shrimping operations).

To support tariff conditions, a system of verification must be set up. Under the EC’s GSP, it is up to developing countries to apply for the additional tariff preferences under the Special Incentive to Promote Labour Rights. The requesting country submits its application and supporting documentation to the European Commission, which has one year to examine the request. It takes into account reports of the ILO and submissions from the public. Could a similar system be implemented for tariff conditions? Whatever the system of verification, it should be transparent and efficient.

Tariff Conditionality and WTO Rules

It is often asserted that WTO rules do not allow differential treatment on the grounds of production and process methods. It is true that Articles I and III of the GATT require equal treatment of ‘like products’ and the definition of ‘likeness’ ignores the conditions under which items were produced. However, Articles I and III cannot be read in isolation. Article XX of the GATT contains ten public policy exceptions allowing countries to take certain measures on, *inter alia*, the environment and public morals notwithstanding the other Articles of the GATT. Thus, it appears that tariff conditionality may be WTO compatible if a measure falls within the ambit of Article XX.

Amongst other things, Article XX excludes from the ambit of Article I and III measures

to protect public morals (paragraph a), which – it has been widely argued – includes human rights and therefore the core labour rights as defined by the ILO in the 1999 Declaration on Fundamental Principles and Rights at Work. Accordingly, it would be acceptable under WTO rules to apply lower tariffs to products that conformed with labour rights criteria.

Paragraph (g) covers “*measures relating to the conservation of exhaustible natural resources*”, which has been broadly interpreted by the GATT/WTO dispute settlement organs to include both living and non-living natural resources, including sea turtles, fisheries and clean air. It is conceivable that tariffs could also be differentiated on the basis of environmental criteria to minimise the enormous environmental impact of banana production, notably soil degradation, water pollution and waste disposal.

In the WTO *US - Shrimp* case the Appellate Body made it clear that “*conditioning market access to a Member’s domestic market on whether exporting Members comply with, or adopt, a policy or policies unilaterally prescribed by the importing Member may, to some degree, be a common aspect of measures falling within the scope of one or another of the exceptions (a) to (j) of Article XX*” (AB report WT/DS58/AB/R para. 121). In that case, the Appellate Body eventually found that the US prohibition on shrimp caught using methods that were harmful to sea turtles did fall within paragraph XX(g) of the GATT.

Nor is tariff differentiation without precedence. In its GSP scheme, the EC already grants additional tariff preferences to developing countries that can demonstrate that they effectively apply the ILO core labour conventions on freedom of association, the right to collective bargaining, the abolition of forced and child labour and the elimination of employment discrimination. Developing countries that meet these conditions receive tariff reductions of 30 percent on top of the standard GSP tariff reductions.

Labour Rights and EPAs

Tariff conditionality is also relevant to the Economic Partnership Agreements (EPAs) that are being negotiated between the EC and the ACP countries. These free trade agreements will give tariff-free treatment to the majority of products from parties to the agreement and the EPAs are designed to improve current market access of ACP products whilst imposing reciprocal obligations in trade in goods, trade in services, investment, competition policy and government procurement.

It is true that the small-scale banana farmers in the Caribbean need security and tend to have a less negative social and environmental impact than the plantation production in Latin America. However, the race to the bottom has seen a dramatic increase in banana production from large-scale monoculture intensive plantations in West Africa, where the working conditions are already low. Therefore it makes little sense to treat all ACP bananas the same.

It may be possible to implement a punitive system of tariff conditionality within the EPAs withdrawing tariff-free treatment if countries or companies fail to meet minimum social standards. Article 96 of the Cotonou Agreement already foresees the suspension of its provisions if a party fails to fulfil its obligations on human rights and it would therefore be appropriate to include some sort of social and environmental conditionality in the EPAs, allowing the withdrawal of tariff-free treatment if certain social or environmental standards are not respected. Alternatively, bananas could be removed from the EPAs and all banana exports could be subject to a system of tariff differentiation.

It is clear that unless trade policy-makers at the international level take some action, the race to the bottom will continue to the detriment of hundreds of thousands of banana workers and small farmers.

A discussion paper by Liz Parker and James Harrison on behalf of the European Banana Action Network (EUROBAN) called ‘Bananas: Differentiating Tariffs According to Social, Environmental and Economic Criteria’ is available at www.bananalink.org.uk or from info@bananalink.org.uk. The views expressed in this article are those of the authors and they do not necessarily represent those of EUROBAN members.

Brazil Wins Landmark Cotton Dispute

A still confidential interim panel report has found that several US support measures for upland cotton violate WTO rules and do not fall under the Agriculture Agreement's Peace Clause. The details of the ruling will only be known once the report has been made public, probably on 18 June.

Despite the confidentiality of the interim report released to the parties in the dispute on 26 April, some of the key findings have been widely reported on, and the US has announced it will appeal. Brazil's Trade Minister Celso Amorim noted that the ruling would be "very important for the future of the Doha Round" as Members might find negotiations a better way to achieve their subsidy reduction ambitions than dispute settlement where the implementation of WTO rulings can drag on for several years.

The Claims in the Dispute

Brazil had alleged that subsidies paid to US cotton farmers from 1999-2000 and those authorised in the 2002 Farm Bill, contravened WTO rules on Subsidies and Countervailing Measures and the Agreement on Agriculture. It argued that the US was responsible for driving down world cotton prices, consequently causing harm to Brazilian farmers while increasing the US share of the global cotton market. The US had countered this allegation by claiming that the disputed subsidies were covered by the Peace Clause because they were 'decoupled' from output and thus did not encourage over-production. The US also maintained that the drop in world prices for cotton and Brazil's loss of market share were due to other causes, such as China's large cotton reserves and competition from man-made fibres (Bridges Year 7 No.8, page 12).

What Is an Illegal Domestic Subsidy?

According to published reports, the panel crucially found that some of the domestic subsidies the US claimed were allowed under the 'green box' (non trade-distorting or only minimally distorting support) were in fact prohibited 'amber box' measures and exceeded the ceiling the US had committed to at the end of the Uruguay Round. As such measures are not covered by the Peace Clause, they fall under the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Much of the dispute had centred on data proving or disproving that US cotton growers received commodity-specific payments that provided an incentive to produce cotton rather than other crops. In order to substantiate its claim that US support measures violated Article 6 of the SCM Agreement, Brazil had to establish that a subsidy specific to the cotton industry was causing 'serious prejudice' to the interests of Brazil or another Member. According to Brazil, such measures included producer flexibility payments, market loss assistance, counter-cyclical payments and direct payments to farmers. Article 6 states that serious prejudice occurs, *inter alia*, when prices are undercut by the subsidised product in the market of the subsidising country or a third market, or when the subsidising Member increases its world market share. The panel found that US payments had indeed caused serious prejudice to the interests of Brazilian producers by suppressing cotton prices.

Export Credit Guarantees, Step 2 Programme Condemned

The panel ruled that US export credit guarantee programmes were export subsidies because they offered too long repayment terms and rates that did not cover long-term operating costs and losses. Furthermore, the export credit programme for cotton was actionable because the US had not notified any export subsidies for cotton under its Uruguay Round commitments. The panel also found that the Step 2 programme violated the WTO's export subsidy disciplines and rules prohibiting the conditioning of subsidies on the use of domestic inputs. Under Step 2, US producers are paid the difference between domestic and world market prices, and apparel or milling companies are compensated for buying US cotton. According to the Washington-based non-profit Environmental Working Group, between 1996 and 2003 the Step 2 programme alone paid US\$1.68 billion to only a hundred export or milling companies that bought cotton grown in the United States.

At the time of this writing it was not yet clear how the panel ruled on Brazil's specific claims that US subsidies were responsible for its increased share of the world cotton market, and that Brazilian producers were threatened with serious prejudice through the continued provision of those subsidies.

In the next issue of Bridges, Richard Steinberg will analyse the panel report in detail.

DSU Review Update

On 19 May, six WTO Members circulated draft legal text amending provisions of the Dispute Settlement Understanding (DSU) in three areas: (i) 'sequencing': clarifying conflicting timelines arising from retaliation procedures; (ii) remand authority: making it possible for a disputing party to request the original panel to complement its ruling in areas where the Appellate Body finds that the panel report "does not provide sufficient factual basis to complete the analysis with respect to certain issues"; and (iii) clarifying procedural steps for the lifting of trade sanctions.

The proposal was tabled by Argentina, Brazil, Canada, India, Norway and New Zealand, who specified that the draft amendments were independent of one another and could form "elements of a wider package at some point." The proponents also said that a number of other issues should be addressed in the context of the DSU review, including improving compliance, participation of developing countries in the dispute settlement system, transparency and increased third party rights. They did not, however, indicate whether or when they would suggest amendments in these areas.

The current deadline for concluding the review expires on 31 May 2004. When this issue of Bridges went to press, Members were likely to request more time in order to reach consensus on a balanced package of amendments.

Science and Precaution in the GMO Dispute: A brief analysis of the first US submission

María Julia Oliva

In 2003, the United States initiated a WTO dispute against the European Communities' moratorium on approving and marketing agricultural biotech products. With the first US submission tabled on 21 April, the legal contours of the case are now beginning to emerge.

Science, not surprisingly, is the focus of the US submission. While the request for consultations mentioned that the EC's alleged moratorium on marketing approvals appeared to be inconsistent with a number of WTO agreements (Bridges Year 7 No.7, page 13), the submission deals exclusively with claims under the Agreement on Sanitary and the Phytosanitary Measures (SPS Agreement). This was expected for two reasons. First, the SPS Agreement clearly governs any measure applied by a WTO Member to protect human, animal or plant life or health from risks arising from the pests, disease-carrying organisms, additives, toxins, etc. that may affect international trade. Second, and more importantly in this case, it is the only WTO instrument that requires measures to be based on scientific evidence, thus establishing a higher burden of proof for the EC than might have resulted from the other agreements.

Science and Risk Assessments in the SPS Agreement

The US claims that the EC measures are not based on a risk assessment (RA) as required by Article 5.1 of the SPS Agreement, making them also inconsistent with Article 2.2, i.e. the general obligation to base SPS measures on scientific principles. According to the US, the EC presented no risk assessments backing its general moratorium and some of its product-specific moratoria; even in cases where RAs were provided, the final decisions were not "based on" those assessments. The panel's interpretation of the scope of a RA under Article 5.1 will thus be a significant issue in the case as the strength of these claims can only be established after determining what constitutes a RA and when measures are considered to be based on it.

What Is a Risk Assessment?

Although the US asserts that there is no evidence of a scientific assessment "whatsoever", the concrete challenge is that there is

no RA as defined by the SPS Agreement in Annex A, paragraph 4. What is, then, the scope of a RA under the SPS Agreement? WTO jurisprudence has, in effect, established a broad scope for RA. In the *EC – Hormones* case, for instance, the Appellate Body (AB) affirmed that the fact that a RA was a "scientific process" did not mean that all matters not susceptible of quantitative analysis were excluded from its scope. The risk evaluated, the AB said, had to be the "risk in human societies as they actually exist".¹ The *EC – Hormones* case also established that a RA is not a "minimum procedural requirement": Members are not obliged to carry out their own RA nor are they required to prove that the study was effectively considered by the decision-makers.²

The scope of RA established by cases such as *EC – Hormones* was not necessarily restricted by the examination of RA on the basis of the Annex A definitions in the *Australia – Salmon* case, which the US submission cites.³ On the contrary, in *Australia – Salmon* the AB highlighted some of its previous statements. For instance, it confirmed that the fundamental element sought in a risk assessment is the objective relationship between the science and the measure, rather than compliance with burdensome procedural requirements.⁴ In that sense, the US emphasis on the distinction between "scientific assessments" in general and "risk assessments" may constitute an overly restrictive notion of RA.

Nevertheless, *Australia – Salmon* did contain some elements that could be interpreted to restrict the scope of RA and other cases, such as *Japan – Apples* are seen by some as following this trend.⁵ In the context of biotech products, however, the issue may play out differently. For one thing, Article 5.1 establishes that the RA must be "appropriate to the circumstances," providing for a certain degree of flexibility.⁶ The space for the WTO dispute settlement system to consider "product, origin and destination, including, in particular, country specific situations" is crucial not only in light of the unique challenges posed by biotech products, but also in relation to the exceptional challenges facing the EC in the regulation of such a sensitive issue. In this regard, Busch and Howse consider that the WTO is likely to prove somewhat deferential to the EC as the US complaint calls into question its domestic regulatory politics at a fundamental level.⁷

Moreover, the precautionary principle becomes critical in determining the scope of risk assessments, especially in the biotechnology context. After all, Article 5.7 (see page 9 for further details) does not exhaust the relevance of the principle in the SPS Agreement, and the WTO dispute settlement system has affirmed that a panel charged with determining whether "sufficient scientific evidence" exists to warrant the maintenance by a Member of a particular SPS measure "may, of course, and should, bear in mind that responsible, representative governments commonly act from perspectives of prudence and precaution."⁸

When Is a Measure Based on a Risk Assessment?

The US claims that, while the EC did undertake some RAs, the decisions eventually made were not based on these assessments. In fact, both at the European and national levels, decisions banned products identified as not posing a risk to human or animal health or the environment by previous assessments. What, then, does it mean for a measure to be "based on" a risk assessment? In *EC – Hormones* the relationship referred to by the US (between the scientific conclusion yielded by a risk assessment and the scientific conclusions implicit in the measure), was indeed considered relevant, but not "to the exclusion of everything else."⁹ What "everything else" entails is still unclear. However, one thing is clear and particularly important in *EC – Biotech* in light of the on-going debate in the scientific community: according to the

AB, countries can base their measures on minority scientific opinions without eliminating the reasonable relationship between the measure and the RA.¹⁰

Precaution and Article 5.7 of the SPS Agreement

Even if the EC cannot fulfil the requirements of Articles 5.1 and 2.2, it has the possibility of invoking Article 5.7.¹¹ Article 5.7 allows Members to provisionally adopt SPS measures in cases where relevant scientific evidence is insufficient, and as such has been interpreted to establish a formulation of the precautionary principle. However, Article 5.7 constitutes a *qualified* exemption from Article 2.2. That is, it only justifies provisional SPS measures if four cumulative requirements are met: on one hand, the measure must be imposed in a situation where “relevant scientific information is insufficient” and adopted “on the basis of available pertinent information”; and on the other, the measure may not be maintained unless the Member which adopted it attempts “to obtain the additional information necessary for a more objective assessment of risk” and reviews the “measure accordingly within a reasonable period of time.”¹²

Since the EC measures are in fact only a temporary step in a complex and comprehensive process of regulating biotechnology products in the European Union, which is nearly at the point of resuming product approvals, the EC is likely to raise this provision in its defense. The other decisive issue in this case will thus be the interpretation of the conditions that trigger Article 5.7. The EC has continued to gather relevant information and the threshold of “available pertinent information” does not seem particularly high. The issue of whether the “relevant scientific information is insufficient” could, however, prove trickier.

While in the 1992 Rio Declaration on Environment and Development it is “lack of full scientific certainty” that triggers the precautionary principle, according to *Japan – Apples*, Article 5.7 is *not* triggered by scientific uncertainty, but rather by the insufficiency of scientific evidence. That is, Article 5.7 applies in situations where little, or no, reliable evidence is available on the subject matter at issue.¹³ The considerable amount of scientific studies conducted on biotechnology products, as inconclusive as they may be, could thus prove a challenge for the EC. Since the four requirements are cumulative in nature, failing to surpass this condition would cause the measure at issue to be inconsistent with Article 5.7. Nevertheless, a broader formulation of the precautionary principle for biotech products in other international law rules could prove a compelling element in favour of the EC.

Cartagena Protocol on Biosafety: Role and Potential Influence

Any panel or AB decision would be incomplete without consideration of other relevant international law rules. In *EC – Biotech*, consideration of the Biosafety Protocol, which recently entered into force, will be particularly significant. As the only multilateral agreement specifically dealing with biotech products, the Protocol is likely to play an important role both as a source of factual information and as a reference for the proper interpretation of the SPS Agreement.

The Protocol as a Source of Factual Information

Within the WTO dispute settlement system, a WTO Member may turn to information implicit in or generated by other international rules and institutions to prove factual circumstances related to compliance with WTO rules. Although the early stages of the Protocol’s implementation will most likely limit its role as a source of factual information in *EC – Biotech*, the very existence of a treaty attempting to deal with the potential adverse effects of biotech products may be considered proof of any EC allegations as to the risks they present. In that way, the Biosafety Protocol could strengthen the EC’s defense to the US claims under Article 5.1.

The Protocol as a Source for Interpretation

The most significant role that the Biosafety Protocol will have on *EC – Biotech* is in giving meaning to the terms of the WTO agreements. Customary rules of interpretation of public international law, recognised by the WTO dispute settlement system, establish that in cases where several international instruments interact, “any relevant rules of international law applicable in the relations between the parties” must be taken into account.¹⁴ Such consideration has proved fundamental for achieving balanced and coherent results in a number of WTO cases.

In *EC – Biotech* there is even further reason for the Biosafety Protocol to be considered. The SPS Agreement’s references to international standards and organisations clearly contemplate that the SPS Agreement’s obligations must be interpreted in light of relevant international law. In that sense, the Biosafety Protocol could be relevant to several issues raised by this case. For example, its RA provisions give the party of import significant room to manage and control the risks identified in the assessment, including the possibility of considering socio-economic factors. Such elements could be important in the interpretation of the scope of Article 5.1, although the Protocol’s reference to other international obligations on this point may limit its usefulness. The Biosafety Protocol’s precautionary principle, stating that lack of scientific certainty does not impede a party from making an appropriate decision with regard to the import of the GMOs, is another element that could be important to the case. As the Protocol’s articulation of the precautionary principle is specifically designed for biotech products, it could provide critical guidance on the interpretation of the triggering conditions of Article 5.7.

Conclusion

Predicting the outcome of *EC – Biotech* is, at this early stage, impossible. However, the first US submission does provide some elements to further define the key issues at stake. Articles 5.1 and 2.2 of the SPS Agreement, as the core of its science-based decision-making, will certainly figure prominently in any decision. In that sense, *EC – Biotech* will be one of a line of cases to further define the scope of RA, hopefully reflecting the importance granted to the inclusiveness of the concept by earlier decisions.

The pivotal issue, however, is likely to be Article 5.7, with the controversial yet essential issue of precaution. The context and history of the case not only suggest that the EC will invoke Article 5.7, but also demand that the panel acknowledge the relevance of the precautionary principle. The Biosafety Protocol may play a crucial function in this regard. The consideration of the objective and structure of the Biosafety Protocol, as well as its formulation of the precautionary principle, should strongly advocate the recognition of the funda-

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mental role of precaution in the context of biotechnology.

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ENDNOTES

¹ See EC – Measures Concerning Meat and Meat Products (*EC – Hormones*), WT/DS26/AB/R, WT/DS48/AB/R, at para. 187.

² *Id.* at para. 189.

³ Australia – Measures Affecting Importation of Salmon (*Australia – Salmon*), WT/DS18/AB/R, at para. 124.

⁴ The panel on *Australia – Salmon* held that a risk assessment need not be an official government report: “We note that these reports do not form part of Australia’s formal risk assessment nor represent Australia’s official government policy. However, to the extent they constitute relevant available scientific information, which was submitted to the panel, we consider it our task to take this evidence into account. We consider that, for purposes of our examination, the scientific and technical content of these reports and studies is relevant, not their administrative status (i.e., whether they are official government reports or not).”

⁵ Japan – Measures Affecting the Importation of Apples (*Japan – Apples*), WT/DS245/AB/R, at para. 163.

⁶ *EC – Hormones*, supra note 1, at para. 190.

⁷ Marc Busch and Robert Howse, “A (Genetically Modified) Food Fight: Canada’s WTO Challenge to Europe’s Ban on GM Food,” C.D. Howe Institute Commentary, No. 186, September 2003.

⁸ *EC – Hormones*, supra note 1, at para. 124.

⁹ *Id.* at para. 193.

¹⁰ *Id.* at para. 194.

¹¹ The EC may choose to not argue it alternatively, however, due to consequences on the burden of proof (see *Japan – Apples*).

¹² Japan – Measures Affecting Agricultural Products, WT/DS76/AB/R, at para. 91.

¹³ *Japan – Apples*, supra note 5, at para. 184.

¹⁴ See Art. 3.2 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 31 (3) (c) of Vienna Convention. The DSU, however, establishes that “the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.”

Biotech and Developing Countries

Fuelling the debate on genetically modified crops and foods, a new FAO report says that biotechnology ‘holds great promise for agriculture in developing countries’. Meanwhile, African NGOs have alleged that donors restrict their right to GMO-free food aid.

Commenting on the latest annual *State of Food and Agriculture* report of UN Food and Agriculture Organisation (FAO), the organisation’s Director-General Jacques Diouf said that biotechnology would be beneficial to developing countries if more investment were directed to “new genetic technologies for the so-called ‘orphan crops’ such as cowpea, millet, sorghum and tef that are critical for the food supply and livelihoods of the world’s poorest people.” Dr Diouf added that other barriers preventing the poor from “accessing and fully benefiting from modern biotechnology” included inadequate regulatory procedures, complex intellectual property issues, poorly functioning markets and seed delivery systems, and weak domestic plant breeding capacity.

The FAO report emphasised that agricultural research – including biotechnology – held “an important key” to meeting the needs of more than 70 percent of the world’s poor who depended on agriculture for survival. However, the report acknowledged that poor farmers could only benefit from biotechnology products if they had access to them “on profitable terms”, a condition currently met only in a handful of developing countries. Six countries (Argentina, Brazil, Canada, China, South Africa and the US), four crops (maize, soybean, canola/rapeseed and cotton) and two traits (insect resistance and herbicide tolerance) accounted for 99 percent of the global area planted in transgenic crops in 2003, the report said. It also noted that despite the fact that transgenic crops had been delivered through the private sector in most cases, the benefits had been widely distributed among industry, farmers and consumers, which would suggest that “the monopoly position engendered by intellectual property protection does not automatically lead to excessive industry profits.”

African NGOs Denounce Donor Policies

On 4 May, more than 60 African civil society groups wrote an open letter to the World Food Programme (WFP) protesting against the pressure it and certain donors exert on Sudan’s and Angola’s decisions to impose restrictions on GM food aid. The signatories – representing farmer, consumer, environmental and development organisations from 15 African countries – demanded that the WFP and donors “respect international law, regional guidelines and national regulations and restrictions on GM food” and “immediately desist from a scenario of no choice.”

The protesters noted that the Sudanese government gave the WFP ample warning that it would prohibit GM food aid as of mid-2004, and that, once notified, WFP policy requires the agency to take steps “to adjust rations, food procurement procedures, and food pipeline plans to ensure that all WFP food is imported in full compliance with the changed regulatory environment for GM/biotech foods.” Nevertheless, Sudan had been subjected to ‘arm-twisting’, which had led the government to delay the prohibition’s entry into force. The signatories also asserted that the WFP had told the Angolan government that the country would face a significant decrease in the provision of food aid if it continued to insist that GM grain was first milled (to avoid replanting) despite a recommendation of the SADC Advisory Committee on Biotechnology and Biosafety on GM food aid that “food aid consignments involving grain or any propagative plant material should be milled prior to distribution to beneficiary populations.”

The letter urged the WFP to “encourage all donors to provide food aid by way of cash donations to enable the purchase of food at the local and regional level, instead of providing food aid in kind, which creates a ready parallel market for surpluses from grain producing countries such as the US.” In the context of the WTO dispute regarding the EU’s *de facto* moratorium on GMO approvals, the US has repeatedly portrayed some African countries’ resistance to biotechnology, and GM food aid in particular, as based on “ill-informed health and environmental concerns, as well as fears that the countries’ exports to Europe would be jeopardised by ‘contamination’ of local crops” (Bridges Year 7 No.5, page 9).

CTD to Address Sustainable Development

Meeting on 11 May, the WTO Committee on Trade and Development focused on declining commodity prices and paragraph 51 of the Doha Declaration, which requests Members to consider how sustainable development is reflected in the overall negotiations.

Commodity price discussions picked up from the February CTD meeting (Bridges Year 8 No.3, page 9). Kenya, Tanzania and Uganda proposed that work on this issue be shared between the special (negotiating) sessions of the Committee on Agriculture and the Negotiating Group on Market Access, with the CTD taking responsibility for monitoring progress (WT/COMTD/W/130). The proposal drew widespread support from developing countries as well as the US.

In order to provide for sound analysis in the negotiations, Switzerland said it was essential to ensure that delegates were well informed about the technical, economic and commercial factors that influence commodity decline and volatility. Switzerland advocated in-depth informal discussions within the CTD, assisted by input from various international organisations represented at these meetings (WT/COMTD/W/129). The role of the CTD was, according to the Swiss, to further raise awareness on the decline in commodity prices, and to prepare the ground for delegations to introduce concrete proposals in the negotiating sessions, rather than to make concrete recommendations to negotiating bodies. Switzerland viewed its approach as complementing rather than competing with the proposal from the three African countries. The Chair said he would consult with Members with a view to convening an informal meeting along the lines suggested by Switzerland in the next few weeks.

At the meeting, Members also supported a request by the Common Fund for Commodities (CFC), an inter-governmental financial institution, for observer status.

Developing Countries Seek to Operationalise Para. 51

Discussions on Para. 51 saw rifts emerge between countries such as Kenya and India, which sought a “faithful” implementation of the letter of the Doha mandate, and certain developed countries. One developing country trade delegate emphasised that the Doha mandate requested the CTD to identify and debate the developmental aspects of the negotiations “in order to help achieve the objective of having sustainable development appropriately reflected”. The delegate called for more than academic debates and reports from various committees delivered to the CTD, and said that the CTD should serve as a monitoring mechanism to ensure that the negotiations delivered meaningful sustainable development.

Many developed countries were, however, concerned that any power to make recommendations would imply assigning a negotiating mandate to the CTD regular session, and wanted to keep the discussions on an academic plane. Canada and the US reportedly took a position more in tune with those of developing countries.

Informal consultations are due shortly on both declining commodity prices and Para. 51.

Maldives Requests Special Treatment for Graduating LDCs

The Maldives raised a new issue by requesting the CTD to recommend a series of measures that would enable it and other least-developed countries (LDCs) a smooth transition as they graduate from LDC to developing country status (WT/COMTD/W/128). The Maldives drew attention to the additional costs resulting from added WTO obligations following graduation, and the loss of trade preferences it would face. Some Members responded by proposing that any preferential treatment to graduating Members be addressed on a case-by-case basis rather than as a systemic issue as requested by the Maldives, whose graduation is still pending within the UN. Further discussions of the issue are set to take place in the CTD.

The next session of the CTD will take place in September 2004.

Industrial Market Access Update

According to delegates present, the 10-12 May session of the Negotiating Group on Market improved Members’ understanding of each others’ concerns, but made no concrete progress on any of the issues discussed. As the meeting took place just prior to ministerial-level discussions in Paris, and possible developments in agriculture (see page 1), Geneva-based diplomats were cautious about engaging in substantive negotiations. Nevertheless, agreement on a broad negotiating framework for non-agricultural market access (NAMA) is a key component of the package that Members hope to adopt in July.

The main issue discussed at the May meeting was non-tariff barriers, which developing countries in particular fear will increasingly replace import duties as the principal means of border protection in industrialised countries. Largely at their insistence, the Doha Declaration called for negotiations on “non-tariff barriers, in particular on products of export interest to developing countries”. Until now, the issue has hardly been addressed at all, and there was no concrete outcome of the talks in May.

Delegates conceded that wide differences remained on the key issue, i.e. the formula to be used for lowering tariffs on industrial goods (Bridges Year 8 No.4, page 12), but the topic was not discussed in any detail. Several Members noted that any agreement would have to take into account of their sensitive sectors. Most delegates contacted for this update predicted that the agreement on the tariff formula would be close to the text tabled by Minister Derbez in Cancun, although a number of developing countries continue to oppose it on the grounds that it demands them to make far greater concessions than industrialised countries, whose tariffs for non-agricultural goods are already generally low. In addition, many developing country governments depend on tariff revenue for a large part of their budgets and hard currency needs.

The next NAMA negotiating session will take place on 9-10 June.

General Council Update

Several Members commented on the recent developments in the Doha Round at the WTO's General Council meeting on 17-18 May.

Council Chair Shotaro Oshima urged delegates to build on the recent political momentum, and said that in the process leading up to the end of July he was planning on holding informal Heads of Delegation meetings on a regular basis, the first one on 1 June.

The Chair of the agriculture negotiations Timothy Groser reported that Members were close to drafting a negotiating framework on agriculture. He stressed that the framework would not yet include any numbers; and that a balance would have to be struck between the three agricultural pillars (market access, domestic support and export subsidies).

India emphasised that fundamental differences remained between Members, in particular in the key area of agriculture. India also noted that due to its recent change in government, there would be some delays in its positions.

The Brazilian Ambassador, Luiz Felipe Seixas Correa said the G-20 would try to come up with a market access formula by the 2-4 June meeting on agriculture. But Brazil also proposed that Members work together to develop an approach acceptable to all.

China's Ambassador Sun Zhenyu stressed that development issues must be prominent in any package.

The US and many other Members welcomed the EU's recent move on agriculture and reiterated that the US was ready to negotiate the subsidy elements of its export credit system and the distortive elements of its food aid programme. The EU noted that a balanced deal would have to be found between all three pillars of agriculture, and that non-trade concerns had to be included in this balance. The EU also stressed that the weakest Members should only have to make limited commitments.

Rules Group Takes Up Fisheries Subsidies

At its April meeting, the Negotiating Group on Rules discussed a new proposal on eliminating subsidies that contribute to overexploitation of fisheries resources, as well as a US proposal aimed at confirming the WTO-compatibility of distributing antidumping duties to petitioning industries.

New Zealand's proposal on fisheries subsidies (TN/RL/W/154) noted that while a number of previous submissions had sought to define categories of forbidden subsidies based on their contribution to fleet overcapacity or to over-fishing (Bridges Year 7 No.5, page 14), explicitly addressing these issues through subsidy rules was difficult. New Zealand suggested instead an approach based on a broad prohibition of programmes that have revenue or cost impacts for the fisheries industry and thereby lead to overcapacity and over-fishing. Under this broad approach, New Zealand highlighted the need for exceptions and transitional provisions, including special and differential treatment for developing countries, and suggested the negotiation of a 'negative list' of exceptions to exempt environment-friendly and other subsidies.

Other members of the 'Friends of Fish' group (i.e. the US, Iceland, Chile, Norway and Peru), as well as Argentina, Pakistan, the Philippines and Thailand supported the proposal. The EU agreed with the general idea behind the proposal, but felt the approach was too harsh, as there was a need for exemptions for programmes not only in developing countries but in poorer regions of the EU itself. India and Malaysia also said that special and differential treatment for developing countries was essential.

Japan – supported by Korea and Chinese Taipei – opposed the New Zealand proposal, calling it extreme and outside the mandate agreed for the Doha Round. Since the outset of the rules negotiations, Japan and Korea have systematically argued that there is no need for specific fisheries disciplines, and that over-fishing should be addressed through better fisheries management (see article opposite). New Zealand, however, said that the April debate was less polarised than some previous exchanges, and called on Members to work together to find ways to limit harmful fisheries subsidies.

US Seeks to 'Legalise' the Byrd Amendment

The US proposed that the Group "explore clarification and improvement of the rules" with regard to Members' "right to determine the disbursement of collected antidumping duties" (TN/RL/W/153). In January 2003, the Appellate Body ruled against the US Continued Dumping and Subsidy Offset Act, commonly known as the Byrd Amendment, under which anti-dumping duties collected by customs are redistributed to the companies that requested the higher tariffs (Bridges Year 7 No.1, page 7). The US missed the 27 December 2003 deadline for implementing the ruling, and the WTO is expected to announce the level of trade sanctions for the complainants in June. At the Rules Group meeting, Brazil said that changing the rules to make illegal measures WTO consistent would set a bad precedent. Many other countries raised similar objections, with Korea saying the issue did not belong in the Rules Group and Japan noting that new rules on this point would never be acceptable. The US, however, maintained it was "beyond question that countries have the sovereign right to distribute government revenues as they deem appropriate," but added that the US intended to implement the Byrd Amendment ruling.

No consensus emerged on a proposal (TN/RL/W/150) by the 'Friends of Anti-dumping Negotiations' (Chile, Colombia, Costa Rica, Japan, Korea, Norway, Singapore, Switzerland, Chinese Taipei, Thailand, and Hong Kong, China) to amend certain provisions of the Anti-dumping Agreement related to the determination of "normal value" in anti-dumping investigations.

The Rules Group negotiations on the review and improvement of WTO rules that govern issues such as dumping, antidumping measures, subsidies and countervailing measures are part of the single undertaking established by the Doha Ministerial Declaration. The next meeting of the Negotiating Group is scheduled for 7-8 June.

Fishing Subsidies: Can New WTO Rules Strike the Right Balance?

David K. Schorr

The WTO charter calls for trade rules that contribute to ‘expanding production’ and to ‘the optimal use of the world’s resources in accordance with the objective of sustainable development’, yet the multilateral trade system has traditionally focused only on preventing export market distortions. Current negotiations over new rules on fishing subsidies will test the WTO’s ability to fulfill its broader mandate without exceeding its ‘trade-related’ competence.

The WTO negotiations on fishing subsidies have reached a critical new phase. As evident in submissions to the Negotiating Group on Rules, and in discussions at a recent two-day UNEP workshop, the dialogue has moved beyond its initial polarisation into a more practical, results-oriented process.¹ Some basic parameters of the negotiation are coming into focus – for example, new fishing subsidies rules will likely be based on the familiar ‘traffic light’ approach of the Agreement on Subsidies and Countervailing Measures (SCM), and priority attention will go to subsidies that increase fishing capacity. In addition, the political dynamics have also matured, particularly with the shift by the EU last year from opponent to *demandeur*, and a palpable softening of opposition from Japan.

This is good news. The Doha Declaration mandate to negotiate new rules on fishing subsidies reflects international recognition that harmful subsidies are among the factors driving an unprecedented worldwide crisis of fisheries depletion. Heads of state gathered at the 2002 World Summit on Sustainable Development in Johannesburg placed completion of the WTO talks on fishing subsidies among the top eight priorities for global action to promote sustainable fisheries, joining similar calls from the UN General Assembly, the OECD, and the G-8 leaders. After years of preliminary debate, governments are finally rolling up their sleeves.

Some Key Questions and a Fundamental Challenge

As the negotiations start to take shape, several issues are emerging to the forefront, including:

- What should be the scope of new fishing subsidies disciplines? Should they cover government payments for access to foreign fishing grounds? Subsidies to basic infrastructure, such as port facilities?
- Should new rules start with an outright ban on broad classes of fishing subsidies, or be more nuanced and specific?
- To what degree should new rules accommodate subsidies with positive environmental or social impacts?
- How should new rules address the special needs of developing countries, and in particular those of ‘artisanal’ fishing communities?
- How can rules for the notification and review of fishing subsidies be made truly effective?

Many of these questions are of a kind familiar to trade negotiators. For example, the WTO has substantial experience with the basic traffic light vocabulary, the treatment of infrastructure subsidies, the means for improving notifications, the granting of ‘special and differential treatment’ to developing countries, and even the crafting of exceptions or ‘non-actionable’ categories for environmental subsidies.

Of course, negotiators will also face some more novel questions. For example, can new rules recognise the legitimacy and importance of government payments for access to foreign fisheries without leaving them wholly undisciplined and subject to abuse? How should ‘artisanal’ fisheries be defined and treated? Can notification requirements be tailored to include information critical to the control of fishing subsidies? Such questions will undoubtedly require the close involvement of fisheries experts in the WTO talks.

But the problem that many stakeholders find most troubling is a broader one: how can the WTO successfully discipline fishing subsidies without overstepping the bounds of its trade-related mandate and becoming entangled in matters of fisheries management or environmen-

tal policy? This question – sometimes known as the problem of ‘the thin green line’ – will require innovative answers if new WTO rules on fishing subsidies are to be both workable and effective.

The Need to Address Production Distortions

The problem of the thin green line is rooted in two basic characteristics of the fishing subsidies issue. First, fishing subsidies more directly distort patterns of production than they distort patterns of international sale. The fishing industry is engaged in a race for scarce resources, not merely a competition for international markets. Subsidies that promote overfishing reduce the ability of competitors to catch fish in the first instance, as stock depletion drives up production costs or leads to the limitation or termination of the right to fish.

Some stakeholders fear that addressing fisheries production would tread dangerously close to the thin green line. But this fear is unfounded. To begin with, despite the

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To avoid overstepping the thin green line, where reference to the fisheries context is necessary in future WTO disciplines, the rules could refer to pre-existing judgments by competent international bodies; i.e. whether a fishery is considered ‘overexploited’ by the FAO, or a target species is labeled ‘endangered’ by the World Conservation Union (IUCN). Where no such judgments exist, WTO rules could look to simple, objective and uncontroversial facts – for example, whether a capacity management plan is formally in place, or whether a straddling stock is subject to co-operative management by all of the relevant states.

WTO's traditional focus on export markets, nothing about dealing with production distortions *per se* would stretch the WTO beyond its core mission. Indeed, the first paragraph of the Agreement Establishing the World Trade Organisation calls for "expanding the *production* of and trade in goods and services, while allowing for the *optimal use of the world's resources* in accordance with the objective of sustainable development". In the fisheries sector – where biological realities and the mobility of fishing vessels can render boundaries meaningless – the WTO's standard equation of 'trade distortion' with 'export market distortion' is especially misplaced.

Moreover, production distortions in the fisheries sector can be framed in familiar economic terms, such as productive capacity, costs of production, or levels of output. And ecological analyses can be further avoided by preferring *ex ante* prohibitions (*i.e.*, 'red light' rules) based on subsidy design to *ex post facto* disciplines based on a subsidy's actual impacts.

Relevance of the Fisheries Context is Sometimes Unavoidable

Unfortunately, a second basic characteristic of the fishing subsidies issue gives rise to problems with the thin green line that are a bit harder (but certainly not impossible) to manage: in a few cases, the condition of a fishery can determine whether a given subsidy is likely to be harmful or benign.

In fact, a fishing subsidy's impact may depend on a combination of its design and the ecological, industrial, and regulatory condition of the fishery in which it is applied. A forthcoming UNEP study, which received broad support from governmental and non-governmental participants in UNEP's recent workshop, provides the most thorough analysis to date of how design and context can affect outcomes.²

For those concerned with the thin green line, the UNEP paper has two important implications. First, in today's world few if any fisheries are sufficiently healthy and well-managed to render context-sensitive subsidies 'safe.' When combined with the fact that some kinds of subsidies are dangerous even under excellent fisheries management conditions,³ this suggests that

many harmful fishing subsidies can be banned on the basis of their design alone. Accordingly, the WWF will soon propose a relatively broad red light that prohibits certain subsidies without reference to their actual impacts or context.⁴

However, the second implication of the UNEP paper – confirmed by WWF's own analysis – is that a broad design-based prohibition would, taken alone, almost certainly be overinclusive. For example, a capacity-enhancing subsidy to an artisanal fishery may be desirable in an underexploited and well-managed fishery, but prove disastrous in a fully exploited and under-regulated fishery. Hence, WWF has had to include references to the fisheries context in its proposals for certain exceptions to a new red light, in a list of triggers for a new burden-shifting 'dark amber' rule, and in some 'special and differential treatment' provisions.

Dealing with the Thin Green Line

The need to consider the fisheries context, even if only in exceptional cases, obviously raises the danger of the thin green line. As developed extensively in WWF's paper, WTO negotiators can employ three basic strategies to avoid overstepping it. First, they can seek to avoid the problem altogether. Two techniques for doing this, mentioned above, are: (i) to depend as heavily as possible on rules that eschew judgments about the actual impacts of fishing subsidies; and (ii) to make the widest possible use of terms and tests drawn from the familiar economic vocabulary of the WTO.

Second, where reference to the fisheries context is necessary, it is critical to limit the kinds of judgments the WTO could be called upon to make. Here again, at least two methods can be used. First, WTO rules can look to pre-existing judgments by competent international bodies. For example, a rule could turn on whether a fishery is considered 'overexploited' by the FAO, or whether a target species is labeled 'endangered' by the World Conservation Union (IUCN). Second, where reliance on such authoritative judgments is impossible, WTO rules can look to simple, objective, and uncontroversial facts – for example, whether a capacity management plan is formally in place, or whether a straddling stock is subject to co-operative management by all of the relevant states.

Note the very limited ambition of what is proposed here: The WTO would determine only whether a fishery is grossly and obviously unhealthy, or whether it patently fails to meet even the minimum formal criteria for adequate management. The WTO should not be expected to ask, for example, whether a capacity management plan or straddling stock agreement is good or effective – only whether such instruments are in place at all. The idea is not for the WTO to police fisheries policies, but only to forbid certain kinds of subsidies where the most minimal standards of ecological health and resource management are visibly unmet.

So far, so good. But if WTO rules are to be maximally effective, they will occasionally require judgments more nuanced than the foregoing strategies allow. Accordingly, a third strategy for dealing with the thin green line in these few remaining cases would be for the WTO to share elements of its authority over fishing subsidies with appropriate experts or other intergovernmental organisations. For example, WWF proposes that subsidies to reduce fishing capacity (such as 'buy-back' programs) be allowed only if accompanied by a capacity management plan meeting certain minimum criteria (beyond a requirement that the plan merely exist). Administering such criteria would, however, lead the WTO across the thin green line if not 'outsourced' to other appropriate bodies, such as the FAO or regional fisheries management organisations. As radical as such a proposition may sound, there are multiple precedents for such mechanisms within the WTO system. For example, the WTO defers to the IMF regarding the consistency of a member's actions with IMF requirements, just as it shares authority with the World Customs Organisation and the Codex Alimentarius on issues within the competence of those bodies.⁵

In sum, the challenges facing WTO negotiators on fishing subsidies are indeed substantial. But there is no need for panic. Many of the issues turn out to be familiar. Others are novel but clearly within the WTO's core mandate. And many harmful subsidies can be addressed through

a design-based 'red light' rule. For those cases that do run close to the thin green line, a strategy of avoiding, limiting, and sharing the hardest questions can succeed. It is in the hands of governments now to strike the right balance among these approaches, and to ensure that the WTO does its part for sustainable fisheries.

David Schorr, a Senior Fellow at WWF and an independent consultant in Washington, DC, is author of the forthcoming WWF technical paper, "Healthy Fisheries, Sustainable Trade: Crafting New Rules on Fishing Subsidies in the World Trade Organisation", available as of 9 June at <http://www.panda.org/trade>. This article was written by Mr Schorr in his personal capacity, and does not necessarily reflect the views of WWF.

ENDNOTES

¹ See BRIDGES Trade BioRes, Vol. 4 No. 8 (30 April, 2004). Proceedings of UNEP's April workshop are at <http://www.unep.ch/etu/Fisheries%20Meeting/FishMeeting2004>.

² Porter, *A Matrix Approach to Analysing the Resource Impacts of Fisheries Subsidies* (UNEP, forthcoming in 2004).

³ See, e.g., Munro and Sumaila, 'The impact of subsidies upon fisheries management and sustainability: The case of the North Atlantic.' *Fish and Fisheries* 3: 233–50 (Blackwell Science 2002).

⁴ Schorr, David. *Healthy Fisheries, Sustainable Trade: Crafting New Rules on Fishing Subsidies in the World Trade Organisation* (WWF, forthcoming in June 2004).

⁵ See, respectively: GATT Article XV:2; *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade* Art. 18.2; and *Agreement on Sanitary and Phytosanitary Standards* Article 12.3 & Annex A, ¶ 3.

Post-Cancun WTO Priorities of Least-developed Countries

Trade ministers of least-developed countries adopted the Dakar Declaration on 5 May 2004. Highlights are paraphrased below.

Agriculture: Developed country export subsidies to products of export interest to LDCs shall be phased out on a fast-track basis. Fast and substantial reduction of domestic support measures which impede LDC exports shall be achieved through the establishment of accurate criteria and a ceiling of the green box, as well as phasing out the blue and amber boxes.

Members shall exercise restraint in applying technical barriers to trade and sanitary and phytosanitary measures to products from LDCs. Technical and financial assistance shall be provided to assist LDCs in complying with SPS and TBT requirements.

Developed countries, and to the extent possible developing countries, shall provide bound duty- and quota-free market access for all products originating from LDCs (this also applies to industrial goods, including "realistic, flexible and simplified rules of origin").

Erosion of preference margins due to MFN tariff reductions shall be offset by establishing compensatory and other appropriate mechanisms, including measures that promote exports from LDCs (this also applies to industrial good, including measures to overcome supply constraints and diversify LDC exports).

Cotton: We remain open to ways and approaches likely to resolve the various aspects of this issue and we expect, from the concerned countries, concrete proposals to resolve urgently the problems raised in the sectoral Cotton Initiative.

NAMA: Negotiations on non-tariff barriers should commence as soon as possible and be dealt with by the NAMA Group. As an early harvest, LDCs want a moratorium on all contingency actions, including anti-dumping measures against LDC exports (see agriculture above for the erosion of preferences and duty- and quota-free market access).

Commodities: We note the heavy dependence of LDCs on a few commodities and the adverse effects of persistent decline and sharp fluctuations in commodity prices and urge Members to address the trade-related issues in the ongoing negotiations.

Special and differential treatment: All S&D treatment shall be considered in the Committee on Trade and Development Special Session. All agreement-specific proposals must be addressed as a matter of priority and a specified timeframe shall be established.

Services: We call upon Members to provide improved offers in favour of LDCs in Mode 4, particularly for less skilled persons.

Singapore issues: Clarification work on trade facilitation should continue. After the completion of the clarification process, a decision would need to be taken on the modalities, by explicit consensus, before negotiations can commence. Modalities should include, among others, the adoption of a provision whereby LDCs are exempted from WTO dispute settlement action. Technical and financial assistance should be ensured for LDCs to conduct studies to assess the implications and meet the costs of implementation of trade facilitation measures.

WTO rules: Members should review anti-dumping and countervailing rules in order to prohibit their application to LDC exports.

Members should treat as non-actionable LDCs' subsidies for development, diversification and upgrading of infant industries, as well as research activities and adaptation of new environmental requirements.

They should also grant an exemption from export competitiveness thresholds to export subsidies applied by LDCs.

EPA Update

At their meetings on 4-5 May, the ACP Council of Ministers and the joint ACP-EU Council reviewed progress in the Economic Partnership Agreement (EPA) negotiations, as well as discussed an upcoming review of the Cotonou Agreement.

With regard to the EPA process, ACP ministers agreed to continue discussions at an all-ACP level, as well as with the EU, on rules of origin, dispute settlement and trade-related areas (i.e. services, intellectual property rights, standardisation and certification, environment, labour standards and consumer protection). Several ACP ministers protested vigorously against an EU proposal to include in the EPAs a 'non-execution clause' that would apply to all members of the arrangement if one of them violated the EPA's provisions. ACP ministers described the proposal as unacceptable 'collective punishment', and Jamaica's Trade Minister K.D. Knight said his country would block negotiations if the idea was upheld.

The ACP also presented their concerns regarding cotton, sugar, rice, bananas, the level of cadmium content in swordfish allowed into the EU and the tuna fish import quota of ACP countries.

The EU sought to reassure ACP countries with regard to the maintenance of fundamental objectives and principles of the Cotonou Agreement, but proposed amendments, such as a clause on the fight against the proliferation of weapons of mass destruction (this was rejected by the ACP), more flexible allocation of financial resources, and clarification of the details of support granted to non-state players.

Both sides agreed to postpone until 2006 the assessment anticipated in the Cotonou Agreement of the situation of non-LDCs that are not in a position to enter into EPAs.

In related news, the G-90 alliance of ninety developing and least-developed countries consisting mostly of ACP states will meet in June and July in Guyana and Mauritius to deliberate further on the best strategy to defend their trade interests.

Southern Africa Weighs Trade Options

The negotiations for a free trade area between the US and the Southern African Customs Union are progressing so slowly that concluding the talks by the end of the year may be compromised.

The two sides met during the first week of May to discuss US demands on labour and environment, investment, government procurement and financial services, i.e. the so-called Phase II issues (these also include intellectual property rights, yet to be addressed). SACU has not yet tabled its proposals on these topics. South Africa's chief negotiator Xavier Carim called the the US drafts – tabled just before the May round of talks – "complex texts with complex, potentially unforeseen consequences." Mr Carim indicated that SACU might only be able to offer basic concessions on the detailed US demands given the tight timeframe. He added that there were "no clear breakthroughs" on any of the issues, including previously discussed Phase I topics, such as tariff phase-outs or SACU's request that the agreement address US anti-dumping practices. So far, the two sides have only reached agreement on market access modalities, but not made concrete offers in either agricultural or industrial goods.

With regard to investment, South Africa has launched a Black Economic Empowerment (BEE) initiative, which strongly encourages companies doing business in South Africa to, *inter alia*, grant equity ownership to non-white business partners and appoint black executives to company boards. While compliance is voluntary, the government may consider a company's BEE performance when extending licences or doing business with it.

As US businesses cannot meet the empowerment criteria above, they seek to negotiate alternative ways of compliance, such as increasing a company's participation in one of the other requirements through, for instance, setting up or contracting with BEE enterprises instead of giving up a quarter of the US company's equity. Sources say there is little chance that the South African government will agree to exempt certain sectors from BEE.

Services are shaping as another potential stumbling bloc, as the US is essentially pushing for a 'negative list' approach where all sectors would be liberalised unless they are explicitly carved out from the agreement. The US would be ready to accept longer transition periods for opening up sensitive sectors, but SACU negotiators are holding out for a 'positive list' approach modelled on the WTO's GATS agreement, which would only open specifically designated sectors (Bridges Year 8 No.3, page 16).

Speaking at a round table discussion organised by the South African Institute for International Affairs after the May negotiating session, Standard Bank Group economist Iraj Abedian urged Southern Africa's business sector and civil society to get more involved in the talks: "I challenge most executives to give more than a few minutes general talk on what an FTA is and what its impact will be on their business. An FTA now encompasses far more than just goods, as trade in services is the new thrust of US trade policy. It also covers things such as employment practices and environmental standards, so businesses and civil society better wake up and know what the impact is going to be. You want to know what is coming down the line, not wake up after the deal has been signed to find you are out of business." Some business sources have pointed to deep-seated mistrust of trade and foreign investment as one of the main reasons for what they see as SACU negotiators' lack of enthusiasm for the FTA.

SACU already has a free trade agreement with the EU, and is currently involved in negotiations with the European Free Trade Area (i.e. Iceland, Liechtenstein, Norway and Switzerland) and Mercosur.

SACU members include Botswana, Lesotho, Namibia, South Africa and Swaziland.

The next negotiating sessions are scheduled for June, August and October, with a final meeting in Washington in December.

Western Hemisphere Trade Integration Continues

Despite widespread demonstrations, free trade area talks were launched between the US and three Andean Countries in May. Mercosur and the EU are on course for concluding an agreement in October, and bilateral efforts continue to solve the impasse on the FTAA negotiations.

The US and three member countries of the Andean Community – Colombia, Ecuador and Peru – started negotiations for a regional free trade area in the third week of May. Bolivia is following the negotiations as an observer and must, according to chief US negotiator Regina Vargo, do more to convince its domestic constituencies of the advantages of free trade before joining the treaty. The US did not invite Venezuela, the fifth Andean Community (CAN) member, to participate in the FTA due to political differences between the two governments.

The short meeting consisted of countries outlining their broad objectives for the talks. The US tabled initial 'template' text for rules on intellectual property rights, investment, services and market access. In all, the negotiations are expected to cover about 14 subject areas, including environment and labour provisions, trade remedies, financial and telecommunications services, trade facilitation, technical barriers to trade, sanitary standards and dispute settlement. Ms Vargo noted that the Andean parties had also expressed interest in government procurement disciplines, which were not included in the Central American (CAFTA) agreement concluded earlier this year. All participants will be subject to the same set of rules, but will negotiate separately their market access schedules in agriculture, industrial goods and services.

For the Andean countries, a key reason for concluding the FTA is to lock in place existing preferences under the US Andean Trade Preferences Act (ATPA) and to increase market access for agricultural goods through tariff reductions and quota elimination. Talks related to the removal of trade-distorting agricultural export and domestic subsidies, as well as safeguard mechanisms, are expected to prove difficult. Intellectual property protection is another area where both sides expect tough negotiations.

While no formal deadline has been set for concluding the talks, the parties are likely to aim for February next year in order to make it possible for the US Congress to vote on the deal before the president's trade promotion (i.e. fast-track) authority comes up for renewal in June 2005. The next negotiating round is scheduled for 14-18 June.

Mercosur and EU Close to Market Access Deal

Despite several meetings qualified as 'constructive' by EU and Mercosur officials, the two sides had not yet agreed on market access concessions at press time. Both sides did, however, express confidence that improved offers would be submitted before the 28 May EU – Latin America Summit in Guadalajara, Mexico. The talks are slated to conclude next October.

Expanded access to the EU for Mercosur agricultural products will in all likelihood be regulated through import quotas rather than preferential tariffs or by tariff cuts. Brazil's EU Ambassador Jose Alfredo Graça Lima said in early May that the EU had for the first time offered market access for processed farm products, including cocoa, yoghurt, ice cream and tobacco goods. In addition, the EU had indicated it might open its market to certain sensitive products, such as those with a high degree of sugar content. No offer had been made on sugar itself. According to press reports, EU negotiators have also suggested an extra import quota for top-quality beef, as well as increased access for ethanol from Mercosur, which comprises Argentina, Brazil, Paraguay and Uruguay.

On the Mercosur side, Argentina's chief negotiator Martin Redrado said that Mercosur had been more forthcoming in opening financial services markets and the telecommunications sector. The EU has also requested Mercosur to lower industrial trade barriers, liberalise investment and open services and government procurement to EU suppliers.

The EU has denied that its farm goods offer is designed to soften Mercosur countries' stance in the WTO's agricultural negotiations, and Brazil has confirmed that Mercosur will do nothing to split the G-20 group of developing countries. Nevertheless, French Agriculture Minister Hervé Gaymard said the European Commission had made a serious tactical mistake in aiming to complete an FTA with Mercosur before the WTO's Doha Round is over. In contrast, both EU and Mercosur officials have noted that a successful outcome could give Mercosur a boost in the FTAA negotiations.

FTAA Negotiations Update

The Brazilian and US Co-chairs of the stalled negotiations for a Free Trade Area of the Americas (FTAA) have met several times in recent weeks in order to narrow differences sufficiently to offer guidance to the FTAA's Trade Negotiations Committee (TNC). In February, the TNC's meeting was suspended due to an impasse over the relationship between a binding 'common set of obligations' embracing nine negotiating areas and voluntary agreements between participants willing to take on/benefit from more far-reaching commitments (Bridges Year 8 No.2, page 15). Resumption of the TNC has been postponed twice since amidst continued disagreement between the US and 13 Latin American countries on the one hand, and Mercosur members on the other.

At their last meeting on 21 May, Co-chairs Adhemar Bahadian of Brazil and Peter Allgeier of the US were expected to discuss, among other controversial subjects, draft language on intellectual property rights and agricultural export subsidies. According to Mr Bahadian, the negotiators made scant progress, as the US brought up market access issues on agriculture that he thought had been resolved in earlier discussions. In what he called an "unpleasant and sad surprise", Mr Bahadian said the US had signalled for the first time that some agricultural products could be excluded altogether from the hemisphere-wide trade agreement.

US Developments in Brief

- As expected, the Office of the US Trade Representative has rejected the petition from trade unions to impose trade sanctions on China due to the latter's poor enforcement of labour standards (Bridges Year 8 No.4, page 17). US Trade Representative Robert Zoellick admitted that concerns over labour rights and working conditions in China were valid, but added that the real question was how to best change those practices. He said that the Bush Administration believed that "trade and economic growth – combined with the use of leverage to pursue mutual interests under agreed international rules – [would] move China faster and further toward achieving real results than a retreat into economic isolationism and the raising of barriers that block trade."

The Administration is also widely expected to turn down a petition to file a WTO dispute against OPEC for "colluding to set production levels" for oil (Bridges Year 8 No.4, page 16).

- The US announced on 17 May that the Food and Drug Administration would give fast-track approval to new ready-made, single dose cocktails to treat AIDS, including generic versions made in India. According to US Global AIDS Coordinator Randal Tobias, the approved drugs could be offered by the US AIDS programme to "developing countries, where international patent agreements permit them to be purchased."

Until now, the US government had resisted approvals for 'copycat' drugs, arguing that they might not be safe. The Nobel-winning NGO Doctors Without Borders and the World Health Organisation, however, disagree and are distributing generic versions made by two Indian companies. AIDS activists have accused the US government of catering to big pharmaceutical companies that make brand-name drugs under lucrative patents.

Coinciding with the government's announcement of the policy change, a number of brand-name drugmakers said they were planning to make their own combination doses of HIV drugs.

Main Features of the EU's Latest WTO Offer

On 9 May, EU Trade Commissioner Pascal Lamy and Agriculture Commissioner Franz Fischler sent a letter outlining their current position on key WTO issues to the trade ministers of all WTO Members. Reactions to the document have ranged from satisfaction to outright alarm.

Most importantly, the letter stated that, provided "an acceptable outcome" on agricultural market access and domestic support, the EU "would be ready to move on export subsidies". The commissioners insisted, however, on first clarifying the meaning of 'parallelism' with regard to export credits and state trading enterprises. They also expressed a preference for the 'blended' formula for agricultural tariff reductions developed by the EU and the US prior to the Cancun Ministerial Conference, albeit "with the necessary modifications".

With regard to domestic support, they said the EU was ready to commit to "a large reduction in trade-distorting (amber) support, as well as reduction in existing blue box payments and their capping." In addition, the commissioners said they believed *de minimis* support should be eliminated for developed countries and that there should be "new rules, which would prevent subsidising countries from transferring subsidies between and within boxes." Nevertheless, while professing to be "open to commitments guaranteeing the overall reduction of trade-distorting domestic support", they drew the line at restricting 'green box' measures, currently unlimited and exempt from capping. The ongoing reform of the EU's Common Agricultural Policy (CAP) relies heavily on decoupling state aid from production levels and privileging environment-friendly farming methods, which are covered by existing green box rules.

The letter stated that developed countries should eliminate all forms of export support to cotton (the EU does not have any), and provide "free and unfettered market access and significantly reduce and, if possible, eliminate the most trade-distorting subsidies."

Industrial Goods, Services and the Singapore Issues

The commissioners proposed that negotiations on non-agricultural market access focus on a "simple, general and ambitious formula for market opening accompanied by a short set of qualifications or exceptions in country or product terms." They specified that exceptions could be accepted for "clearly identified for products of particular sensitivity to developing countries" and that the principle of "less than full reciprocity" needed to be made more operational.

With regard to services, the commissioners said that all developed countries should show openness to developing country interests, particularly on the temporary presence abroad of professional service providers. But they insisted that it would be 'inconceivable' to conclude the Doha Round "without a significant level of new and substantial commitments on services."

On the Singapore issues, the commissioners confirmed that the Union was ready to drop investment and competition policy from the 'single undertaking', while being ready to join the consensus view on transparency in government procurement. That would leave trade facilitation as the only subject for negotiation within the Doha Round.

G-90 to Have Round 'For Free'

Mr Lamy and Mr Fischler suggested that least-developed and other "weak or vulnerable developing countries in the same situation – essentially the G-90¹" should not have to open their agricultural or industrial goods markets beyond their existing commitments, and should be able to benefit from increased market access offered by both developed and advanced developing countries. In effect, the commissioners said, the G-90 should have the Round 'for free' except for increasing their tariff bindings to a 'reasonable' level. They also said that the EU was open to setting up a "negotiating group on some of the outstanding special and differential treatment and implementation requests tabled by Members" as proposed by some developing countries.

¹ The G-90 alliance consists mainly of least-developed countries and developing nations – mostly former European colonies – in Africa, the Caribbean and the Pacific.

Canada's New Patent Bill Provides a Basis for Improvement

Richard Elliot

On 14 May, Canada became the first country to adopt a law that permits the export of generic medicines manufactured under compulsory licence to developing countries. This article reviews the positive and negative features of the legislation.

On 30 August 2003, the WTO General Council unanimously adopted a Decision on 'Implementation of paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health' (IP/C/W/405). The Decision is supposed to address the difficulties faced by WTO Members lacking sufficient pharmaceutical manufacturing capacity "in making effective use of compulsory licensing" to obtain cheaper medicines. It allows countries with generic manufacturing capacity to permit exports to countries without domestic manufacturing capacity, through an (interim) waiver of the TRIPs Article 31(f) restriction that compulsory licensing may only be used 'predominantly' for supplying the domestic market of a country.

In September 2003, Canadian civil society organisations called on Canada to implement the Decision. On 14 May 2004, Canada became the first country to pass such legislation.¹ In theory, Bill C-9 (*An Act to amend the Patent Act and the Food and Drugs Act*) makes it possible for Canadian generic pharmaceutical producers to obtain licences to manufacture patented medicines for export to eligible countries.

It is significant that a G-7 country has taken such a step, and civil society organisations managed to significantly improve the bill from its original form. In particular, they succeeded in eliminating the anti-competitive 'right of first refusal' clause that would have allowed patent-holders to scoop contracts negotiated by generic suppliers, and rebuffed several problematic 'alternatives' put forward by industry and government. But as the bill still falls short of providing a 'model', other countries should learn from it and avoid replicating its defects.

Limited List of Medicines

Among the most serious flaws is the bill's schedule of pharmaceutical products subject to compulsory licensing. The federal Cabinet may, upon ministerial recommendation, add other products, and an advisory committee will be established.

As enacted, the bill includes a list of 56 products, derived principally from the WHO's Model List of Essential Medicines. In response to criticism, the government agreed to include all those anti-retrovirals for treating HIV/AIDS currently approved in Canada.

WTO Members agreed they would not limit the 30 August 2003 decision to just specific diseases or products. Canadian advocates criticised the government for reneging on that international consensus and urged the list be abolished. They warned that requiring ministerial recommendations and a Cabinet decision to add any product would permit lobbying by brand-name companies and create delay. The government dismissed these concerns, stating the legislation would not be limited to dealing only with HIV/AIDS, tuberculosis and malaria, nor just to medicines on the WHO model list.

But these concerns proved well founded. The opposition New Democratic Party proposed the addition of a number of medicines to the schedule, including two medicines to treat community-acquired pneumonia, one of which (clarithromycin) is also used prophylactically to prevent mycobacterium avium complex (MAC), a life-threatening infection in people living with HIV/AIDS. Clarithromycin produced by an Indian generic manufacturer is among the HIV/AIDS medicines pre-qualified by the World Health Organisation.

Pharmaceutical companies lobbied against the additions. And, notwithstanding the government's previous assurances, its representatives argued in Parliament against the motions, stating the medicines were not needed to treat HIV/AIDS, TB or malaria and were not on the WHO's list of essential medicines. The motions were defeated. The process illustrates the pitfalls of having such

a list of products. This is a serious flaw in the Canadian legislation.

NGO Procurement

Bill C-9 states that any NGO wanting to contract with a Canadian generic producer must get the (undefined) 'permission' of the government of the importing country. This requirement applies even if the product is not patented in that country or the NGO has obtained a compulsory licence authorising importation, and even if the product is approved for sale. This requirement is not based on TRIPs or the Decision. It creates unnecessary hurdles to NGOs supplying cheaper medicines and invites political manipulation.

Royalty Payable to Patent-holder

Bill C-9 will likely set a reasonably good precedent in its approach to royalties payable to a patent-holder. The details remain to be set out in regulations, but the government has committed to establishing a formula linking the royalty rate on any given contract to the importing country's ranking on the UN Development Program's Human Development Index. The effective cap will be four percent of the value of the contract for the highest-ranking country. Most eligible importing countries rank well below this, meaning royalties in those instances will be lower. If enacted as promised, this will be a positive feature of Canada's law.

Non-WTO Developing Countries

The Government originally intended to permit exports only to WTO Members – and to non-WTO Members recognised by the UN as 'least-developed countries' (LDCs). But activists argued that nothing prohibited Canada from extending this benefit to other non-WTO Members.

In the end, the bill does allow for compulsory licensing for export to non-WTO countries, but with unjustifiable conditions attached. A Canadian generic producer may get a licence to export to a non-WTO

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Member only if that country:

- is eligible for 'official development assistance' according to the Organisation for Economic Cooperation and Development;
- declares a 'national emergency or other circumstances of extreme urgency'; and
- specifies the name and quantity of a specific product needed for dealing with that emergency.

This imposes on non-WTO developing countries an unethical 'emergency' threshold that is unsound health policy and was rejected by developing WTO Members in negotiating the 30 August 2003 Decision.

In addition, the country must agree the imported product "will not be used for commercial purposes." Allowing such use may lead to it being struck off the list. This limits the possibility of commercial competition in the importing country's marketplace. The term is also undefined, raising questions about the distribution of imported generics via commercial actors in the private sector (e.g., retail pharmacies) in the importing country. This provision is unnecessary under TRIPs and the WTO Decision and should be rejected.

Price and Profit Caps Invite Vexatious Litigation

Under Bill C-9, the Canadian patent-holder may apply for a court order terminating a compulsory license or ordering a higher royalty, on the basis that a generic company's contract with a purchaser is 'commercial' in nature. The patent-holder must allege that the generic producer is charging an average price that exceeds 25 percent of the patent-holder's average price in Canada. No such court order may be made if an audit demonstrates the generic producer's average price is less than 15 percent above its direct manufacturing costs. This section invites vexatious litigation by patent-holders as a disincentive to generic producers' use of this system, and is not required under TRIPs or the WTO Decision.

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ENDNOTES

¹ The full text of Bill C-9 and other materials can be found on-line at: <http://www.aidslaw.ca/Maincontent/issues/cts/patent-amend.htm>.

Textiles Liberalisation Sparks Reactions

With the removal of quotas on textile imports scheduled for 2005, developing countries seek to ensure that other restrictions do not take their place, while textile lobbies argue for delaying action.

The US, the EU, Norway and Brazil have already officially announced that they will terminate remaining quotas on textiles and apparel by 1 January 2005 as required by the Agreement on Textiles and Clothing (ATC). Until now, the US has removed 20 percent of the 937 import quotas in place when the phase-out began, and the EU 32 percent of its original 303 quotas. As the remaining restrictions affect items of the greatest commercial value, the final quota removals will result in profound changes in the international textiles trade, with China and India in line to reap the lion's share of quota-free access to rich country markets. Smaller producers, whose market share has been protected by quotas, stand to lose from across-the-board liberalisation. Least-developed countries and others benefiting from special arrangements, such as the US African Growth and Opportunity Act (AGOA) and the EU's Everything But Arms (EBA) initiative, will see their preferential margins narrow, although continued duty-free access will cushion the effect to a certain extent.

Once textiles are integrated into the WTO in 2005, import tariff reductions will be subject to negotiations in the WTO Negotiating Group on Non-agricultural Market Access. The current average tariff is about 12 percent (compared to 3.8 percent for all industrial goods), but 'sensitive' of fully processed textiles items commonly face tariffs between 30-40 percent. The Doha Ministerial Declaration calls on Members "to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries."

Preventive WTO Measures and Rearguard US Action Sought

On 13 May, twenty-one member countries of the International Textiles and Clothing Bureau (ITCB), which represents the interests of developing country textile exporters, circulated a communication at the WTO warning against the risk of restraining countries resorting to "alternative methods of protection" when the quotas are removed. The WTO's Textiles Monitoring Body is currently preparing a final review of the implementation of the textiles agreement, and the ITCB urged it to "underscore the desirability of restraining Members from taking steps to avoid any rush to alternate methods of protection by their domestic industries following the abolition of the large bulk of quota restrictions only at the end of the phase-out process." Such methods could include a raft of new anti-dumping and countervailing investigations or safeguard actions, as well as the use of non-tariff barriers such as hiked-up technical standards.

In contrast, the US National Council of Textile Organisations is planning to send a petition to President Bush in late May requesting him to delay the quota removal by a further three years. The letter evokes the possibility of more than 600,000 job losses in the US and as many as 30 million around the world after the quota phase-out. While the motive of the letter is to shield the US textiles industry from vastly increased competition, the Council argues that quota removal would have dire consequences for the US national security: "Many of our key allies in the war on terror, as well as our strategic trading partners, will quickly see millions of their workers put out on the street." The disappearance of jobs and economic hardship would make those nations "less able to lay out massive funds to fight terror and more likely to become hotbeds of terrorist activity," the Council warned. Among US allies likely to be most severely affected by China's dominance, the Council listed Turkey, Egypt, Indonesia, Bangladesh, the Philippines and Pakistan. In addition, the Council said that the destruction of "more than half a million textile and apparel manufacturing jobs in Latin America [would] likely trigger a new wave of illegal immigration that will further burden state and local governments at a time of economic difficulty."

So far, the US Administration has indicated that the phase-out will happen as scheduled.

New Perspectives for Integrating Sustainable Development into Regional Trade Agreements

Eric Peters

Since regional trade agreements (RTAs) emerged as a key tool to foster economic integration in the 1990s, most of the debate has focused on 'good' or 'bad' regionalism, i.e. trade creation or diversion. This article takes a more global view and analyses the potential of RTAs to promote sustainable development, stressing the needs to adopt a strategic approach and a better focus on implementation.

SD and RTAs: Need to focus trade tools for sustainable growth

While in recent years most countries have endeavoured to integrate sustainable development (SD) objectives in their regional trade agreements, emerging evidence shows that the effective contribution of RTAs to SD could still be optimised. Recent studies¹ illustrate the multidimensionality of the impacts of RTAs and their reliance on timing and framing circumstances. More generally, they show that:

- economic and other long-term benefits of trade opening are not automatic and depend on a high number of external factors (growth sharing, regional integration, market failures, information asymmetry and domestic law enforcement); and
- liberalisation generates environmental and social adjustment costs that can be mitigated if addressed by relevant domestic and regional policy measures.

Addressing the Political and Social Acceptability of RTAs

The social and political acceptability of market opening is neither obvious nor consensual. It is clearly illustrated by the legitimacy crisis of trade liberalisation that has been emerging since 1998. Growing public concerns that call liberalisation into question can be both genuine and legitimate. They relate, for example, to the power of the state to regulate and to the future of agriculture and development policies. Many of these fears tend to focus on the small but visible part of the iceberg – i.e. some negative effects, such as restructuring adjustment costs – and fail to analyse the greater but diffuse opportunities of trade opening (economic growth, development of new industries and services, better use of natural resources and poverty reduction).

Policy-makers need, however, to propose concrete solutions showing they have analysed and integrated these concerns. This is particularly crucial in the case of bilateral agreements such as the one between the EU and Mercosur, which is expected to have significant impacts on trade flows.

Dealing with Uncertainty

The signature of an agreement is often seen as the end point of a process, while what really matters is what occurs after the signature, including the effectiveness of implementation by both parties. To some extent, within this 'after', we enter an area of uncertainty. Our capacity to control and predict with accuracy the effects of a trade agreement is limited by the difficulty of controlling all potential factors that may affect the complex range of systems (economic production systems, natural resources) and their environment (investors' decisions, domestic frameworks, safety nets, protection of environmental resources). To manage uncertainty while staying on course towards sustainable development, the following requirements should be included into the negotiation preparation: (i) establishing SD as a clear strategic goal; (ii) maximising the agreement's contribution to SD; and (iii) setting up institutional mechanisms allowing flexible implementation, which makes it possible to react to changing conditions.

Defining a Strategic Approach for SD

Three key points form the foundation for building a coherent and efficient strategic framework for better integrating sustainable development within RTAs:

- **Base the approach on dialogue and partnership:** SD integration is more of a marathon than a 100 metre sprint; it requires the buy-in of each party. Any step forward should be developed in partnership, putting the emphasis on process and confidence-building.

- **Develop governance:** Mutual supportiveness between trade, environment and social policies requires good governance and RTAs should contribute to this goal at national, regional and interregional levels. This requires an open and transparent negotiating process with the participation of the trade, environment and employment ministers of both sides, and involvement of a broad range of stakeholders. Regional and international organisations – such as the Inter-American Bank of Development, the UN Environment Programme – could play a useful role through their expertise, financial support and capacity-building.
- **Better focus on implementation:** In order to improve the benefits of effective trade rules, the uncertainty and lack of implementation capacity of some developing countries should be taken into account.

Maximising the Contribution of the Agreement to SD

Recognition by both parties that sustainable development constitutes an overarching objective of the regional trade agreement is a pre-condition. There is also a need to build bridges with other international commitments, including multilateral environmental agreements (MEAs), ILO conventions, Agenda 21 and the World Summit on Sustainable Development.

It is equally important to ensure mutual supportiveness between the chapters of the RTA (preamble, co-operation and trade) and the three pillars (environmental, social and economic) of SD. Mutual supportiveness between the RTA and domestic policies should also be ensured. Reinforcing these links is vital in order to prevent any comparative advantage from being extended to areas where environmental resources are put in danger or where social protection is diminished. Parties could also commit to implementing their existing so-

Continued on page 22

cial and environmental legislation and to promoting corporate social responsibility.

Sustainability Impact Assessments

Sustainability impact assessments (SIAs) seek to identify the economic, social and environmental impacts of the future agreement. SIAs are not only essential to help clarify trade-offs between the three pillars of sustainable development, they also provide complementary measures for mitigating negative impacts and enhancing positive ones. Through the dual role of SIAs in highlighting existing SD issues and emerging trends, the contents of RTAs, as well as their implementation, can be improved.

Making Full Use of Trade Potential

Until relatively recently, RTAs focused mainly on enhancing both parties' market access. Recent experience has highlighted the key role of (i) trade rules and (ii) regional integration, to reap the benefits of opening. Trade rules help create a business environment (economic predictability, visibility and transparency) that supports sustainable growth. Regional integration is also critical for sustainable growth as it favours regulatory or institutional reform, helps overcome the economic and political disadvantage of the small size of many developing country economies, contributes to political stability and external security, and provides better macroeconomic discipline. While these two elements have been progressively integrated into EU trade policy, further improvements are still possible.

Each trade item in the negotiation agenda should be fine-tuned to ensure that it contributes fully to SD, for instance including ensuring full compatibility between intellectual property rights (IPRs) and the Convention on Biological Diversity, development of trade in environmental services, and market access incentives.

The last item offers highly interesting potential for investigation: the use of market access incentives to take advantage of an 'invisible hand' working for sustainability objectives. The core idea is to create trade incentives (supplementary tariff cuts or quotas, faster tariff phase-out) to promote trade in 'sustainable' products. Obviously, this will work particularly well in areas where the overall tariff levels are still high.

Thanks to the recent development of standards and certification, and to the current discussion of the Doha Development Agenda, a fairly broad range of products and services could be addressed by such incentives. The RTA context offers specific opportunities, as the parameters (flexibility, type of goods, choice of certification, etc.) have to be agreed only by the two partners.

The scope of the goods concerned should be ambitious and include a wide set of goods which demonstrate, either in their characteristics or in their mode of production (organics, forest products), high social and environmental standards and a clear contribution both to social development and environmental resources/protection objectives (air or water pollution abatement).

Setting up Institutional Mechanisms for Improving Implementation

The incorporation of coherence, flexibility and adaptability into the implementation process is a major challenge. It is therefore suggested that RTAs should be flanked with a Joint Commission on Sustainable Development (JCSD), i.e. an innovative joint institutional body in charge of monitoring the sustainable development dimension of the trade agreement. Its objectives would be to:

- create a forum for intercultural exchange, mutual understanding, confidence building, and exchanges of best practices;
- provide analysis during the agreement's implementation through (i) carrying out surveys and providing analytical views on the economic impacts of trade liberalisation (ii) ensuring in-depth monitoring of rules-related trade measures implementation (intellectual property rights, customs, sanitary regulations); and (iii) by providing joint analyses and assessments through, in particular, a common (SIA-like) framework for assessing trade policy impacts on SD in order to better identify and monitor the impacts of regional trade agreements;
- contribute to the enforcement of the SD commitments of the trade agreement (i) by developing common indicators to measure the progress towards SD within implementation (ii) ensuring monitoring and enforcement of its social and environmental commitments, and (iii) by generating synergies with other ongoing national and international initiatives in the social and environmental fields, including law enforcement and environmental protection; and
- promote coherence between analysis, implementation and bilateral co-operation by encouraging optimum allocation of resources to the needs identified in the course of analytical work.

The JCSD should have a joint Secretariat comprising representatives from all parties of the agreement and dispose of sufficient resources to finance analysis and organise consultations. It should engage in extensive interaction with civil society and rely on the active involvement of international and regional organisations for monitoring the agreement. International organisations could, *inter alia*, provide technical and analytical support, make recommendations or help design mechanisms to make implementation of the regional FTA supportive of MEAs and ILO conventions.

There are obvious similarities between the proposed JCSD and the NAFTA Commission on Environmental Co-operation, but the degree of ambition of the JCSD is higher: the concept is more comprehensive and includes clear linkages with RTA implementation.

While the ideas presented here could be further elaborated, they offer a sufficiently solid ground for policy-makers to build on.

Eric Peters is a member of the EU Commission's DG Trade's Sustainable Development team. The views expressed here are personal and can in no way be attributed to the Commission.

ENDNOTE

¹ See Carnegie Endowment for International Peace: *NAFTA's Promise and Reality* (2003); Commission Méditerranéenne du Développement Durable: *Libre Echange et l'environnement dans le contexte Euro-Méditerranéen* (2003); and PricewaterhouseCoopers: *Sustainability Impact Assessment (SIA) of the Negotiations of the Trade Agreement between the European Communities and the Countries of the Co-operation Council for the Arab States of the Gulf* (2004), Globalisation, Growth and Poverty, World Bank (2002)

Developing Regional Agendas for IPRs and Sustainable Development

On 22-24 March 2004, ICTSD and UNCTAD, together with the Centre for Interdisciplinary Studies in Industrial and Economic Law of the University of Buenos Aires and the Peruvian Society on Environmental Law, organised a South American regional dialogue on intellectual property rights (IPRs) and sustainable development in Buenos Aires. The meeting aimed to identify relevant political actions and areas where research was lacking. It also sought to review regional challenges related to IPRs and sustainable development, as well as South America's capacity to negotiate at the bilateral, regional and multilateral levels. Participants included experts (acting in their personal capacity) from governments, international organisations, the private sector, civil society, academia and other institutions interested in the issue area.

Three specific themes were discussed. The first dealt with the principal effects of competition policies on intellectual property regimes; the second looked into the aspects of intellectual property rights related to biodiversity; and the third addressed issues of coherence between the different fora and levels of negotiations with the objective to identify strategies that respond to national and regional interests.

The main message of the regional dialogue was that it would only be possible to achieve balanced results at international, regional or bilateral levels when asymmetries between countries negotiating on higher standards of intellectual property protection are duly recognised.

Documentation, including 'think pieces' by Carlos Correa, Ignacio de Leon and Manuel Ruiz, as well as a summary of the discussions and a list of participants, is available at http://www.iprsonline.org/unctadictsd/dialogue/2004-03-22/2004-03-22_docs.htm.

Another regional dialogue, in collaboration with Trade and Industrial Policy Strategies (TIPS), will be convened in Cape Town from 29 June to 1 July to examine the issues from a Southern and Eastern African perspective. The meeting will provide a platform for a strategic discussion between key stakeholders, including Geneva-based negotiators, capital-based policy makers, academia, NGOs and the private sector. The participants will review general trends and thematic issues of particular relevance to the continent in order to identify elements of a regional agenda for development-oriented intellectual property policies and informal mechanisms. The tentative agenda (still subject to change) includes sessions on the harmonisation of IP standards and bilateral free trade agreements; health, competition policy and intellectual property; IP tools, innovation and commercialisation of research and development; and agrobiodiversity and intellectual property.

The regional dialogues take place in the context of the joint UNCTAD-ICTSD Project on Intellectual Property Rights (IPRs) and Sustainable Development, which aims to improve understanding of the development implications of IPRs and facilitate an informed participation of developing countries in ongoing multilateral and bilateral negotiations through policy-oriented research, multi-stakeholder dialogues and outreach.

Recent publications from the UNCTAD-ICTSD Project include:

- *The Socio-economics of Geographical Indications* by Dwijen Rangnekar
- *Nutrition and Technology Transfer Policies* by John H. Barton
- *Encouraging International Technology Transfer* by Keith E. Maskus
- *Intellectual Property and Computer Software* by Alan Story, and
- *Development in the Information Age* by Ruth L. Okediji

For more information about the dialogues or the UNCTAD-ICTSD Project on Intellectual Property Rights and Sustainable Development, please contact David Vivas at dvivas@ictsd.ch or visit www.iprsonline.org.

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

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

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Fundación Futuro Latinoamericano, Quito, Ecuador

Web: <http://www.ffla.net>

PASSERELLES

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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

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Meetings of WTO Bodies*

June 2-4	Committee on Agriculture, Special Session*
June 7-8	Negotiating Group on Rules
June 9-10	Negotiating Group for Market Access
June 15-17	Council for Trade-related Aspects of Intellectual Property Rights (TRIPs)
June 21-22	Committee on Trade and Environment, regular session followed by Special Session*
June 22-23	Comm. on Sanitary and Phytosanitary Measures
June 22	Dispute Settlement Body
June 23-25	Committee on Agriculture, Special Session*
June 28	Council for Trade in Services Special Session*
July 1	Committee on Technical Barriers to Trade
July 2	Council for Trade in Services Special Session*
July 5	Council for Trade in Goods
July 14-15	Committee on Agriculture, Special Session*
July 19	Committee on Trade and Development, Special Session*
July 20	Dispute Settlement Body
July 27-29	General Council

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

Other Meetings

June 3-4 Paris	Fifth SUSTRA Workshop on European Governance and European Opinions on Trade and Sustainable Development http://www.agro-montpellier.fr/sustra/
June 11-12 São Paulo	UNCTAD Civil Society Forum http://www.abong.org.br
June 13-18 São Paulo	Eleventh UN Conference on Trade and Development (UNCTAD XI) http://www.unctad.org
June 22-23 Puebla	NAFTA Council for Environmental Cooperation http://www.cec.org/

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