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## Facts and Figures

- Between 1990 and 2000, exports grew in 51 least-developed countries (LDCs). In 18 of them, this growth had an immiserising effect and in 11 cases the effect was ambiguous. The export growth translated into an increase in private consumption in only 22 cases and the correlation was positive in just three LDCs for both halves of the decade.
- Due to their long involvement in structural adjustment programmes, most LDCs' trade regimes are now more open than those of other developing countries and as open as the trade regimes of high-income OECD countries.
- In agriculture-exporting LDCs increased pressure on land is causing environmental degradation and impoverishment. Development of non-agricultural employment is necessary, but rapid and deep liberalisation has led to de-industrialisation as import-substitution industries have collapsed.

Source: *The Least-developed Countries Report 2004*, UNCTAD

## What Chances for a July Package?

The 30 June session of the Trade Negotiations Committee provided an opportunity to assess the chances of meeting the end-July deadline for agreement on broad negotiating frameworks for agriculture and industrial market access in the WTO's beleaguered Doha Round. Agreement on the Singapore issues, development concerns and cotton are other key elements of the package.

The contrast between numerous recent ministerial-level pledges of flexibility and commitment and the very slow pace in Geneva begs the question of whether any real appetite for the Doha Round actually exists. WTO Director-General Supachai Panitchpakdi told the TNC that it was "increasingly worrying" that "a strong political commitment [...] was not being translated into progress here in the negotiations." Nearly all groupings of Members are planning more ministerial conclaves in the run-up to the 27-29 July General Council meeting.

Unless those encounters produce significant new flexibility, many fear that the July 'package' might be so vague as to be virtually meaningless. Dr Supachai and General Council Chair Shotaro Oshima are to circulate a first overall draft text of the July outcome within the next two weeks. Rather than paper over cracks, Dr Supachai said the draft would "reflect the state of convergence – or divergence – as it exists." He intended the draft to be a "launching pad for the last phase in which you will work to finalise the July product." It is also clear that Ambassador Groser, who chairs the agriculture negotiations, is pressing for broad solutions to the most controversial issues before rather than after the July deadline.

As the Chairs of all negotiating groups reported on progress – or the lack thereof – to the TNC, it quickly became obvious that no significant movement would occur anywhere until the shape of the framework agreement on agriculture is known. This applies in particular to negotiations on non-agricultural market access (NAMA), where many Members are unwilling to agree to a tariff reduction formula without a clear indication of the level of ambition in agriculture (see page 13). Several Members are holding back the submission of their services offers for the same reason. While announcing its (extremely modest) services offer on 28 June, Brazil openly said that its "level of commitment in market access in the services negotiations will in the final analysis reflect the movements other Members are prepared to undertake in the areas of the negotiations where we have a particular interest, specially in agriculture, which by all standards is the core and the 'raison d'être' of this round."

### Agriculture: Where Are the Deal Breakers?

The problem of balanced commitments on the Doha Round components is compounded by the fact that Members are seeking an equal level of specificity on all three pillars of the agricultural negotiations: domestic support, export competition and market access (tariffs). In his report to the TNC, Ambassador Groser gave a frank appraisal of what needed to be agreed.

**Domestic support:** Political guidance is needed on whether to negotiate a complete elimination of the current *de minimis* limit, which allows developed countries to use trade-distorting support worth 5 percent of their total agricultural production. As for Amber Box (most distorting) support, Ambassador Groser said there was general agreement that higher subsidies should be cut most. He also detected "some resonance" to the idea of capping product-specific support, but noted that, due to no sign of agreement, reducing support for each product could simply be identified as a subject for further negotiation.

*Continued on page 2*

# Bridges

## Between Trade and Sustainable Development

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Blue Box payments are likely to be capped, although some flexibility might be needed for countries where the limit would mean drastic reductions. Simple 'box shifting' could be avoided through developing criteria that would make Blue Box payments clearly different from Amber Box payments. In addition, signs of convergence exist on the need to review the basic concepts, principles and effectiveness of the Green Box, and to tackle "serious deficiencies" in monitoring and surveillance, which would have to be negotiated after July.

**Export competition:** The July framework should say that a credible end-date will be negotiated for all forms of export subsidy, as well as state that 'equivalent disciplines' will be set on export credits, state trading enterprises (STEs) and food aid. Agreement on export credits and STEs is a potential deal-breaker, and Mr Groser exhorted Members to choose urgently between two options: (i) either to signal willingness in the next few weeks that they will abolish the 'governmental instruments' themselves, or (ii) to state that they are willing to focus, after July, on such questions as the terms of credit, insurance or the operations of STEs in order to identify whether subsidies are involved (interest rates, repayment periods, insurance premiums, government guarantees to cover risk, etc). Language on food aid could be easier to agree.

**Market access:** This remains the most difficult of the three pillars. There seems to be a degree of convergence toward a 'tiered approach', which would divide products into bands according to the height of their tariffs. The reduction formulas to be applied are, however, far from agreed. One option could be to split the tariff bands into categories, one subject to Swiss (or similar) formula cuts, and another to a flat percentage reduction.

The potential deal-breaker is how to deal with 'sensitive products' of developed countries. The G-10 group (Japan, Korea and Switzerland, among others) is unwilling to agree to a *quid pro quo* where maintaining very high tariffs on some products would entail mandatory quota expansion to ensure some increase in market access, with perhaps the possibility of negotiating certain exceptions. Mr Groser said that due to the difficult nature of sensitive products "getting this right, now, seems to be the critical challenge for the market access pillar." For many countries, greater access to export markets is a condition for cutting export subsidies.

In contrast, Members largely agree on flexibilities for developing countries such as the 'special products' category, the special safeguard mechanism and the need to address the erosion of preferential margins. Details (such as the number of, and criteria for, special products) should be negotiated after July, Mr Groser proposed.

**Cotton:** According to Mr Groser, discussions so far do not permit to make any recommendations.

The next agriculture negotiating session will take place on 14-16 July.

### Development Concerns

Addressing development issues, such as the strengthening of special and differential treatment (S&D) provisions in WTO Agreements, is among the central elements of the July paper, but little progress was apparent in the TNC report of the Chair of those negotiations. Beyond a general reference to "the need to ensure that the Doha Round is a genuine development round", only the following two concrete elements of "the development component of the July package" were identified: (i) a decision on the 28 Agreement-specific proposals on which Members had agreed to in principle; and (ii) elaboration of the process that would unlock the current impasse and take the work on remaining issues forward.

The next formal negotiating session is scheduled for 19 July.

### Singapore Issues

Only trade facilitation will be part of the Doha Round, but disagreement persists on when to launch negotiations, as the G-90 coalition of developing and least-developed countries wants the 'clarification process' to continue for the time being (see page 20). It is also still unclear whether any discussions at all will take place in the WTO on the other three topics, i.e. investment, competition policy and transparency in government procurement.

# Make Drugs Affordable: Replace TRIPs-plus by R&D-plus

*James Love and Tim Hubbard*

The global trade framework for financing new medical technologies is in trouble. It will and should change. If we want innovation, fairness and efficiency, we will need innovation in the trade framework.

In November 2001, WTO Members adopted the Doha Declaration on TRIPs and Public Health, which said the TRIPs Agreement “can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all.” This was a symbolic step toward fairness. But within months the US government launched a plethora of bilateral trade negotiations seeking tough new ‘TRIPs-plus’ intellectual property measures<sup>1</sup> that would plainly undermine the declaration.

The European Commission, the United States and Japan have also raised issues concerning drug pricing in various bilateral trade discussions. In 1999, the European Commission<sup>2</sup> and the US<sup>3</sup> asked Korea to accept hefty prices for patented medicines. The European Commission brought a similar case against Turkey in 2003.<sup>4</sup> The United States has a long history of attacking price control mechanisms in poor countries, and has recently launched a campaign to undermine price negotiations by higher income countries as well.<sup>5</sup>

Trade agreements involving intellectual property rights (IPRs) or drug prices are justified because of the need to provide incentives for research and development (R&D). For those who want medicines to be more affordable, it is necessary to confront the big issue of how we finance R&D on new products *and* provide equitable access.

The TRIPs Agreement and the growing number of new TRIPs-plus trade agreements are flawed. They seek to increase investment in R&D, but only by increasing prices. The more successful these agreements are in raising prices, the greater the problems of access. The conflict is most clear in developing countries, where patent owners sell to the highest income groups to maximise profits.<sup>6</sup> But high-income countries are also increasingly rationing medicines. For instance, Singular, a product to manage chronic asthma, is reimbursed in only some high-income countries. Drugs that treat severe illnesses come with astronomical price tags. According Dr Robert Wittes, a research scientist and former BMS executive, insurance companies are resisting paying for cancer drugs like Erbitux, which is priced at US\$10,000 per month.<sup>7</sup> Wittes notes: “The increasing co-pay percentages of most plans and the capping of benefits in others will compel a major financial outlay for those determined to have the treatments.” Third party payers will decide that medicines are simply not worth paying for, or limit ‘off-label’ uses – something that is particularly disturbing in cancer, where drugs are commonly used “for a broader array of indications than specifically approved by the FDA.”

Marketing monopolies are also inefficient. Only a small fraction of the high prices is reinvested in research and development, and most of this on non-innovative ‘me too’ products for chronic diseases that afflict high-income patients. Very little private R&D is invested in basic research, public goods such as the Human Genome Project (HGP) or Medline, the development of vaccines, or higher priority medicines, such as new treatments for malaria. Higher IPR protection for products is also associated with a number of other problems, including excessive secrecy and anti-competitive barriers to follow-on innovation.<sup>8</sup>

The massive investments in marketing medicines protected by patents and other exclusive rights are not only wasteful, they are also often associated with inappropriate use of products arising from fraudulent or unethical practices that skew the evidence and incentives that determine which medicines are prescribed.<sup>9</sup>

A framework that relies upon private marketing monopolies is morally repugnant, economically inefficient and corrupt. We can and should do better.

## R&D-plus and Free Riding

We propose a new trade framework – focused directly on R&D rather than patent rights or drug prices, which are mechanisms to finance R&D.<sup>10</sup> The idea is to change the context from commerce to health. This is not to say that money is not important. The development of new medicines is expensive. We need a global framework to ensure that the burden of paying for R&D is fairly shared. The trade framework has to prevent ‘free riding’.

Agreements on IPRs or drug prices are partial steps to address free riding, but they only address one financing mechanism – high drug prices. There are other options. Countries can impose R&D mandates on private firms, such as requirements that a percentage of drug sales or insurance premiums be invested in R&D. Mechanisms like the US ‘orphan drug’ tax credit provide decentralised funding for clinical trials, as do tax incentives to donate money to charitable trusts, such as the Gates, Ford or Rockefeller Foundations. There is also the option of direct R&D funding via the public sector, such as the US\$100 per capita US taxpayers spend for the National Institutes of Health (NIH). Some economists and political leaders are advocating greater use of public or private sector funded ‘prizes’ as a reward for successful innovation.

To sum up, while other countries spend less (per capita) on public sector R&D than the US does, they all do something, and there is growing interest in alternative mechanisms to finance R&D, such as public private partnerships (PPPs), tax breaks, research mandates, competitive intermediaries, or prize funds. These also cost money.

A trade framework that only recognises IPRs skews global investments, and forces us to choose high drug prices to finance new medicines. It does nothing to address free riding in public goods.

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The R&D-plus approach would count both public and private expenditures. It would also allow countries the freedom to choose the optimal mix of public and private sector spending, and it would allow more flexibility in terms of finance mechanisms. Most importantly, it would allow countries to choose mechanisms that are consistent with desired levels of access, and which are more efficient in promoting useful innovation. Competition among financing mechanisms would be encouraged.

In an ambitious multilateral setting, the R&D-plus approach would involve setting research and development targets that would be reasonably related to incomes and stages of development of the country – such as 10 to 15 basis points of GDP. In meeting the targets, countries could buy high priced drugs from foreign pharmaceutical companies, like they do now, and get credit for the share of sales the foreign firm actually reinvests in R&D. But countries could also choose other options, such as investing money in their own universities or businesses, using resources domestically to build capacity and provide skills and jobs.

For bilateral, regional or more limited multilateral negotiations, the R&D-plus approach can supplement or co-exist with traditional IPR agreements. In its free trade area negotiations with the US, Thailand could propose to increase domestic spending on research and development for SARS, Bird Flu or AIDS vaccines, in return for a weaker IPR chapter than the one in the Central American Free Trade Agreement (CAFTA).

More Thai spending on R&D for global infectious diseases would be attractive to many in the US Congress who want broader sharing of global R&D costs. It would also be a more attractive alternative for Thailand than facing high prices for drugs for heart disease or cancer that few would afford. R&D-plus would be a better outcome than TRIPs-plus for both the United States and Thailand.

For a number of reasons, R&D-plus is likely to lead to a more decentralised R&D infrastructure, with more technology transfer and capacity building than is likely for a TRIPs-plus approach.

## R&D-plus, Health and Development Objectives

With TRIPs-plus we get too much investment in non-innovative copycat products, and too little investment in public goods, innovative medicines, vaccines and other health priorities. How would R&D-plus be better? Once the context of the trade agreement is changed from commerce to health, it is easier to address social agendas. One mechanism is to provide for social weights that would increase the measured contribution toward benchmarks. Discussions of R&D treaties have focused on three areas where this might be useful:

- technology transfer: such as collaborative projects between higher and lower income countries;
- openness: such as the Human Genome Project (HGP), or open source drug development projects; and
- public health priorities: such as research on malaria and other neglected diseases or vaccines for AIDS and SARS.

## Concluding Remarks

In this short article we have presented a trade framework that does not require a choice between access and innovation. It does not choose between private or public sector approaches. Both are likely to be used. R&D-plus is flexible, featuring decentralised decision-making. In its pure form, global negotiators decide on targets for floors on R&D funding. Social objectives are addressed through weights that increase measured contributions toward the targets. Each country then chooses how it will meet those targets. Some will choose stronger IPRs, while others will prefer open source approaches. Some will favour public sector management of investments, while others will rely upon a more entrepreneurial private (profit or non-profit) approach. Most will choose mixed approaches. In the short run, more incremental R&D-plus approaches can be used to avoid the worst aspects of TRIPs-plus agreements.

We believe R&D-plus is both feasible and likely. The current system is not working for developing countries or for high-income countries. Strong IPR models are imploding even in the United States and Europe. We must find ways to avoid the rationing, the costly inefficiencies and the corruption of the scientific and medical professions – and to promote more open science in order to promote greater innovation. R&D-plus is the future, but we need it now.

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## ENDNOTES

<sup>1</sup> For patents: limitations on compulsory licensing, extension of terms, broader patent scope and lower novelty standards, and linkage to drug registration. Also, exclusive rights in health registration data.

<sup>2</sup> 1999/C 218/03. Rambau Garikipati, "EU companies frustrated with drug pricing guidelines," *Korea Herald*, 12 June 2004.

<sup>3</sup> The Korean Government agreed in 1999 to price new, innovative drugs at the average price in the US, the UK, Germany, France, Italy, Switzerland and Japan. *2002 National Trade Estimate Report on Foreign Trade Barriers*, USTR.

<sup>4</sup> 2003/C 311/04.

<sup>5</sup> The US introduced oversight of the Australia Pharmaceutical Benefits Scheme (PBS) into the US/Australia FTA. Also, International Trade Administration, Drug Pricing Study *Federal Register*: June 1, 2004, Volume 69, Number 105, page 30882-30883.

<sup>6</sup> In the Dominican Republic, the price of the heart disease drug Plavix is 60 percent of the income of an unskilled worker. Until recently, AIDS drugs in developing countries were priced at more than US\$10,000 per year.

<sup>7</sup> Robert E. Wittes, "Cancer Weapons, Out of Reach," *Washington Post*, June 15, 2004.

<sup>8</sup> *Keeping science open: the effects of intellectual property policy on the conduct of science*. Royal Society, April 2003.

<sup>9</sup> Richard Smith, "Medical journals and pharmaceutical companies: uneasy bedfellows," *BMJ* 2003;326:1202-1205 (31 May).

<sup>10</sup> TJ Hubbard and J Love. "A New Trade Framework for Global Healthcare R&D" *PLoS Biology*, 2004. 2(2): p147-150.



# Information: A Crippling Factor for the Doha Negotiations

WTO Members, and developing countries in particular, depend on accurate information to help set priorities and steer trade negotiations towards sustainable development goals. Such data is, however, often either lacking or too widely dispersed to be easily accessed. These difficulties can be further compounded for those developing countries that face human resource constraints in making the best use of available data and tools.

The importance of timely and relevant trade information for both trade negotiations and policy-making cannot be underestimated. On the broader level, any attempts of ensuring that negotiated commitments and trade rules are in line with national sustainable development priorities would be hard pressed to succeed without reliable trade-related data. The same can be said for trying to appreciate the specific legal and sustainable development implications of any number of trade rules or negotiating outcomes. Such information is also vital for a country to be able to identify the concessions of greatest value to be sought during the negotiations, as well as understanding the true commercial value of concessions offered in return.

To manage these challenges, both policy-makers and negotiators need to know *what* information is important to their trade negotiating strategy, as well as *how* and *where* to access it. A no less important question is *who* can access the information, which raises the issue of wider public availability of trade-relevant information.

## What Information Is Relevant?

Although the emphasis varies according to levels of development and economic structures, all trade negotiators need answers to at least the following questions:

- What are the main tariff and non-tariff barriers facing my country's products? In which markets?
- What is my country's market share for a particular product in different importing countries?
- What is my country's situation vis-à-vis competing exporters? Do they enjoy any special advantages (such as preferential access)?

In addition, both negotiators and policy-makers need information to estimate the potential sustainable development impact – economic, social or environmental – of a particular negotiating outcome.

## Where to Find It?

Negotiators have several channels for accessing trade-relevant data and information. Most WTO agreements require Members to provide specific information on measures taken to implement their Uruguay Round obligations. Information may also be gleaned from the reviews of Members' trade policies regularly carried out by the WTO Secretariat.

The major sources of relevant information from the WTO, however, are the two tariff databases maintained by the Secretariat – namely the Consolidated Tariff Schedules Database (CTSD) and the Integrated Database (IDB).<sup>1</sup> While these offer a great deal of useful information for negotiators and policy-makers, they fall short of filling the diverse information requirements for negotiations. In that the former shows bound tariffs, and the latter applied MFN tariffs, neither offers sufficiently comprehensive information on non-tariff barriers (NTBs) or *ad valorem* equivalents of specific tariffs<sup>2</sup>. In an environment where NTBs are increasingly overtaking tariffs in terms of achieving effective market access, this lack of comprehensive coverage of NTBs greatly hampers the ability of Members to gauge the real impact of the reductions negotiated at the WTO. This is further compounded by the effect of non-*ad valorem* duties, whose protectionist effects may be difficult to discern or evaluate during negotiations on tariff cuts (see also 'agriculture' below).

Countries also depend heavily on international organisations such as UNCTAD, the World Bank, the IMF and the International Trade Centre (ITC), which provide access to databases and analytical information. In particular, the World Bank's *World Integrated Trade Solution*

(WITS) software provides access to both the WTO databases mentioned above, as well as the UN Statistical Division *Commodity Trade Database* (COMTRADE) and the UNCTAD *Trade Analysis Information System* (TRAINS). The TRAINS database is of particular interest as it helps potential exporters identify the full range of existing barriers in foreign markets including tariffs (normally at the six digit-level), as well as a range of non-tariff barriers affecting a particular tariff line (filling, in part, gaps on NTB data left by the WTO databases).

This assortment of data is complemented by additional information in WITS on, *inter alia*, bound and duty-free tariff lines, share of non-*ad valorem* tariff lines, and measures of the prevalence of tariff peaks and tariff escalation, as well as a facility for users to conduct analytical exercises such as simulating the impact of different types of tariff-cuts or analysing the trade flow impacts of regional integration schemes. Via the ITC, countries also have access to *Market Access Maps*, which allow users to analyse protection at different levels of sectoral and regional aggregation and to simulate tariff reductions scenarios.

*Continued on page 6*

While the two tariff databases maintained by the WTO Secretariat contain a great deal of useful information, neither offers sufficiently comprehensive data on non-tariff barriers or *ad valorem* equivalents of specific tariffs to adequately fill the requirements of negotiators and policy-makers.

The lack of comprehensive coverage of NTBs greatly hampers Members' ability to gauge the real impact of the reductions negotiated at the WTO, and the protectionist effects of non-*ad valorem* duties may be difficult to evaluate during negotiations on tariff-cuts.

Information on barriers faced by domestic exporters is often supplemented by the local private sector itself. Various non-governmental organisations and advocacy groups may also offer information and tools (for example, methodologies to assess certain sustainable development impacts of trade policy), which can influence a government's policy decisions and negotiating positions at the WTO.

### Key Gaps and Challenges

As useful as these (and other) sources of information are, they do not fill the numerous informational requirements needed to inform trade negotiations. The issues touched on below – based on discussions with trade negotiators and other experts – offer a flavour of the gaps and challenges with regard to accessibility of trade-relevant information.

**Public accessibility of trade databases.** While the WITS software is available online, free of charge, the underlying databases have different contractual arrangements. Access to TRAINS is free for developing country governments, however other users (e.g. universities, think tanks) are normally asked for a financial contribution. Access to COMTRADE is by subscription from the UN. The two WTO databases are available only to Members and approved intergovernmental organisations. Facilitating public accessibility to these sources, at least for organisations undertaking work on trade policy issues, would greatly contribute to the prevalence of better-informed analytical inputs to trade policy-makers and negotiators, as well as stakeholders in the trade community at-large.

**Communication and co-ordination.** Exporters and trade ministries often fail to communicate relevant data quickly enough to Geneva-based trade negotiators. Many developing countries also lack institutional mechanisms to facilitate such communication.

**Dispersion of relevant information.** Timely notifications to the WTO, particularly with regard to agricultural domestic support measures, are often hindered by the difficulty in obtaining relevant information from sub-national governments. In addition to imposing costs on affected export-

ers, such delays also make it difficult for delegations to put particular measures on the 'hit-list' either with regard to dispute settlement or trade negotiations.

**Inadequate information on trade barriers and lack of detail in notifications.** That existing trade databases and notifications do not address trade barriers in a comprehensive manner is an important factor in the failure of developing countries' attempts to export new products. Furthermore, many notifications only describe the measure affecting trade in general terms. Thus if a Member wanted to discipline elements of the measure, either through negotiations or dispute, a fair amount of time-consuming research would still be required – which is often beyond the human and financial resource capacity of smaller delegations.

**Lack of relevant information:** There is a large information gap in areas not yet subject to notification obligations, such as services subsidies, or potential new negotiating topics such as trade facilitation. This is particularly true of non-tariff barriers, where the response from Members to requests for notifications has been lukewarm (see TN/MA/W/46 and TN/MA/S/5). A shortage of information on these barriers and distortions could send incorrect signals on the 'true' market access value of a trade-negotiating concession offered or hide the potentially negative impacts created on domestic suppliers through the granting of a market access concession (e.g. services subsidies). Information gaps surrounding possible new disciplines, including analytical studies on the financial, administrative and legal costs and benefits, may also discourage delegates from venturing into new negotiations (such as, for example, on investment and competition policy).

**Verification of information.** Most information obtained from Members is deemed to be fairly accurate. In case of doubt, Members can raise questions in the relevant committees and as part of the trade policy reviews. They can also crosscheck this data with information obtained from national websites or other international and regional organisations. Data held by Member governments have in many cases been reported to contain discrepancies due, for instance, to the inability of many customs organisations in developing countries to provide complete and accurate statistics on trade flows.

**Changes in market access requirements.** In many instances, developing country delegations point to notifications lagging well behind rapid changes in market access requirements, particularly those related to health and technical standards. Their exporters are thus hard put to assess the barriers actually facing their products on the ground.

**The problem of voluntary standards.** Business and consumer-driven standards may have an equal or greater impact on trade than government regulations. Unlike government mandated SPS and TBT measures, which must be notified to the WTO, exporters and delegations rarely, if ever, have access to complete information on the myriad of voluntary standards in use – making it more difficult to address any potential concerns on them in the context of relevant WTO bodies (see box on page 7).

### Agriculture: A sector for priority action

Agriculture, the sector that provides livelihoods for most of the world's poor, has been particularly affected by the lack of timely and relevant trade information.

**Delay in notifications.** In order to monitor the implementation of the Uruguay Round commitments in reducing domestic and export subsidies, Members must notify their Aggregate Measure of Support (AMS) to the WTO on an annual basis. However, notifications are often late, particularly with regard to domestic support where delays can run to two or three years.<sup>3</sup>

**Specificity of Blue and Green Box payments.** Members do not usually notify payments under the Blue and Green Boxes – which are exempted from reduction commitments – by product but as general programmes. This makes it difficult to estimate if such payments are 'specific' to a product unless additional information is provided. The lack of detailed data on domestic support was a key issue in the US-Brazil cotton dispute at the WTO as well (see page 5).

*Ad valorem equivalents for specific duties.* Very few countries have included *ad valorem* equivalents for their non-*ad valorem* duties on agriculture in their bound tariff schedules or the Integrated Database on applied tariffs. Non-*ad valorem* duties – used mostly in key markets such as the US, EC, Canada and Japan – comprise specific tariffs, compound rates, mixed-duty rates and technical duty rates (see footnote 2). The incidence of specific duties is highest in agricultural products of interest to developing countries, such as sugar, cocoa or textiles.

Specific duties have particularly pernicious protectionist effects, as they do not decline when the market price drops. They thus constitute an effective protectionist wall, especially for commodities that suffer declining prices, such as those (coffee, cocoa and cotton, for instance) exported by developing and least-developed countries. The existence of specific duties and other non-*ad valorem* duties make it difficult to estimate the actual level of protection for certain commodities. Further, they may create difficulties in using non-linear tariff-cut formulas in negotiations, such as the Swiss formula, which require *ad valorem* equivalents to be calculated for the remaining specific tariffs.

### Implications for Negotiations

Lack of knowledge about the actual level and form of their trading partners' trade-distortive agricultural support is a significant problem for negotiators seeking to understand the value of establishing a numerical threshold for overall spending under a certain subsidy category – an option that Members are currently considering for Blue Box<sup>4</sup> payments, for instance. In this context it is also crucial to have full clarity on present support levels if negotiators are to agree on reference periods for calculating Members' individual commitments. With regard to market access negotiations, a key challenge facing Members is finding agreement on a common methodology for calculating *ad valorem* equivalents for specific tariffs. This would be a precondition for avoiding the negative experiences many Members had during the Uruguay Round, when countries were essentially free to choose their own methodology for converting non-tariff border measures – such as quotas or variable import levies – into ordinary customs duties (so-called 'tariffication').

### Some Options for Consideration

In the area of agriculture, one option for improving information flows could include making mandatory the obligation to provide timely and updated notifications for the Integrated Database and product specific information on Blue and Green Box payments. There is also a need for clear and mandatory notification obligations in key negotiating areas where information gaps still exist, such as subsidies in services. A formal mechanism for mandatory notification of all voluntary standards and labelling schemes (with details on standard-setting processes and eligibility criteria) should also be established. In light of the informational support civil society groups can offer negotiators, especially from developing countries, WTO Members may also wish to consider making all trade databases open to the public, or at least to interested parties from civil society and academia.

Interviews with trade delegates indicate that Members are hesitant to notify sensitive information that could be used against them in WTO disputes. This concern highlights the potential strength of the Trade Policy Review Mechanism (TPRM) as a unique tool for ensuring domestic transparency, especially where sensitive information is concerned. The TPRM is not intended to serve as a basis of enforcement of obligations or as an alternative to the dispute settlement system. In fact, Members may not use the process or its outcome as the basis for a challenge under the Dispute Settlement Understanding (DSU), making the TPRM an environment conducive to voluntary participation and collaboration by Member countries. This is clearly an area where Members could collaborate more effectively with the WTO Secretariat, especially as Member input is crucial to the final TPR report.

Finally, the WTO's dispute settlement system is available to an aggrieved Member who believes that another Member's lack of compliance with an information obligation has caused injury to their trade. In this respect, Article X of GATT 1994, which outlines the obligation to publish certain relevant trade measures, could provide the additional ground for such a

challenge. The use of Article X and the DSU as a tool for promoting greater transparency in notifications, will be considered in the July-August issue of Bridges.

### ENDNOTES

<sup>1</sup> The CTSD shows all WTO Members' industrial and agricultural bound tariff rates, as well as their pre and post-Uruguay Round commitments. It is updated regularly. The IDB offers less Member coverage, but is based on applied MFN tariff rates at the most detailed level, and shows imports by commodity and partner country. Both are compiled on the basis of Members' notifications. See TN/MA/S/2 for further details on data availability for tariff negotiations.

<sup>2</sup> Specific tariffs apply to the quantity, rather than value, of the imported item. *Ad Valorem* equivalents (AVEs) translate this tariff into one based on the item's value (see TN/MA/S/10 for more details).

<sup>3</sup> While WTO Members often turn to alternative sources, such as the OECD's Producer Support Estimates for industrialised countries, these may not be comparable with the WTO's AMS. (See Timothy A. Wise, *Barking Up the Wrong Tree: Agricultural Subsidies, Dumping and Policy Reform*, Bridges Year 8 No.5, May 2004.)

<sup>4</sup> See Article 6.5 of the Agreement on Agriculture.

### Non-tariff Barriers

Non-tariff barriers are of growing concern to developing countries. While the WTO's Doha Round negotiations are mandated to address these, exporters on the ground are often faced with situations that require immediate action.

For instance, African agricultural producers are currently concerned about their ability to provide detailed enough information to fulfil the EU's new traceability requirements on food. Kenyan cut flower exporters worry about qualifying for certification by EUREPGAP, a Brussels-based consortium of retailers and suppliers. Due to complex documentation requirements, they fear the loss of an export market estimated at US\$370 million by the *Economic Survey 2004*.

## UNCTAD XI: A Personal View from the UK

Eleanor Fuller

The sheer size of the mid-June gathering in Sao Paulo showed that UNCTAD has lost none of its convening power. Developing countries and those wishing to meet them were there in force. At numerous sessions and side events member states and civil society organisations debated the issues of trade and development. Delegates to UNCTAD XI agreed on a declaration, the Spirit of Sao Paulo, and, the culmination of several months of negotiation, put the finishing touches to a longer document, the Sao Paulo Consensus.

The lengthy text negotiations pointed to issues of particular importance to developing countries, and different perceptions of these. 'Policy space' was one such issue. We now know, if we did not know it before, that it is something that developing countries care about deeply. We also know that it was difficult to reconcile the different viewpoints. But despite the many hours spent on the text negotiation the issue itself remains unclear. For our part we will seek to clarify it through a major programme we will be launching soon with a range of partners. And we are glad that it will feed into discussions with developing countries on this and other vital principles of special and differential treatment.

The strategic framework and biennial budget exercises of the United Nations are now well established and have effectively removed the need for UNCTAD conferences to agree work programme priorities for the secretariat. In that case, is time spent on the traditional set-piece text negotiation well spent? Would we understand each other better if we devoted the same time, energy and combined brainpower to debating the substantive issues which concern us instead of shadow boxing? At the very least, we might understand each others' views – the essential basis for effective dialogue. Who knows, we might arrive at some better joint understanding of the issues at stake. Heresy, no doubt. And certainly not worth pursuing if the outcome is that the next negotiation is preceded by a negotiation on whether there should be one!

Some of the events at Sao Paulo demonstrated what could be achieved by focussing directly on the issues that matter. At times tighter chairing and discipline on prolix speakers could have created space for more interventions and a greater interplay of views. But there was a wealth of ideas and much food for thought in these discussions.

We were pleased to be able to present the proposals for the International Finance Facility and look forward to continuing the debate in other fora.

The focus on trade and poverty and on trade and gender at the conference, and in UNCTAD's work programme thereafter, is very welcome. Poverty reduction, and the achievement of the Millennium Development Goals, are the organising principle for all our development efforts, including on trade. We are sure UNCTAD can make a valuable contribution to understanding these issues better, clarifying the policy choices as well as working towards the right outcomes in international trade negotiations.

The launch of the new negotiations for the Global System of Trade Preferences among developing countries was a significant step on the road to better market access for developing countries, taking into account their levels of economic development and trade needs. Combined with better access to developed country markets, which is a major aim of the Doha Development Agenda, this could create a more supportive environment for pro-poor growth in developing countries.

Last but not least the participation of civil society was a vital dimension of the conference. Civil society played a vocal and constructive role in challenging conventional wisdom, proposing new ideas and viewpoints. We were pleased to have been able to support participation of some civil society representatives from developing countries who might not otherwise have been there.

### Implications for DFID's Work on Trade

A gathering of this magnitude provided a major opportunity to meet the people who matter to us. The timing – just a few weeks before a crucial juncture in the Doha Development Agenda – made the contacts with ministers and senior decision-makers particularly timely. Hearing from them about their concerns and priorities helps us to determine how best we can support them through our work.

More parochially, we seized the opportunity to gather a wide range of views on the Department for International Development's own work on trade, which will help us enormously in the months to come as we begin to draw up a draft three year DFID trade strategy. This will be on our website for consultation in the autumn. We are grateful to all those who shared their views with us, and would welcome more, in writing, at the address [trade@dfid.gov.uk](mailto:trade@dfid.gov.uk).

The presence of so many developing countries, the relationship of trust between them and the secretariat and their mutual responsiveness, proved again that UNCTAD is well placed to use its expertise to deliver programmes of technical assistance. We continue to work with UNCTAD on a wide range of programmes, some of them involving other partners, such as the International Centre for Trade and Sustainable Development (ICTSD) and the Foundation for International Environmental Law (FIELD). It was clear that UNCTAD has a key role to play in supporting least-developed countries in mainstreaming trade into poverty reduction strategies in the Integrated Framework.

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# WTO Accession: Russia Secures Deal with the EU

*Malena Sell and Julia Selivanova*

Russia recently signed a bilateral deal with the EU on the terms of its WTO accession, thus finalising a key agreement on its road to membership. While solid on market access for goods, the deal left trading partners wishing for more on the services side. On the controversial issue of dual energy pricing, Russia agreed to only gradually increase domestic prices – in line with its national energy policy.

Top Russian and EU officials concluded their bilateral agreement regarding the terms of Russia's accession to the WTO at a 21 May Summit in Moscow. The agreement came in the wake of a last-minute deal between Russia and the EU in late April to extend their Partnership and Co-operation Agreement to the ten new EU member states that joined on 1 May. As such, the deal served to appease Russian fears that the accession to the EU of a number of former Soviet satellite states would hurt its trade interests. Falling out of any package deal was Russia's ratification of the Kyoto Protocol – high on the EU wish list – although President Putin signalled his support for the treaty immediately after the Summit.

## Russia's WTO Accession Process

A decade after the initial application to join the WTO, Russia's accession negotiations appeared stalled on a number of issues, including the liberalisation of key services sectors, agricultural subsidies and tariffs, as well as energy pricing. WTO Members had become increasingly concerned by Russia's introduction of additional restrictive trade measures, such as tariff quotas and quotas on imports of meat. Members also requested Russia to join certain plurilateral agreements, including the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft. The Russian government had stressed, however, that the terms and conditions of Russia's accession should be based on "standard WTO requirements,"<sup>1</sup> i.e. the rules and provisions set forth in the Uruguay Round Agreements only.

The bilateral deal came as a surprise to many, particularly as the EU, which is Russia's most important trading partner and accounts for more than half of its foreign trade, had sought to set tough terms for Russia's accession. Under WTO rules, acceding countries have to reach bilateral agreements with Members that request them, and the deal with the EU is a major milestone in the overall accession process. The concessions agreed through the bilateral negotiations are consolidated into the overall accession package, and any concession made to one country is automatically extended to all other Members.

## Russia's Commitments

Russia's concrete commitments vis-à-vis the EU will bring the average import tariff down from 18 percent to 8 percent. Russia agreed to bind its tariffs at 7.6 percent for industrial goods, 11 percent for fishery products and 13 percent for agricultural goods.<sup>2</sup> Some difficult areas of the negotiations with the EU related to Russia's tariffs on cars, furniture, machinery and civil aviation. Initially, Russia sought to increase the proposed level of tariff protection on cars to 35 percent in order to stimulate investment. The Russian government, however, abandoned these plans. Reportedly, tariffs for cars and aircraft will be set at 20 percent until the end of a six- to seven-year transitory period, and will be bound at 10-15 percent thereafter. In the main services sectors, Russia undertook only limited commitments. Most importantly, it refused to grant market access to branches of foreign banks and insurance companies. In order to operate in Russia, financial service providers must establish a subsidiary. Although it had strongly defended telecom provider Rostelecom's monopoly throughout the previous negotiations, Russia agreed in the end to eliminate the company's monopoly on long-distance calls by 2007. In addition, Russia agreed to revise the system of fees foreign airlines have to pay Aeroflot when flying over Siberia.

## Dual Energy Pricing

The deal's centrepiece was the agreement reached on energy pricing policy – long seen as the major element blocking the accession process. The problem resides primarily in Russian state control over domestic prices for gas. Some existing WTO Members see this price differential

as a subsidy favouring the production of energy-intensive products, such as fertilizers and metals. Since Russian industrial producers do not have to pay the full market price for their energy inputs, this situation has adverse implications for the ability of imported goods to compete on the Russian market. The policy also gives Russian producers an advantage when they compete in third markets with foreign companies that use more expensive energy inputs.

The interests of the EU and the US differ in relation to the energy pricing policies maintained by Russia. The major concerns of the US are related to the effects of dual pricing on downstream industries. In addition to these issues, the EU is concerned about high import prices for the gas it buys from Russia. Presumably, profitable exports to Europe are used to cross-subsidise domestic supplies at low prices.

Although current export prices are four times higher than controlled domestic ones, it would be difficult to challenge Russian energy pricing policy on the basis of WTO agreements. Russian policy is neither contingent on export performance nor specific. Thus it does not, as such, result in either prohibited or specific subsidies in sense of the Agreement on Subsidies and Countervailing Measures. Russia has consistently argued that its energy policy is in line with WTO requirements.

The EU side argued otherwise, but wished to clinch a deal on pricing before Russia joined the WTO, rather than have the question hashed out in dispute settlement afterwards. Therefore, the EU long insisted on Russia's eliminating its dual pricing policy as a precondition for WTO accession.

In the final agreement, Russia undertook very limited commitments with respect to its energy policy. Russia gave assurances that the price for gas for industrial users will cover

*Continued on page 10*

costs, profits and investment needed for exploitation of new fields. Industrial users' gas prices will be gradually increased from current US\$27-28 (per 1,000 cubic metres) to between US\$37-42 by 2006 and US\$49-57 by 2010. This means that by 2010 export prices for gas will be double domestic prices. The export monopoly of Gazprom – the world's largest gas company – will be retained. All companies, including foreign ones, will obtain access to transportation pipelines on a non-discriminatory basis. Transit rights, however, will not be granted. Export duties on gas will be capped at 30 percent.

Although Russian domestic prices should cover the costs of production by the end of the transition period, they will remain significantly lower than export prices. Russia refused to undertake a commitment to phase out state controls over energy prices altogether. Thus the EU seems to have abandoned its original objective to ensure that domestic gas prices are raised to correspond to export prices. It remains to be seen whether the US will insist on additional Russian commitments in relation to its own energy priorities.

Russian industries are apprehensive about the possibility of increases in energy tariffs. Some export-oriented industries such as producers of metals have been strong supporters of Russia's accession to the WTO. These industries, however, oppose Russia's accession if it is conditional on a substantial increase of domestic energy prices. More-over, such an increase would lead to social instability, bankruptcies and non-payments for energy. It is thus highly unlikely that Russia would undertake far-reaching commitments in respect of its energy policy.

### Kyoto Protocol

In a press release following the signing of the deal, the EU noted that "increasing domestic energy prices will encourage a more efficient use of energy resources in Russia and it is thus mutually supportive of the Kyoto goals." The Kyoto Protocol, which sets emissions limitations for greenhouse gases in order to combat global warming, cannot enter into force without Russia following the pullout of the US in 2001. While the EU is a proponent of the treaty and ratified it in 2002, Russia has been

sending mixed signals on its intentions. Prior to the EU-Russia Summit, speculation was rife regarding the potential for linking the issues in a package deal that would include Russia's ratification of the Kyoto Protocol. This did not happen. However, immediately following the Summit, President Putin threw the treaty a lifeline, saying "It is true that the European Union has met us half-way on certain issues during the WTO negotiations. This cannot but have a positive effect on our position on the Kyoto Protocol. We will speed up Russia's moves towards ratifying the protocol... We clearly set out our position on Kyoto long ago. We are for the Kyoto process and we support it".<sup>3</sup>

Since Kyoto ratification has now officially been delinked from the WTO accession agreement, Russia's next steps will depend on calculations on the actual benefits and costs to the country. These remain uncertain, a factor invoked again and again as Russia stalls on its decision. Putin has received advice from different sources, including the Russian Academy of Science and his own officials. In addition, vocal appointees have come out with their own statements – often at strategic junctures in time – while industry has been working behind the scenes. The verdicts have been conflicting. A number of businesses have embraced Kyoto and gotten involved in joint projects with European and other companies. A government report in May stated that Russia's emissions would not exceed its Kyoto target in the first commitment period, and that the Kyoto Protocol would not damage Russia's economy but rather potentially be beneficial to the Russian energy sector. However, coinciding with this report, the Russian Academy of Sciences issued a statement criticising the science behind climate change. Further, Putin's economic advisor Andrei Illarionov has repeatedly bashed the Protocol, saying it would undermine Russia's economy. Unfortunately, Russia's patchy national reporting to the UNFCCC secretariat on its emissions does not add certainty to the baseline situation, nor do the differing views between agencies and stakeholders.

The game may still be one of brinkmanship, with issues such as ensuring a market for Russian carbon credits on the table. Currently, with the US out of the game, the EU, Canada and Japan would have to step in as the biggest buyers – but the EU has capped the amount of credits it can source from abroad, and Russia is concerned that the EU will source its carbon credits mainly from its new member states or from developing countries. Russia may be looking for assurances for its own sales of credits. The WTO might also remain on the agenda since the bilateral agreement does not alone guarantee its WTO accession, and Russia might still need the EU's backing as it negotiates further agreements with other Members.

### The Road Ahead

Having concluded the agreement with the EU on its WTO accession, Russia has yet to reach agreements with most other WTO Members, including the US, Japan and China. The priorities of these Members, although they partially overlap with those of Europe, lie in other areas. For the US, the major concern is the failure of Russia to ensure adequate protection of intellectual property rights. The International Intellectual Property Alliance has pointed out that overall copyright industry losses exceed US\$1 billion per year.<sup>4</sup> The US might also insist on greater liberalisation of the Russian aircraft market and key services sectors, such as telecommunications and financial services. Similarly, Japan might attempt to obtain greater commitments regarding tariffs on cars than those offered to the EU. The next set of bilateral and multilateral meetings in the Working Party on Russian accession are scheduled for 12-16 July.

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### ENDNOTES

<sup>1</sup> Andrew Gowers, Robert Cottrell and Andrew Jack: Interview with Vladimir Putin, *Financial Times*, (December 16, 2001).

<sup>2</sup> See press release at [http://europa.eu.int/comm/trade/issues/bilateral/countries/russia/pr210504\\_en.htm](http://europa.eu.int/comm/trade/issues/bilateral/countries/russia/pr210504_en.htm).

<sup>3</sup> *Russia gets EU deal on WTO, backs Kyoto*, Reuters, 21 May 2004.

<sup>4</sup> International Intellectual Property Alliance, 2003. *Special 301 Report – Russian Federation*, at 1, [http://www.iipa.com/gsp/2003\\_Feb14\\_GSP\\_Russia.pdf](http://www.iipa.com/gsp/2003_Feb14_GSP_Russia.pdf).

# EU Denies Moratorium on GMO Approvals

The EU has questioned the very basis of the US challenge of its approval and marketing procedures for biotech products through claiming that no moratorium has in fact ever existed. This and other EU arguments have been vigorously contested by the US.

In its first submission on 17 May, the EU also argued that several of the contested measures did not fall under the Agreement on Sanitary and Phytosanitary Measures (SPS), which was the sole focus of US claims (Bridges Year 8 No.5, page 8). Furthermore, the EU has claimed that the dispute could now be moot as approvals have resumed (the Commission cleared Bt-11, a variety of sweet corn, for human consumption but not for cultivation on 19 May).

## Does a General Moratorium Exist?

The EU maintained that there was no ‘general moratorium’ that could be challenged as a ‘measure’ violating WTO rules, since it had never officially decreed a ‘moratorium’ on the approval of GMOs or suspended the application of its GMO legislation. Thus, the EU argued, the panel should confine its findings to the specific ‘measures’ identified in the US panel request. In oral comments on 17 June, the US pointed to numerous occasions where high EU officials had referred to a moratorium, including the European Council, which used “this very word in a statement concerning the scheduled Bt-11 approval.” The US stressed that the existence of a ‘general moratorium’ was “at the core of this dispute”, which was brought because the EU “at the highest levels announced a general moratorium on biotech approvals, and followed through on those pronouncements by failing to approve any biotech products for over five years.”

## Member State Measures

As for specific measures taken by EU member states, the Commission said these were consistent with the SPS Agreement’s provisions on risk assessment, i.e. they were provisional, temporary and based on the precautionary principle, pending a full assessment at the EU level. They were also maintained by the member states on the basis of available scientific information and in light of insufficient scientific evidence. The EU emphasised that it was in the process of seeking additional information necessary for a more objective assessment of the risks posed by GMOs.

The US argued that the member states maintaining product-specific measures, and continuing to refuse to resume approvals, violated the SPS Agreement because they had not put forth risk assessments justifying the measures. In fact, the US maintained, the only risk assessments concerning the banned products were the positive scientific assessments by the EU’s scientific committees or the member states themselves.

## Scope of the SPS Agreement

The US also brushed aside the EU’s contention that measures taken to avoid certain risks such as those related to the conservation of biodiversity or increased antibiotic resistance due to the ingestion of genetically-engineered plant DNA were not covered by the SPS Agreement. In contrast, the US argued that the EU’s entire approval regime, “including that part of the regime modified by the general moratorium, plainly is a ‘sanitary or phytosanitary’ measure.” It contended that the evaluation of environmental risks was covered under Article 5.2 of the SPS Agreement, which requires “the consideration of relevant ecological and environmental conditions in an assessment of SPS risks” (see also the role of the Biosafety Protocol below).

## ‘Undue Delay’

The US had alleged a violation of the EU’s obligations under the SPS Agreement to undertake its control, inspection and approval procedures without undue delay. While the EU conceded that this assertion did fall within the scope of the SPS Agreement, it denied that there had been any such delay. Instead, the EU claimed that its approval process was slow because requests for additional information had been put to applicants at different stages. According to the EU, the requests were justified on the basis of risk assessment, risk management and risk communication endorsed by the international community. Furthermore, the EU noted that

its procedures were merely provisional and justified on the basis of the insufficiency of scientific evidence and the adaptation of its directives in light of the evolving science, political and social debate on GMOs.

## Role of the Biosafety Protocol

In justification to its precautionary approach to GMOs, the EU drew attention to scientific reports, as well as stricter precautionary measures adopted by other countries, including total bans on GMOs. It also noted that the existence of GMO policies in inter-governmental institutions, as well as the Cartagena Protocol on Biosafety, pointed to wide-spread awareness of potential health and environmental risks associated with GMOs. The EU urged the panel to interpret and apply the relevant WTO agreements against the background of relevant norms in international law outside the WTO context.

The US responded by stating that the Biosafety Protocol explicitly required parties to “not disregard their existing international obligations in their implementation of the Protocol. Furthermore, the Biosafety Protocol foresees a functioning regulatory system in each Party country; it does not provide an excuse for refusing to make prompt, transparent decisions.”

## Dispute Not Moot, US Says

In response to a question from the panel, the US made it clear that it sought a ruling on the basis of the situation that prevailed when the panel request was made. That request alleged that the EU had applied a ‘moratorium’ on the approval of products of agricultural biotechnology since October 1998, and that pursuant to that moratorium, it had “suspended consideration of applications for, or granting of, approval of biotech products under the EC approval system.” The US further claimed that certain EU member states maintained a “number of national marketing and import bans on biotech products even though those products [had] already been approved by the EU.”

**Disputes in Brief**

- **US – Foreign Sales Corporations** The House and Senate of the US Congress have adopted different versions of the American Jobs Creation Act, meant to replace the Extraterritorial Income Exclusion Act (ETI), which gives US exporters significant tax breaks. In view of the significant differences between the two legislative proposals, reconciliation may last until late July. The WTO has condemned both the ETI and its predecessor, the Foreign Sales Corporation regime, for providing companies illegal export-contingent subsidies worth US\$4 billion a year. In March 2004, the European Union raised import duties by five percent on a wide range of US goods in retaliation for US non-compliance with the WTO rulings. The tariffs are set to increase by one percent a month until the ETI replaced.
- **Japan – Apples** The US is likely to request a WTO panel to examine Japan's implementation of the November 2003 Appellate Body condemnation of its quarantine restrictions on apples (Bridges Year 8 No.2, page 5). Japan was to bring its quarantine regime into compliance with WTO rules by 30 June. If the compliance panel decides that Japan has failed to do so, the US may have recourse to trade sanctions.
- **US – Byrd Amendment** The WTO has delayed its arbitration of the amount of trade sanctions in the dispute regarding the redistribution of anti-dumping duties to petitioning US firms. The EU and other complainants had requested the right to impose sanctions equivalent to their share of the total Byrd Amendment payments in any given year. The arbitrator, which has requested more detailed technical information from both sides, has not yet announced a new date for its decision.
- **Canada – CWB** The US has announced that it will appeal the April panel ruling, which found that the Canadian Wheat Board was essentially compatible with WTO rules (Bridges Year 8 No.4, page 11).

## Cotton Panel: US Subsidies Are Illegal

On 18 June, the final panel ruling on US subsidies to upland cotton was handed to the parties in the dispute. While its contents are still confidential, it is clear from both sides' comments that the panel essentially upheld its interim findings, which found in favour of Brazil on most main points.

According to press reports, the panel condemned not only direct cotton subsidies but also US export credit guarantee programmes for all agricultural products, including soybeans, corn and rice. Brazil had challenged these as export subsidies inconsistent with the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. The panel reportedly gave the US until 1 July 2005 to withdraw the measures.

"We could not have hoped for a better decision, we are extremely pleased," said Roberto Azevedo of the Brazilian Foreign Ministry. The US, on the other hand, remained defiant. A spokesperson for the US Trade Representative said that the report would be appealed, and that in the meanwhile farm programmes would not be affected: "We will defend US agricultural interests in every form we need to, and we have no intention of unilaterally disarming." The panel report will be released to the public once it has been translated into French and Spanish, probably in late August. The next issue of Bridges will look into the details of the ruling (see also Bridges Year 8 No.5, page 7 for a report on the interim findings).

The ruling has enormous precedent-setting value, and may encourage other countries to launch disputes against heavily subsidised agricultural products. While US Trade Representative Robert Zoellick has warned that the WTO's agricultural negotiations could be damaged if countries preferred to "litigate rather than negotiate", Mr Azevedo said that there "should not be any link at all to the Doha Round – this ruling is based on current, not future, WTO obligations."

The verdict on another landmark agricultural subsidy case is expected in early September, when a panel is to rule on Brazil's challenge of the EU's sugar regime, which it says allows sugar to be exported below cost of production (Bridges Year 8 No.4, page 9; see also page 19).

### Cane Sugar vs Corn Syrup: Take Two

The US has requested a dispute settlement panel on Mexico's taxation in favour of cane sugar. The measures at issue include a 20 percent tax on beverages and syrups that use sweeteners other than cane sugar, as well as certain services related to the consignment and distribution of such products. According to the US, the taxes discriminate against imported sweeteners/beverages made with such sweeteners in violation of GATT Article III, which requires WTO Members to tax imported products the same way as 'like' domestic products.

The contested taxes particularly target US exports of high fructose corn syrup (HFCS), which is mainly used to sweeten soft drinks. Mexico imposed the taxes after it lost a WTO dispute over anti-dumping duties on HFCS in November 2001. Mexican officials say the purpose of the HFCS taxes is to "level the playing field" in the face of US refusal to accept imports of Mexican sugar equivalent to the amount of cane sugar displaced by cheaper American corn syrup. The sugar cane industry supports up to three million Mexicans.

Industry representatives from both countries are still working on a deal that would allow some corn syrup into Mexico and open the US market to surplus sugar. If they succeed in finding a compromise, and the two governments approve it, Mexico would abolish the tax, and the US would withdraw the WTO dispute.

While such an outcome is unlikely in an election year, particularly with US sugar producers already up in arms over market access for sugar offered under CAFTA, it could help prepare the terrain for 2008, when the North American Free Trade Agreement (NAFTA) foresees a completely liberalised market for all sweeteners.



## NAMA Talks Still Await Breakthrough in Agriculture

Discussions at the June session of the Negotiating Group on Non-Agricultural Market Access (NAMA) produced no consensus on the formula for tariff reductions for industrial goods, or on how to accommodate the needs of weaker and more vulnerable countries.

An agreement on the overall approach to industrial tariff reduction will be an integral part of the package Members hope to adopt in July. The other main elements of the package are frameworks for addressing agriculture, trade facilitation and development issues.

Sources indicated some increase in Members' "level of comfort" with the NAMA proposal put forward by Minister Derbez in Cancun. While no one is entirely happy with the text, it could, according to one trade delegate, leave enough space for manoeuvre both for countries in favour of a very ambitious formula and countries looking for significant flexibility. However, an agreement is expected only once further progress is reached in agriculture (see page 1).

Members disagreed on how to address the concerns of the WTO's poorest countries. In a 9 May letter, the EU's Trade and Agriculture Commissioners had suggested that least-developed and other weak and vulnerable developing countries, "essentially the G-90", should not have to open their agricultural or industrial markets beyond existing commitments (Bridges Year 8 No.5, page 2). At the NAMA session, many were uneasy about this proposal because of the implied and unclear differentiation among developing countries. Some Members also felt that the issue belonged among other development concerns rather than in NAMA specifically.

The US, Canada and Hong Kong organised a meeting to explore support for a 'critical mass' approach to eliminating tariffs in certain sectors. A number of developing countries, including

formerly reluctant Brazil, said that any movement would depend on positive outcomes in agriculture and the rest of the NAMA negotiations. The US nevertheless indicated that support was growing for the 'critical mass' approach.

Members are still undecided on how to address non-tariff barriers. Overall, there is a feeling that they need more time to comprehend and assess the effects of such measures in order to determine whether they should be treated in the NAMA group, in the Committee on Technical Barriers to Trade or a combination of the two. Several countries also said they needed more input and involvement from their industries.

The next session of NAMA negotiations is tentatively scheduled for 6-8 July.

## Japan Signals Willingness to Address Fisheries Subsidies

Departing from its long-held position that problems related to overfishing arise from poor fisheries management rather than subsidisation, and therefore disciplines specific to fisheries are unnecessary, Japan has tabled a surprise proposal on fisheries subsidies at the Negotiating Group on Rules.

The proposal (TN/RL/W/159) stressed that the task of the Negotiating Group was to prohibit 'really problematic' subsidies that contributed to illegal, unreported and unregulated fishing and to overcapacity ('red-light' subsidies). On the other hand, subsidies aimed at ensuring sustainable development should be allowed ('green-light' subsidies).

The discussions should take into account the importance of the fisheries sector to developing countries, ensure transparency and encourage co-operation with other international organisations. Japan called for a more 'balanced approach' than the blanket ban on all subsidies, with exceptions defined through the negotiating process, proposed by New Zealand at the group's April meeting (Bridges Year 8 No.5, page 12). A bottom-up approach to defining harmful fisheries subsidies was needed to avoid the prohibition of "too many different subsidies, including payments for capacity reduction or scientific research for aquatic resources, which could play critical roles for conservation and sustainable use of the resources," Japan said.

Japan also supported further discussion of notification requirements and of special and differential (S&D) treatment for developing countries, noting however the diverse interests and situations among developing countries, with China being the world's largest producer. The paper acknowledged that the Japanese fishing fleet was heavily subsidised, but argued that most of the subsidies (there are none for exports) did not distort trade.

Korea – until now a staunch supporter of Japan's previous position – as well as the 'Friends of Fish' group of *demandeurs* for fisheries subsidy disciplines,<sup>1</sup> welcomed the Japanese proposal, although one member of the group, New Zealand, stressed that Japan focussed too strongly on overcapacity, and downplayed other important factors, including price support, operating

costs and infrastructure. In fact, New Zealand said 90 percent of Japanese fisheries subsidies would be exempt from any reduction commitments under the proposal.

The EU, which only recently became proactive on fisheries subsidies, also said Japan's engagement was positive, but felt that Japan would have to move further in its position to ensure sustainability. China supported the proposal to use a positive, rather than negative list approach, and said it would like to see further discussion of S&D.

According to the World Wide Fund for Nature, 75 percent of the world's major fishery areas are either depleted or fished to the brink, and subsidies to the industry around the globe total over US\$15 billion annually – or nearly 20 percent of its total revenue.

### ENDNOTE

<sup>1</sup> The US, Iceland, Chile, New Zealand, Norway and Peru.

### TRIPs Council Update

The WTO Council for Trade-related Aspects of Intellectual Property Rights (TRIPs) has postponed until 31 March 2005 the deadline for an amendment of the TRIPs Agreement that would allow countries to export generic versions of drugs still under patent to countries lacking pharmaceutical manufacturing capacity of their own. A temporary waiver that makes this possible was adopted on 30 August 2003 (Bridges Year 7 No.6, page 9), and Members had hoped to turn the waiver into a permanent amendment of the TRIPs Agreement by 30 June 2004.

Just a handful of exporting countries have started implementing the 30 August 2003 decision. In Norway, amended legislation became effective on 1 June and Canada's new legislation is set to enter into force this autumn (Bridges Year 8 No.5, page 19). No developing country has made use of the waiver so far.

Biodiversity-related discussions focused on a checklist proposed by Brazil, Ecuador, India, Peru, Thailand, and Venezuela in March (IP/C/W/420, see Bridges Year 8 No.3, page 12). The US and Japan continued to oppose structuring negotiations around the three clusters of questions suggested in the checklist, i.e. disclosure of origin, evidence of prior informed consent, and benefit-sharing related to genetic material and traditional knowledge. Proponents of the checklist rejected the Chair's suggestion that Members instead focus on reviewing national legislation, disclosure requirements in patent applications and existing databases.

Switzerland presented a paper (IP/C/W/423) reiterating its proposal to amend the WIPO Patent Co-operation Treaty (PCT) to include, in appropriate cases, declaration of origin of genetic material in patent applications as a voluntary requirement. The proposal includes a concrete description of when disclosure would be relevant, as well as a penalty system for failure to comply in which case the patent would be rejected or withdrawn.

The next TRIPs Council meeting is scheduled for 21-23 September.

## Some Progress on Environmental Goods

Members continued to disagree on how to clarify the relationship between WTO rules and multilateral environmental agreements, but held more constructive debates on the liberalisation of trade in environmental goods at the June session of the Committee on Trade and Environment.

With regard to the relationship between WTO rules and specific trade obligations (STOs) in multilateral environmental agreements (MEAs), the US suggested that Members assess national experiences in implementing the two bodies of law rather than focus on abstract principles (TN/TE/W/40). Based on its national experience, the US stressed the importance of national co-ordination, as well as careful design and implementation of STOs. The proposal was generally well-received, including by the *demandeurs* for clarification (the EU, Switzerland and Norway), who believed that examining national experiences could usefully complement a more conceptual approach. The EU, however, stressed that simply focusing on experiences was unlikely to lead to a coherent outcome in the absence of parameters to guide the discussions.

### Chinese Taipei Takes on EU Proposal

Chinese Taipei expressed disagreement with a number of points in a paper tabled by the EU at the April CTE meeting (Bridges Year 8 No.4, page 12). For instance, Chinese Taipei opposed the idea that disputes over trade measures applied pursuant to an MEA should be dealt with by the MEA in question, arguing instead that WTO Members should have the right to pursue their complaint in either forum. The submission also took issue with the EU's interpretation that the Appellate Body's ruling in the gasoline case had confirmed that WTO rules should be interpreted in a broader context of public international law, including MEAs. Chinese Taipei argued that while the Appellate Body should apply public international law in the context of treaty interpretation, it should not incorporate the substantive norms created under MEAs to interpret WTO provisions. In response to the criticism, the EU and Switzerland cited other WTO rulings that supported this interpretation, such as the shrimp-turtle dispute.

### Constructive Discussions on Environmental Goods

The debate on environmental goods and services (EGS) is finally getting more concrete. The EU said that the US proposal on modalities (Bridges Year 8 No.4, page 12) was premature. Instead, the EU said the CTE should identify principles and criteria for environmental goods before starting discussions on modalities in the Negotiating Group on Non-agricultural Market Access. The EC identified two categories of environmental goods that should be included in the definition, namely goods used in pollution control and resource management; and goods with high environmental performance or low environmental impacts. Goods in the second category would be chosen based on objective parameters such as composition and/or environmental performance, possibly defined through standards that require certification. The EU said it would submit a more detailed proposal in the coming months.

China said that 'problems' such as multiple uses, process and production methods and clean technologies, should be excluded from the deliberations on definitions. China put forward the possibility of developing a 'common' list and a 'development' list of environmental goods. The common list would include goods of interest to both developed and developing countries, with priority given to products of export interest to developing and least-developed country Members. The development list would provide for special and differential treatment, allowing developing and least-developed countries to exempt some products on the common list from tariff reduction commitments. China also stressed the importance of facilitating technology transfer when discussing the liberalisation of environmental goods.

### Direction on Paragraph 51 Still Missing

Members continue to lack ideas on how to implement para. 51 of the Doha Declaration, which mandates the CTE and the Committee on Trade and Development (CTD) to ensure that sustainable development is adequately reflected in the negotiations. Chair Naëla Gabr will hold consultations with delegations and the CTD Chair before the next meeting on 11-12 October.

# Snipping at the Gordian Knot: A New Approach to Trade and Environment Issues?

Simon S.C. Tay

The environment did not feature prominently in the failed WTO talks in Cancun in late 2003, or in their aftermath, but this does not mean that the issues have been settled. A regional, 'bottom-up', approach could help build a basis for multilateral consensus.

The WTO's relationship with the environment has largely been shaped by dispute settlement. Controversies about the *Tuna-Dolphin* case<sup>1</sup> led to the formation of the Committee on Trade and Environment (CTE). While the CTE report presented at the 1996 WTO Ministerial meeting in Singapore offered little substance and got even less attention, along came another controversial case: the panel and Appellate Body decisions in the *Shrimp-Turtle* dispute.<sup>2</sup>

At the 1999 Ministerial Meeting in Seattle, the environmental cause was allied to others in street protests that dramatically disrupted the meeting. Accommodation followed at the 2001 Doha Ministerial Meeting, which agreed to further discussions in several areas, but talks since have made little progress. Meanwhile, another dispute – launched by the US against the EU's approval processes for genetically modified products – has potentially far-reaching consequences for the relationship between trade rules and environmental protection.

## What Can Be Done?

The debate about trade and the environment in the WTO is often a beggared choice. On the one hand, many continue to want to ignore the interface altogether. In contrast, others seek to join the issues, but in a negative way centred on sanctions. Such measures can hurt market access, especially for developing countries.

Little surprise therefore that many of them remain sceptical if not antagonistic. If we are going to move beyond the impasse, it is important to find a new balance and new approaches to resolve the issue, and the underlying tensions between Northern and Southern countries.

## What Are the Alternatives?

While there are those who continue to 'just say no', even before Cancun some elements had begun to emerge for a more positive developing country trade and environment agenda. These elements are linked to the elimination of subsidies for fishing, agriculture and other sectors, which are deleterious not only to developing country production but also aggravate the impact on the environment. While the idea is gaining some momentum, subsidies – and agricultural subsidies in particular – are among the most important and difficult areas in the WTO, and dealing with them slows down any progress on trade and environment issues.

In the wake of Cancun, those interested in trade and environment may therefore wish to broaden their sights.

## Looking for Regional Solutions

There are signs that energies and focus will continue to shift from the global regime of the WTO to the regional and bilateral levels. In almost all continents, and especially in Asia, regional and bilateral trade agreements have been resurgent. While some see this as regrettable, others argue that this need not derail future progress in WTO negotiations and indeed can interlink with and assist the broader global processes.

The trade and environment debate too may be usefully linked to the regional and bilateral processes. The first effort would be to bring the issue to the table in these negotiations.

In the ASEAN-China free trade negotiations, for example, the aim is to create the world's largest market with almost two billion people, including freer trade in a number of agricultural products and natural resources. The potential environmental impacts have not yet been

closely studied despite China's proven and still growing appetite for resources. Trade and environment issues can and should be brought to this and other sub-global trade negotiations.

We should, however, avoid immediately fixing any single policy or formula for dealing with these issues. Developing countries should not be given the sense that the process is driven by the European Union or the United States, each of which has its own trade and environment agenda.

Rather, these regional and bilateral agreements should allow us to experiment for a period. From this, different sub-global processes might evolve and help ground the issues in different and varied sets of trade relations, many of which would be more appropriately tailored to the states of the South.

As part of their planning and preparations for trade liberalisation, each government should be assisted to undertake a close study of the environmental impacts in different sectors in the form of an 'impact assessment' of freer markets. This could also provide an assessment of realistic opportunities for raising environmental standards and practices in tandem with market opening. Many developing countries would also benefit by increasing capacity and expertise on trade and environment issues.

## Seeking the 'First Best'

In bilateral trade agreements in particular, developing country governments can and should be encouraged to look at promoting 'first best' options for reconciliation at the production level. This would help lessen the perceived need to seek 'second best' solutions involving trade measures.

As the regional and bilateral efforts progress, they can be linked upwards to the global

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level. But rather than looking at just the WTO to provide answers, it may be useful to conceive it more in terms of a global level mechanism for 'policy review', which would look at ways in which regional and bilateral treaties deal with, or fail to deal with, trade and environment issues.

Like the WTO's trade policy review process, which deals with mainstream trade issues, this could be a process helping to identify and articulate best practices of the international community and, over time, ensure a degree of harmonisation among the practices of different states and regions.

In some ways, these ideas can be seen in contrast to the proposal to create a Global Environment Organisation, seen by some as a quasi-monopoly to help improve environmental governance and a more easily managed relationship with the WTO. My emphasis on sub-global proposals tries instead to create a larger and freer market of experiments and modes in environmental policy-making and governance.

These suggestions may be controversial for a number of reasons. Perhaps chief amongst them is that they do not focus on the WTO. This is a deliberate tactic to evade the tangle of issues at this formal and presently fractured institution in the immediate term, and to give opportunities for regional, bilateral and national efforts to take different ways in seeking to reconcile trade and environment issues. From such experiments, we might later return to the WTO with more varied approaches and a greater understanding of the importance of the trade and environment interface.

The trade and environment debate at the WTO has become tangled into something of a 'Gordian knot' that cannot, it seems to me, currently be unravelled. The time has come to find ways to snip at the knot, rather than expending energy in disentangling it at the multilateral level.

*Simon S.C. Tay is Chairman of the Singapore Institute of International Affairs. This article draws from a 'think piece' the author prepared for the ICSTD/IISD Southern Agenda on Trade and Environment, available at: [http://www.trade-environment.org/output/southernagenda/s-se-asia/seasia\\_thinkpiece.pdf](http://www.trade-environment.org/output/southernagenda/s-se-asia/seasia_thinkpiece.pdf).*

### ENDNOTES

<sup>1</sup> On the tuna-dolphin case, see Marine Mammal Protection Act of 1972, Pub. L. No. 92-552, 86 Stat. 1027 (codified as amended at 16 USC §§. 1361-1407 [1988 & Supp. III 1991]); *Earth Island Institute v. Mosbacher*, 929 F.2d 1449 (9th Cir. 1991); and United States-Restrictions on Imports of Tuna, GATT Doc. DS21/R (3 September 1991).

<sup>2</sup> See US-Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Panel, WT/DS58/R, 15 May 1998; and US-Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body Report WT/DS58/AB/R, adopted 6 November 1998. See Bridges Year 2 No.7, page 9 for an analysis of the Appellate Body report.

## The Evolution of the United States Trade and Environment Policy

John J. Audley

Ten short years ago, the North American Free Trade Agreement (NAFTA) broke new ground by including language designed to address environmental issues. For many of its critics, NAFTA's environmental provisions were little more than "green window dressing," with no real environmental protections. For developing country governments, the provisions represented yet another attempt by the United States to either protect domestic producers from international competition, or to unilaterally impose US environmental priorities on the rest of the world.

Fast forward to the present; all trade agreements involving the United States contain separate chapters on the environment that include the possible use of trade measures for the "failure to effectively enforce" environmental measures that influence trade. Conducting an environmental review (ER) of all proposed comprehensive trade agreements is required by US law, and many US trading partners now conduct their own version of an ER before the agreement is finalised. The US now links technical assistance and capacity-building to all of its trade agreements involving developing countries. Are these changes to US trade and environmental policy just more green window dressing, is it policy masquerad-

ing as protectionism in a green suit, or do they reflect the kind of policy maturation that leads to a more integrated relationship between trade and environmental policy?

Without a doubt, the standard for environment in trade policy is now more ambitious, but whether or not the new environmental provisions result in improvements in the quality of the environment depends greatly on two things. First, will the United States fulfil its commitments to provide trading partners with technical assistance and capacity-building resources? Second, will developing countries take advantage of this opportunity to secure targeted technical assistance by integrating environment into their overall negotiating objectives? Determining the answers to these questions requires both an understanding of history and of politics.

### Establishing the US Benchmark for Environment in Trade

NAFTA negotiations created a pattern for including the environment that continues to influence the US approach to trade and environment policy even today. First, the NAFTA text includes language in the text on the relationship between trade and key environmental issues, including multilateral environmental agreements, food safety and product standards, and investment.



Second, while a few critical trade-related environmental issues are addressed within the trade agreement itself, the majority of environmental issues are addressed through the parallel agreements, designed to target the underlying causes of environmental degradation. In the North American Agreement on Environmental Cooperation (NAAEC), the Parties established a secretariat charged with the authority to conduct independent fact-finding studies to determine whether a Party has failed to effectively enforce their environmental laws. While the provisions were never implemented, the NAAEC further allows parties to seek compensation if another party has established a pattern of failure to effectively enforce its environmental laws. If the fines are not paid in a timely fashion, the injured party may suspend trade benefits. Both environmental 'side agreements' are designed to integrate government and civil society in the shared governance of the environmental provisions, and both agreements target financial resources and technical assistance to actually engage in concrete environmental problems solving.

While the first effort was undoubtedly crude, the third element of the US approach to trade and environment policy involves use of environmental reviews. In the NAFTA, the United States' first attempt to coordinate trade and environment policy was informed by information obtained from conducting an environmental review of the proposed trade deal. Arguably intended primarily to provide political cover for NAFTA supporters, like so many other elements of the NAFTA package, it set the stage for further efforts to more accurately determine the environmental efforts of trade liberalisation.

Continued development of the US approach to trade and the environment was stalled until it began bilateral trade negotiations with the Hashemite Kingdom of Jordan. From the onset, US officials considered negotiating a separate chapter on the environment, in seeking to make non-enforcement of environmental laws affecting trade policy subject to the same terms for dispute resolution accorded the rest of the agreement. In exchange for this concession, the environment chapter also includes language allowing government officials wide discretion regarding enforcement. Jordanian negotiators enthusiastically embraced the "good governance" elements of US trade policy, agreeing to conduct an environmental review, and to expanded transparency provisions with regard to the agreement's implementation. Finally, the United States and Jordan agreed to a Joint Statement on Environmental Technical Cooperation. The Statement commits both parties to advance Jordan's capacity to protect the environment by developing environmental technical cooperation initiatives.<sup>2</sup>

### The New Blueprint for US Trade and Environment Policy

In 2002, when Congress granted the Bush Administration trade promotion authority (TPA) it also gave the administration binding negotiating objectives for the environment.<sup>3</sup> The TPA states: US negotiators must ensure that "a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade. . ." Beyond this specific instruction regarding investment, Congress instructs US negotiators to:

- strengthen the capacity of US trading partners to protect the environment;
- promote the sale of green products and services;
- reduce or eliminate government practices or policies that unduly threaten sustainable development;
- establish consultative mechanisms to strengthen the capacity of US trading partners to develop and implement environment and human health protection standards;
- conduct environmental reviews of trade agreements;
- respect the Doha Declaration on Trade-related Aspects Intellectual Property Rights clarifying a developing country's right to break patents during a public health crisis, and;
- promote consideration of multilateral environmental agreements (MEAs) in negotiations on the relationship between MEAs and trade rules, especially as they are related to GATT Article XX.

It is hard to underestimate the impact of TPA's environmental provisions. They have become the standard by which all US environmental provisions in trade agreements are judged by Congress. While not all instructions from Congress have been followed to the letter, every US

trade agreement since TPA now contains specific environment language in the text, parallel commitments to address environment related technical assistance and capacity issues, and involve conducting an environmental review of US trade policy.

Every environment chapter includes more or less the same language with regard to investment, including the language allowing for national discretion over regulatory enforcement. Provisions regarding transparency and public participation are generally adjusted to conform to the degree to which a US trading partner's domestic procedures already provide for due process.

In the language instructing the US to pay particular attention to the relationship between trade rules and multilateral environmental agreements, disagreement among US federal agencies involved in trade policy development has resulted in the option of a less deterministic approach to the MEA/WTO relation than that negotiated into NAFTA; parties are instructed to follow the MEA/WTO deliberations, and consult with regard to their outcome. US negotiators have also been criticised for using bilateral negotiations to step back from the spirit of the Doha TRIPs political declaration on access to medicines by negotiating language guaranteeing safeguards in favour of the patent holder.<sup>4</sup>

Arguably, the most ambitious effort by government officials to implement TPA instructions can be found in the use of environmental reviews of prospective trade agreements, and in the technical assistance and capacity-building responses to the underlying environmental problems in developing countries. As part of the overall effort by the United States to link trade liberalisation to development assistance and good governance, since NAFTA the United States has increased its emphasis on the problem-solving aspects of trade and environment negotiations.<sup>5</sup> Repeated environmental reviews have improved the US methodology, resulting in better and more useful information. The Department of State is now responsible for negotiating long-term, trade and environment agreements between the United States and its trading partners, and has negotiated a long-term environment

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commitment in every regional and bilateral negotiation completed during the Bush administration.

### The Evolution of US Trade and Environment Policy Continues

There are a number of forces likely to continue shaping the US policy on trade and environment. Non-governmental organisations are dissatisfied with the changes made to US investment objectives, and continue to push for greater protections for environmental policy from pressures arising from investment. On a related matter, the United States has not changed its services negotiations position in response to public alarm over the potential for services disciplines to harm regulatory authority, arguing instead that the current trade rules allow adequate flexibility.

Perhaps of greater importance to agricultural exporting countries is the growing trend towards considering the environmental implications of expanded trade in agricultural products.<sup>6</sup> TPA's instructions on trade and agriculture are quite narrow, focusing only on efforts to make sure that trade agreements reduce formal and informal barriers to trade in agricultural products. Whether or not the more flexible provisions contained in TPA (for example, ensuring mutual supportiveness between trade and environmental policies) are capable of providing adequate guidance in these areas is questionable, as political resistance to using trade policy as a more active instrument to promote environmental protection remains strong.

The greatest potential for positive impact on the quality of the environment lies in full implementation of the US commitment to link technical assistance and capacity-building to trade liberalisation. Establishing this linkage is just as important an element of a developing country's proposals for trade and the environment as they are for the US. The US interagency process responsible for developing these linkages will continue their "learning by doing" approach to negotiations, hampered by the executive branch's inability to make commitments that involve allocating federal dollars without prior approval from the United States Congress. To assist them in this effort, and help avoid potentially un-

helpful proposals from the US, developing countries would be wise to prepare and present their proposals for environment and trade early in the negotiations. While it may be difficult for developing country officials to accept, providing US negotiators with this kind of guidance helps them negotiate an agreement that meets the conditions outlined in TPF.

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### ENDNOTES

<sup>1</sup> The term "NAFTA package" refers to four agreements; *The North American Free Trade Agreement, the North American Agreement on Environmental Cooperation, the North American Agreement on Labor Cooperation, and the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank.*

<sup>2</sup> For a full analysis of the environmental provisions contained in the agreement, see Mary Tiemann, *US-Jordan Free Trade Agreement: Analysis of Environmental Provisions*, (Washington, DC: United States Library of Congress, Congressional Research Service, Updated October 16, 2001).

<sup>3</sup> Public Law 107-210 (2002). For analysis of the environmental provisions, see John Audley, *Environment's New Role in US Trade Policy*, (Washington, DC: Carnegie Endowment for International Peace, September 2002), Trade Equity, and Development Issue No. 3.; Mary Tiemann, *Trade Promotion Authority: Environment Related Provisions of P.L. 107-210* (Washington, DC: CRS Report for Congress, the Library of Congress, October 3, 2002).

<sup>4</sup> See comments on the US-Chile and US-Singapore FTA (Section VB3c, "implications for pharmaceuticals" submitted to Congress from the Trade and Environment Policy Advisory Committee (available at USTR's website [www.ustr.gov](http://www.ustr.gov)).

<sup>5</sup> See John J. Audley and Vanessa Ulmer, *Strengthening Linkages Between US Trade Policy and Environmental Capacity-building*, (Washington, DC: Carnegie Endowment for International Peace), Working Paper Number 40, July 2003 (available at [www.ceip.org/docs](http://www.ceip.org/docs)).

<sup>6</sup> Jason Clay, *World Agriculture and the Environment*, (Washington, DC: Island Press, 2004).

### Rough Ride Expected for CAFTA

President Bush signed the Central American Free Trade Agreement (CAFTA) on 28 May and the implementing legislation is likely to be introduced to Congress early next year. Most Democrats, as well as a number of Republicans from sugar and textiles producing states, are expected to oppose CAFTA. Senator John Kerry has announced that he will vote against the treaty's ratification because CAFTA "marks a reversal [of the 2001 US-Jordan FTA] by not including adequate and fully enforceable protections for labour rights and environmental protections in the core of the agreement." Senator Kerry, backed by several Democrat lawmakers, has also said that if he wins the presidency he will renegotiate CAFTA's environment and labour provisions.

Five Senate Democrats have urged President Bush to use the coming months to complete CAFTA's institutional framework through, *inter alia*, creating an appellate mechanism for investor-state disputes, as well as a mechanism akin to the NAFTA Commission for Environmental Co-operation, which would handle citizens' complaints. The Senators strongly emphasised the need for a detailed multi-year workplan for a capacity-building programme under CAFTA's labour and environment co-operation annexes. The plan should include benchmarking and monitoring of progress as "CAFTA will be the first free trade agreement in which the United States pursues trade capacity-building and co-operation projects as the principal means for promoting improved environment and labour standards in developing country partners. In order to assess whether this model can be successful in this and future agreements, it is essential that we set goal-oriented (as opposed to process-oriented) and stakeholder-informed benchmarks to measure progress."

## New Snags Hit EU–Mercosur, FTAA Talks

Free trade area negotiations are set to conclude in October between the EU and Mercosur, and by January 2005 between all Western hemisphere countries except Cuba. The latter deadline will almost certainly be missed, and meeting the former is doubtful.

Meeting on the sidelines of UNCTAD XI in Sao Paulo in June, high officials from the European Union and Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) sought to clear remaining hurdles in their negotiations for a free trade area, which both sides still hope to conclude in October.

No major breakthroughs were made on agriculture, services, government procurement or investment, the main points on the agenda. On services, Mercosur's offer of certain legal guarantees for investments fell short of the EU's wish list. In defense of the offer, Brazil's Foreign Minister Celso Amorim said that his country was "in no position to introduce five constitutional amendments and 23 bill reforms to comply with EU requests." An EU source quipped that the investment proposal had "one page of offerings and four of exceptions".

The EU is particularly keen on gaining access to Brazil's banking and transportation sectors, both of which face limitations with regard to foreign investment. President Luiz Inácio Lula da Silva's government has also recently enhanced local content requirements in public procurement contracts, which the EU is seeking to reverse. Uruguay's Foreign Minister Didier Opertti called government purchases "the most sensitive issue of all."

Nevertheless, both sides referred vaguely to progress on all topics except agricultural market access. The EU originally offered to phase out tariffs for 87 percent agricultural commodities over a ten-year period. For the rest Mercosur would have to accept quotas and smaller tariff reductions. This is not acceptable to Mercosur, which also objects to having to wait until the end of the WTO's Doha Round before some EU commitments would enter into force.

In related news, the EU has signalled to the Andean Community and Central American countries that it will not start free trade negotiations before both Latin American blocks have achieved deeper regional integration. The final agreement is to build on the results of the Doha Round.

Egypt, on the other hand, has concluded FTA negotiations with Mercosur. Ministers were expected to sign the agreement on 7 July in Argentina.

### FTAA Negotiations on Hold

Chances of concluding the talks for a Free Trade Area of the Americas (FTAA) on schedule by the end of the year seem increasingly slim. The US and Brazilian co-chairs of the negotiations have postponed further meetings while awaiting more instructions from their political authorities. The talks reached a fresh impasse in May, when Brazil claimed that the US had gone back on previously agreed language on agricultural market access (Bridges Year 8 no. 7, page 17). Intellectual property protection, which Brazil wants to keep outside the treaty's dispute settlement mechanism, is another sore point.

Once the co-chairs reach a compromise, the text will be reviewed by an informal group of other top negotiators from key countries among the 34 nations involved. Only when that group deems that the text is likely to be accepted as a basis for continuing the talks, will the co-chairs reconvene the full Trade Negotiations Committee (TNC). The Committee was tasked by FTAA ministers in November 2003 to come up with instructions that would allow negotiations to proceed on a common set of rights and obligations for all countries across nine negotiating areas, while permitting more far-reaching agreements between willing participants. So far, numerous informal consultations – and one suspended formal TNC meeting – have not produced a common vision of what level of ambition to aim for in the common set, or what the balance should be between that set and the plurilateral agreements.

### Sugar, Bananas and the EU

In mid-July, EU Agriculture Commissioner Franz Fischler is expected to submit to the Commission a radical overhaul of the EU's sugar sector. Those familiar with the proposal say Commissioner Fischler will suggest cutting the EU's guaranteed internal sugar price by one-third between 2005 and 2007, as well as reducing EU producers' sugar quota from 17.4 million to 14.6 million tonnes a year. Export subsidies will reportedly also be slashed.

The final word belongs to the 25 member states, which are likely to take months to reach a consensus. France is expected to strongly resist the plan, but sugar beet growers everywhere in Europe are worried. The development NGO Oxfam, on the other hand, blasted the Commission for not going far enough in stopping the dumping of subsidised EU sugar, which destroys poor people's livelihoods (Bridges Year 8 No.4, page 9). On 24 June, the leaders of the African, Pacific and Caribbean (ACP) Group of States adopted a resolution highlighting the economic importance of the high prices the EU pays for ACP sugar imports and requesting it to fully compensate ACP states and least-developed countries "in the event of any price reduction."

The Commission also faces an uphill battle in the negotiations set to start soon on a new import tariffs for bananas. The EU is to replace its current duty- and quota-system by a single tariff as of 2006, and ACP banana producers, whose imports are duty-free, are calling for the Commission to at least triple the current tariff of EUR75 per tonne to help them compete without quota protection. In contrast, the world's largest banana exporter Ecuador has announced that it will challenge any tariff it finds too high at the WTO (it reportedly considers the current tariff the upper limit). For their part, ACP banana producers fear that the ten new EU members will not have much interest in protecting possibly WTO-incompatible exports from the Caribbean and Africa (see related article in Bridges Year 8 No.5, page 5).



## Pending Ministerial, G-90 Holds Firm on Tariff Exemptions

Eighteen members of the G-90 coalition met in early June to define a common position for the WTO negotiations leading up to the end-July session of the General Council. The Georgetown Consensus will be presented to a full G-90 ministerial meeting on 12-14 July in Mauritius.

The coalition is under contradictory pressures. On the one hand, the EU's Trade and Agriculture Commissioners proposed in May that most of its members should not be required to make new market access commitments for either agricultural or industrial goods. On the other hand, non-G-90 developing countries, particularly in Latin America, see the idea as an attempt to create a new category of countries and to consolidate existing preferential regimes at their expense (Bridges Year 8, No.5, page 2). Elaborating further on the proposal, EU Trade Commissioner Pascal Lamy recently said that lack of negotiating capacity could be a criteria for determining who would benefit. Commission officials have also informally indicated that at least South Africa and Egypt would not qualify.

### The G-90 and Differentiation

The self-assigned 'developing countries' in the WTO include huge variations in levels of economic development and trading capacity, ranging from Brazil to Fiji and China to Guatemala. So far, all attempts to differentiate within this group have failed. For instance, the post-Doha work programme on small and vulnerable economies, which could have developed a special status for remote islands and poor land-locked countries, has made no perceptible process.

The EU's proposal that "essentially the G-90" should have the Doha Round 'for free' thus holds considerable charm for the group, which comprises several weak and vulnerable economies whose situation is close to that of least-developed countries (LDCs). In Georgetown, Brazil's Foreign Affairs Minister Celso Amorim warned the G-90 against an "addiction to preferences" that could split developing countries. Representing the G-20 group of developing countries focused on tearing down industrialised countries' barriers to agricultural trade, Minister Amorim said that without a broad-based coalition "the attainment of the Round's development objectives [would] always be hindered by interest groups in developed countries."

That warning notwithstanding, the Georgetown Consensus welcomed "the recent initiative in favour of weak and vulnerable economies" and urged WTO Members to consider such initiatives "in order to address the specificity and development needs of the G-90." The document also contained numerous references to the importance of preferential arrangements to G-90 economies and the need to offset the erosion of preferential margins "by establishing compensatory and other appropriate mechanisms, including measures that promote exports from G-90 countries." In addition, the paper clearly stated that the G-90 should be exempt from any tariff reduction commitments for both agricultural and industrial goods.

### Position Aligned with LDCs

On most points, the Georgetown Consensus simply reproduced the language adopted by LDC ministers in May (Bridges Year 8, No.5, page 15), substituting 'LDCs' with 'G-90' where necessary. Thus, for instance, agricultural and industrial goods from all G-90 countries, rather than from LDCs only, should be granted duty- and quota-free access to developed country markets.

### Development Concerns

The G-90 regretted the lack of progress on special and differential treatment (S&D) for developing countries and stated that member countries were "firmly against consideration of any new commitments in the absence of the complete settlement of outstanding agreement-specific S&D proposals." The statement also said that a negotiating group should be established under the auspices of the Trade Negotiations Committee to address outstanding implementation concerns and put forward decisions for adoption by December 2004.

### Singapore Issues

Echoing their LDC colleagues, the G-90 minister took note of the "increasing convergence of views [...] regarding the development of a more precise and focused work programme on the issue of trade facilitation", but warned that "a number of issues should be clarified" before agreeing negotiating modalities "by explicit consensus". Among such issues, the ministers listed the need to address resource and capacity constraints, the costs of implementing the new rules, as well as clarity on whether trade facilitation rules would be subject to the formal dispute settlement. In a deliberately ambiguous statement, the ministers left open possibility of continuing talks on competition policy, investment and transparency in government procurement in the WTO, but made clear that these would not be part of the Doha Round negotiations.

### G-90 Membership

The coalition consists of three groups of least-developed and developing countries with largely overlapping memberships: the Group of Least-developed Countries (LDCs), the African, Caribbean and Pacific (ACP) Group of States and the African Union. Most of these countries are located in Sub-Saharan Africa and none in continental Latin America. The main differences between the three grouping are:

- The 49-strong LDC Group (of which 30 are WTO members) comprises 33 Sub-Saharan countries, nine Asian members and Haiti in the Western Hemisphere. Under current WTO rules only LDCs form a defined category, to which easier liberalisation commitments apply. Little is expected from them during the Doha Round, and many countries grant duty- and quota-free market access for most, if not all, of their exports.
- The 77-member ACP Group includes 19 small island developing nations in the Caribbean and the Pacific (five of which are LDCs) in addition to 47 Sub-Saharan countries (33 of which are LDCs). All ACP countries, most of which are former colonies, have preferential market access to the EU.
- The African Union groups most countries of the continent, including relatively well-to-do Egypt and Morocco, as well as South Africa.



# The Role of Trade Liberalisation in Improving Access to Clean Water and Sanitation in Mexico

Enrique Lendo Fuentes

The potentially positive sustainable development impacts from expanding markets for environmental goods and services have been addressed in diverse fora, but the international community has not reached a consensus on what such goods and services consist of. Mexico's experience in the areas of water and sanitation may offer food for thought on the policy implications of the debate.

Neither the Doha Declaration, nor the Johannesburg Plan of Implementation<sup>1</sup> define or propose a classification for environmental goods and services (EGS). Definition proposals put forward at the WTO both by Members and international organisations, notably the OECD and APEC fora, have generated extensive debate as many Members feel that these approaches are based on technology/high-skill solutions to environmental problems presenting a comparative advantage to developed countries.

While the Doha Ministerial Conference mandated negotiations on tariff and non-tariff barriers affecting (undefined) environmental *goods*, WTO negotiations towards further liberalisation of environmental (and other) *services* began before Doha as part of the so-called 'built-in agenda' agreed during the Uruguay Round. According to Article 19 of the General Agreement on Trade in Services (GATS), Members had to start discussions on negotiating formats and procedures in 2000. A few months later, the Doha Ministerial Conference set deadlines for submitting requests (June 2002) and offers (March 2003), as well as for concluding the talks in 2005. The basis for classifying environmental services at the WTO is document MTN.GNS/W/120 derived from the UN Central Product Statistical Classification, which focuses mainly on waste management and pollution control. Some countries have proposed to update this approach in order to capture the latest environmental policy developments, principally in the area of pollution prevention. However, these proposals have not reached full consensus among WTO Members.

## Classification of EGS: Implications for Mexico

Mexico faces major challenges in defining its position on the most suitable definition/classification of EGS in light of its sustainable development goals. On the one hand, Mexico is the ninth largest economy in the world and a member of both the OECD and APEC. Moreover, its standards for environmental protection compare with and, in some cases exceed, those of some developed countries.

On the other hand, Mexico is experiencing difficulties in halting and reversing environmental degradation and unsustainable use of natural resources. In addition, it has the second lowest GDP per capita rate among OECD countries<sup>2</sup> and over one third of its population lives below the poverty line, especially in rural areas.

Aside from these contrasting sustainable development variables, Mexico shares with other developing countries a comparative advantage in the export of certain environmentally preferable products, particularly in the primary sector. The liberalisation of international trade in goods and services in sectors such as sustainable agriculture, fisheries, forestry and tourism could not only bring significant environmental and economic benefits to the country, but it also has the potential to push some key social goals. In many cases the provision and production of such goods and services rely on labour from low-income communities and indigenous groups. Mexico thus needs to assess the costs and benefits from the liberalisation of the EGS trade under different definitions by considering the three dimensions of sustainable development.<sup>3</sup>

## Private Participation in Water and Sanitation Services in Mexico

Over the last five decades, government authorities' efforts to expand and improve potable water and sanitation services throughout Mexico have achieved remarkable results. In 1950, forty-three percent of Mexico's 26 million people had access to potable water, while just 23

percent had sewage services. In contrast, today's population of 100 million has a coverage rate of 87 percent for water and 73 percent for sewage. Nevertheless, 10.4 million people remain without access to clean water and 24 million have no sewage services. Most of the people lacking access to these services live in rural low-income communities.<sup>4</sup> Moreover, only 27 percent of the wastewater produced in the country is treated.<sup>5</sup>

In order to comply with the United Nations Millennium Development Goals and the Johannesburg Plan of Implementation, Mexico has set ambitious quantitative targets for clean water and sanitation for the next 25 years. While the financial resources needed to meet these targets amount to US\$73.5 billion dollars in 25 years (3 billion a year), the public budget currently available for potable water, sewage and sanitation is considerably lower. Even when water charges are added to federal government subsidies, available resources stand at only 42 percent of the investment needed.<sup>6</sup>

## Efficiency Issues in the Water Sector

Mexican water service companies' efficiency rates are below international standards (45 percent global efficiency) and they lack federal funds to improve performance. Budget constraints and competing priorities from other public policy areas are the main causes of insufficient government resources to finance infrastructure and operating costs in the water and sanitation sectors. As low efficiency rates and below-cost water tariffs have deteriorated the financial situation of many operating companies in Mexico, private participation initiatives have been explored to attract the necessary investment for achieving the targets. Some advantages of private participation include:

- improvement of operating and commercial efficiency;

*Continued on page 22*

- potential improvement in service quality;
- continuity and stability of policies and programmes;
- speed and flexibility in the decision making process and resources allocation; and
- separation of operational and regulatory regimes.

### *Regulatory Framework for Private Participation in Water and Sanitation*

While under Mexico's current regulatory framework water and sanitation services can be outsourced to private parties, water remains a national property. Some schemes for private participation considered in the Mexican Water Law include:

- public works and service contracts with possibility of return of investment;
- total or partial concessions for operation, conservation, maintenance and expansion of hydraulic infrastructure;
- total or partial concessions to build, own, operate and transfer (BOOT); and
- concessions for comprehensive services.

Despite the existence of regulatory and institutional frameworks, private participation in the Mexican water and sanitation sectors is still in its infancy. Due to its potential to improve global efficiency and to generate additional financial resources, the federal government has explored two strategies to further promote private participation in the water and sanitation sectors in Mexico: (i) binding subsidy programmes to private participation and tariff efficiency in municipalities<sup>7</sup>; and (ii) initiatives to foster international trade and investment in water and sanitation services.

The Johannesburg Plan of Implementation calls on governments to undertake public/private partnerships to enhance the benefits of trade liberalisation for developing countries and to "support voluntary WTO-compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, including organic products, which maximise environmental and developmental benefits through, *inter alia*, capacity-building and technical assistance to developing countries."

### **Mexico's Experience in EGS Trade Liberalisation**

Although there were a few initiatives to assess the environmental market in Mexico before 2000,<sup>8</sup> it was the GATS process and more specifically the deadline established in Article 19 that triggered government involvement in this area. In early 2001, WTO Members started circulating proposals to guide the negotiations mainly directed at updating the W/120 classification for environmental services in light of recent developments in environmental policy. The Mexican government with the support of some international organisations, such as the North American Commission for Environmental Cooperation, the OECD and ECLAC, has conducted a preliminary assessment of the market and the feasibility for trade liberalisation, which in general proposed a selective and sequenced liberalisation process.<sup>9</sup>

Mexico's intention to analyse its EGS market in order to determine the pros and cons of trade liberalisation did not stop WTO Members from meeting their Doha deadlines. In mid-2001, some (mainly developed) countries requested Mexico to open its environmental services sector by complying with the principles of market access and national treatment in the four modes of supply considered by the GATS.<sup>10</sup> Mexico responded to those requests in 2003 by presenting an offer that included market access and national treatment commitments (at the federal level) in two sub-sectors of the W/120 classification: sewage services, and sanitation and similar services. Some safeguards to provide for regulatory flexibility, and to preserve municipal authorities' autonomy in granting concessions and setting the rules of the game in terms of tariff structures complemented the offer.

However, Mexico still has the opportunity to propose, or support definition and classification approaches that maximise the sustainable development gains from trade liberalisation of EGS. In this process, sustainable impact assessments are most welcome. These tools will permit to base the goods list proposals and services commitment schedules on sound analysis and the reconciliation of economic, social and environmental goals.

As in most trade liberalisation processes, at the end of the day there will be winners and losers from the EGS negotiations. Hence *flanking measures*, including those supporting the principle of universal access to water and sanitation services, should be considered. After all, the GATS disciplines recognise Members' right to regulate services supply and to place limitations on national treatment in their schedule of commitments.

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### ENDNOTES

<sup>1</sup> Adopted by the World Summit on Sustainable Development on 4 September 2002.

<sup>2</sup> Its GDP per capita in 2002 was US\$9,200 when the OECD average was US\$25,000 (OECD, *National Accounts of OECD Countries, Main Aggregates, Volume I*, 2004, www.oecd.org).

<sup>3</sup> The North American Commission for Environmental Cooperation (CEC) in collaboration ICTSD is currently undertaking a sustainable impact assessment of trade liberalisation of the EGS sector in Mexico.

<sup>4</sup> National Water Commission (Comisión Nacional del Agua), *Private Sector Participation in Water and Sanitation Services*, Mexico, 2001.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> See the Mexican National Water Commission PROMAGUA programme for more information about this strategy, www.can.gob.mx.

<sup>8</sup> The CEC has undertaken different comprehensive and sector-specific studies of EGS and EPP in which aspects or case studies from Mexico are considered. For more information see www.cec.org/pubs\_docs.

<sup>9</sup> CEC-OECD, *Identifying Complementary Measures to Ensure Maximum Realisation of Benefits From the Liberalisation of Trade in Environmental Goods and Services, the Case of Mexico*, 2003.

<sup>10</sup> See General Agreement of Trade in Services, 1995, www.wto.org.

## Trade & Environment at ICTSD

During the past months, ICTSD has continued to consolidate and expand its *Trade & Environment Programme*. Some recent activities included:

### *Identifying the trade & environment priorities of Southern and Eastern Africa*

As part of the ICTSD-IISD-RING Southern Agenda on Trade & Environment project, the regional expert consultation for Eastern and Southern Africa, held in South Africa on 10-11 June, brought together a diverse group of 25 regional stakeholders, representing the views of governments, civil society groups and academia, to debate the region's priorities with regard to trade and environment. Six issues emerged as key areas of interest for the region, namely intellectual property rights, services, standards, market access, domestic policy space and capacity concerns. Among these, participants identified a wide range of specific concerns and priorities, among them the need for a regional approach to standard setting, the elimination of tariff peaks and tariff escalation, and impact assessments of trade and development priorities.

The meeting was the fourth in a series of regional consultations along with Western Africa, South America and South-Southeast Asia (see BRIDGES No.1, 2004). The outcomes of this process will flow into the research outputs of the project, which will provide useful information to practitioners and involved observers while also pushing the discussion on these issues forward by highlighting cutting edge ideas that can inform existing and emerging debates. For more information on the project, see [www.trade-environment.org/page/southernagenda/description.htm](http://www.trade-environment.org/page/southernagenda/description.htm).

### *Linking the trade and environment communities*

On 22 April, ICTSD and IUCN – in collaboration with the North-American Commission for Environmental Cooperation (CEC) and supported by the Finnish Ministry of the Environment – organised a side-event to the 12<sup>th</sup> session of the UN Commission on Sustainable Development (CSD-12), highlighting the trade dimension related to water and sanitation. The side-event aimed to 'carry' some ideas and thoughts on how trade negotiations, particularly in the context of environmental goods and services (EGS), could affect access to water and sanitation to the environmental community at CSD-12. To complement this process, ICTSD organised a round table session during the WTO Symposium on 26 May to discuss how EGS liberalisation could deliver a meaningful outcome for sustainable development. The round table was aimed at sparking a debate on the sustainable development aspects of EGS, this time among trade negotiators and other mainly 'trade-community' stakeholders. This strategy of 'cross-fertilisation' of ideas for the two meetings reflects the approach underlying ICTSD's work on EGS. The strategy is meant to respond to the needs of both trade and environmental stakeholders, with different priorities and tasks, yet bound together by ensuring sustainable development outcomes.

### *Providing a comprehensive online space on trade & environment*

As part of its web portal strategy to better serve specific communities using information technologies, ICTSD in March 2004 launched the *Trade & Environment Knowledge Navigator* ([www.trade-environment.org](http://www.trade-environment.org)) with the support of the Canadian Department of Foreign Affairs and International Trade. This comprehensive web portal aims to facilitate access to a wide range of knowledge on trade and environment for trade policy-makers and influencers. To this end, it provides information, news, analysis, context setting and negotiating documents, as well as links to a wide range of resources, other sources and actors that can be accessed to support long-term policy-making efforts. Among the features currently under development, the portal will provide a space aimed specifically at fostering information exchange between the trade and environment communities. The section will provide updates on relevant meetings, including background information on the respective trade & environment linkages, as well as links to official documents and other resources by interested stakeholders.

For further information on ICTSD's Trade & Environment Programme, contact Heike Baumüller, [hbaumuller@ictsd.ch](mailto:hbaumuller@ictsd.ch)

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

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

#### **BRIDGES regional editions:**

##### **PUNENTES**

##### **entre el Comercio y el Desarrollo Sostenible**

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

Web: <http://cinpe.una.ac.cr>

Fundación Futuro Latinoamericano, Quito, Ecuador

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

##### **PASSERELLES**

##### **entre le commerce et le développement durable**

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: Heike Baumüller

##### **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 Yvonne Apea

##### **ECLAIRAGE SUR LES NEGOTIATIONS COMMERCIALES**

Co-publisher: ECDPM

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 Yvonne Apea

##### **PASSERELLES SYNTHESE MENSUELLE**

Co-publisher: ENDA – Tiers Monde

Publication électronique mensuelle sur les questions de commerce et développement durable d'importance particulière à l'Afrique. Rédacteur: El Hadji Diouf

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

### Meetings of WTO Bodies\*

July 5	Council for Trade in Goods
July 6-8	Negotiating Group on Non-agricultural Market Access
July 13	Working Group on Trade and Transfer of Technology
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; expected to adopt frameworks for agriculture and non-agricultural market access modalities
Aug. 31	Dispute Settlement Body
Sept. 21-23	Council for TRIPs

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

### Other Meetings

July 12-14 Mauritius	G-90 Ministerial Meeting on a common position on the WTO negotiations
Sep. 20-24 Geneva	First Meeting of the Conference of the Parties to the Rotterdam Convention (on prior informed consent for trade in hazardous chemicals and pesticides) <a href="http://www.pic.int">http://www.pic.int</a>
Sep. 26 Montpellier	Eighth International Symposium on the Biosafety of Genetically Modified Organisms <a href="http://www.inra.fr/gmobiosafety/aboutsymposium.php">http://www.inra.fr/gmobiosafety/aboutsymposium.php</a>

### Call for Papers

Nov. 1-2 Amsterdam	Second CAT&E Conference on Trade, Environment and Development: The North South Dimensions The organisers invite policy-makers, researchers and others to submit papers to the conference, preferably with an empirical or quantitative approach in the fields of economics, law, social sciences and environmental science. <i>Interested authors should send a 300-word abstract to <a href="mailto:luke.brander@ivm.nl">luke.brander@ivm.nl</a> as soon as possible.</i> <a href="http://www.cat-e.org/">http://www.cat-e.org/</a>
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### Selected Documents Circulated at the WTO

Negotiating Group on Rules. 28 April 2004. Developmental Aspects of Regional Trade Agreements and Special and Differential Treatment in WTO Rules: GATT 1994 Article XXIV and the Enabling Clause. Paper by the ACP Group of States (TN/RL/W/155)

Negotiating Group on Rules. 7 June 2004. Fisheries Subsidies: Proposed Structure of the Discussion. Communication from Japan (TN/RL/W/159)

### Other Selected Resources

Attaran, Amir and Granville, Brigitte (eds.). June 2004. Delivering Essential Medicines: The Way Forward. The Royal Institute of International Affairs. London

Brusick, Philippe; Alvarez, Ana Maria; Cernat, Lucien and Holmes, Peter (eds.). 14 June 2004. Competition, Competitiveness and Development: Lessons from Developing Countries. UNCTAD. Geneva

Chang, Ha-Joon and Grabel, Ilene. May 2004. Reclaiming Development – An Alternative Economic Policy Manual. Zed Books. London

Cosbey, Aaron; Mann, Howard; Peterson, Luke and von Moltke, Konrad. June 2004. Investment and Sustainable Development: A Guide to the Use and Potential of International Investment Agreements. IISD. Winnipeg

Guha-Khasnobis, Basudeb. June 2004. The WTO, Developing Countries and the Doha Development Agenda: Prospects and Challenges for Trade-led Growth. Palgrave Macmillan. London

Lines, Tom. June 2004. Commodities Trade, Poverty Alleviation & Sustainable Development. Common Fund for Commodities. Geneva

Mehta, Rajash and Agarwal, Pooja. May 2004. WTO Market Access and Indian Small Scale Industry. Research and Information System for the Non-aligned and Other Developing Countries. New Delhi

OECD. 2004. Inventory of Tariffs and Trade Data and OECD Agricultural Outlook: 2004-2013. OECD. Paris

Stieglitz, Joseph and Charlton, Andrew. An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancun. Commonwealth Secretariat. London

UNCTAD. 4 June 2004. New Geography of International Trade: South-South Co-operation in an Increasingly Interdependent World. (TD/404). UNCTAD. Geneva

### GMO Dispute Documents at [www.ictsd.org](http://www.ictsd.org)

Government submissions and *amicus curiae* briefs in the US/Argentina/Canada dispute against the European Union's approval processes for genetically modified (GM) products have been posted at <http://www.trade-environment.org/page/theme/tewto/biotechcase.htm>