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Facts and Figures

- Global spending on health research by both the public and private sector represents about 2.7 percent or US\$73 billion of total annual health expenditures worldwide (estimate for 2000). Less than 10 percent of this is devoted to diseases or conditions that account for 90 percent of the global disease burden. This imbalance is referred to as the 10/90 gap.
- In the year 2000, total expenditure for research on specific tropical diseases (leishmaniasis, malaria, sleeping sickness and tuberculosis) was US\$ 383 million. US\$85 million (0.11 percent) of that budget was spent on drug research and development for those diseases, which account for 5 percent of the global disease burden.
- Only 13 of the 1233 drugs that reached the global market between 1975 and 1997 were for tropical infectious diseases that primarily affect the poor.

Source: *The 10/90 Report on Health Research 2003–2004*. Global Forum for Health Research.

How Significant Is the Latest WTO Deal?

The General Council decision on the future of the Doha Round, adopted after marathon negotiations on 31 July, was less vague than some had expected. Nevertheless, it only provides a roadmap for yet more negotiations and contains enough grey areas for the end result to remain uncertain. The conclusion of the Round was delayed at least until December 2005.

The decision consists of a general text and four specific annexes. The first of those lays out a framework for establishing negotiating modalities in agriculture, the second does the same – albeit in less detail – regarding non-agricultural market access, the third contains recommendations for the services negotiations, and the fourth establishes modalities for negotiations on trade facilitation. While the decision did no more than confirm expectations in most areas, a short paragraph on cotton in the agriculture framework text provided a welcome surprise.

Cotton Will Get Specific Treatment

Since June last year, four least-developed West African countries have waged an uphill battle to persuade the multilateral trading system to take on board their difficulties in exporting cotton at a profit due to international prices pushed down by the heavy subsidies of a handful of developed countries (Bridges Year 7 No.5, page 1). They asked for a fast elimination of all cotton subsidies and the establishment of a compensation mechanism until the phase-out was complete. These hopes were dashed in Cancun, and any special treatment for cotton seemed increasingly unlikely as the negotiations creaked on after the collapse of the Ministerial.

While the 31 July decision does not deliver everything the Cotton Initiative's sponsors hoped for, it explicitly commits Members to addressing the issue "ambitiously, expeditiously, and specifically, within the agriculture negotiations." Those negotiations must ensure "appropriate prioritisation of the cotton issue independently from other sectoral initiatives". A subcommittee on cotton will meet periodically and report to the agriculture negotiations to review progress. Furthermore, the work "shall encompass all trade-distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition". Until negotiations in late July with the four African countries, there were no signs of the US reversing its opposition to singling out cotton, or any other agricultural commodity for that matter, in the negotiations. Losing the dispute on cotton subsidies to Brazil may have contributed to the US change of heart.

Agriculture Text May Yield Long-term Progress

Whether the framework agreement on agriculture eventually lives up to its hype will depend on the actual modalities adopted after the next stage of the negotiations. One thing is already certain: it will be many years, most likely more than a decade, before the WTO's latest effort to liberalise agricultural trade will make a concrete difference on the ground (see page 3 for details).

The total elimination of export subsidies and equivalent instruments will eventually remove the form of government support that most distorts international trade. The 'credible end date' for such support remains, however, to be negotiated and is likely to extend far into the future. The EU, for one, has let it be understood that it will seek to retain some export subsidies longer than others, and French Agriculture Minister Hervé Gaymard has predicted that export subsidies will not be completely eliminated until 2015 or 2017. The forthcoming negotiations on 'commitments and disciplines' will determine whether it will be possible to reduce support on

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Bridges

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a product-specific basis; it is conceivable that a date very far into the future would give rise to negotiations on modalities to avoid the highest subsidies being phased out the slowest.

There is a general tendency toward compressing domestic support and tariffs into a flatter range through the principle that the highest levels must be cut the most. Referring to the Doha Declaration, the text emphasises that the negotiations must result in 'substantial' reductions in trade-distorting domestic support, as well as substantial improvement in market access. At the same time, there many are loopholes, such as the to-be-negotiated 'appropriate number' of sensitive products on which higher tariffs and tariff quotas may be maintained. Similarly, further negotiations on the Blue Box may actually expand its scope to cover counter-cyclical payments, which would otherwise be included in the most trade-distorting support category.

While the developed country commitment to reduce trade-distorting support by 20 percent during the first year of the implementation period looks good on paper, its concrete value may boil down to the establishment of a new ceiling that cannot be later exceeded.

The section on agricultural tariff cuts, one of the most sensitive issue of the run-up to the July meeting, leaves practically all crucial decisions to further negotiations (see page 4).

The Singapore Issues and NAMA

As expected, the 31 July decision launches negotiations on trade facilitation "with a view to further expediting the movement, release and clearance of goods, including goods in transit". The modalities for negotiations clearly spell out the need for special and differential treatment, technical assistance and capacity-building for developing countries. This includes a caveat that these countries will not be required to implement the final agreement if support and assistance for the required infrastructure is missing or they continue to lack the necessary capacity.

With regard to the other three Singapore issues (investment, competition policy and transparency in government procurement), the text stresses that "no work towards negotiations on any of these issues will take place within the WTO during the Doha Round". However, certain opponents to WTO involvement in these issues have expressed concern that the language is vague enough to allow clarification work to continue on the sidelines, and does not exclude the possibility of launching negotiations some time in the future.

The annex on non-agricultural market access (NAMA) is much shorter and less precise than the agriculture text, largely due to Members' reluctance to enter into details before the scope of the latter was known (see page 6).

Development Provisions Spark Debate

The July decision's weak section on 'development' as a stand-alone subject reflects the impasse reached in the WTO with regard to improving provisions on special and differential (S&D) treatment for developing countries and addressing implementation concerns (see page 5).

S&D provisions are, however, firmly integrated in the four frameworks adopted on 31 July. While their effectiveness remains to be proved, some have already called for ending the practice of extending identical treatment to all members of the large, self-designated category of developing countries. US sugar producers are among the loudest critics of their government's acceptance of easier subsidy and tariff reduction terms for Brazil and other competitive developing country agricultural exporters. Speaking to sugar producers on 10 August, J.B. Penn of the US Department of Agriculture said that it made "absolutely no sense for Brazil to be treated as a developing country when it has a first-world agriculture system" and called on the WTO to rethink the tradition of self-designation.

Brazil's Foreign Minister Celso Amorim brushed the comments aside. With about a third of its 175 million people living in poverty, "Brazil is a developing country," he told reporters. He added that as the co-ordinator of the G-20 group of developing countries, which has fought for an end to rich country subsidies, "Brazil doesn't want special treatment for these (developing) countries, it wants just treatment."

The Main Features of the Agriculture Modalities Framework

The major merit of the agriculture framework is simply that it now exists. It contains few surprises and leaves most of the hard decisions to future negotiations with no specified deadline.

The agreement to eliminate export subsidies is undoubtedly an accomplishment, but achieving this – or the goals of the other two pillars of the negotiations – is very much a long-term project.

Domestic Support

The negotiations must achieve a 'substantive reduction' in the combined support provided through Final Total Bound AMS (Aggregate Measure of Support, commonly known as the Amber Box), permitted *de minimis* and the Blue Box, but the pace and depth of this will depend on the modalities agreed for each category through further negotiations. The broad parameters for those talks include special and differential treatment for developing countries, such as longer implementation periods and lower reduction coefficients, and a 'strong element' of harmonisation in developed countries' reductions. Developing countries will continue to be able to exempt investment and input subsidies and support for diversification from growing illicit crops from their AMS calculation under Article 6.2 of the Agreement on Agriculture.

Each developed country Member must make a 20 percent reduction in the overall level of its permitted trade-distorting support during the first year of the implementation period, which is yet to be determined. The fact that the subsidy cuts will be made from bound commitments means that few countries will feel the pinch in the immediate future, as the levels bound at the end of the Uruguay Round are so high that US officials, for instance, have already said that current farm programmes will not be affected. Due to the harmonisation principle, the EU with its higher starting level is more vulnerable at first glance, but its plan to shift most domestic support into the permitted Green Box is likely to considerably lessen the impact.

The importance of the 20 percent down payment is thus mostly symbolic, although it will establish a new ceiling that cannot later be exceeded. Further reductions will be calculated on the basis of each Member's entire bound permitted trade-distorting support (rather than the 80 percent remaining after the first year cut) according to a 'tiered formula to be negotiated'. The text lays out guidelines for those negotiations for each of the three components.

Amber Box Support Will (Eventually) Be Cut

Members with higher total AMS are called to make the greatest reductions. The innovation in this category is a timid start to addressing subsidy reductions on product-specific basis. However, the text only requires product-specific AMS to be "capped at their respective average levels according to a methodology to be agreed". While this is new, the capping will only partially prevent Members from keeping high levels of support for certain products (tariff peaks) while still achieving the required overall cut through greater reductions on other products. This is a far cry from the G-20 pre-Cancun demand that developed countries should make all subsidy cuts on a product-specific basis. A little discipline is provided by the requirement that the overall Final Bound Total AMS reduction must result in actual reductions (rather than just capping) in "*some* product-specific support" (editor's italics).

De Minimis Support to Be Reduced

WTO rules currently allow a developed country Member to extend trade-distorting support to 5 percent of its total value of agricultural production (this *de minimis* limit is 10 percent for developing countries). The framework foresees negotiations to reduce these levels, but specifies that "developing countries that allocate almost all *de minimis* programmes for subsistence and resource-poor farmers will be exempt." This last provision will permit differentiation between developing countries – most likely excluding Brazil – without creating a new category Members.

Blue Box Coverage to Expand

Before and at Cancun, developing countries had proposed the elimination of the Blue Box, which now exempts from reduction commitments support to product-limiting schemes (mostly

used by the EU). However, far from eliminating the Blue Box, the new text expands its coverage to direct payments decoupled from production but not from prices, which would protect the counter-cyclical payments employed by the US to shield farmers from the effects of market price fluctuations. This creates a new category of exempted support that would otherwise have been subject to reductions under the Amber Box.

Flexibility will be provided "on a basis to be agreed" to Members (such as the EU) that have placed "an exceptionally large percentage" of their trade-distorting support in the Blue Box to ensure that they are "not called upon to make a wholly disproportionate cut".

Total Blue Box payments will be capped at 5 percent of the average value of the Member's agricultural production based on a historical period to be established through negotiations. This ceiling is to apply to "any actual or potential Blue Box user" from the beginning of a to-be-agreed implementation period. While the cap is a novelty, the Derbez text proposed in Cancun went further as it suggested dates for the historical period (2000-2002) and – in line with developing country demands – linear reductions thereafter for an [x] number of years.

The new flexibilities may be somewhat curtailed by the 'additional criteria' that will be negotiated to ensure that Blue Box payments "are less distorting than AMS measures"; take into account the balance of WTO rights and obligations; and "will not have the perverse effect of undoing ongoing reforms".

Green Box Criteria Will Be Revised

Green Box payments are currently both uncapped and free from reduction commitments because they are considered to have "no, or at most minimal, trade-distorting effects or effects on production". The present criteria allow governments to support agricultural research, the promotion of food security stocks, direct payments to producers decoupled from production levels, structural adjustment assistance, safety-net pro-

Continued on page 4

grammes, and environmental and regional assistance programmes. These measures must not involve price support, such as the counter-cyclical payments described above.

Contrary to developing country demands for a cap on Green Box payments, the 31 July text foresees only a revision of the criteria to ensure that Green Box measures actually are at the most minimally trade-distorting. The review must take 'due account' of non-trade concerns, a concept dear to mostly European countries, which are in the process of shifting the bulk of their support measures to the Green Box through income support decoupled from production or market prices and payments linked to environmental standards and rural development objectives.

Export Competition

"As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date." In the abstract, negotiations on export competition could be over as soon as that date is set. In the real world, Members are likely to spend considerable time on definitional issues and the extent to which export credits, export credit guarantees or insurance programmes with a repayment period beyond 180 days actually have an "equivalent effect" to export subsidies.

Other contentious issues include disciplining the 'trade distorting practices' of exporting state trading enterprises (STEs), "including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses." Canada has already warned that it will fight any attempt to curtail the activities of its Wheat Board, while US Trade Representative Robert Zoellick has stated that the framework agreement "commits to disciplines, for the first time ever, on monopoly state trade enterprises like the Canadian Wheat Board." As a special and differential treatment measure, STEs in developing countries "which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status." This is important since for many developing countries STEs are the only available means to regulate imports, as well as exports.

Food aid was added to the export competition chapter because agricultural surplus stocks accumulated through domestic subsidisation are frequently exported to developing countries facing food shortages. This practice displaces commercial shipments, including food from neighbouring countries. The negotiations are to address the role of international organisations "as regards the provision of food aid by Members, including related humanitarian and developmental issues", as well as the "question of providing food aid exclusively in fully grant form".

The export competition commitments and disciplines will be implemented by annual instalments "according to a schedule and modalities to be agreed. [...] Their phasing will take into account the need for some coherence with internal reform steps of Members."

As with domestic support, developing countries will be granted longer phase-out periods for all forms of export subsidies, and the negotiations must ensure that any new disciplines "make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries". Developing countries will be able to retain marketing and transport subsidies, currently exempted under Article 9.4, for a to-be-negotiated 'reasonable period of time' after the general elimination is complete.

Market Access

Expanded market access through significant reductions in tariffs and non-tariff barriers was a *sine qua non* for securing concessions on domestic and export support from export-oriented subsidising countries. In contrast, the G-10 group of net food-importing industrialised countries, as well as developing countries such as India and the G-33, fought to preserve the right to high tariffs and import quotas to protect their farmers from competition. The 31 July framework sketches an outline for compromise.

A Single Tiered Formula Approach

The text decrees a 'single approach' for both developed and developing countries, but tariff reductions will be made through a "tiered formula that takes into account their different tariff structures". The details of the formula are left wide open, with the text mentioning only that "the number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated."

Despite the similarity in approach, the text makes no mention of the detailed 'banded' tariff reduction model developed by Stuart Harbinson, former Chair of the agriculture negotiations, in the run-up to the Cancun Ministerial Conference (see box in Bridges Year 7 No.3, page 7).

A few guiding principles are laid out for further negotiations, including: (i) tariff reductions will be made from bound rates; (ii) all Members other than least-developed countries (LDCs) will make a contribution; (iii) special and differential provisions for developing country Members will be an integral part of all elements; and (iv) progressivity will be achieved through deeper cuts in higher tariffs with flexibilities for 'sensitive products'.

Whatever formula is eventually agreed, it will bite only gradually, as the cuts will be made from bound levels, which are generally much higher than those actually applied, particularly in developing countries. Nevertheless, the reduction of the bound level will limit Members' scope for raising applied tariffs in response to import surges or domestic policy objectives.

Flexibilities Offered under Market Access

The framework agreement contains three flexibility instruments to offset the impact of mandatory tariff cuts:

- All countries may designate 'an appropriate number' (to be negotiated) of sensitive products to which the formula will not apply. While this provision responds mainly to the concerns of the G-10, it will also benefit highly protected sectors – sugar comes to mind – in other countries. Tariff cuts will still be required, and market access must be improved through quota expansion. Negotiations on the details are expected to be difficult.

- In addition, as a special and differential treatment measure, developing countries will be able to designate ‘an appropriate number’ of Special Products, based on criteria of food security, livelihood security and rural development needs. The criteria and treatment of these products will be specified through further negotiations, likely to centre on the number of products (which the G-33 group of developing countries says should be self-selected) and whether any tariff cuts will be required.
- A Special Safeguard Mechanism (SSM) will be established for use by developing country Members, and the question of the existing special agricultural safeguard (SSG) for developed countries remains under negotiation. The G-20 had demanded the elimination of the SSG.

Other Elements

The negotiations will also address the erosion of trade preferences due to MFN liberalisation, which is a major concern to many developing and least-developed countries (LDCs), as well as liberalisation of trade in tropical agricultural products and “products of particular importance to the diversification of production from the growing of illicit narcotic crops.”

The text calls on all developed “and developing country Members in a position to do so” to provide duty- and quota-free market access to LDCs, which are not required any reduction commitments themselves. It also commits Members to “work to achieve ambitious results expeditiously” on cotton due to the sector’s vital importance to certain LDCs. The particular concerns of recently acceded Members “will be effectively addressed through specific flexibility provisions”.

Sectoral initiatives, differential export taxes and geographical indications are only mentioned as “issues of interest but not agreed”.

What Happened to the ‘Development Agenda’?

The General Council’s 31 July decision devoted just 790 words on ‘development’ as a concern of its own in the Doha Round negotiations.

On special and differential treatment (S&D) and implementation-issues, the core development elements of the Doha Declaration, the decision essentially instructs Members to continue the work that has been underway since early 2002 and reiterates earlier commitments with regard to technical assistance and the work programme for least-developed countries (LDCs).

S&D Unlikely to Progress as a Stand Alone Issue

Instead of adopting the 27 recommendations on 28 Agreement-specific proposals that were agreed ‘in principle’ in the lead-up to the Cancun Ministerial, Members set yet another deadline for completing the review of ‘outstanding’ Agreement-specific proposals, this time for July 2005. They also agreed to address ‘other outstanding work’, referring, *inter alia*, to cross-cutting issues (dealing mostly with systemic concerns), the monitoring mechanism and the incorporation of S&D into the architecture of WTO rules.

During the drafting of the ‘development language’, advanced Latin American and East Asian developing countries reportedly diverged with their African, Caribbean and Pacific (ACP) country counterparts over phrasing that was seen to confer greater benefits to the latter group. The Latin American and East Asian countries were reluctant to accept special treatment for a *de facto* new class of developing country WTO Members, which could consolidate and institutionalise preferential market access as a norm in the multilateral trading system (for example via regional trade agreements such as the EU-ACP Economic Partnership Agreements).

One sticking point was language indicating that the concerns of small, vulnerable developing economies “shall be taken into account, without creating a sub-category of Members”. The other revolved around language to the effect that developing country reduction commitments in agriculture and non-agricultural market access would take account of “their levels of development in particular sectors”. In the end, the ‘shall’ in “shall be taken into account” was changed to ‘should’ and the language tying market access reductions to levels of development in particular sectors was removed. New language on ‘other development issues’ makes explicit mention of “the fundamental principles of the WTO and relevant provisions of GATT 1994”. This effectively makes the ensuing language on providing special attention to developing countries with particular concerns subject to the WTO’s most-favoured nation (MFN), which requires any benefit conferred to one Member to be conferred to all.

Differentiation between developing countries is one of the most contentious issues of the S&D review (see also page 2). Many developed country Members have pointed to the lack of a mechanism to differentiate between the larger advanced developing countries and the smaller non-LDC countries as *the* stumbling block to deepening the effectiveness of S&D provisions. Developing country proponents of the S&D review – while possibly disagreeing in private over the value of differentiation – have held that putting in place such a mechanism does not form part of the mandate on S&D.

These concerns resurfaced after the EC Trade Commissioner Pascal Lamy and Agriculture Commissioner Franz Fischler, suggested last May that the G-90, which groups most African and ACP countries, should essentially have the Round ‘for free’ (Bridges Year 8 No.5, page 2).

Implementation Issues

On implementation-related concerns, i.e. the difficulties in meeting negotiated obligations and perceived imbalances with certain WTO rules, the text calls on the different bodies involved to ‘redouble’ efforts to find ‘appropriate solutions’. It also instructs the General Council to “review progress and take any appropriate actions no later than July 2005”.

Vague NAMA Text Agreed

Members were generally reluctant to engage in serious negotiations on non-agricultural market access (NAMA) until the level of ambition in agriculture had become clearer, leaving NAMA as the major stumbling block as the talks drew to an end. Consequently, the framework agreement on NAMA is much less specific than the agriculture annex, outlining merely “initial elements for future work on modalities”.

Members battled early on over how much of the controversial NAMA Annex B from the failed Cancun draft text to retain, and how or where developing country concerns could best be reflected. In the July decision, they agreed to include an initial paragraph outlining developing country concerns in front of the Cancun NAMA language. This initial paragraph stipulates that “[a]dditional negotiations are required to reach agreement on the specifics of some of these [initial] elements”, which relate to the tariff reduction formula, the starting point for binding unbound tariff lines, flexibilities for developing countries, and participation in sectoral initiatives. While some – mostly developing – countries appear to view the language regarding additional negotiations on specifics sufficient to signal their qualified acceptance of the form and content of the ensuing paragraphs, some developed countries have suggested that the additional negotiations will simply involve tweaking the elements but maintaining their essential form.

India's industry groups generally welcomed the NAMA text. “It is satisfying to see that a number of our concerns have been addressed and reflected in the deal,” said the Federation of Indian Chambers of Commerce & Industry. The Confederation of Indian Industry also saw the text as a much-needed boost for the flagging Doha negotiations. US Trade Representative Robert Zoellick and EU Trade Commissioner Pascal Lamy echoed these positive sentiments, with the latter adding that the 31 July language was an improvement over the Cancun text. In contrast, Sander Levin, the ranking member of the US House Ways and Means Committee, said that four years of negotiations had apparently resulted in no more than an identification of the barriers that trading partners had in place with regard to US exported manufactured goods.

Sugar Subsidies: Brazil Scores Again

A preliminary WTO ruling has found that the EU's high domestic support for sugar enables it to export sugar at prices below the cost of production. This cross-subsidisation means that the EU's subsidised sugar exports are four times higher than the one million tonne ceiling it had committed to during the Uruguay Round.

Brazil, Australia and Thailand had argued that the EU's support measures for sugar produced for the internal market in fact acted as an export subsidy as they made it possible to export surplus sugar at below-cost prices. The panel upheld this view in the interim report handed to the parties on 4 August. The report will not be released to the public until it has been finalised and translated, most likely in late September. Some details have, however, already been leaked.

According to a number of sources, the panel found the EU's illegal sugar exports to amount to US\$1.4 billion in value terms and more than four million tonnes in volume. These exports consist of 2.7 million tonnes of sugar produced in EU countries and 1.6 million tonnes imported from the African, Caribbean and Pacific (ACP) Group of States, refined in Europe and then re-exported to world markets.

It appears that the panel found these exports inconsistent with the EU's scheduled commitments under Articles 9.1(a) and 9.1(c) of the Agreement on Agriculture, but declined, on judicial economy grounds, to rule on whether the export subsidies also violated provisions under the Agreement on Subsidies and Countervailing Measures (SCM). Under the latter agreement, Members must eliminate inconsistent measures ‘without delay’.

At press time it was not clear how the panel ruled on the complainants' claim that the EU's sugar regime violated the national treatment principle by paying domestic refiners a subsidy in the form of a guaranteed intervention price.

Brazil's Delight Contrasts with ACP Worry

Despite the confidentiality of the interim ruling, Brazil's Foreign Minister Celso Amorim described it as “a Brazilian victory” – the second after another WTO panel ruled in favour of Brazil's complaint against US cotton subsidies earlier this year (Bridges Year 8 No.6, page 7). The development NGO Oxfam, which has long campaigned against the EU's sugar subsidies (Bridges Year 8 No.4, page 9), called the ruling a “triumph for developing countries and a death knell for unfair EU sugar exports subsidies”.

While Oxfam argues that the removal of the EU's trade-distorting measures would result in a higher international market price for sugar and thus help farmers in all developing countries, ACP sugar producers are seriously concerned. They fear the loss of a vital source of export earnings, as well as a major erosion of their traditional trade preferences, if the EU reduces its imports or lowers the guaranteed price it pays for ACP sugar. ACP countries maintain that Brazil, already the world's number one sugar producer, will capture the lion's share of any new export opportunities opened up by the ruling.

The EU has declined to comment officially on the interim report other than to acknowledge it has been released. Speaking on the condition of anonymity, some European Commission sources have, however, acknowledged that the panel's findings were not unexpected and would even be helpful in securing member states' acceptance of the Commission's vastly unpopular proposal for reforming the sugar regime. In tabling the proposal, the Commission itself said the existing system had “come under fierce criticism for misallocating resources, hampering competition, harming developing countries and giving consumers, taxpayers and the environment a raw deal” (see page 16).

The Commission is likely to appeal the panel's final decision once it is released, if only to gain time to push through the sugar reform.

GMO Verdict Delayed until March

The panel report on the EU's measures affecting the approval and marketing of biotech products has been postponed until March 2005 due to the parties' common request for additional time to prepare their rebuttals and the panel's decision to seek scientific and technical expert advice.

The US had argued forcefully that there was no need for expert advice because the scientific procedures for EU decision-making were not under challenge. Instead, the US continues to stress, the dispute concerns moratoria maintained at both the EU and national levels *despite* positive risk assessments made by the EU's own scientific bodies. On 16 August, the US told the panel that it had not identified "any specific questions" that the experts could address, and shot down all initial suggestions offered by the EU. Most important among these was a categoric "opposition to the consideration of the Biosafety Protocol as relevant to substantive consideration of the issues raised in this dispute." It was not the role of scientific experts to "develop their own arguments as to why a safeguard measure is consistent or inconsistent with the obligations under the SPS Agreement," the US maintained.

Precaution and the Biosafety Protocol

In its July rebuttal submission (for EU arguments, see Bridges Year 8 No.6, page 11), the US argued at considerable length that both the notion of 'precaution' and the Biosafety Protocol were irrelevant to the case. For instance, it asserted that "given that precaution cannot even be defined and, therefore, could not possibly be a legal norm, one could not argue that states follow it from a sense of legal obligation." The US also noted its strong disagreement with "any notion that the Biosafety Protocol is a rule of international law". To be relevant to treaty interpretation, the international rule must be "applicable in the relations between the parties". This, the US said, was not the case for the Protocol because the US is not party to it.

The US called the EU's statement on the 'purported risks' of biotech products 'misleading' and its description of the biotech approval regime 'inaccurate'. It was particularly cutting about the basis on which member states' measures were maintained, arguing that 'insufficient' scientific evidence could not be evoked since the EU itself had found enough evidence to conduct positive risk assessments for each product subject to a member state measure, and there was no evidence that the states in question had sought to perform additional risk assessments. The US also said that the EU's statement that the contested measures were "under constant review" did not "come close to meeting the requirement that the measures are in fact reviewed within a reasonable period of time of their adoption".

The submission blasted member states for using the lack of laws on environmental liability and co-existence [between genetically modified and conventional crops] as a reason to continue their moratoria. "Such rules have no bearing on decisions or assessments regarding the environment or human or animal health or safety, and a desire for such rules cannot justify delay. Otherwise, a member could always say it would like a better regulatory regime in other aspects and delay approvals indefinitely, rendering the SPS 'undue delay' discipline meaningless."

Existence of Moratoria Still Disputed

The EU continues to deny the existence of a 'general moratorium' on marketing approvals, pointing in particular to the approval of two varieties of genetically modified (GM) corn after the April 2004 entry into force of new regulations on traceability and labelling of GM products. The US counters this assertion through two arguments: (i) the dispute applies to the situation that prevailed when it was launched in August 2003; and (ii) several EU member states continue to maintain 'product-specific moratoria' on new approvals, including the two that recently received the green light from the European Commission.

Argentina and Canada are co-complainants in the GMO dispute, and Australia, Brazil, Chile, China, Colombia, El Salvador, Honduras, Mexico, New Zealand, Norway, Paraguay, Peru, Chinese Taipei, Thailand and Uruguay have reserved their third-party rights.

Disputes in Brief

- **EU – GIs** The release of the panel report on the US-Australia complaint against the EU's protection of trademarks and geographical indications (GIs) has been postponed from August until the end of the year "due to the complexity of the case".

The complainants have alleged that EU Regulation 2081/92 imposes a condition of reciprocity and equivalence for the registration of geographical indications relating to areas located outside the EU in violation of TRIPs Article 4, which requires a WTO Member to accord "immediately and *unconditionally* to the nationals of other Members any advantage [...] that it grants to the national of any other country." The EU has denied this, arguing that Regulation 2081/92 applies "without prejudice to international agreements" such as TRIPs and therefore does not require reciprocity from WTO Members. Another disputed point is that the EU does not refuse protection for GIs that are confusingly similar to existing trademarks.

- **Mexico – HFCS** Panelists were appointed on 18 August in the dispute brought by the US against Mexico's tax on high fructose corn sugar (HFCS, see Bridges Year 8 No.6, page 12). The case will be heard by Ronald Saborio Soto (Chair; Costa Rica), Edmond McGovern (UK) and David Walker (New Zealand). Canada, China, the EU, Guatemala, Japan and Pakistan have reserved their third party rights. In principle, panels should deliver their reports within six months, but this deadline is often missed.

In related news, the Mexican National Industry Chamber for Sugar and Alcohol told US Trade Representative Robert Zoellick in a 6 August letter that it would petition the Mexican government to file a countersuit at the WTO. The letter alleged that the disputed tax was a direct response to repeated US failure to open its market to Mexican sugar as required by NAFTA, and blamed the US for foiling all attempts to have the matter arbitrated under NAFTA itself.

On Enforcing the Right to Information at the WTO

The notification obligations under many WTO agreements play a fundamental role in keeping Members informed about the trade barriers they face in foreign markets. If a country fails to notify such measures, the dispute settlement system provides an ultimate avenue for redress.

A WTO Member that considers its trade harmed by the failure of another Member to adequately notify a trade measure can bring a challenge under any agreement that contains specific notification requirements, as most of them do.¹ Alternatively, a case may be brought under Article X of GATT 1994 on the publication and administration of trade regulations.

The Obligation to Publish under GATT Article X

The essence of Article X is to ensure predictability and transparency in the administration of trade laws and rules. Article X:1 requires members to *promptly* publish laws, regulations, judicial decisions and administrative rulings of general application that affect imports and exports in a form that will enable both governments and traders to become acquainted with them (an exception is made for confidential information). Under Article X:2 no Member is permitted to enforce trade measures that will raise new obligations or impose burdensome requirements under existing import regimes prior to their publication. Finally, the 'due process' provisions of Article X:3 require Members to administer such laws and regulations in a "uniform, impartial and reasonable manner".

Despite a number of panel and Appellate Body rulings involving Article X,² uncertainty remains regarding three aspects:

- the relationship between the obligation to publish and the obligation to notify;
- the relationship between specific publication requirements in other WTO agreements and Article X; and
- the probability of a panel or Appellate Body ruling on an Article X claim occurring at all due to 'judicial economy' reasons, i.e. instances where panels address only those issues that they consider necessary for the resolution of the matter between the parties.

Notification and Publication

Notification obligations involve the provision of specific information on trade measures

as detailed under various WTO agreements to the WTO Central Registry of Notifications. In contrast, the requirement to publish certain trade information is a general obligation, which flows from the WTO transparency principle. It often appears loosely in other WTO agreements and is crystallised in Article X.³

In effect, where a specific notification obligation is satisfied, it can be argued that the more general obligation to publish has also been fulfilled. Thus in a specific notification challenge, Article X can provide an additional ground. Moreover, even without a legal obligation to notify a specific trade measure, the general obligation to publish it may still apply by virtue of the transparency principle, or because it is the type of information regulated by Article X.

The Relationship between Article X and Specific Publication Requirements under WTO agreements

Where a GATT provision and a WTO agreement contain similar obligations, WTO jurisprudence supports the application of both agreements rather than a total dismissal of the more general GATT provision.⁴ In *EC – Bananas III*, the Appellate Body noted that similar provisions appearing in both Articles 1.3 of the Licensing Agreement and Article X:3 of GATT *equally* applied to certain EC import licensing procedures. Nevertheless, the Appellate Body dealt with the issue of specificity by asserting that as the licensing agreement was more detailed on the administration of import licensing procedures, the panel should have applied it first.⁵

Judicial Economy and Sole Article X challenges

In certain cases (*US – DRAMS*, *US – Stainless Steel*), panels have found it unnecessary to decide Article X claims after examining other claims in the dispute. However, the transparency principle is one of the fundamental notions of the multilateral trading system⁶, and it is important for panels to further expound on such provisions in order to entrench the principle in WTO jurisprudence. It is equally important for Members not to subsume transparency challenges under other claims; for were an action to be brought solely on the basis of Article X, the panel would have no choice but to adjudicate it. Bringing a case solely under Article X, or any other transparency provision for that matter, would also create a real incentive for compliance by WTO Members.

This article is the second part of ICTSD analysis of the availability of information on trade barriers. The first part was published in Bridges Year 8 No.6, page 5.

ENDNOTES

¹ The EC successfully challenged Korea's obligation to notify safeguard measures under Article 12 of the WTO Safeguards Agreement in *Korea – Dairy* (WT/DS98/AB/R).

² See WTO analytical index: GATT 1994 (Article X) available at www.wto.org

³ For example Annex B, para. 1 of the Agreement on Sanitary and Phytosanitary Measures (SPS) calls on Members to ensure that SPS measures adopted are 'published promptly'. In its first submissions in the *EC – Biotech* case, the US argued that the failure by the EC to publish its GMO moratorium amounted to a lack of transparency.

⁴ *Indonesia – Certain Measures Affecting the Automobile Industry* (Indonesia – Autos) WT/DS54/R, para 14.28

⁵ *EC – Regime for the Importation, Sale and Distribution of Bananas* (EC – Bananas III) WT/DS27/AB/R, para 202-204

⁶ See the Appellate Body's comments on Article X:3 and transparency in *US-Import Prohibition of Certain Shrimp and Shrimp Products* (US – Shrimp-Turtle) WT/DS58/AB/R, para 183

Specific Trade Obligations in the Stockholm Convention on Persistent Organic Pollutants

Glenn Wiser and Marcos Orellana

When the Stockholm Convention on Persistent Organic Pollutants (POPs) entered into force on 17 May 2004, it became the latest in a growing list of multilateral environmental agreements that incorporate specific trade obligations to achieve their objectives. This article reviews some of the Convention's trade-related provisions, and examines how they may be considered at the first Conference of the Parties in 2005.

POPs are a class of chemicals that persist in the environment, are capable of long-range transport, bioaccumulate in human and animal tissue, and have significant impacts on human health and the environment. They include such substances as dioxins, PCBs, and DDT.¹ POPs released to the environment can travel through air and water to regions far distant from their original source. They can accumulate in living organisms, including humans, to concentrations that exceed ambient levels by many orders of magnitude. Even in very low concentrations, these chemicals are associated with an array of human health problems including cancers, neurobehavioral impairment, immune system changes and reproductive disorders. Because POPs are capable of causing serious harm thousands of miles from their source, local and national efforts to control them can be completely ineffective in the absence of global action.

The Stockholm Convention begins to address these threats by banning the production and use of nine POPs pesticides and industrial chemicals; restricting the production and use of an additional pesticide, DDT; and establishing measures to reduce or eliminate releases into the environment from unintentional production (e.g., incineration) of PCBs and two other POPs (Articles 3 and 5). Specific exemptions that allow the continued production and use of some of these POPs are available to countries that may have particular difficulty complying with an immediate ban. Exemptions will be periodically reviewed by the COP, with the intention of permanently phasing them out as soon as possible (Article 4).

Because the 'dirty dozen' substances presently listed in the Convention represent only a fraction of the synthetic chemicals released into the environment that exhibit POPs characteristics, the Convention contains a science-based process for adding other POPs to its scope (Article 8). It also contains provisions to: reduce or eliminate POPs releases from stockpiles and wastes; establish information exchange and reporting requirements; facilitate public awareness and research, development, and monitoring; and provide technical and financial assistance to developing country parties and parties with economies in transition (Articles 6, 9-13 and 15). The preamble of the Convention acknowledges "that precaution underlies the concerns of all the Parties and is embedded within" the treaty.

Rejection of a Trade Supremacy Clause

At the final negotiations on the POPs Convention in Johannesburg, South Africa in December 2000, the debate over whether the treaty should include a 'WTO supremacy clause' took centre-stage. 'Bracketed' language had been introduced to the negotiating draft during the Second Intergovernmental Negotiating Committee (INC) meeting, which read: "The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreements."²

Many participants and observers to the negotiations believed this clause was intended to subordinate the aim of eliminating POPs to the goals of the international trading system.³ Similar language had been proposed during negotiations on the Rotterdam Convention on Prior Informed Consent, but it was eventually moved out of the body of that treaty and into the preamble.⁴

The POPs Convention negotiators in Johannesburg agreed at 6.50 a.m. – after the last session had been extended all night – to delete the trade supremacy clause. In its place, they inserted language into the Convention's preamble that states, "*Recognising* that this Convention and other international agreements in the field of trade and the environment are mutually support-

ive. . ." This language clearly indicates that governments did not consent to subordinating the treaty to trade disciplines. Rather, the preambular language is consistent with the Doha Declaration, and the Plan of Implementation agreed at the World Summit on Sustainable Development (WSSD).⁵

Import and Export Restrictions

To help achieve its objectives, the Stockholm Convention establishes restrictions on trade in listed chemicals, both among parties and between parties and non-parties. Convention parties must ban the import of listed chemicals except for the purpose of environmentally sound disposal or for a use or purpose that complies with a specific exemption permitted for the party. Similarly, parties must ban all exports of listed chemicals except for the purpose of environmentally sound disposal or to a party that is permitted to use the chemical under a specific exemption. This latter exception to the general export ban is intended to avoid creating an incentive for parties to begin domestic production of a POP when they are permitted to continue using it.

As to restrictions on trade with non-parties, parties to the Convention may export listed chemicals to non-parties only if the latter provides an annual certification to the exporting party. The certification must specify the intended use of the chemical and include "any appropriate supporting documentation," such as legislation, regulations, or guidelines. These certifications must also include a statement that the importing country is, with respect to the chemical, committed to:

- protect human health and the environment by taking the necessary measures to minimise/prevent releases of the chemical, and
- comply with the Convention's measures to reduce or eliminate releases from stockpiles and wastes (Article 3.2(b)(iii)).

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In addition, if the chemical being exported is DDT, then the non-party certification must state that the importing country is committed to using DDT only for the purpose of disease vector control, in accordance with recommendations and guidelines of the World Health Organisation, and only when locally safe, effective, and affordable alternatives are not available to the importing country (Annex B, part II.2).

Monitoring Trade

The Stockholm Convention utilises a reporting mechanism to monitor trade in listed POPs. As part of its periodic reporting, each party must provide the secretariat with a list of countries from which it has imported POPs and countries to which it has exported POPs (Article 15.2(b)). However, according to the draft reporting format prepared by the secretariat, the only required information would be the name of the originating or destination country, and only “to the extent practicable.”⁶ Exporting parties are also responsible for sending non-party certifications to the secretariat within 60 days of receiving them (Article 3.2(b)).

The secretariat is required to compile reported information and make it available to other parties and, presumably, the public (Art. 20.2(d)). Yet it is not apparent whether there will be any formal process for third-party review or verification of the non-party certifications. Additionally, there is no indication of whether information on exports to non-parties will be considered by the COP when it conducts an “effectiveness evaluation” of the Convention in 2008.

The Stockholm Convention and other MEAs on Trade in Chemicals

The import and export requirements of the Stockholm Convention are analogous to rules under the Basel Convention on the Transboundary Movement of Hazardous Wastes. The Basel Convention allows its parties to import or export hazardous wastes from or to non-parties only if they first conclude bilateral agreements ensuring that the wastes will be dealt with in a manner that is at least as environmentally sound as that required under the Convention (Article 11). This rule serves the same function as the Stockholm non-party certification requirement, by allowing trade with non-parties only if they agree to meet the relevant standards established under the treaty.

In contrast, the Stockholm Convention import-export restrictions are not as stringent as the rules governing trade with non-parties under the Montreal Protocol. Under the Montreal Protocol, parties must ban imports and exports of ozone depleting substances with non-parties, and they must discourage the export of technology for producing and utilising such substances. They must also refrain from subsidising or supporting the financing of exports to non-parties of products, equipment, plants, or technology that would facilitate the production of listed substances. Moreover, Protocol parties agreed to determine the feasibility of banning or restricting the import from non-parties of products produced with, but not containing, listed substances.⁷ The Stockholm Convention does not contain an analogous process and production methods (PPM) provision.⁸

First Conference of the Parties

The Stockholm Convention's first Conference of the Parties (COP-1) will meet in May 2005 in Punta del Este, Uruguay to consider and decide upon many of the rules and guidelines needed to make the treaty functionally operational. Among other issues, COP-1 will consider the required party reporting formats and possible terms for the effectiveness evaluation. The COP will consider technical guidelines on the environmentally sound management of POPs wastes, which are being developed by the Basel Convention, and which will inform how the Stockholm Convention's Article 6 on measures to reduce or eliminate releases from stockpiles and wastes is interpreted. How these rules are defined may have international trade implications, because non-party importers must state in their certifications that they are in compliance with them. However, there is no indication at this time that COP-1 will consider guidelines or rules directly concerning non-party certifications.

The COP may also consider rules pertaining to the availability of specific use and production exemptions for listed chemicals, including a possible review process for entries in the exemptions register. These rules may also have trade impacts, because they will affect the extent to which parties and non-parties may trade in listed chemicals. An additional issue that could have important trade implications is non-compliance, especially if the parties were to consider trade-related sanctions as a potential response to non-compliance. Yet the Convention is vague on this point, requiring only that the COP develop and approve procedures and mechanisms for determining and treating cases of non-compliance “as soon as practicable” (Article 17). The Stockholm parties are unlikely to adopt any final decision on non-compliance at COP-1.

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ENDNOTES

¹ The ‘dirty dozen’ chemicals currently listed in the Convention include aldrin, chlordane, dieldrin, endrin, heptachlor, hexachlorobenzene (HCB), mirex, toxaphene, polychlorinated biphenyls (PCBs), dichlorodiphenyltrichloroethane (DDT), dioxins, and furans. See POPs Convention Annexes A-C.

² Report of the Second Intergovernmental POPs Negotiating Committee Meeting, Annex 1, UN Doc. UNEP/POPS/INC.2/6 (1999).

³ See, e.g., *WTO ‘Supremacy Clause’ in the POPs Convention* (CIEL Working Paper, 1999); Claudia Saladin and Brennan VanDyke, “*International Trading Rules and the POPs Convention*” (1999). Both are available at <http://www.ciel.org/Publications/>.

⁴ The Rotterdam Convention establishes PIC procedures for international trade in chemicals banned or severely restricted in a country and in pesticides considered to be severely hazardous.

⁵ The Doha Ministerial Declaration, para. 31, states that negotiations on the relationship between WTO obligations and specific trade obligations in MEAs should be conducted “with a view to enhancing the mutual supportiveness of trade and environment”. Para 98 of the WSSD Plan of Implementation pledges to “promote mutual supportiveness” between the multilateral trading system and MEAs.

⁶ See Format and Timing of Party Reporting under Article 15, annex III, sect. VII.22-23, UN Doc. UNEP/POPS/INC.7/19 (2003).

⁷ Montreal Protocol on Substances that Deplete the Ozone Layer (as adjusted and amended), Art. 4. However, the Protocol's Meeting of the Parties decided in 1993 that “it is not feasible to impose a ban or restriction on the import of such products under the Protocol at this stage.”

⁸ While the PIC Convention applies to a far greater range of chemicals than the Stockholm Convention, it neither regulates their production or use, nor contains import and export restrictions such as those in the Stockholm Convention, Basel Convention or Montreal Protocol. Rather, it establishes procedures for information sharing, notice, and consent regarding international trade in listed chemicals.

Environmental Goods: Challenges for Developing Countries

The Doha Ministerial Declaration calls for “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.” Some progress has been made on environmental goods, although the negotiations are yet to move into a concrete phase.

From the outset, Members faced significant difficulties in agreeing to a common definition of environmental goods (EGs). This has focused attention on a ‘list-based’ approach whereby countries can submit their own specific lists of environmental goods, with lists developed by the Asia Pacific Economic Co-operation (APEC) and the Organisation for Economic Co-operation and Development (OECD) serving as reference points.¹ Considering that liberalising trade in the products on these lists would primarily benefit industrialised countries, many developing countries have demanded the inclusion of products of export interest to them in any list eventually developed.

Several African countries, including Kenya in document TN/MA/W/27, have referred in particular to organic agricultural products. They have also asked for a clarification on where the liberalisation of ‘environmental’ agricultural goods will be negotiated, since at present only the Negotiating Group on Non-agricultural Market Access (NAMA) has a formal mandate to address EGs. In addition, they have stressed that para. 16 of the Doha Declaration (on the reduction/elimination of tariff-peaks, tariff-escalation and non-tariff barriers; less than full reciprocity in reduction commitments with emphasis on products of export interest to developing countries; and the principle of special and differential treatment for developing countries) must apply to environmental goods negotiated under NAMA (TN/MA/W/40).

While no clear decision has been taken as to the negotiating body where agricultural EGs will be discussed, the framework for establishing modalities in market access for non-agricultural products (Annex B of the 1 August General Council decision on the Doha Work Programme) encourages the NAMA group to “work closely” with the Committee on Trade and Environment (CTE) “with a view to addressing the issue of *non-agricultural* environmental goods.” Whether this excludes NAMA as a forum for discussing ‘agricultural’ environmental goods is an open question.

Lists of Environmental Goods: Few Submissions So Far

While WTO Members, and developing countries in particular, have been asked to submit specific lists of environmental goods, so far only Japan (TN/MA/W/15), Qatar (TN/TN/W/19) and Taiwan (document yet to be officially released) have done so. Taiwan’s list reportedly contains 70 environmental goods in the category of pollution control equipment, and Japan’s list includes products from both APEC and OECD lists plus some additional products, such as energy-efficient consumer equipment. Qatar has proposed efficient, lower carbon pollution emitting fuels such as natural gas and related technologies.

The PPM Dilemma Continues to Haunt

Submission of specific lists that go beyond the ‘end-of pipe’ approach raises a number of challenging issues, notably with regard to the inclusion of products based on process and production methods (PPMs). This is of particular concern to developing countries, which on the one hand wish to include products deriving from organic agriculture, but on the other hand realise that PPMs may provide the only grounds for their inclusion in an EG list. Most WTO Members understandably want to avoid introducing PPM-based criteria into discussions.²

The US and Chinese Proposals on Modalities

The US has proposed a ‘core list’ (on which consensus exists) and a ‘complementary list’ for which individual countries could nominate products enjoying a wide degree of support (TN/TE/W/3). The proposal envisages faster liberalisation for core list products (zero tariffs by 2010) and a minimum [x] percent tariff cut on goods on the complementary list. China has called for a ‘common list’ including environmental goods of export interest to both developed and developing countries, as well as a ‘development list’ derived from the common list that would benefit from special and differential treatment in the form of lower levels of reduction

commitments for developing countries. China has also stressed the importance of facilitating technology transfer to developing countries when working on trade liberalisation of environmental goods (TN/TE/W/42).

EGs, MEAs and Good Governance

The EU has suggested that deeper cuts in this area would need to be justified by a solid environmental rationale and could, for instance, draw upon multilateral environmental agreements (MEAs) and the numerous international initiatives that resulted from the World Summit on Sustainable Development. The Kyoto Protocol, for instance, could indicate what environmental goods would be important in mitigating climate change. One EU delegate emphasised that ensuring harmony between different fora was in keeping with the principles of ‘good governance’. He also considered it important to have a complementary approach involving product lists, as well as a clarification of definitional aspects, but acknowledged that there was a need for wider agreement among WTO members on this approach.

Outcome Still Uncertain

In a report to the Trade Negotiations Committee (TN/TE/9), the Chair of the environmental negotiations noted that since Cancun “encouraging progress” had been made on the EG mandate and urged participants to continue submitting specific examples of products or product categories they would like to include in the negotiations. The OECD, the World Customs Organisation and UNCTAD have been invited to brief the CTE on their work on environmental goods at the next CTE-special session meeting on 12-13 October.

ENDNOTES

¹ See ICTSD-IISD Doha Round Briefing Series on Trade and Environment at www.ictsd.org/pubs/dohabriefings/cancun_updates/V2_09_TandE.pdf.

² Under current rules, Members may not distinguish between ‘like’ products on the basis of the manner in which they are processed or produced.

Tariffs and Preferences in Latin America

Mauricio López Dardaine

This look at the mosaic of trade arrangements in Latin America shows that most countries already rely on a network of tariff preferences that will largely shield them from abrupt effects of the most-favoured nation tariff reduction expected to result from the WTO's Doha Round.

In the early sixties, ten South American countries and Mexico created the Latin American Area of Free Trade (ALALC)¹, which was to be concluded by 1973. While the free trade area was not attained, thirty-one years later the initial objective appears to be within range.² The first practical outcome of the primary pact, which took twenty years to engineer, was what could be called 'an area of fixed tariff preferences' (even if not a whole lot of 'preferential' trade actually ensued). There was, however, a significant exception: a number of sectors – such as those involving chemicals, pharmaceuticals, infant electronics and data processors, photography and a few others – developed high *temporary* preferences among Member Countries³, in an era where 100 percent tariff levels for third countries were not exceptional.

Disappointed at ALALC's achievements so far, the founding fathers turned it into today's Latin American Area of Integration (ALADI)⁴ in 1980. The flexibility incorporated in the Montevideo Treaty that gave birth to the new association made it possible to renegotiate existing 'national lists' of concessions where one country gave identical tariff preferences to all others. This exercise lasted for most of the eighties and yielded a host of bilateral agreements, including those between Argentina and Brazil, Brazil and Mexico, and Colombia and Uruguay. In later years, tariff positions were – and in some instances still are – added to these bilateral formats and preferences increased in many cases to 100 percent.

During the nineties, 'preferential trade' gradually gained importance, particularly for the leading sectors. Nevertheless, many an industrial project was made possible by the existence of the fixed tariff preferences – way before the introduction of *automatic annual rebate mechanisms* in the early nineties or the creation of full-fledged free trade areas.

Another thing stands out: while it was always tough to negotiate a tariff preference

that would actually create more trade, once obtained, there was no going back, except in a very limited number of cases. These permanent additional preferences were, of course, apart from the 'temporary system of sectoral preferences' mentioned earlier, which was much employed – and created a great deal of trade – between 1965 and 1990.

The nineties saw the creation of Mercosur between Argentina, Brazil, Paraguay and Uruguay. It also witnessed an invigorated Andean Pact⁵ (now the Andean Community of Nations, or CAN), a sub-regional enterprise, which has been struggling during the last few years to perfect its common external tariff, just as Mercosur is wrestling to put the finishing touches on its own complicated common external tariff.

In June 1996, an important free trade area agreement was signed between Chile and Mercosur. Here was an instrument of a new era: it effectively applied an *automatic* reduction mechanism until internal tariffs between the two parties were brought to zero on 1 January 2004. Good will, strong political support, increased two-way trade and the successful resolution of a few significant controversies were the real world background elements supporting the success of the automatic rebate system.⁶

The ALADI Regional Tariff Preference System

When addressing the interweaving agreements among ALADI countries that constitute the tariff preference system developed from 1960 to 2004 in a short article one is forced to make more than a few simplifications and trust the readers to be able to see through the maze created in the last forty odd years.

There are a number of often overlaying agreements that may be described as the network of tariff preferences through which 'preferential trade' flows. This network was negotiated on the basis of two extremely important 'floors', to wit: the *Regional Tariff Preference System* and the so-called *Patrimonio Histórico de la ALADI*.

The Regional Tariff Preference includes all countries except Cuba, which was not yet a member when the agreement was signed. Through this system all countries offer all others tariff preferences across the board, except for a short list of exceptions, which vary from country to country.

The system divides ALADI members into four categories roughly based on levels of economic development:

- Group I comprises Argentina, Brazil and Mexico, which offer 20 percent among them. Group II benefits from a 28 percent reduction, Group III gets 40 percent and Group IV 48 percent.
- Group II consists of Chile, Colombia, Peru and Venezuela, which again offer 20 percent to each other. In addition, they offer 12 percent to Group I and 28 percent to Group III.
- Group III comprises Uruguay and Ecuador, which offer 20 percent to each other, 8 percent to Group I, 12 percent to Group II and 28 percent to Group IV.
- Group IV is formed by the two landlocked ALADI members: Bolivia and Paraguay. They offer 20 percent to each other, 12 percent to Group III, 8 percent to Group II and only 4 percent to Group I.

This matrix is the only functioning multilateral agreement within the ALADI (excluding Cuba). It is one of the 'floors' for the preferences negotiated in the early nineties, but not the only floor. There is in fact another basis for the agreements of the nineties and from 2000 onwards: the *Patrimonio Histórico* – roughly, "the historical preferences negotiated and en-

forced to date”, which must be taken into careful consideration in the negotiations for any new agreement.

Other ALADI Tariff Arrangements

Mercosur, a free trade area since 1995, represents a strong initial step towards a customs union, although still a rather imperfect one. Actual residual tariffs between the four countries are zero, as are those between Mercosur members and Chile.

In addition, Chile – the most proactive member of the ALADI in this respect – has similar bilateral agreements with Mexico, Colombia, Venezuela, the US and Canada, as well as the European Union. It is also a member of APEC.

Bolivia, negotiating on its own despite being a member of the Andean Community, signed an agreement with Mercosur in 1996, although that still has to become a free trade area.

NAFTA member Mexico has a ‘new generation’ agreement with Chile, plus the ‘G-3’ with Colombia and Venezuela, as well as a brand new free trade area agreement with Uruguay, which here is well ahead of its Mercosur partners. Mexico is currently renegotiating existing bilateral pacts with Argentina and Brazil, but this is still a long cry from an FTA.

As of August 2003, under the undeniable drive of Brazil, Mercosur countries have made a considerable effort to conclude a new set of agreements with the Andean countries (except Bolivia, with which a pact already exists since 1996). The renewal of this diplomatic effort has almost yielded a Peru-Mercosur agreement that might eventually be signed while these lines go to press.⁷

After a number of *faux pas* in the previous seven years, Mercosur and the rest of the Andean countries – Colombia, Ecuador and Venezuela – started in late 2003 to create a basis for what will become the Mercosur-Andean FTA between 2005 and 2015. The initial differences between these countries were so great that it required an extremely complex set of different automatic rebate mechanisms to reach a satisfactory solution; even a brief description would take forever and only experts would be really interested. Suffice it to say that the last details are currently being ironed out, although it may take some time.

In addition, Mexico and Chile have both signed agreements with the EU, and Mercosur is negotiating a similar pact. There are also *pourparlers* between the Andean Community and the EU.

Last but not least, all ALADI countries are also party to the negotiations for the Free Trade Area of the Americas (FTAA). The FTAA’s fate, however, will not be clear until after the US presidential elections next November.

The Big Question

So, within the ALADI we essentially have Mercosur, the Andean Community, Chile with its numerous FTA agreements, and Mexico, which is part of NAFTA but also has with growing links southwards. All this will result in a free trade area between 2008 and 2015, and had in fact already partially begun to look like one at the beginning of 2004.

In many cases the actual ‘preferential trade’ has been spurred among neighbouring countries within the region by the existence of FTAs and even by the agreements that target FTAs, such as the one between Mercosur and Chile or Mercosur and CAN, respectively.

The big question is: *will the tariff reductions granted among all WTO Members dilute the preferences of the new generation ALADI agreements when existing barriers are lowered for third countries beyond the ALADI region?*

To answer this question, we need some sort of a hypothesis regarding the time the eventual WTO agreement begins to yield results. Let us say at the beginning of 2008, to be realistic if

not downright optimistic. How many years will it then take before ALADI countries must offer zero tariffs to all WTO Members? This, of course, will greatly depend on the formula that is finally negotiated. But let us say: *no less than ten years*.

So it will be around 2018 that the ALADI region will, to a great extent, become open to exports from all WTO Members – excluding, of course, the so-called ‘sensitive’ products, which may make a significant difference to trade.

WTO tariff cuts will be made from bound levels. Within Mercosur, for instance, a great number of tariffs are bound at the 35 per cent level, whilst the average common external tariff of Mercosur is about 14 per cent. Here is a difference that will be significant in those ten years after 2008.

In addition, as mentioned earlier, within the ALADI there are two parallel tariff preference ‘floors’: the residual tariff level resulting from the Regional Tariff Preference Agreement and those residual tariffs that are part of the *Patrimonio Histórico*. The ‘new generation’ agreements negotiated from the early nineties to this day have used both of these ‘floors’ as stepping stones. All of this means a much lower starting point, which in turn means much lower residual tariffs, much earlier. The fact that most ‘preferential’ trade is encompassed within the very low (or non-existent) residual tariff corridors that exist today gives the ALADI region more than ten years to adapt to what is bound to come.

So, it all becomes a question of time, wise use of time. And this holds true for governments, as well as individual firms.

The one thing we cannot do is to try and hide our heads deep in the sand. In the long run, the ALADI will become a single free trade area, but the next day the preferential margins will start to erode if the Doha Round negotiations come to a successful conclusion.

There is no space here to address other relevant concerns such as specific rules of origin and non-tariff barriers. Once most residual tariffs reach zero, rules of origin and non-tariff barriers will still be there and still remain a crucial ingredient of the global game

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where tariffs are part of the fair game, and other barriers part of unfair trade; yet both are functions of the real planet called commerce.

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ENDNOTES

¹ Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

² According to the 1960 Montevideo Treaty, ALALC's actual goal was to create a *common market* by 1973, which was at variance with the very name of the association.

Perhaps no one at the time was quite sure what a *common market* meant in terms of economic integration, at least within Latin America (the European experience had been launched in 1957, only three years before).

³ This exception to the rule that all Member Countries must to benefit from tariff preferences offered by a given country was known as the *Acuerdos de Alcance Parcial de Naturaleza Comercial* (Partial Extent Commercial Agreements), the key word being 'partial', i.e. only two or more Member Countries benefited from the preferences negotiated. The preferences consisted of a fixed number of tariff points instead of today's percentage calculated on the whole tariff. Concessions lasted normally a year and could be extended, usually a year at a time. Quotas were more often than not a part of the negotiations.

⁴ All former ALALC members with the recent addition of Cuba.

⁵ The original Andean Pact included Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela. Chile left the pact in 1974.

⁶ One ought to mention here the efforts undertaken by Argentina and Chile to settle the historical differences that took them to the brink of war in the late seventies.

⁷ The Peru-Mercosur agreement signature has been delayed due to a tug of war between Uruguay and Peru on exports of three products from Uruguay (bicycles, woollen tissues and one chemical) that created a long impasse when Argentina, Brazil and Paraguay had all already ironed out their small differences with Peru.

Latin America Trade Integration Update

- **EU – Mercosur** Both sides admitted that no progress was made during free trade area negotiations in July and August, but were reluctant to offer details.

It is nevertheless known that the EU has not met Mercosur ambitions regarding agricultural market access, particularly on beef and other sensitive items, such as processed foods with high sugar content. On the other hand, the EU considers Mercosur's offers on government procurement, investment and certain services sectors insufficient (Bridges Year 8 No.6, page 19). Despite the stalemate, neither side seems ready to abandon the October 2004 deadline for concluding the talks. The next meeting will take place in September.

Mercosur consists of Argentina, Brazil, Paraguay and Uruguay. Bolivia, Chile, Mexico, Peru and Venezuela are associate members.

- **Mercosur – CAN** According to a 6 August press release from the Argentine Foreign Ministry, Mercosur and three members of the Community of Andean Nations – Colombia, Ecuador and Venezuela – have completed 'final details'

of a bilateral accord. The press release described the agreement as 'limited', but noted that it contained an 'evolutionary' clause, which allows it to be expanded over time. The statement gave few details about what had been agreed except that tariffs on many products would be eliminated within ten years.

CAN members Colombia, Ecuador and Peru started FTA negotiations with the US in May 2004. While Venezuela was not invited, Bolivia may join the pact later (Bridges Year 8 No.5, page 17). The next meeting is scheduled for 13-17 September.

The EU, on the other hand, has postponed free trade area negotiations until the five-member CAN has reached a deeper level of regional integration and the WTO's Doha Round has concluded.

- **CAFTA – Dominican Republic** The Dominican Republic joined the CAFTA (US-Central America Free Trade Agreement) on 5 August. Other CAFTA members are Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Securing US Congressional approval to the pact is expected to be difficult (Bridges Year 8 No.6, page 18).

- **FTAA** Negotiation co-chairs Brazil and the US have not met since talks broke down in May over a new US market access offer (Bridges Year 8 No.6, page 19). The September 2004 deadline for concluding a deal on market access – the only concrete instruction of the November 2003 FTAA Ministerial Conference – will thus be missed, and bets are off as to when – and even whether – the Free Trade Area of the America will see the light of day.

The main thing holding up progress remains a fundamental disagreement on the level of the 'common set of obligations' and how that set should relate to the 'additional obligations and benefits' that FTAA members may negotiate plurilaterally. In particular, Mercosur countries and the US have clashed on the latter's insistence that higher commitments in areas such as services, intellectual property protection and government procurement should entitle signatories to greater market access in industrial and agricultural goods.

Australia Passes US FTA with Amendments

On 13 August, the Australian Senate adopted implementing legislation for the free trade agreement it concluded with the US in February, but the treaty's entry into force depends on US acceptance of three amendments aimed at ensuring the availability of generic medicines in Australia.

The three amendments were pushed through by the opposition labour party whose support was necessary for the legislation to pass.

Brief Description of the Amendments

According to labour's description, the first amendment requires patent holding companies to issue a certificate when they seek to use the courts to block cheaper generic drugs coming to market. Patent companies must certify that the legal action has been commenced in "good faith, has reasonable prospects of success and will be conducted without unreasonable delay." If the certificate is false or misleading, or its undertakings are subsequently broken, the company can be fined up to AU\$10 million for each contravention. This provision seeks to balance the requirement that generic companies must certify the patent status of new drugs on the market.

The second amendment allows state authorities to recover costs incurred by the Pharmaceutical Benefits Scheme (PBS) and public hospitals due to a patent holder's legal action that "unreasonably delays" a generic drug coming onto the market. During the FTA negotiations, a large number of Australians were concerned about the FTA's impact on the PBS under which the government purchases about 90 percent of all prescription drugs in the country and sets subsidised prices for them. Australia eventually agreed to the establishment of a medical working group to address pricing issues, as well as the possibility for companies to appeal decisions against the inclusion of their products in the PBS list of drugs.

The third amendment reduces generic companies' burden of proof – from absolute to 'reasonable grounds' – when issuing a certificate regarding the patent status of a drug.

The labour party called these amendments "vital to safeguarding Australian consumers against evergreening practices and ensuring that affordable medicines are available in this country." Evergreening – or the extension of a patent on 'frivolous' grounds such as a negligible change – can delay the introduction of a generic version of the patented drug to the market.

TRIPs, FTA Incompatibility Raised

Some commentators have noted that the amendments may violate the WTO's Agreement on Trade-related Aspects of Intellectual Rights (TRIPs). For instance, the certification procedure only applies to pharmaceutical patents, whereas TRIPs Article 27.1 states that "patents shall be available and patent rights enjoyable *without discrimination as to the place of invention, the field of technology* and whether products are imported or locally produced" (editor's italics).

Others have pointed out possible inconsistency with the US-Australia FTA's provisions on the enforcement of intellectual property rights, which require the parties to ensure, *inter alia*, that right holders are not unreasonably deterred from legal recourse, as well as to "provide for a rebuttable presumption that the patent is valid."

US Stresses Right to Certify Australia's Legislation

The US-Australia FTA was easily passed by the US Congress in May, and President Bush signed implementing legislation on 3 August 2004. After the adoption of the three Australian amendments, the US Trade Representative released a statement emphasising that it was "Australia's obligation to implement the FTA in a manner consistent with both the terms of the FTA and international intellectual property agreements. We've made clear that the United States must certify that the implementation language fulfils the obligations under the FTA before the FTA can come into force. We reserve all our rights in this process. At no point have we expressed acceptance of the proposed legislation and/or amendments."

Asia Roundup

- **Australia – Thailand** On 5 July, Australia and Thailand signed a free trade agreement (TAFTA), which is to liberalise 95 percent of current bilateral trade by 2010. The agreement contains 19 chapters, including services, intellectual property, investment and competition policy. The two countries see the TAFTA as a stepping stone for a regional pact between Australia and the Association of South East Asian Nations (ASEAN). ASEAN has proposed starting negotiations with both Australia and New Zealand before the end of the year. Besides Thailand, ASEAN groups Indonesia, Vietnam, the Philippines, Brunei, Laos, Myanmar, Malaysia and Cambodia.

On 26 July 2004, Australia and Malaysia agreed to conduct parallel scoping studies on a bilateral FTA, to be completed in the first quarter of 2005. Australia and China also aim to conclude a joint FTA feasibility study by March 2005. An FTA with Singapore – Australia's first ever – entered into force last year.

- **Thailand – GMOs** On 24 August, Thailand revoked its three-year moratorium on the commercial planting and trading of genetically modified (GM) crops. Thai Prime Minister Thaksin Shinawatra said the decision was motivated by concern about "missing this scientific train and losing out in the world." GM crops will be allowed to grow in open field trials with non-GMO plants. Over the next three months, the National Biosafety Committee is to finalise new regulations on the growing, labelling and trade of GM products. The Ministry of Natural Resources and Environment will draft a comprehensive biosafety bill within the next year.

Agricultural industry representatives praised the move while environmental and organisations roundly condemned it. Monsanto said biotechnology could "bring enormous benefits to Thai farmers, environment and society", but Greenpeace Southeast Asia accused the government of "directly putting the Thai people and environment at risk."

Africa Roundup

- **SACU – US** The US and the Southern Africa Customs Union (SACU) postponed their August FTA negotiating session due to a number of issues that need further work.

SACU is essentially interested in locking in the benefits of the African Growth and Opportunity Act and in extending the range of products that qualify for preferential tariffs to peanuts, sugar, cotton, steel, manganese and slate. In contrast, SACU is reluctant to agree on US demands on intellectual property, government procurement and services, since far-reaching FTA commitments could lead to pressure to grant similar concessions in WTO negotiations. SACU is also concerned about US demands on labour rights as Swaziland and Lesotho have both faced ILO complaints.

In addition, SACU negotiators are struggling to come to grips with the complex investment chapter – reportedly four times longer than those in other FTAs – proposed by the US. It is still unclear whether the talks can conclude by their informal December 2004 target date.

- **COMESA Criticises July Package** In a statement issued on 10 August, the Common Market for Eastern and Southern Africa (COMESA) Secretariat described the WTO's July package as "bad news for Africa". While it welcomed the developed country pledge to cut of agricultural subsidies by 20 percent, COMESA said the cut was "not deep enough to enable Africa to be competitive and to remove the distortions [...] Perhaps more disturbing is ... special and differential treatment for sensitive products that developed countries can resort to." The statement also said that the agreement failed to satisfy Africa's request to treat cotton as a stand-alone issue and was vague on development issues such as commodities; trade, debt and finance; and trade and technology transfer. In addition, COMESA said the WTO's decision-making process was untransparent and undemocratic, and lent itself to arm-twisting in drafting text.

EU Sugar Reform Finds Few Supporters

On 14 July, the European Commission released its reform plan for the EU sugar regime to a loud outcry of several member countries, which said it would kill their sugar production entirely.

Among other changes, the reform will reduce the EU's intervention price for sugar by 33 percent (from 632/tonne to 421) and the minimum price for sugar beet by 37 percent (from 43.6/tonne to 27.4) over three years. The European sugar production quota will be slashed by 2.8 million tonnes over four years and subsidised exports by two million tonnes (from 2.4 million to 0.4 million). European sugar farmers are to be compensated for 60 percent of their income losses and factories leaving the sector will be offered a conversion scheme of 250/tonne.

The plan still needs to be approved by the member states, some of which face fierce opposition from producers. Farmers in uncompetitive EU regions, such as Ireland and the Nordic countries, have charged that the reform will kill off their sugar production and provide no benefits to the poorest developing countries, while mainly opening the market to countries such as Brazil "where social and environmental conditions of sugar farming are to say the least, questionable".

In contrast, Oxfam and WWF International released a joint statement describing the reform as a "half-hearted effort". They said the new system would "allow continued export dumping on developing countries, thereby undermining poor farmers' livelihoods".

EU Agriculture Commissioner Franz Fischler said the reform would give "the EU sugar sector and developing countries a realistic perspective. Our consumers will see much more market orientation, developing countries much less trade distortions." Another Commission source said the adverse interim ruling in the sugar dispute "will only help us" in convincing member states of the reform's necessity (see page 6).

ACP Countries Worry about the Reform's Impact

By the end of the year, the Commission proposes to develop an 'action plan' for the African, Caribbean and Pacific (ACP) countries, which are to "keep their import preferences and retain an attractive export market". That those preferences will change is fairly clear, however, as the Commission also says that 'affected' countries will be provided "tailor-made programmes to help them adapt to the new market conditions to improve the competitiveness of sugar production where viable or to support diversification."

ACP countries fear that the reform will eventually reduce the guaranteed price the EU pays for their sugar exports by more than one-third, which would result in a loss of US\$90 million a year by 2008. In addition, ACP producers will not receive as high a level of compensation as their European counterparts.

For more information on the EU sugar reform, see http://europa.eu.int/comm/agriculture/capreform/index_en.htm

Peter Mandelson Appointed to Succeed Pascal Lamy

The new President of the European Commission, José Manuel Barroso, has appointed controversial UK politician Peter Mandelson as EU Trade Commissioner after Pascal Lamy steps down in November. Mr Mandelson was UK Secretary of State for Trade and Industry for five months in 1998 and later Secretary of State for Northern Ireland. He also acted as Tony Blair's campaign manager in the May 1997 election.

Other key nominations include:

- Mariann Fischer Boel (Denmark) – agriculture and rural development
- Joe Borg (Malta) – fisheries and maritime affairs
- Stavros Dimas (Greece) – environment
- Louis Michel (Belgium) – development and humanitarian aid.

The US–Chile FTA: Intellectual Property Issues

Pedro Roffe

The TRIPs Agreement signalled a major change in international economic relations as it marked the first time intellectual property was fully integrated into the international trading regime.

The reasons for including intellectual property rights (IPRs) in the framework of the multilateral trading system during the Uruguay Round were complex. The issue was largely driven by the US, whose 1974 Trade Act had established a link between trade and adequate protection of intellectual property. A number of developing countries initially resisted the attempt, not least on public interest grounds, such as concern about subjecting inventions related to public health and nutrition to strict patenting rules under the new trade regime ushered in with the WTO's creation in 1995.

While the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) introduces minimum standards of protection and offers some flexibilities, recent developments suggest a growing trend toward much more stringent standards. This 'TRIPs-plus' phenomenon has raised concerns as it seeks to harmonise intellectual property (IP) regimes with those of economically and technologically more advanced countries. This trend is clearly noticeable in bilateral, regional and new multilateral initiatives. Some developing countries worry about the curtailment of their policy space in an important area of economic development. Many share the perception that TRIPs-plus requirements will inhibit countries from using fully the flexibilities implicit in the TRIPs Agreement or to adopt industrial policies with laxer systems of IPR protection, similar to those followed in the past by developed countries and until recently by newly industrialised countries.

The TRIPs-plus phenomenon corresponds to the view that the Agreement does not adequately reflect the high standards of IP protection needed to promote global trade and to respond to the requirements of the digital age. As a result, the US has in recent years followed an explicit bilateral trade policy of going beyond the TRIPs Agreement by including TRIPs-plus provisions in its free trade agreements post-NAFTA, which was concluded almost in parallel with the Uruguay Round negotiations. This bilateral agenda has included most issues raised by the US in various international fora, namely:

- the extension of copyright, trademark, and patents protection;
- the need to ratify certain intellectual property-related treaties;
- patent protection for life forms;
- limitations in granting compulsory licences on patents;
- specific implementation of TRIPs provisions in areas such as undisclosed information; and
- rules concerning the exhaustion of IPRs.

The US–Chile FTA

The free trade agreement (FTA) between Chile and the US, which entered into force on 1 January 2004, comprises 24 chapters. Some deal with broad aspects of trade, including general provisions establishing a free trade zone between the two countries, definitions, administrative aspects and settlement of disputes. Others are more specific and concern standards in areas such as market access, services, investment and telecommunications. Chapter 17 refers to intellectual property. Its preamble is followed by 12 sections, which deal with general provisions; trademarks; Internet domain names; geographical indications; copyrights; related rights; obligations common to copyrights and related rights; protection of encrypted programme-carrying satellite signals; patents; measures related to certain regulated products; enforcement of intellectual property rights; and final provisions.

The FTA is an interesting example, both of the TRIPs-plus phenomenon and, more generally, of negotiations between the most powerful and technologically advanced country in the world – with clear stakes in IPRs – and a small and dynamic developing country that has one of the most open and liberal economies in the Americas.

At the outset of the negotiations, Chile was well aware of the US position on trade liberalisation and IP issues. More precisely, the Trade Promotion Authority (TPA) provided broad negotiating parameters that were transparent and to the point. Moreover, the bilateral treaty between the US and Jordan constituted an important precedent for future negotiations concerning IPRs.

Since the restoration of democracy, Chile has followed a consistent and multidimensional strategy of trade liberalisation. During the 1990s, it was among the most active Latin American countries in pursuing bilateral trade agreements, based on both foreign policy and economic considerations. Chile's bilateral trade policy has not been limited to the Americas; it has expanded to major partners in Europe and recently to Asia (the Republic of Korea¹, India and China).

The FTA and IP issues

In the early 1990s Chile was the first Latin American country to amend its domestic law to limit the exclusions from patentability, particularly for pharmaceutical products. It also adhered to a number of multilateral IP treaties and included important chapters dealing with IP in its bilateral trade agreements with Mexico, EFTA and the EU. However, the US–Chile FTA is unprecedented in many aspects, particularly with respect to the WTO's TRIPs Agreement.

The FTA builds on the international architecture of IPRs. It establishes as a major principle that nothing in the bilateral treaty derogates from the obligations and rights of the Parties by virtue of TRIPs or other multilateral IP agreements administered by WIPO (the 'non-derogation principle'). It enshrines the national treatment principle of non-discrimination between nationals of the two countries. As a consequence of the most-favoured nation clause of TRIPs, the advantages, benefits and privileges granted by the FTA are automatically accorded to the nationals of all other WTO Members.

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Because of the principle of non-derogation, the FTA does not deal with all IPR-related subject matters; it focuses on a few but important ones. It contains detailed provisions on issues not covered by TRIPs, such as Internet domain names, related rights of performers and producers of phonograms, remedies against the circumvention of effective technological measures, effective legal remedies to protect rights management information and protection of encrypted programme-carrying satellite signals. In traditional areas already covered by TRIPs, it expands the coverage of trademarks and the protection of pharmaceutical products.

In contrast to other US bilateral agreements, the US-Chile FTA makes a clear difference between copyrights and related rights reflecting the different legal systems prevailing in the two countries. In this area, one major development relates to the expansion of the terms of protection that in the case of Chile results in an extension for most works to 70 years compared to 50 under TRIPs.

For pharmaceutical products, it expands protection by different means, including:

- reinforcement of the provisions on marketing and sanitary approvals;
- adjustment of the term of the patent to compensate for unreasonable delays in its granting;
- prohibition of the use of undisclosed information about the safety and efficacy of pharmaceutical products for five years from the date of its marketing or sanitary approval;
- extension of the patent term to compensate for unreasonable curtailment of the patent term as a result of marketing approval; and finally,
- granting of marketing approval to third parties requires the consent or acquiescence of the patent owner.

During the FTA negotiations, the provisions affecting pharmaceutical products were subject to intense discussions as they took place almost simultaneously with the WTO deliberations on TRIPs and access to medicines.

A closer study of the US-Chile FTA is a stimulating incursion into the TRIPs-plus world.² At this stage, it is difficult to assess the overall impact of its IP provisions, and it is even trickier to extrapolate the results of such an evaluation to other countries.

The FTA is a comprehensive treaty, which in Chile's perception, together with a broad network of trade agreements with a multifarious group of trading partners, constitutes a dynamic feature of its economic policy geared to the promotion of exports of services and products with greater added value. Thus, its impact cannot be assessed in isolation of other considerations.

While it is safe to say that the US-Chile FTA's IPR protection and enforcement provisions are less stringent than those negotiated simultaneously by the US with Singapore and, subsequently, with CAFTA, Australia, Bahrain and Morocco, it nevertheless includes a number of provisions that might constitute precedents for future bilateral and multilateral agreements.

Its provisions with regard to pharmaceutical products, as well as those negotiated in the context of other US bilateral trade agreements, have elicited a number of criticisms. In the US-Chile FTA, the expanded protection of pharmaceutical products is in some respects conditioned to the principles set out in the Declaration on the TRIPs Agreement and Public Health. This is specifically highlighted in the Preamble to Chapter 17, which is unique among the bilateral trade agreements signed by the US. However, the relationship between the Preamble and the general principles of the US-Chile FTA (such as the non-derogation clause) and the provisions dealing with pharmaceutical products are, to say the least, ambiguous. This ambiguity permeates the entire Chapter 17.

The US-Chile FTA Does Not Address the Whole Gamut of IPR Issues

Notably, unlike the proposed Free Trade Area of the Americas (FTAA), Chapter 17 of the US-Chile FTA remains silent on granting of compulsory licences to allow for the use of the subject matter of a patent. It should be borne in mind, however, that Abbott concludes that in some cases, in particular the agreements of the US with CAFTA and Morocco,

“... the provisions relating to patents and regulatory approvals with respect to medicines ... are intended to restrict the flexibilities inherent in the TRIPs Agreement, Doha Declaration and Decision on Implementation of Paragraph 6... They appear designed to negate the effective use of compulsory licensing by blocking the marketing of third party medicines during the term of patents.”³

Another area not addressed in Chapter 17 concerns protection for traditional knowledge, although a number of developing countries have repeatedly claimed that international intellectual property regimes (whether at the WTO or WIPO) fail to take adequate account of the issue.

Neither does the FTA address the exhaustion of IPRs in areas such as patents and trademarks. The Doha Declaration on the TRIPs Agreement and Public Health of 14 November 2001 reaffirmed the right of WTO Members to use, to the full, the provisions in the TRIPs Agreement, which provide flexibility for each Member to establish its own exhaustion regime. The US FTA with Australia, however, gives the patent owner the possibility to contractually restrict the importation of patented products that it has placed on the market (see related article on page 15). The US-Chile FTA leaves Parties with the full flexibility contemplated in TRIPs.

Conclusion

Although bilateral free trade agreements recently signed by the US follow the same structure and have many similarities their nuances differ substantially. Taken together, they add an uncharted page in the history of IPRs. TRIPs was an important event in this history but not the concluding one.

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ENDNOTES

¹ The Republic of Korea made its first bilateral trade agreement ever with Chile in March 2004.

² See UNCTAD-ICTSD Policy Paper: *Intellectual Property Rights, Implications for Development, 2003*.

³ Abbott, Frederick M, *The Doha Declaration on the TRIPs Agreement and Public Health and the Contradictory Trend in Bilateral and Regional Free Trade Agreements*, Occasional Paper 14, QUNO, Geneva, April 2004.

Opportunities and Risks of Liberalising Trade in Services in Bangladesh

Ananya Raihan and Mabroor Mahmood

As a least-developed country, where services play a major role in the domestic economy but generate only a fraction of export earnings, Bangladesh faces a delicate task in developing a WTO negotiating strategy that furthers its national development interests.

After two decades of robust growth, the services sector now accounts for almost 60 percent of the Bangladesh's GDP and generates more than a quarter of its total employment. In 2003, the GDP-employment ratio for services was four times higher than that for agriculture. This growth was primarily driven by domestic investment, which stood at US\$756.64 million in 2003, while the contribution of foreign direct investment (FDI) was only US\$162.9 million.

In contrast to the services sector's dominance in the domestic economy, trade in commercial services represents only 5.44 percent of the value of merchandise trade. For the last couple of years, the trade deficit in services has ranged between 20 and 40 percent. In 2003, Bangladesh imported more than double the value of services it exported (US\$324.94 million).

The high contribution of the services sector to Bangladesh's GDP and its low share in cross-border trade point both to the economy's vulnerability to external shocks, which calls for protection of the domestic service industry, and to growth potential through an open market regime. In order to retain and deepen competitiveness in goods exports, realise opportunities through increased tradeability of services, and to improve the delivery of quality services to the domestic market, liberalisation is necessary, but so is keeping the mechanism of protection in place.

Priority Sectors for Bangladesh

In order to identify priority sectors with regard to export and import interests, as well as sectors that need protection, we analysed the share of individual sub-sectors in GDP and employment, their balance of payments situation, as well as their strengths and weaknesses from the national sustainable development perspective. We also looked at the requests made to Bangladesh by WTO Members and the provisions for special treatment for least-developed countries (LDCs) in the services negotiations.¹ In general, sub-sectors that show secular positive signs in the balance of payments are predominantly of export interest; negative signs will imply sectors predominantly of import interest, and sub-sectors showing mixed signs are those that need comparatively higher protection.

Export Interests

Bangladesh has an export interest in four services sub-sections, which generally enjoy a positive balance of payments: computer and related services; telecommunication services; life insurance; and maritime transport services.

In some cases, despite a positive balance of payments, liberalisation of a sub-sector will be necessary to attract further foreign investment and improve universal access to a particular service. Telecommunications, with huge growth potential but a very weak infrastructure, provide a good example. Poor telecommunications hinder the development of other sectors of the economy and reduce the competitiveness of exports. To speed reform, it will be necessary to open the market to foreign firms in a carefully planned manner.

Temporary Movement of Natural Persons (TMNP) is the mode of supply that offers the greatest export interest to Bangladesh, which already exports service providers to many countries under bilateral arrangements. If countries can identify specific categories of service providers in which they have export interests, then negotiations can take place on a practical ground rather than in rhetorical terms. We have identified specific categories of service providers in which Bangladesh has considerable strength, covering the entire range of employment from agricultural workers to highly skilled scientists and corporate managers.

Any liberalisation measure taken by a country is based on economic benefit to the country itself. The liberalisation of TMNP is no exception. Several studies (Winsters, 2003; IOM, 2003) show that demographic momentum in OECD countries and countries like Bangladesh creates a perfect demand-supply equilibrium at the aggregate level in the medium to long term. EU member states would need an additional 46 million labour migrants up to 2050 to keep the workforce constant. Until 2025, countries in Central and Eastern Europe will require a net inflow of 8 million people to stabilise their working age population.

Import Interests

Based on balance of payment analysis, sectors of pre-dominantly import interest are: rental/leasing services without operators, construction and related engineering services, education services, health and social services, tourism and travel-related services, news agency services, research and development services, and air transport services. While these sectors have been identified at the aggregate level, many of their sub-sectors might need protection from the view point of national sustainable development and the principle of universal access to basic services.

Sectors Needing Protection

Among sectors needing protection are audio-visual services, financial services (non-life, reinsurance and banking), personal, cultural and recreational services, and rail transport services. However, protection does not mean that these sectors should operate in complete autarky.

Bangladesh and the WTO Negotiations

A number of countries – including Singapore, the EU, Japan, Norway and the US – have requested Bangladesh to open some services sectors in the Doha Round market access negotiations. More than one

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country requested access to maritime transport, financial services, construction and related engineering services, telecommunications and environmental services. A single country asked for computer and related services, distribution and other business services and services auxiliary to all modes of transport.

Bangladesh has not yet submitted any requests or made offers to Member countries. However, after the adoption of the special LDC modalities in September 2003¹, Bangladesh is in a good position to develop comprehensive requests and proposals for making liberalisation happen in TMNP and other sectors (see Table 1 for a priority list prepared by Bangladesh).

Developing a Negotiating Strategy

Despite frequent arm-twisting by strong WTO Members, the global campaign of poverty alleviation through the Millennium Development Goals – and special and differential treatment to help less-developed WTO Members achieve a ‘level playing field’ – have created room for LDCs to bargain in the negotiation process. The scope for using this latitude largely depends on the identification of country positions on each issue and the creation of issue-based coalitions. The Cancun Ministerial showed that through informed positions and ‘critical engagement’ LDCs can influence the multilateral trading system.

Specifically, Bangladesh should base its negotiating strategy on the following elements:

- the provisions of the special modalities for LDCs;
- the sectors identified for export interests, import interests and protection;
- the development objectives of individual sectors;
- the experience of current liberalisation in individual sectors; and
- building partnerships with country groups.

Given the policy objectives of increasing access to basic services, improvement of infrastructure and diversification of exports, liberalisation in Bangladesh is largely taking place independently of the WTO. The multilateral negotiations should strike a balance between autonomous liberalisation and locking in those measures under the WTO.

The negotiating strategy for TMNP should include, *inter alia*, a different approach to developed and developing countries; the use of additional commitments for the inclusion of selected categories of service providers; and highlighting the poverty alleviation implications of TMNP (see box on page 21).

Implications of the Services Negotiations for Sustainable Development

As an LDC, Bangladesh is allowed to offer less than national treatment and not to take on additional commitments. It thus has the possibility to protect domestic services sectors where necessary and to limit offers in those sectors where the impact of liberalisation is not clear. Bangladesh may also be able to seek credit for autonomous liberalisation on a non-reciprocal basis under the LDC modalities. However, the sectors where Bangladesh may seek credit – financial and energy services, among many others – are being further liberalised under the aegis of the World Bank and the IMF, which is against the principle of coherence between international financial institutions and WTO negotiations.

Although liberalising health and education services is generally more complicated than other sectors, Bangladesh has opened these markets to a certain degree during the past decade. The question is whether such liberalisation generates further disparity in a highly polarised society and thus creates a potential danger of destabilisation.

The commitment to provide market access under mode 4 (i.e. TMNP) in ‘all categories’ of natural persons identified by LDCs is extremely important for Bangladesh, since market access in mode 4 has a strong development and poverty alleviation dimension. Regression analysis of the total remittance of a number of Bangladeshi professionals, and skilled, semi-skilled and less-skilled service providers under mode 4 shows that Bangladesh would gain substantially through increased export of service providers through TMNP. The additional income from exporting skilled service providers has been estimated at US\$281 million; less skilled categories could bring another US\$3.5 billion. Earnings from professionals in foreign countries could reach US\$11.57 billion.

It should also be noted that policy reform and budgetary increases for particular services sectors are distinct from the WTO negotiating process. For example, a simple budget increase may be enough to ensure rural people better access to education or health care; however, without a level playing field in the telecommunication sector, Bangladesh will not be able to attract more foreign investment to ensure universal access to basic and value-added telecommunications services.

The WTO negotiations will also have important repercussions on the environment and environmental services, but more specific analysis is needed to comment on the implications of liberalising environmental services.

Dealing with Capacity Challenges

One fundamental structural problem dogging Bangladesh's trade negotiations is that the Ministry of Commerce deals with trade matters in Dhaka while negotiations at the WTO are co-ordinated by the Ministry of Foreign Affairs. The negotiating mechanism lacks in-house

Table 1: Bangladesh's Negotiating Interests in Key Sectors

Sectors of Common Interests	Bangladesh's Interests
Financial services (non-life, reinsurance, banking)	Protection
Telecommunication services	Export
Computer & related services	Export
Construction and related engineering services	Import
Education	Import
Temporary movement of natural persons	Export

legal expertise, as well as research and analytical capacity that could provide timely support to the negotiating team. The problem of scant capacity within the Ministry of Foreign Affairs is compounded by the frequent transfer of officials recently trained abroad to a different department or Ministry. It was decided only recently not to transfer officials with knowledge and expertise on trade issues. It is becoming increasingly difficult to handle bilateral, plurilateral and multilateral negotiations simultaneously on a wide range of issues. Due to the capacity problem the entire WTO negotiations have become a nightmare for policy-makers and negotiators from Bangladesh and other LDCs.

On the other hand, Bangladesh has been able to partially overcome its limitations of in-house capacity through its tradition of extensive consultations aimed at developing consensus in key negotiating areas. An advisory committee, as well as sectoral expert groups comprising wider stakeholders, are the main channels for this interaction.

In conclusion, Bangladesh should continue to pursue a strategy of 'critical engagement' in the GATS negotiations as services liberalisation can play a positive role through improving the competitiveness of the goods sector, as well as increasing export opportunities and the efficiency of domestic services sectors. Development co-operation can play a significant role in building

negotiating capacity and increasing the participation of Bangladesh and other LDCs in the services trade, as required by Article IV of the GATS.

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ENDNOTES

¹ *Modalities for the Special Treatment for Least-developed Country Members in the Negotiations on Trade in Services*, adopted by the Special Session of the Council for Trade in Services on 3 September 2003.

Creating a Development Oriented TMNP Strategy

'Natural persons' in the GATS may include all categories of professionals, with low to high skills. Bangladesh should focus negotiating efforts on obtaining:

- improved market access commitments in mode 4 from selected countries of interest and for selected categories;
- improving structure and scope of horizontal commitments in mode 4; and
- a commitment to address horizontal limitations and broaden relevant GATS provisions.

Selected Countries and Selected Sectors: The current export destinations of Bangladeshi service providers through TMNP are Europe, Asia, Africa and the Middle East. Since OECD countries are expected to face huge labour shortages in the next fifty years, they should be the major recipients of specific Bangladeshi requests.

Horizontal Commitments in Mode 4: Bangladesh should propose the inclusion of new sectors and skill categories under 'additional commitments'. The negotiations should enlarge the scope and coverage of service providers, including independent professionals and contractual service providers. It is very important to de-link commercial presence from mode 4. It is also important to supplement sectoral commitments, not substitute for them.

Horizontal Limitations: Bangladesh should propose the development of multilateral guidelines on the use of economic necessity tests to reduce their discriminatory application. The unnecessary confusion around the temporary and permanent movement should be removed through the introduction of a GATS visa. The indiscriminate practice of charging social security taxes for temporary workers should be stopped and the obvious difference between temporary and permanent workers clarified.

Sectoral Commitments: It should be made clear that the GATS allows flexibility to modulate commitments in four ways: by sector, category, skill-level and period of stay. This explanation would resolve the problem of defining 'temporary stay'.

Highlight Poverty Alleviation Implications of TMNP: These – including effects on under- and unemployment – should be highlighted in all requests with country-specific facts and figures and be linked with the Millennium Development Goals. Temporary movement also helps ensure higher wages to non-migrant workers through increased bargaining power.

Simultaneous Domestic Policy Measures

Policies should be put into place to assist returnees in reintegrating into the domestic labour market. The negotiating strategy should also identify domestic policies to facilitate human development benefits and mitigate the costs of temporary movement of service suppliers, as well as address brain drain and 'brain circulation' through incentives, improved domestic conditions and recovery of lost investment.

As opportunities through market opening will only be meaningful if there are enough quality service providers, investment in training and education is a must. The establishment of independent regulatory bodies and monitoring mechanisms to ensure standards is another way to create predictable level playing fields.

Negotiations and Domestic Policy Issues

Contrary to orthodox rhetoric, LDC negotiators should recognise that many sectors would benefit from an open policy regime and a predictable competitive environment. Proper sectoral studies are a pre-requisite for opening more sectors.

Mutual recognition agreements with key markets, as well as bilateral co-operation on visa and recruitment policies with host countries, should be actively pursued.

Following UNCTAD XI, the WTO Should Acknowledge the Need for Policy Spaces

Brigitta Herrmann

The most heartening outcome of the June 2004 UNCTAD XI conference was the recognition, despite stiff initial opposition, that developing countries' requests for 'policy space' were legitimate.

Prior to the conference, the US had objected to any document mentioning 'policy space', and the EU had proposed a very restrictive definition of the concept. Nevertheless, the *São Paulo Consensus* recognises that the scope for domestic policies, especially in the areas of trade, investment and industrial development is now often restricted by international disciplines. Noting the importance of 'development goals and objectives' to developing countries, the final conference document urges all countries to "take into account the need for appropriate balance between national policy space and international disciplines and commitments." Even the EU admitted that these policy spaces would also refer to multilateral trade rules.

It remains to be seen how this important decision will be handled by the WTO. If, for instance, developing countries will be allowed to protect their markets against agricultural dumping, they will be able to protect the livelihoods of their poor small-holder farmers, who face unfair and destructive competition from abroad.

Another important step taken at UNCTAD XI was the launch of the third round of negotiations under the General System of Trade Preferences (GSTP) between developing countries. While previous rounds had not achieved much, this time delegations seemed very committed to real progress towards the reduction of trade barriers in order to promote South-South trade. The first meeting of the new round is scheduled for November 2004 at the latest. The GSTP is open to all G-77 countries, including China.

At the São Paulo meeting, ministers of the more powerful countries, such as Brazil, committed themselves to fairness and solidarity with those less powerful. UNCTAD Secretary-General Rubens Ricupero said that, in contrast to WTO negotiations, no country would put pressure on another, but

that all participants were committed to creating "mutually beneficial market access fine-tuned by the benefit of all, of the entire world community."

With regard to 'good governance', developing countries headed by Jamaica successfully defended their view that the term refers both to the national and the international level (the EU had favoured a text which would have restricted good governance to the national level). The final document states that "transparency in the financial, monetary and trading systems, and full and effective participation of developing countries in global decision-making, are essential to good governance and to development and poverty eradication."

A multitude of debates took place throughout the five-day conference on how to put into practice the Millennium Development Goals and find alternatives for financing them, including the need to effectively implement the commitment of developed countries to spend 0,7 percent of their GDP on public development aid. Many interactive sessions and discussions were held on the problem of falling commodity prices. The final document concluded that UNCTAD should strengthen its efforts in this area by: (i) providing analysis of commodity markets; (ii) assisting developing countries in formulating strategies and policies to respond to the challenges of those markets; and (iii) helping to build effective partnerships among relevant stakeholders aiming at sustainable approaches to commodity problems. A task force was established on commodity problems, and another on gender equality.

UNCTAD XI offered many possibilities for civil society participation. In fact, two days before the conference, a Civil Society Forum attended by groups from all around the world agreed on a common declaration to UNCTAD XI. The document was handed over to UN Secretary-General Kofi Annan before the official opening of the conference, as well as delivered to government delegations and to the press. Both the *São Paulo Consensus* and the more general final document entitled the *Spirit of São Paulo*, include an UNCTAD commitment to make civil society participation more systematic and better integrated with intergovernmental processes.

From a civil society perspective, some negative aspects must nevertheless be highlighted. For instance, the meaning of 'coherence' in the *São Paulo Consensus* remains unclear. The text seems to indicate that the term refers to interdependence between international trade, investment and financial arrangements rather than a comprehensive approach that balances trade and development policies in a way that promotes sustainable development, as civil society representatives had demanded.

As to the responsibilities and obligations of the private sector, the *São Paulo Consensus* fails to include the results of the 2002 Johannesburg World Summit on Sustainable Development. The São Paulo text only mentions responsibilities of business, but fails to include the Johannesburg decision to further develop the concept of corporate accountability.

Civil society would also have preferred the text to include criticism of free trade areas and of the current negotiations on agriculture in the WTO. Several speakers brought up the issue during the conference, including Mr Ricupero, who harshly criticised the behaviour of Northern countries in the WTO negotiations on agriculture.

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Ensuring Pro-poor Agricultural Reform

ICTSD and the International Institute for Environment and Development (IIED) co-convened a Strategic Dialogue on Agriculture, Trade Negotiations, Poverty and Sustainability on 14-16 July 2004 in Windsor, UK. The twin goals of this dialogue were to determine (i) how the Doha Round agricultural negotiations could increase benefits for poor people and nations, and (ii) how to link developments in those negotiations to other areas of policy necessary for trade liberalisation to realise its potential to improvement of the lives of the world's poor.

The meeting offered an opportunity for a mix of trade, agriculture, poverty, and sustainable development analysts and actors to explore shared concerns and work towards a common vision for agricultural policy reform, such that the resulting WTO processes and agreements address the imperatives of poverty alleviation and food security.

Participants acknowledged that agriculture trade reform at the WTO would not provide all the answers to food security, poverty reduction and sustainable development. Questions were raised as to whether the agriculture trade negotiations were appropriate processes, and whether the WTO is a suitable political forum to promote pro-poor and pro-sustainability agendas and fair trade, not least because the objective of the WTO is to promote free trade and liberalisation.

There is also a need for deeper understanding of the kind of domestic agricultural policies and systems that have worked best in delivering poverty reduction in the past since domestic policies, including investment in healthcare and education, can have far bigger impact on the poor than WTO policies. Needless to add, pro-poor measures need to be used at the most appropriate levels and forums and within achievable timeframe.

With respect to outlook for negotiations, participants differed in terms of levels of optimism and expectations. Some felt that there might have been excessive expectation in the ability of the WTO or liberalisation to deliver pro-poor, pro-sustainability outcomes, as it would be unlikely for fundamental reform to take place in the near future. This is not least because international trade rules often reflect an agreement not to worsen the status quo rather than significant reform or cuts.

Other shortcomings of the multilateral trading system were discussed, such as the dominance of mercantilism in trade negotiations and failures in targeting reductions in subsidies for products of specific interests to developing countries due to the aggregated approach to liberalisation. The system also fails to provide meaningful special and differential treatment for poor countries or regions as well as adjustment to ease the pains of the sweeping changes brought about by liberalisation. There has also been insufficient technical assistance for poor countries to implement SPS/TBT measures, for example.

Even though the ability of the current negotiations at the WTO to deliver pro-poor outcomes had been questioned, participants broadly agreed on the need for a two-pronged strategy – working with the current trade negotiations agenda to ensure a pro-poor outcome, and be prepared to introduce a broader strategy into parallel (or complementary) processes. Participants also highlighted the need to fill knowledge and research gaps in this area in manner that is directly relevant to policy-making.

As part of the follow-up process, a broad Windsor Initiative was proposed by the organisers to provide a set of principles and a process based on informal an network and an annual review of progress. While the initiative would focus on the WTO, it would also be broad enough to reach into regional and bilateral trade issues that focus on developing countries. The network will be organised, announced and open for other organisations to join.

To access background papers for the Windsor Initiative, as well as the agenda and list of participants, see <http://www.ictsd.org/dlogue/2004-07-14/2004-07-14-desc.htm>

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

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

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Meetings of WTO Bodies*

Sept. 20-23	Services Meeting
Sept. 21-23	Council for TRIPs
Sept. 23	Committee on Agriculture
Sept. 27	Dispute Settlement Body
Sept 27 - Oct. 1	Council for Trade Trade in Services - Special Session*
Sept. 28-29	Committee on Trade and Development
Sept. 28-30	Negotiating Group on Rules (anti-dumping, subsidies, including fisheries subsidies)
Oct. 1	Council for Trade in Goods
Oct. 7-8	Committee on Regional Trade Agreements
Oct. 12-15	Committee on Trade and Environment Special Session*, followed by a two-day regular session
Oct. 18	Dispute Settlement Body

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

Other Meetings

Sept. 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) http://www.pic.int
Sept. 20-24 Rome	FAO Committee on Food Security http://www.fao.org/unfao/govbodies/wfsfinal
Sept. 26 Montpellier	Eighth International Symposium on the Biosafety of Genetically Modified Organisms http://www.inra.fr/gmobiosafety/aboutsymposium.php

Call for Papers

The NAFTA Commission for Environmental Co-operation has issued a public call for papers examining trade and environment issues related to investment and growth in North America. The final papers are to be presented by the authors at the third North American Symposium on Assessing the Environmental Effects of Trade in the fall of 2005.
http://www.cec.org/pubs_docs/documents/index.cfm?varlan=english&ID=1586

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