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Facts and Figures

- Only about a dozen agricultural crops are produced primarily for export, including coffee, cocoa, soybeans, rubber, tobacco, and aquaculture salmon and shrimp.
- In contrast, the bulk of key commodities for addressing hunger (in the sense of a shortage of overall calories in the diet) is consumed in the producer country. Exports of the four crops that account for 73 percent of global caloric demand amount to just 4 percent for rice, 9 percent for cassava, 14 percent for corn and 22 percent for wheat. If you add potatoes, sorghum, bananas and sweet potatoes, the total percentage of food calories is nearly 90 percent.
- In developed countries, the average share of the household budget that goes to food is at an all time low (14 percent in the US). The poor in developing countries may pay 75 percent of their income for food and still go hungry.

Source: Jason Clay: *World Agriculture and the Environment: A commodity-by-commodity guide to impacts and practices*. Island Press, 2004.

Winds of Change Blow on WIPO

For the first time, the General Assembly of the World Intellectual Property Organisation (WIPO) has been called upon to consider the establishment of a Development Agenda that would go beyond the organisation's current focus of safeguarding the protection of existing intellectual property rights and the negotiation of ever more stringent and far-reaching new standards.

Demands for refocusing WIPO's mandate have come from many quarters, including the governments of Argentina and Brazil, as well as non-governmental organisations and academics concerned about the effects of its traditional defence of narrowly-defined intellectual property rights on larger societal concerns such as access to medicines, knowledge, technology and the appropriation of public research by private interests.

The Development Agenda Proposal

A central tenet of the formal proposal (WO/GA/31/11) submitted by Brazil and Argentina to the 27 September - 5 October session of WIPO's General Assembly is that "intellectual property protection cannot be seen as an end in itself, nor can the harmonisation of intellectual property laws leading to higher protection standards in all countries, irrespective of their levels of development."

As a specialised agency of the United Nation, WIPO should be "fully guided by the broad development goals that the UN has set for itself, in particular in the Millennium Development Goals and [...] strive for an outcome that unequivocally acknowledges and seeks to preserve public interest flexibilities and the policy space of Member States. Provisions on 'objectives and principles', reflecting the content of Articles 7 and 8 of the TRIPs Agreement, should be included in the Substantive Patent Law Treaty [SPTL] and other treaties under discussion in WIPO." The TRIPs Articles in question refer, *inter alia*, to technology transfer and the need for 'appropriate measures' to prevent right holders' abuse of IPRs.

One of the public interest flexibilities the proponents undoubtedly have in mind is the protection of biological resources and the attendant indigenous traditional knowledge (TK). The obligation to declare the source of the genetic resources and TK in patent applications is already inscribed the patent laws of several developing countries, but not yet recognised in either WIPO treaties or the WTO's TRIPs Agreement despite years of effort.

The United States is a staunch opponent of mandatory disclosure requirements for biological resources or TK in patent applications, as well as one of the keenest supporters of the WIPO Patent Agenda, which aims at harmonising patent application and maintenance procedures. US Deputy Trade Representative Peter Allgeier said he was 'mystified' by the Development Agenda initiative, claiming that "the primary beneficiaries of stronger IPR protection in Brazil would be Brazilian artists and innovators, and investment in high-technology industries".

In contrast, Argentina's and Brazil's concerns about stronger IPR protection centred on the perpetuation of the knowledge gap between rich and poor countries. As an example, they cited restrictive IPRs that hamper technology transfer, innovation and creativity through proposed or actual restrictions on the use of resources available on the Internet and elsewhere. They proposed that WIPO members negotiate a Treaty on Access to Knowledge and Technology (see page 17 for further details).

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Bridges

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The Geneva Declaration

While welcoming the proposal for a WIPO Development Agenda, the Geneva Declaration issued by a number of non-governmental organisations at the close of a workshop on the future of WIPO went further. It demanded a moratorium on any new WIPO patent treaties, including the SPLT, in order to create space for addressing “far more urgent needs”, such as those advocated by consumer and human rights groups in defence of “the poor, the sick [and] the visually impaired”. The Declaration charged that WIPO had “embraced the culture of creating and expanding monopoly privileges”, and now needed to “enable its members to understand the real economic and social consequences of excessive intellectual property protections, and the importance of striking a balance between the public domain and competition on the one hand and the realm of property rights on the other.”

The Geneva Declaration backed the call for a Treaty on Access to Knowledge and Technology, and urged the relevant WIPO committees to solicit the views of member states and the public on the elements of such a treaty. In addition, the Declaration said that WIPO should “fundamentally reform its technical assistance programmes, including by helping developing countries to take full advantage of the flexibilities reconfirmed by the WTO Declaration on TRIPs and Public Health, as well as assisting them in addressing the limitations in patent and copyright law that are essential for fairness, development and innovation” (see related article on page 22).

The WIPO Manifesto

James Boyle, a Professor of Law at Duke Law School and the co-founder of the Center for the Study of the Public Domain, is among those advocating that WIPO consider a change of direction. In his Manifesto on WIPO and the Future of Intellectual Property, Professor Boyle said that “when WIPO documents speak of ‘balance’ they generally refer to a balance between producer and consumer, or developed and developing nations. But the intellectual property system depends on a different, and neglected, kind of balance. Science, technology and the market itself depend on a rich ‘commons’ of material available to all, just as they also depend on the incentives provided by intellectual property rights. Too many rights will slow innovation as surely as too few. The WIPO secretariat should be required to perform an Intellectual Environmental Impact Statement on each new proposal for the expansion of rights, detailing its effects on the public domain, and the commercial, innovative, artistic and educational activities that depend on the public domain.” In addition, he urged WIPO to start considering the Internet as an opportunity rather than a threat: “WIPO should be at least as concerned about the impact of software patents on open source software development as it is about the impact of software piracy on closed source software development.”

Like the Development Agenda proposal and the Geneva Declaration, the Manifesto called for greater participation and transparency: “WIPO needs to continue the welcome steps it has already taken to increase the participation of civil society groups in the discussion and debate. When intellectual property implicates everything from access to essential medicines and free speech to education and on-line privacy, it cannot be made according to the assumptions of a narrow coterie of lawyers and industry groups.”

In conclusion, Professor Boyle noted WIPO's limited power to undo the trend toward ever-increasing private rights through patents and copyrights although “genius is actually less likely to flower in this world, with its regulations, its pervasive surveillance, its privatised public domain and its taxes on knowledge.” In fact, trade negotiations “have become the preferred arena for expanding rights still further. But if these trends are to be reversed there will need to be an international, informed, democratic debate about the trajectory we are on. WIPO's role in that debate is a central one. It should embrace that role, rather than seeking to jump onto the bandwagon of ever-expanding rights.”

The Geneva Declaration can be found at <http://www.cptech.org/ip/wipo/genevadeclaration.html>, and the entire text of the WIPO Manifesto is available at <http://www.law.duke.edu/journals/dltr/articles/2004dltr0009.html>.

Where Now for the WTO Industrial Tariff Negotiations?

Sam Laird and Santiago Fernandez de Córdoba

The difficulties of reaching agreement on how to proceed in the WTO negotiations on non-agricultural market access (NAMA) area took many by surprise, and the July framework text leaves considerable uncertainty about the future direction of the negotiations.

In one view, the negotiations are back at square one. Others see the text as the basis for an ambitious approach to tariff cutting. This could have some advantages in terms of market access and economic efficiency for developing countries, but would also pose severe sectoral adjustments problems, as well as revenue losses. It is encouraging that the World Bank and the International Monetary Fund envisage lending to address these issues, but many of the affected countries are already highly indebted, pointing to a potentially greater role for ODA.

Annex B of the Decision adopted by the WTO General Council (WT/L/579) on 1 August 2004 provides the framework for future work in the non-agricultural market access (NAMA) negotiations. While in many respects it differs little from the Derbez text presented in Cancun, a key modification was the insertion of a new opening paragraph stating that the framework “contains the *initial elements* for future work on modalities” (editor’s italics). The framework also states that additional negotiations are required to reach agreement on the specifics of some of these elements, such as the treatment of unbound tariffs, flexibilities for developing countries, participation in the sectoral tariff component and preferences.

Some developing countries take the reference to ‘initial elements’ to mean that the modalities issue is wide open and all options are on the table. No doubt others will disagree, and negotiations will continue to be difficult as to the degree of ambition and flexibilities for developing countries.

Given the mandate of the Doha Declaration to reduce or eliminate tariffs, including tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries, much attention has inevitably focused on harmonising approaches that cut high rates more than proportionately (to be supplemented by request and offer and sectoral negotiations). However, some developing countries see harmonising approaches as running counter to the Doha requirement of allowing less than full reciprocity for developing countries. Many of these countries feel that they need some policy space to use tariffs for industrial development purposes, to mitigate the impact of liberalisation on output and employment in key sectors and to avoid resort to alternative WTO measures, such as anti-dumping.

While the July agreement has helped restore momentum to the Doha Round negotiations, meeting the varied objectives of participants in the NAMA negotiations will not be easy to achieve. Among the key issues to be resolved are: (i) a formula has yet to be selected; (ii) consensus on participation in sectoral elimination still eludes the group; and (iii) the provisions for special and differential treatment for developing countries need to be clarified.

Some Considerations on the Formula Approach

On the whole, a formula approach has certain advantages in simplifying negotiating procedures and reducing the advantages that large countries have in bilateral request and offer negotiations. However, beyond the overall level of ambition, the question remains as to the precise formula and its parameters. If these details are not worked out on a satisfactory basis, some countries may consider supporting alternative approaches, such as request and offer, using the phrase ‘initial elements’ in the first paragraph as the basis for starting afresh.

Certain elements of the framework suggest that the aims are ambitious, but much depends on how these elements and the terms for developing countries are elaborated. The agreement provides for further work by the negotiating group on the reduction of tariffs by means of “a non-linear formula applied on a line by line basis”. All of the pre-July proposals on modalities

would still be on the negotiating table. Even proposals such as the one put forward by India could be broadly described as non-linear since the core linear percentage cuts on individual lines are modulated by limiting rates to no more than three times the national average. Discussions have focused on a Swiss-style formula based on each country’s national average, multiplied by another factor (the “B coefficient”) that could vary by country group.

One problem in this approach is that it is relatively difficult for any country to compute what it has to do and to assess what others are doing, i.e. it is difficult to work out the balance of concessions. This seems unnecessarily burdensome, since, from an economic perspective, it is possible to tailor non-linear and linear approaches to achieve very similar results for trade, welfare, output, employment and revenues. A linear approach would be simpler and more transparent.

Other Elements

Beyond the formula component, the new framework also foresees possibilities for more ambitious tariff cuts/elimination for certain sectors, including those of interest for developing countries (so-called sectoral initiatives), where participation now seems to be voluntary.

Another area of ambition in the text is the proposal for increasing the binding coverage in non-agricultural products. Some developing countries have a high proportion of unbound tariffs. The framework proposes that Members would bind currently unbound rates at [two] times the MFN applied rate. Acceptance of this formulation would lock countries that have low applied rates into a permanent low-rate regime.

Some flexibility is provided for countries that currently have a very low binding coverage. Thus, paragraph 6 of the framework states that Members with a binding cover-

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age of less than [35%] would be exempt from making tariff reductions. Instead, they would bind [100%] of their tariff lines at the average tariffs for all developing countries. However, the text does not state which average would be used under this paragraph. Here the issue is whether the simple or trade-weighted average (as has normally been used in earlier GATT negotiations on industrial tariffs) would be used. Since the simple average is some 28 percent and the weighted average 12 percent, this choice makes a big difference.

Least-developed countries (LDCs) would be exempt from tariff reductions. However, this does not imply that LDCs would have the Round 'for free', as they and some others are likely to be negatively affected by the erosion of preferences.

What to Make of It All?

Overall, an ambitious approach presents something of a dilemma for the developing countries. On the one hand, it would

In the NAMA framework text, Members agreed the following elements regarding the formula:

- product coverage shall be comprehensive without *a priori* exclusions;
- tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; however, for unbound tariff lines, the basis for commencing the tariff reductions shall be [two] times the MFN applied rate in the base year;
- the base year for MFN applied tariff rates shall be 2001;
- credit shall be given for autonomous liberalisation by developing countries provided that the tariff lines were bound on an MFN basis in the WTO since the conclusion of the Uruguay Round;
- all non-ad valorem duties shall be converted to ad valorem equivalents on the basis of a methodology to be determined and bound in ad valorem terms;
- negotiations shall commence on the basis of the HS96 or HS2002 nomenclature, with the results of the negotiations to be finalized in HS2002 nomenclature; and
- the reference period for import data shall be 1999-2001.

offer deeper tariff cuts on items that they export, including in other developing country markets. This would help expand and diversify their production, as well as create employment opportunities. On the other hand, if they must also make deeper cuts themselves, then while they might obtain longer-term welfare gains, they would likely face an expansion of imports, reductions in output and employment in some import-competing sectors, and tariff revenue losses. They would also have to forgo the possible use of tariffs for industrial development purposes (given that many other options are precluded by WTO rules), or for contingency protection – possibly leading to increased use of anti-dumping and other such measures.

While an extended transition period for implementation will help, there are three areas that need to be addressed if developing countries are to be persuaded to opt for an approach by which they would also make deeper cuts in their own tariffs.

First, while the aggregate effects of even the more ambitious proposals may not be large, there would likely be important sectoral adjustments, positive and negative. Some recent World Bank work shows a decline in growth and an increase in unemployment in the first two to three years following liberalisation, before the benefits start to appear. This suggests the need for support or social safety nets for developing countries during transitional periods, but most of them lack these kinds of facilities.

Second, under the more ambitious approaches there would be a greater loss of tariff revenues. IMF data indicates that the contribution of tariff revenues ranges greatly, from virtually nothing in Italy to 75 percent in Guinea. Less extreme examples are Cameroon and India where tariff revenues represent 28 percent and 20 percent, respectively, of government revenues. In some cases, the revenue loss could have a negative impact on the balance of payments. However, in some small countries where most goods are imported, shifting to a sales or consumption tax, for example, would in fact operate essentially against imports, but would not be subject to WTO negotiations. Nevertheless, this is not an overnight solution as reform of fiscal administration is a long-term process that can be expensive to implement.

Third, LDCs, the ACP group and a number of other countries would face substantial loss of preferences, for example in the textiles and clothing area (as well as for some key agricultural exports such as sugar, bananas and rice). This could also entail some important short-term losses in export revenues and important economic adjustments in the most affected sectors – similar to those caused by the liberalisation of imports.

How can these issues be resolved? At Cancun, the World Bank announced that it would increase its lending to help developing countries take advantage of trade integration. New resources would be devoted to trade facilitation and logistics, including in ports, roads, customs and reforms of trade-related institutions, as well as to the design of trade reform programmes to increase international competitiveness. While some of these measures address long-term problems, the associated expenditure could provide a valuable short-term boost to recipient economies. The IMF, in turn, has initiated a Trade Integration Mechanism to mitigate concerns that implementation of WTO Agreements might give rise to temporary BOP shortfalls. The Fund's expectations are that such shortfalls are unlikely to be large for most countries, but it admits that they could be significant in the short run for some countries.

An important aspect of Bank-Fund proposals is the willingness to address issues ahead of the conclusion of the negotiations, a lacuna in the Uruguay Round package that has given rise to much bitterness on the part of the developing countries and goes a long way to explaining Seattle and Cancun. However, while the proposals are welcome, they also indicate a willingness to increase lending to countries that already have high levels of debt. And the question must be asked as to whether the current WTO proposals represent the best possible use of development finance. It may well be that funding the fight against AIDS should have higher priority. Channelling bilateral aid flows to these problems would seem preferable to increasing debt.

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Commodity Production and Sustainable Development

Jason Clay

There is arguably more food produced on the planet on a per capita basis than ever before, yet poverty and hunger are increasing. Food security in a very real sense has not been addressed because people cannot afford to buy the food that is often available.

Hunger and malnutrition are more about distribution and income than they are about agricultural production. But, in all likelihood, this will not always be the case. Production will not keep pace with population and consumption increases in the future as it has in the past. In fact, cereal yield growth rates have declined for nearly 16 years. Furthermore, per capita land and water quality, and availability of these inputs for agriculture, are declining.

International Market Trends That Affect Commodities

There are a number of market trends that influence commodity production and trade. Many of these trends have not been created by government regulations (or lack thereof) but rather by the private sector and consumer perception. The challenge is to examine these trends closely to understand where the key leverage points are for change, either within public or private sector policies.

Trend 1 – Consolidation and Integration within the Food Market Chain

Perhaps the single most important issue that has arisen within the past 10-20 years with regard to food and agricultural commodities globally is integration and consolidation. Globally for any single commodity, only some 300-400 buyers make key purchasing decisions, not millions of consumers.

Nowhere are these integration trends clearer than with the spread of supermarkets all over the world. These trends occur because supermarket chains can achieve efficiencies of scale, product standardisation and quality, and satisfy increasingly global food tastes and preferences. Similar efficiencies are being driven on the production side, where higher quality, larger volume and lower costs are the order of the day. Market prices are greatly influenced by the largest, most efficient producers. The efficiency of market dominators must be matched by government interventions (i.e. protection, subsidies or tariffs), subsidies from nature (e.g. environmental impacts), or lower profit margins and standards of living for other less efficient producers, including small-scale producers.

Trend 2 – Increased Consumer Concerns about the Quality of Food

Globally, consumers are sending clearer signals than ever before about what they want (or more often, do not want) in their food. Residues in food, food bioterrorism, and food traceability are all putting pressure on food commodity production systems to be able to trace a product from 'field to fork' or from 'pond to plate'. Residues are increasingly not tolerated, even for commodities.

NGOs and consumers have driven the GMO debate and have forced – at least in the EU and Japan – the private sector to separate and label GM products. In some instances, companies are developing their own producer guidelines, which producers who want to sell products to them are required to follow. This has huge implications and shows the extent to which voluntary, private sector-based policies and programmes could fundamentally bring PPM (production, processing and manufacturing) issues back into the global trade agenda even when these may be at odds with prevailing WTO norms.

There are a few other trends in the global market that should be noted:

- increasing use of producer contracts to guarantee production for buyers and to reduce risks;
- significant increase in product testing throughout the market chain, which provides financial incentives for products to be segregated once tested; and
- retailers acting as watchdogs and even developing first and second-party certification programmes and standards.

In the face of all these trends, the main consumption increases globally are likely to be in developing countries where there is far more concern about price than any other single factor. What may be developing globally is a trade system where volume and value are important in developing countries, and quality and uniqueness are major determinants in developed countries.

Impacts on Poverty Alleviation and the Environment

Trends in food production efficiency tend to undermine and marginalise not only many small-scale producers but, in some cases, virtually any producers of some commodities in different countries. Increased food production in places such as India and China has been somewhat de-linked from poverty alleviation, malnutrition and rural development. Those who fight this trend have often succeeded in creating little more than poverty maintenance programmes that might sustain a current lifestyle for another generation, but do not fundamentally increase benefits to the poorest of the poor.

While it seems possible to increase total food production through traditional agricultural production programmes, these may not be the only or even the best way to reduce poverty or malnutrition. Furthermore, it is not clear that agricultural production programmes can continue to result in higher yields and food production if the overall environmental impacts of agriculture are not brought more in line with general principles of sustainability. Here are just a few trends of note in this regard:

- More than half of all habitable land on the planet is used for agriculture or livestock. Some 90 percent of all land is farmed unsustainably so new land (0.25-0.5 percent/year) must be brought into production. It does not take a rocket scientist to see where this is headed.
- Some 70 percent of all water used by humans goes into agriculture. More than 60 percent of all water used for irrigation

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is currently wasted, but solutions are expensive and not generally available to most small farmers.

- Many of today's production packages have reached technological ceilings. For example, the per hectare production of rice is seen to be as high as it can go commercially given today's technology. Another technological breakthrough will be needed to achieve higher levels of production.
- Most biodiversity is in the soil and in areas of agricultural use, yet current production systems are mining the soil for short-term gains and market advantage.
- The use of inputs, such as fertilizers, to offset some of these issues does not appear to be a long-term solution. For example, the amount of nitrogen required to produce a given unit of corn in the US doubled from 1970 to 1990. Quick, technological fixes may not provide continuous improvements in productivity and food availability in the future.

In short, the environmental impacts of agricultural production over the past 30 years, while often greatly improved from the practices of a century ago, are still unacceptable. Fortunately, some production strategies are being developed that will help. For example, in many parts of the world it is more profitable to rehabilitate degraded land than to clear natural habitat and incorporate it into agricultural production. Similarly, abandoning the more marginal areas (say from 5-15 percent) on most farms actually increases total production, reduces costs and impacts (up to 50 percent of environmental impacts) and increases profits. However, few of these solutions are appropriate for small-scale farmers attempting to produce on more marginal lands and at scales that are often not competitive. To put it another way, addressing the environmental impacts of agricultural production on small farms is much more difficult than it is for medium to large-scale farms. This, too, has implications for any overall strategy or set of policies.

Likely Winners and Losers

Trade liberalisation is only one of the factors, albeit an important one, that will affect trade. It is equally important to identify where increased demand is likely to arise in the world for commodities, as well as where the low-cost traders and food manufacturers are likely to be in the new com-

modity world. Most of the studies to date suggest that overall consumption in developed countries will increase only slightly if at all for many commodities. In fact, this is already true for soy in Europe, as well as for bananas, coffee, rubber and fish protein, among others, in both Europe and North America. With the exception of paper pulp, the consumption of most agricultural commodities is actually stable or declining in developed countries.

Real increases in consumption are likely to result from dynamic economic growth in the South. The sustained eight percent or better growth in China over the past decade or more has in fact not just increased the demand for raw materials that directly fuel that economy; it has driven the demand for more overall calories and higher protein-based diets as well. In fact, the entire expansion of soy in South America is directly linked to the increased consumption of animal protein in China. People are "eating up the food chain". China does not import all the resources to satisfy this consumption; since last year it has been the largest agricultural producer globally, surpassing the US for the first time in recent history. These trends (increased consumption and stimulation of local food production) are likely to occur in any develop country able to increase and sustain overall economic growth.

China also demonstrates another likely trend in food commodity market chains. Historically, primary commodities from developing countries were often shipped to developed countries, held or transformed there and then reshipped. This is changing. Overhead in developed countries (from labour and management costs to warehousing and compliance with laws and regulations) is becoming much more burdensome. In the recent past, China bought its soy from the US; now it buys directly from Brazil. China, in fact, is already investing in Brazil's port and transport infrastructure to improve that country's overall efficiency as a supplier. This is likely just the beginning of that trend.

It is more efficient to deal directly with the main producers. For this reason, many developed country traders and processors are likely to be cut out of the South-South trade that will dominate the next 20-50 years of agricultural production unless they shift their operations to the new centres of production.

Another very large problem here is that a number of countries (perhaps 30-50 and most in sub-Saharan Africa) can currently produce little – if anything – competitively for sale on a world market. In fact, trade liberalisation may actually accentuate such countries' plight. They protect their own agricultural producers through tariffs and trade barriers, but this may not be possible in the future. Efficient commodity producers elsewhere could probably produce and ship half way around the world products that would be cheaper and often of higher quality than those produced locally. Unfortunately, while such imports would certainly put local producers out of business, it is not clear whether, without agriculture, many in the local market would have money to buy the imported food at any price since local food production is the largest engine in most of those economies.

Even gaining access to EU and US markets is not likely to help most producer countries. Sugar illustrates the problem. Recent research in the EU suggests that, conservatively, some 50 percent of any increased market for sugar in the EU that might result from reforms in the sugar subsidy regime would go to Brazil. Every metric tonne of sugar Brazil produces will tend to lower its overall production costs relative to its competitors. The only factor that would noticeably change that would be the rapid growth of Brazil's economy, which would increase its currency's value and thus make exports less competitive on global markets.

The Role of the Public Sector in Shaping a Pro-poor and Pro-environment Commodity Agenda

There are two trends of note regarding the role of the public sector in any pro-poor or pro-environment policy agenda. The first is the overall reduction of the role of government and the resources available to government in almost every country in the world. The second is the increasing focus on security and terrorism. While eradicating poverty is considered somewhat important as a strategy for reducing the number of potential terrorists, little money is being

spent on it now, globally, compared to other wars on terrorism. Environment is nowhere to be found in the new counter-terrorism strategies of most developed countries.

What, then, are the current trends of government with regard to commodity food production systems? Simply put, less of everything: less funding for the monitoring and/or enforcement of existing environmental laws and performance standards; less funding for agricultural research and extension; less funding for residue and product testing and a shifting of the responsibility (and cost) to the producer or producer country; and a decentralisation of power to lower units of government where local elites often have significant self interest in agriculture and natural resource exploitation. This often produces neither pro-poor nor pro-environment results.

License to Operate

Agricultural production, and commodity production in particular, does not take place in a vacuum. Governments, NGOs and society at large, including food manufacturers and retailers, all have an interest in the impacts of farming. The pressures that these groups can bring on farming collectively have been referred to as the 'license to operate'. This license to operate is changing. Here are a few of the more significant recent changes:

- In the past, producers were required (though it was not always enforced) to obey the law. This has shifted to obeying the law in the consumer country. This is a result of private sector initiatives, testing and the ability of countries to require of other producers what they require of their own.
- In the past, the goal was to do no harm or to produce with no net loss. This was driven both by NGOs, local government and buyers. Today, at least in the private sector, this is shifting to doing good and performing 'beyond compliance'. Even the International Finance Corporation (IFC) of the World Bank requires its borrowers to go beyond just obeying the law.
- In developing countries, cheap food for cities may well be the most important issue driving food companies' license to operate. While this may lead to a flood of imports and displaced local farmers, it may still be seen by government as preferable to food riots or the strengthening of urban-based opposition political movements. WTO rulings on subsidy regimes may well even encourage this trend by reducing market protection.
- There is also a shift in emphasis from scale *or* equity to one of scale *and* equity. In the past, it was accepted that it was impossible to achieve both. Today, it is increasingly required to achieve equity, as well as produce at a scale that makes one competitive on global markets because retailers are not willing to pay more. Some experiments suggest that both can be achieved through worker equity programmes; joint ventures between investors, producers, food manufacturers and/or retailers; and worker incentive programmes. Brazil has more of these experiments underway in agriculture than any other country.

The Way Forward

Here are a few thoughts about how to move the commodity and sustainable development agenda forward. First, the choice of the crop should depend on the geographic focus, whether the goal is to reduce poverty, reduce hunger, or reduce environmental or social impacts or some combination of the above. Some crops lend themselves to poverty strategies (i.e. perennial crops in the tropics that are labour-intensive and do not lend themselves to mechanisation such as coffee, cocoa, fruit crops, palm oil, or rubber; labour-intensive annual horticultural crops, such as fruits and vegetables; or organic or other more labour-intensive crops where labour is substituted for other inputs). In general, perennial crops tend to have fewer environmental impacts, tend to be less easily mechanised, and have longer investment periods that discourage larger, more capital sensitive investors. For all those reasons they tend to be better for long-term poverty reduction strategies.

Second, the overall goal is to make sure that farmers can still be financially viable in 25-50 years because they are adopting and using sustainable production practices. To do this, they will need to be more efficient in their use of inputs. They will also need to find ways to sell waste or to use it to reduce input costs. Everything about survival in more open, competitive commodity markets in the future will be about efficiency.

Third, the goal should be to develop longer-term partnerships between producers, key market chain players and governments to reduce the risks and costs of players throughout the

market chain. In all likelihood, profitability will have to be found within the current price structure rather than by obtaining price premiums.

Fourth, we need to target key commodities, and then identify those stakeholders who have the largest interest in sustainable production of a specific commodity to ensure that production can continue indefinitely. This generally includes producers, society, government, buyers, manufacturers, retailers and investors.

Fifth, many if not most small farmer development strategies are more about poverty maintenance than poverty alleviation. Globally the trend is for fewer, more productive, larger-scale farmers. Bucking this trend will be difficult if not impossible. That said, however, it is not impossible to find both scale and equity solutions. For instance, the largest sugar plantation in Brazil is 100 percent owned by the workers who have contracted with competent managers and have turned a profit for eight years running.

Sixth, identify key environmental, social or price impacts, establish current baseline performance data, and then identify acceptable performance levels for the future. These performance-based standards should be used as the basis for better management practice (BMP) based screens for investors or buyers or for evaluating certification programmes.

Agriculture is the largest inherited profession on the planet. It is also the profession that has the smallest percentage of new entrants into it. As a consequence, there is considerable room to bring new ideas, innovations and approaches to the sector. At present, EARTH University in Costa Rica is the only agricultural university in the world that requires each undergraduate to identify a business, write a business plan, borrow money at local interest levels, run the business, pay themselves a salary, and sell it out in order to graduate. Agriculture of all industries needs more job makers and fewer job takers.

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Hard Facts and the Way Forward in the Textiles and Clothing Trade

Munir Ahmad

A sense of anticipation, even confusion, reigns in the world of textiles and clothing. A scant three months before the expiry of quota restrictions on pursuant to the WTO Agreement on Textiles and Clothing (ATC), lobbyists are active in a last ditch effort to preserve the protection enjoyed by textile industries in developed countries for over forty years, and concerns are being expressed about the impact of quota abolition on smaller economies.

A variety of analyses and opinions, largely based on econometric modeling, is on offer. The latest in the series is a study produced under the banner of the WTO.¹ Unfortunately, lacking in necessary analytical rigour and employing imprecise (at times misleading) data, it is liable to add to the confusion.

The WTO Textiles Study

The purpose of this paper is not to critique the WTO study (or any other study for that matter). However, on close scrutiny, it is interesting to find that:

- This study, as well as the GTAP (Global Trade Analysis Project) database on which it and a number of other studies are based, treat a large number of such highly traded *clothing* items as T-shirts, jerseys, cardigans, pullovers, etc., as *textiles*. Due to the definition used, the base figures for the respective country shares in the model are substantially overstated or understated depending on their export profiles. This, in the end, would throw up confusing results.
- This inaccuracy in correctly defining the textiles and clothing universe would be likely to have important implications for the calculations of the 'export tax equivalents' (ETEs), which are fundamental to measuring the model results. Likewise, citing the GTAP database as the source, the study assumes ETEs for Bangladesh in the EU (8.4 percent for clothing and 7.3 percent for textiles) whereas, as a least-developed country, Bangladesh has not been under quota restriction in that market since before 1997. The study also erroneously assumes that Mexico faces quotas and Sri Lanka ETEs in the EU.
- The study does not explain the precise parameters from the GTAP model that might have been used in its simulations. Nor is it clarified whether the information used incorporated the all-important fact of differences in tariffs applying to different exporting countries (i.e. tariff preferences), a crucial factor in trade in textiles and clothing. It appears from the

GTAP database that this is not the case, which again casts a shadow on the reliability of simulation results.

Leaving aside the methodological problems stemming from the use of imprecise definitions and data, the manner in which the simulation results are presented also fosters confusion. Thus, the shares shown as 'before' and 'after' quota elimination create the impression that this might be the situation after the end of the ATC, whereas the simulations actually only show what would have been the situation in 1997 absent the quotas in that year. Nor is any effort made to explore the simulation outcome as to why, for example, China could capture 50 percent of imports of clothing in the US, but only 29 percent in the EU.

Finally, although the study emphasises that the simulation results "tell only part of the story", there are such variances that the textiles world is left hard pressed to cast aside the sparkling results thrown up by the model simulations. For example, the study concludes that – in view of changes in business practices, the importance that relative distances play in competitively supplying markets, and differences in the tariff treatment of suppliers – Mexico, the Caribbean, Eastern Europe and North Africa are "likely to remain important exporters to the US and EU respectively, and possibly maintain their market shares" (a result significantly different from those shown on the basis of GTAP simulations).

A Closer Look at Recent Trade Flows

In view of the confusion introduced into the debate, it is imperative to shed light on the crux of issues in this sector in some commonly-understandable way. And there is no better way to do so than on the basis of a review of actual trade flows in the sector.

Analysing UN Comtrade data, one finds that developing Asian economies as a group managed to increase their share in world exports of textiles from 29.3 percent in 1990 to 40.3 percent in 2002, an increase of eleven percentage points. In clothing exports, however, they were only able to advance a mere one and a half percentage point during this period.

The same results stand out from the performance of these economies on the two largest markets: while developing Asian economies increased their share in the US textile imports from 50.7 percent to 57.4 percent in 2003, in clothing they saw their share decline by a massive nineteen percentage points (from 73.5 percent to 54.2 percent) during the same period. Likewise, in the EU, the Asians expanded their share of textiles imports from 34.5 percent in 1990 to 46.4 percent in 2002; but in clothing their share declined by 1.5 percent (from 48.6 percent to 47.1 percent).

It is important to ask the question 'why', particularly as developing Asian economies are believed to a lot more proficient in the more labour-intensive segment of clothing.

Developed Countries' Trade Policy

The main reason behind this large difference in Asian countries' export performance in clothing relative to textiles has lain in the trade policy framework adopted by the US and the EU, which account for the bulk of imports in the sector.

Here, in a nutshell, are the main tenets of that framework and its evolution over time.

- As of the 1950s, the accent is on quota restrictions, initially only on cotton textiles.

- Tariffs are of course there, too, and in fact at rates higher than at present. But the difference is that the same rates apply to imports from most sources, and thus do not advantage some suppliers over the others. The burden is passed on to the consumers in the restraining countries.
- The blanket protection afforded by the quota system obviates the need for alternate methods of protection (safeguards, anti-dumping duties, etc.).
- But to ensure that suppliers are not able to evade the intended limitations, the coverage of restrained products is eventually extended beyond cotton textiles (to include products of man-made fibres, wool and eventually all other fibres in existence), and changes to rules of origin, as well as a myriad of administrative procedures, are implemented.
- The Uruguay Round comes with an ambitious agenda to liberalise trade. A realisation also sets in that, in the long run, the quota system is neither defensible nor practicable.
- A search begins for new avenues to retain a slice of textile production (and trade) for US/EU domestic producers as far and for as long as possible. It produces a great result: the possibility of putting rules of origin to innovative use. The initial message is: “Never mind the quota restrictions, you are allowed to export as much clothing as our market would bear, provided the finished product you export is made with our yarns and fabrics.” The innovation gets labelled ‘outward processing trade’ (OPT) in the EU, ‘guaranteed access levels’ (GALs) in the US. Later, this basic concept is transplanted to free trade area agreements and other preferential arrangements.
- The Uruguay Round concludes with an Agreement on Textile and Clothing (ATC) that will finally bring an end to all quotas by 1 January 2005. In the meantime, however, regional free trade agreements come into vogue. The ‘yarn forward’ rule of origin novelty comes in handy for securing a share of the market for domestic producers both at home and abroad. The focus turns to making eligibility of imported clothing to duty-free treatment, contingent on the use of yarn and fabric produced within the boundaries of the free trade area (which in practice would be in the importing country, given the capital-intensive nature of their production).
- Although the ATC commits WTO Members to wind down the quota regime *gradually*, it is highly profitable to the domestic industry to push actual implementation to the very end of the ten-year implementation period. By then, of course, campaigns by trade unions and NGOs for the protection of labour standards and the environment would have created conditions that ultimately advantage local producing companies.
- And, a wide array of trade remedy instruments remains available should the need arise.

The Implications

It is apparent that an important objective behind the shift in US/EU policy – from quota restrictions to the use of tariff preferences, combined with restrictive origin rules – since about the Uruguay Round has been to retain as much of the home market for domestic producers of textiles as possible, and to ensure them a slice in offshore markets too.

Little wonder that more than 79 percent of all US textile and clothing exports are now destined to countries with whom it has free trade area arrangements or to imports from whom it extends duty-free treatment *on condition* that these exports incorporate US components (yarn, fabric, etc.). In 1980, the share of US textile and clothing exports going to these same countries was only 35 percent.² It is also apparent that on imports from these countries of some US\$20 billion, the US foregoes tariff revenue of over US\$2.5 billion per year that would be due if MFN rates were applied, thereby conferring an implicit subsidy to US textile industry in that amount.

Unfortunately however, in the process, the exporting developing countries concerned have become heavily reliant on the US not only for their apparel exports, but also import of inputs to feed those exports. While that market absorbs over 90 percent of NAFTA and Caribbean Basin Initiative partners’ textile and clothing exports, those exports also depend on imported inputs from the US. Unsurprisingly, few of these countries have succeeded in establishing any viable

textile production base of their own to sustain their apparel export operations on a continuing basis. And, their businesses are straddled with costs associated with the paper work and other formalities required to benefit from these arrangements, adding to the drag on their competitiveness.³ The predicament is dramatically portrayed in this remark to a US Congressional Committee by US importers’ representatives: “Business should not need a Ph.D. to establish a compliant duty-free programme”.

From US industry’s perspective, though, the results of this policy could not have been better.

- It provides for a secure, captive market for its textile products, worth US\$15 billion a year.
- Reserving duty-free access on its home turf for processors in these countries diverts others away.
- It conferred a yearly benefit of over US\$2.5 billion as revenue foregone by the US Treasury for several years, and the bounty is guaranteed for many more to come.
- It makes those countries that are eligible for preferential access at the back of this policy, dependent on inputs from the US and on changes in its trade policy.

On the EU side, too, the strategy and the results are similar to those in the US. Thus, Bulgaria, Morocco, Tunisia, Romania, Turkey, etc. are rendered reliant on the EU market for export of apparel and for import of inputs from the EU (with the exception of Turkey which has a sizable textile capacity of its own).

Continued on page 10

US/EU Textiles and Clothing Trade with Selected Countries (in US\$ million)				
Exporting Country	US Imports from Country	US Exports to Country	EU Imports from Country	EU Exports to Country
Mexico	9,345	5,023	105	531
Dominican Rep.	2,253	1,270	13	48
CBI Countries	9,878	4,647	141	149
Morocco	80	8	2,903	1,882
Tunisia	38	1	3,314	2,157
Romania	125	5	4,439	3,049
Notes US data used here are for 2002, EU data for 2003. EU data cover HS Section XI, excluding agricultural products. US data cover SITC Divisions 65 and 84, excluding sub-Div. 848 (leather apparel).				

The Way Forward

The situation created by such bending of trade policy is unlikely to be tenable over the long run – whether for further liberalisation of trade, for sustaining the continued growth of trade for participants in preferential arrangements, or for development of exports from non-participants in these arrangements. It merely serves to postpone adjustment that is bound to take place, most importantly in the industrialised countries.

The challenge is to avoid further pitfalls and introduce corrections to trade policy. These corrections require a brand-new approach, with action on four inter-related issues.

Issue One: Avoiding rush to alternate protection, post the quota regime

For the immediate term, top of the list of challenges, is the spectre posed by an imminent decline in export prices following the abolition of quotas. Under the quota system, trade transactions were not driven by normal commercial considerations alone; quota prices had been an important component in pricing decisions and arrangements. The issue is how to spare the exporters being caught up in allegations about dumping (and demands for other trade defense measures such as safeguards, countervailing duties, etc.) following price declines induced by the disappearance of costs associated with the quota system.

Issue Two: The tariffs

Addressing tariffs is essential not only for the expansion of trade in this sector of such great promise for developing economies, but also for addressing the problem of least-developed and other countries that have come to rely for their exports on the two largest markets.

The World Bank and the IMF estimate the export revenue loss due to present levels of textile and clothing tariffs at US\$104 billion, of which US\$59 billion to developing countries.⁴ While some caution is in order with such estimates, it is obvious that the absence of tariffs, or even just significant reductions in them, would create tremendous room for trade expansion.

In the long run, the advantage of duty-free access conferred by restraining countries to various groups of countries under free trade agreements or under autonomous preferential schemes – on condition that these im-

ports incorporate importing countries' yarns and fabrics, is bound to lose its significance because Asian countries have already been capturing increasing shares of the world textiles market. The fact that US and EU textile industries are less cost-competitive than their Asian counterparts in the textile segment of the sector therefore places a long-term drag on countries whose preferential access is made conditional on their use. They find themselves in the unenviable situation of having to provide protection to uncompetitive production in developed countries. The policy also inhibits the concerned developing countries' efforts to diversify their export markets.

Therefore, to assist those developing economies that have come to depend on this policy framework, it will be necessary to allow them sufficient time to adjust before their current tariff preferences get reduced. It should be possible to do so by calibrating the tariff agreement currently under negotiation in the Doha Round of trade talks.

Issue Three: Rules of origin

Affording more time for them to benefit from tariff preferences alone is unlikely to solve their fundamental predicament, however. For a longer-term solution, the central issue of rules of origin ought also to be addressed. For this to occur, a grand compact is imperative. Through this compact, many developing countries' dependence – fostered by rigid rules of origin in free trade area agreements and preferential arrangements – would need to be dealt with in a manner that clears the bottlenecks hindering the expansion of their exports.

As an example, although all Bangladeshi exports to the EU are technically eligible for duty-free treatment under the EU's GSP or the 'Everything-but-Arms' initiative, this concession actually benefits only half of Bangladesh's clothing exports due to the constraining effect of rules of origin and a lack of indigenous textile production capacity in the country. Similarly, since the granting of duty-free access by the United States under its AGOA legislation, exports from a number of beneficiary countries have expanded significantly. Not from Mauritius however, because it is not considered a 'lesser-developed country' under AGOA and is therefore ineligible for duty exemption if its exports contain third country fabric.

The point to emphasise in all this is that for many developing countries that are similarly placed, the current dispensation does provide a short-term edge. Over the long haul, however, given the constraints placed by restrictive rules of origin, they are unable to attract significant investments in upstream textile production and, consequently, develop excessive reliance on their major partners for import of necessary inputs that are not cost-competitive. Clearly, therefore, action is needed to make rules of origin more trade and development friendly, whether these are under preferential programmes or under free trade area arrangements.

Issue Four: Performance requirements

A final issue that needs to be addressed is the array of requirements for extracting respect for labour standards and protection of the environment. Whether by coincidence or design, the campaigns surrounding these otherwise worthy causes have gathered momentum just as the quota regime has been drawing to a close, creating avoidable difficulties and confusion without visible consequences for the realisation of the goals they are intended for. The new compact recommended above must also ensure that the proliferation of these requirements and the tendency to turn them into new methods of protection is contained.

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ENDNOTES

¹ World Trade Organization, *The Global Textile and Clothing Industry post the Agreement on Textiles and Clothing*, Geneva: WTO, August 2004.

² Source: Comtrade database; Product coverage SITC Division 65 for textiles, 84 for clothing

³ According to some estimates, this can add 3 to 5 percent of the cost of goods. See United States International Trade Commission, January 2004, *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market*, Chapter 3, page 6.

⁴ IMF/World Bank, *Market Access for Developing Country Exports—Selected Issues*, September 2002.

Agriculture Talks to Focus on Technical Issues

WTO negotiations on agriculture are likely to assume a more technical than political character in the coming months, with the Chair taking a stronger co-ordinating role.

At an informal consultation held in late September, Members agreed in principle to focus on fleshing out the framework agreement reached in July rather than spend time on commenting on the text itself. While there is no detailed work programme, the negotiations Chair Ambassador Tim Groser proposed that the next session on 6-8 October could include one subject from each of the three pillars (market access, domestic support and export subsidies), with time given at the beginning and end for more general comments. To start off, he would choose subjects in the framework where some work had already been done. Those initial subjects were to be announced shortly. Ambassador Groser also urged Members be practical and not to get bogged down on procedural issues, such as the order in which the different elements were addressed.

As an example of the technical work ahead, Ambassador Groser mentioned seeking a common understanding on how to convert specific duties into *ad valorem* duties, as required by paragraph 5 of the market access segment of the framework text. The framework is far less detailed on market access than the other two pillars, and the Chair said that the agreement to (eventually) eliminate export subsidies and to start further domestic subsidy reductions at 20 percent below the ceiling currently allowed created “a much better atmosphere to advance market access negotiations”.

Some sources have, however, predicted that developing countries will push for more specifics on subsidy disciplines before tackling the tariff reduction formula for agricultural products and other market access issues, such as the number of ‘sensitive’ and ‘special’ products to which the formula will not apply (Bridges Year 8 No.7, page 4).

The EU and Switzerland noted that other issues should be included, such as non-trade concerns (NTCs, which include, *inter alia*, environmental protection, rural development, food safety and animal welfare). NTCs are high priority for the EU and the developed country members of G-10 group of net food-importing countries (Bulgaria, Chinese Taipei, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, South Korea and Switzerland).

Chair's Role to Be Enhanced

Ambassador Groser indicated that the technical questions would be handled in a mix of informal and formal consultations and meetings, with the Chair taking a co-ordinating role. From March to June, the negotiations consisted almost entirely of informal negotiations between Members with the Chair taking a backseat. The final phase of negotiations largely took place between just five key players, namely Australia, Brazil, the EU, India and the US. This gave rise to bitter complaints about being sidelined from the G-10, as well as the G-90 coalition of the poorest countries. The Chair now faces the delicate task of addressing their concerns about lack of transparency while still achieving real progress on the technical issues before the next political decisions have to be made.

No Breakthrough Expected in the Near Future

Chile said Members were not expecting any breakthrough or agreement until closer to the Hong Kong Ministerial Conference in December 2005, and asked Members to indicate what they were realistically expecting from the Hong Kong meeting, without making any commitments on the outcome of that meeting.

The provisional dates for future negotiations are 6-8 October, 16-17 and 19 November, and 20-21 December.

Textiles Update

A number of developing countries are expected to raise the issue of adjustment costs related to textiles quota removal at the 1-2 October meeting of the Council for Trade in Goods.

In July 2004, Mauritius, Bangladesh and Nepal requested an emergency meeting of the Council to examine the adjustment costs of the quota abolition due to come into effect on 1 January 2005 under the WTO's Agreement on Textiles and Clothing. These and other smaller textiles producers are concerned about their ability to compete in a post-quota world. They warned that the phase-out of quotas, in combination with the emergence of China in the market, would lead to “unintended consequences,” which would cost “hundreds of thousands if not millions of jobs in those countries that can least afford it”.

Consultations conducted by WTO Director-General Supachai Panitchpakdi in early August on the membership's willingness to hold an emergency meeting yielded no consensus. He thus proposed that Members that so wished could put their concerns on the agenda of the 1 October session of the Council for Trade in Goods, which is already set to review the quota phase-out. Reportedly, Brazil, China, Egypt, Hong Kong, India, Indonesia, Pakistan and Thailand objected to the idea of holding an emergency meeting, as this could be seen as a first step towards quota extension. Developed countries such as the EU and US remained neutral.

In August, the WTO Secretariat released a discussion paper on *The Global Textile and Clothing Industry post the Agreement on Textiles and Clothing*, which predicted growing market shares for China and India in particular, but also noted that countries close to large consumer markets might not fare as poorly as expected. However, Sub-Saharan Africa and other countries currently enjoying trade preferences could lose out, the report estimated (see also article on page 8).

Unravelling the Details and Potential Impacts of the Final Cotton Report

On 18 September, Brazil's victory in the upland cotton dispute was made official. The US is to withdraw those cotton subsidies found to be 'prohibited' export subsidies 'without delay', that is at the latest within six months of the date the Dispute Settlement Body meets to adopt the panel report or by 1 July 2005 – whichever date is earlier.¹

The US has reiterated its position that there will be no immediate changes to its cotton programmes until it has appealed the panel's decision on points which may be gleaned from statements issued by US officials and institutions. The US National Cotton Council (NCC), for instance, has expressed its disagreement with the panel's ruling that disputed subsidies caused 'serious prejudice' to the interests of Brazil. The NCC is also concerned about the panel's finding that US cotton subsidies were not 'decoupled' from production. On the already announced appeal, the WTO Appellate Body could further add to the ruling's potentially far-reaching implications for trade and sustainable development at the regional, bilateral and multilateral trade fronts. An examination of these implications is preceded by a brief overview of the panel's findings.

Subsidies Confirmed as Illegal

The panel found that US export credit guarantee programmes and a category of 'Step 2 marketing payments' offered to exporters were prohibited export subsidies under the WTO Subsidies and Countervailing Measures Agreement (SCM Agreement) and had to be withdrawn "without delay." Under the Step 2 programme, both US cotton exporters and domestic users of upland cotton are paid the difference between the domestic cotton price and the world market price. As to subsidies provided to domestic users, the panel specifically found these to be 'import substitution subsidies' prohibited by the SCM Agreement.

Moreover, the US had argued that some of its programmes such as Product Flexibility Contracts (PFC) and Direct Payments (DP) were 'decoupled' support in the sense that they were provided independently of the yield of farmers. According to the US, these programmes should be categorised as 'green box' subsidies, which are exempt from reduction commitments under the Agree-

ment on Agriculture (AoA). The panel disagreed with the US and reasoned that since the PFC and DP programmes imposed limitations on the kind of crops that were eligible for payments they were not decoupled support. On the contrary, they were trade distorting domestic subsidies which did not satisfy the criterion of green box subsidies under the AoA.

Challenged Subsidies Not Protected by the Peace Clause

This case was the first major ruling on the Peace Clause, which until January 2004 protected most of WTO Members' agricultural subsidies from dispute settlement challenges provided those subsidies met certain conditions. Importantly, the Peace Clause exempted green box domestic support as long as it did not exceed the ceiling the Member in question had agreed to at the end of the Uruguay Round. However, having already found that, contrary to US claims, certain PFC and DP support for upland cotton did not qualify as green box, the panel held that they were not protected by the Peace Clause. The challenged export subsidies and other US domestic support measures that granted support to cotton producers during the implementation period of the Peace Clause beyond 1992 marketing year support levels also failed to satisfy the Peace Clause.

Present Serious Prejudice and Threat of Serious Prejudice Claims

Brazil claimed that by suppressing world cotton prices, US subsidies provided during the 1999-2002 marketing year had seriously injured Brazil's cotton industry. Ruling partially in favour of Brazil, the panel found that a causal link existed between certain US price-contingent payments – such as marketing loans, market loss assistance, Step 2 and countercyclical payments – and significant price suppression of cotton on the world market. According to the panel, these payments were "directly linked to world prices for upland cotton, thereby insulating US producers from low prices". However, the panel found that there was no such causal link in respect of US non-price contingent payments such as the production-based PFC and DP payments, and crop insurance subsidies.

Brazil had also argued that a basket of subsidies yet to be granted in the 2003-2007 marketing years could seriously threaten its cotton industry. On this point, the panel reasoned that the immediate withdrawal of the prohibited subsidies would significantly transform the status of those subsidies. Hence, it was unnecessary to rule on Brazil's 'threat of serious prejudice' claim.

On Confidentiality and Third Party Rights

In an unusual move, the US requested the panel to indicate in the final report that Brazil had breached the obligation of confidentiality of the interim report and to note any information that the panel obtained with respect to those breaches. In its defence, Brazil noted that "the ostensible sources cited in such press reports could just as easily have been United States officials or other persons not connected with Brazil." The panel simply concluded thus: "We consider this lack of respect for confidentiality unacceptable."

On the issue of third party participation, however, the panel was keen to point out the participation of two of the proponents of the Cotton Initiative, Benin and Chad, which are also least-developed countries (LDCs). As noted by the panel, Article 24.1 of the Dispute Settlement Understanding (DSU) outlines special treatment for LDC participants in disputes. According to the panel this provision encompassed situations where LDCs were involved as third parties as in this dispute. The panel therefore took account of Benin and Chad's allegations that US subsidies caused harm to their cotton industries as evidentiary support.

Implications of the Decision for Other Subsidy Programmes

Trade experts have highlighted the point that a ruling in favour of Brazil in this case, as well as Brazil's challenge against EC sugar subsidies, could open a Pandora's Box of WTO challenges against developed country subsidies now that the Peace Clause has expired. Academics have pointed out, however, the difficulties potential complainants will encounter in proving that the subsidies in question caused the particular distortions complained of in a 'serious prejudice' challenge (Bridges Year 7 No. 8 page 7). Importantly, the panel ruled that a serious prejudice analysis does not call for any "precise quantification" of the subsidy. It reasoned that "[a]llocating absolutely precise proportions of the subsidy to the product concerned, or trying to trace with precision where each subsidy dollar may be spent by a recipient, is not a necessary exercise." According to Brendan McGivern, a Canadian trade lawyer, this ruling is likely to facilitate future complaints under the serious prejudice provisions of the SCM Agreement: "If all serious prejudice claims were required to be quantified – as the United States had advocated strongly before the panel – it would have raised the bar to the use of these provisions in many WTO disputes."

Subsidy programmes, such as that of the EU's cotton regime, could be vulnerable to future challenges. New research by the Overseas Development Institute (ODI) released in February found that with an annual subsidy expenditure of EUR 0.8 billion, the EU cotton regime is also substantial and has a disproportionate and significant impact on West African cotton producers. In this respect, it has been pointed out that current EU cotton reform proposals do not break the link between subsidies and cotton production (Bridges Year 8 No. 4 page 7). In light of the panel's ruling on 'decoupling', this could be bad news for EU cotton subsidies.

Impact on Trade Negotiations

In the wake of this ruling, Brazil's Ambassador to the WTO, Luiz Felipe de Seixas Correa was reported to have commented that "we didn't bring these cases to interfere with the WTO negotiations, but without them the EU and US would never change their policies."² The US on the other hand, has emphasised that sustainable agricultural trade reforms will only arise from trade negotiations and not from WTO disputes. Nevertheless, it can be argued that the deal struck by the US and Africa on cotton, reflected in the WTO 'July package' of modalities and coinciding with the outcome of the cotton case, goes some way to prove that while WTO disputes may not be directly responsible for changes in trade policy, they can add to the pressure that drives such change.

If this ruling impacts on the agriculture talks, which are anticipated to resume in earnest in October, it could be the first WTO dispute to directly influence trade negotiations.

Rethinking the Far-reaching Implications of WTO Disputes

The cotton case can be counted among a line of high-profile WTO disputes, such as the Shrimp-Turtle, Tuna-Dolphin and recently the Generalised System of Preferences (GSP) and Biotech disputes in which WTO panels and the Appellate Body have tread into sensitive areas in the arena of trade and sustainable development – for which they have been criticised. Such criticisms, however, must be pitched against the fact that the WTO dispute settlement system is responsive, not proactive, in the sense that panels only have the opportunity to address sensitive issues if relevant disputes are presented to them. In this regard, WTO Members themselves have a responsibility to consider the potential implications of cases they plan to initiate at the WTO. Article 3.7 of the DSU provides that "before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful." Perhaps it is time for Members to rethink and redefine the meaning of potentially 'fruitful' cases taking into consideration their broader impacts on trade and sustainable development at regional, bilateral and multilateral levels.

Byrd Amendment Rewards

On 31 August, WTO arbitrators ruled that eight countries may impose retaliatory measures on the US following the latter's failure to repeal the Byrd Amendment, under which anti-dumping duties are redistributed to the petitioning industries rather than remaining in state coffers as is usually the case.

The decision breaks new ground in that – instead of setting a fixed monetary figure for the harm done to each complainant's economy – it allows them to adjust the level of retaliation at 72 percent of the amount redistributed to US companies under the amendment annually.

The US had argued that the redistribution in itself had no adverse economic effects on companies whose exports were subject to anti-dumping duties. The complainants maintained the US companies receiving Byrd Amendment payments benefited from a 'pass-through' effect, which allowed them to use the totality of the payments to improve their competitiveness vis-à-vis foreign competitors. The arbitrators used economic modelling to determine that a reasonable trade effect of the disbursements could be estimated at 72 percent of the value of the Byrd Amendment duties paid on imports from that complainant. As the disbursements vary from year to year (so far, they have been in constant progression), the arbitrators ruled that the complainants could adjust the level of retaliation on an annual basis.

For 2003, the amount determined by the formula would range from the high end of US\$18 million for the EU to the lowest amount of US\$576,000 for Chile. However, many of the countries involved (Brazil, Canada, Chile, the EU, India, Japan, Korea and Mexico) may actually not retaliate due to the costs that higher import duties would impose on their own economies. Instead, they are – at least initially – likely to use the ruling to put additional political pressure on an unwilling US Congress to repeal the WTO-inconsistent law.

ENDNOTES

¹ United States – Subsidies on Upland Cotton, WT/DS267/R, 8 September 2004

² "WTO Rules Against EU Sugar, U.S. Cotton Support (Update2)," Bloomberg.com, 8 September 2004.

GATS-plus and GATS-minus in US Free Trade Agreements

Luis Abugattas Majluf

Services disciplines under the proliferating regional and bilateral treaties between the US and Latin American countries exceed GATS requirements in certain areas but go less far in others, resulting in a considerably less development-friendly regime than the one offered under the WTO.

This note compares certain aspects of the services disciplines in recent US bilateral/regional free trade agreements (FTAs)¹ to the provisions of the WTO's General Agreement on Trade in Services (GATS). In principle, regional and bilateral agreements should go beyond the obligations contained in the GATS, and address those areas where multilateral experience has revealed the need for improvement or clarification. However, analysis of the services provisions in the bilateral agreements – modelled after the North American Free Trade Agreement (NAFTA) – shows that these conditions have not necessarily been fulfilled.

Modes of Supply

The definition of trade in services involves four 'modes of supply'. With regard to cross-border trade (Mode 1), the US has incorporated in its bilateral agreements a chapter on electronic commerce, which does not exist in the GATS. The chapter recognises that the supply of a service through electronic means falls within the framework of obligations contained in the chapter on cross-border trade in services and the chapter on financial services. The main obligations are a commitment not to levy tariffs on 'electronic products', and to extend non-discriminatory and national treatment to the exports of such products from the parties involved. This amounts to the incorporation of additional specific obligations in this mode of supply that go beyond the requirements of the GATS.

Similarly, the bilateral agreements' definition of 'consumption abroad' (Mode 2) presents a subtle but important difference from the one contained in the GATS Article I. 'Mode 2' is defined as the supply of a service "in the territory of one Party by persons of this Party to persons of the other Party". Whereas Mode 2 under the GATS contains no specifications for the provider of services to persons of another party, this language limits the scope of the agreement to transactions between a consumer in one

party and a provider of the party in whose territory the service is offered. The implications of this formulation should be carefully evaluated.

As to the 'temporary movement of natural persons' (Mode 4), the GATS covers all kinds of movement and all categories of providers with no reference to their level of qualification. Under Mode 4, WTO Members commit to temporarily admitting into their territory citizens of other Member countries – and, under certain circumstances, permanent residents in other Member countries – to provide services to both natural persons and legal entities in the receiving country. The GATS neither defines the meaning of 'temporality' nor imposes any conditions as to how the 'movement' must take place. Latin American countries have prioritised this mode of services supply in their requests in the WTO's services negotiations.

Despite the importance of effective liberalisation of trade in services under Mode 4, the bilateral agreements signed by the US exclude – for all practical purposes – the movement of natural persons. Granted, the agreements with Chile and Singapore made some progress in this area, as the US gave Chile a quota of 1,400 professional entries and granted access to 5,400 service providers from Singapore. In addition, both agreements contain a chapter on the temporary movement of businesspersons, which covers 'business visitors', 'traders and investors', 'intra-corporate transferees' and 'professionals'. However, when analysing the implementing legislation for the Chile and Singapore FTAs, the US Congress clearly indicated that it would not accept similar concessions in future agreements.

Consequent US free trade agreements have not included any expansion of the commitments on the movement of service-providing natural persons already undertaken under the GATS. Given that the commercial possibilities for Latin America and the Caribbean are essentially concentrated in Mode 4, this obstacle seriously affects the balance of concessions, which would require increasing the region's participation in the services trade. The absence of effective commitments on the movement of natural persons is also reflected in the provisions on recognition of qualifications, which basically reproduce the provisions of GATS Article VII.

One of the most divisive services-related issues in the negotiations for the Free Trade Area of the Americas (FTAA) has been whether commercial presence (Mode 3) should be treated in the chapter on services or the one on investment. However, where this question is addressed matters less than the disciplines that are eventually agreed on service providers' right to 'commercial establishment'. Both formulas could be compatible with GATS Article V on economic integration and allow the participating countries to reach their objectives. While this note does not seek to offer a comprehensive analysis of the implications of investment disciplines to services, it may be useful to highlight a few issues that will require further consideration.

The Relationship Between Investment and Services

In the bilateral agreements, the general obligations toward investors (and investment) focus – in addition to most-favoured nation (MFN) and national treatment – on the concept of 'just and equitable treatment', a standard element of investment protection treaties. This still controversial concept has a very different scope from the domestic regulation obligations in agreements on liberalising trade in services. Whilst the GATS upholds the right of Member countries to regulate services, some interpretations in disputes involving obligations under the NAFTA investment chapter seem to question the state's right to regulate.

Another issue that deserves attention is the reference to obligations regarding performance requirements in the bilateral agreements. GATS Article XIX.2 explicitly recognises the right of

Member countries to establish the conditions of market access for foreign providers in their specific commitments. Countries use performance requirements to promote development objectives, in particular with regard to technology transfer and to promote positive externalities that may result from foreign service providers' activities in their countries. Performance requirements may thus contribute to the achievement of social objectives, such as 'universal' provision of certain services with high impacts on the quality of life, for example in the field of the environment and other services of an infrastructural nature. The investment chapters of the bilateral agreements forbid all types of performance requirements, barring reservations specified by each party, thus depriving countries of a right codified in the multilateral framework.²

Domestic Regulation

Regarding domestic regulation, the bilateral agreements have not up to now managed to move forward from what was agreed in the GATS. To the contrary, they limit the breadth of obligations to that specified in GATS Article VI.4, excluding the requirement of the first paragraph in that article, which requires all measures of general application affecting trade in services to be "administered in a reasonable, objective and impartial manner". The bilateral treaties typically extend the reach of the domestic regulation obligations (specified in the chapter on trade in services) to investment in services activities covered by the chapter on investment.

The agreements also include a commitment that any future development regarding domestic regulation in the WTO (or other fora where the various members participate) will be evaluated for eventual incorporation in the bilateral agreement. However, as the definition of 'investment' in the bilateral agreements goes far beyond GATS provisions on commercial establishment, the implications of extending commitments pertaining to domestic regulation to the broad spectrum of investment measures should be carefully considered.

Exclusions and Exceptions

The exclusion of subsidies and other forms of support from the reach of the bilateral agreements constitutes a clear step back from the GATS. Subsidies are covered by the GATS, which stipulates that all subsidies and other measures of support granted to domestic service providers must be extended to suppliers in other WTO Member countries unless the country granting the support explicitly specifies otherwise in its national schedule. Furthermore, Article XV of the GATS requires further negotiations to establish disciplines designed to avoid distortions in trade in services. The exclusion of subsidies from the bilateral agreements means foreclosing this possibility although many services subsidies have perverse effects on trade. The fact that the same economic rationale that underlies disciplines on subsidies in trade in goods is fully valid for trade in services makes this exclusion difficult to justify.

It is also worth noting that the agreements do not consider emergency safeguards, which allow temporary protection of domestic service providers when the increased participation of providers from another party seriously affects them. As disciplines on subsidies and safeguards are to be finally established under the GATS, the links between the commitments undertaken in the bilateral and multilateral agreements are an issue that deserves serious thought.

All the agreements contain an exception regarding the liberalisation of trade in services "supplied in the exercise of governmental authority", as established in Article I.3 (b) of the GATS. For a service to benefit from the exclusion it is not enough for it to be supplied by the state; it must in addition be supplied "neither on a commercial basis, nor in competition with one or more service suppliers". The breadth of this exclusion has been the object of an interesting debate within the framework of the GATS³, where different interpretations exist as to the exact meaning of "supplied on a commercial basis". The WTO secretariat admits that "it is not entirely clear what the term 'commercial basis' means".⁴ The notion of "not supplied ... in competition with one or more service suppliers" is also under scrutiny (even health or education services in most countries are provided both by the government and the private sector). The necessary conditions for a service to qualify for exclusion under Article I.3 are thus not clear⁵, and the bilateral agreements have not offered more clarity in this area. Instead, they replicate the GATS provisions, thus transferring the existing problems of interpretation to the bilateral arena.

Scope of the Liberalisation

The bilateral agreements tend to uphold the status quo through the registration of 'inconsistent' measures that each party decides to keep. The breadth of liberalisation depends on the negotiation process itself. Once reached, the agreements do not foresee a mechanism for future liberalisation through the elimination of the inconsistent measures registered in the annexes. Unlike the GATS, the bilateral agreements tend to exclude, through specific provisions, measures enacted by local authorities, and through reservations measures from regional or state authorities, thereby significantly limiting their scope.

Conclusion

The bilateral agreements concluded to date reflect the US trade agenda, including GATS-plus obligations where these are in its interest (financial services, telecommunications, specific obligations with regard to express delivery, the protection of local distributors and transparency). In other areas the agreements mostly replicate existing obligations under the GATS or are even more limited in scope.

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ENDNOTES

¹ These include FTAs with Chile and Singapore, Central America (CAFTA), Australia and Morocco. Negotiations have started with Colombia, Ecuador, Panama and Peru. There are significant differences between the agreement with Australia and those with developing countries.

² The bilateral agreements prohibit performance requirements independently from the investor's origin. This way the parties undertake commitments with regard to countries that are not party to the treaty in question.

³ The GATS Annex on Financial Services clarifies the scope of services supplied in the exercise of governmental authority.

⁴ WTO S/CW/46

⁵ Draker, Fidler, Correa et al. *A Legal Review of the GATS from a Public Health Perspective*. Mimeo, 2003

CITES to Broaden Coverage of Heavily Traded Commodities

The October Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) in Bangkok is expected to move further into regulating trade in economically valuable species, including a number of fish, timber and medicinal plant species. Also on the table is the recurring question of whether conservation is best achieved through restrictions or sustainable use.

CITES is one of the multilateral environmental agreements (MEAs) that contain specific trade obligations. WTO Members are currently negotiating on the relationship between such obligations and multi-lateral trade rules. While the trade and environment regimes are frequently exhorted to be 'mutually supportive', conflicts can arise, particularly between those WTO Members that are party to the MEA in question and those who are not. Furthermore, the membership of CITES itself is often divided between commercial and environmental interests. Like its predecessors, the 13th Conference of the Parties (COP-13) has a number of important decisions to make in this regard.

Cross-cutting Issues

Namibia has put forward a submission regarding synergies between CITES and the Convention on Biological Diversity (CBD), focusing on the Addis Ababa Principles and Guidelines on sustainable use adopted at CBD COP-7. Namibia would like to see the Principles integrated into the work of CITES, including its definition of sustainable use when assessing whether trade will be detrimental to a species. The CITES Secretariat in its comment notes that "the term 'sustainable use' is not used in CITES and therefore requires no definition".

Parties will also again discuss 'economic incentives', i.e. favouring positive measures to encourage range countries to preserve endangered species rather than establish CITES-plus controls in the importing countries. In this context, the Secretariat has proposed to conduct a review of Parties' national trade policies, including, *inter alia*, the use of economic incentives, market access strategies and benefit-sharing arrangements.

Fish: Shark and Wrasse

The meeting is called upon to decide whether to list the valuable white shark and humphead wrasse in Appendix II (limited trade under strict controls). If the proposal to list the white shark, put forward by

Madagascar and Australia, is adopted, it would become the third shark species placed in Appendix II, following the decision to list the whale and the basking sharks at COP-12. The humphead wrasse has been proposed for listing by Fiji, the EU and the US in an effort to combat over-fishing for use in Southeast Asian luxury restaurant food markets.

Timber: Ramin and agarwood

After the inclusion of big-leafed mahogany in Appendix II at COP-12, Parties at this year's meeting will have to decide over two other heavily traded timber species. Indonesia has proposed including in Annex II agarwood and ramin trees (it has already listing the latter in Annex III, which contains species protected within the borders of a member country). Native to Malaysia, Indonesia and the Philippines, the ramin tree has long been one of Southeast Asia's major export timbers. The proposed listing would include all ramin species, as well as their parts and derivatives. Found in Borneo, Malaysia and Sumatra, the agarwood tree produces the valuable 'agar' oil used for making incense, perfumes and medicines. The listing would cover all species (one of which is listed since 1995).

Medicinal Plants: Hoodia cactus

Among medicinal plants, South Africa and Namibia have proposed the inclusion of the Hoodia cactus in Appendix II. The cactus has long been used by Africa's San people for its appetite-suppressing qualities. In 1996, the South African Council for Scientific and Industrial Research (CSIR) patented the chemical entity extracted from hoodia and licensed the British pharmaceutical company Phytopharm to develop the plant's commercial potential. Phytopharm in turn sold the development and marketing rights to the Pfizer Corporation. The San peoples have high hopes for a share of the profits should a drug be successfully marketed. Following lengthy negotiations, the CSIR concluded a memorandum of understanding with the San tribes in April 2002, which will serve as a basis for benefit-sharing, specifying that the San peoples will receive six percent of the royalties incurred.

Mammals: Elephants and whales

As at COPs past, elephants and whales will again make an appearance at COP-13. After the parties allowed in 2002 one-off ivory sales for Botswana, Namibia and South Africa (which have yet to take place pending the establishment of baseline data on poaching and wild populations), Namibia is now requesting an annual export quota of two tonnes of ivory and, supported by South Africa, has proposed to trade elephant leather commercially in addition to ivory. Opponents and supporters have been divided over the possible benefits of trade in ivory products to local communities and conservation programmes due to concerns that such sales may encourage poaching. The supporters argue that resuming controlled trade would provide an economic incentive to sustainably use a valuable natural resource.

Among other controversial issues, Japan has again put forward a proposal to move three populations of minke whale from Appendix I to Appendix II, arguing that these populations have sufficiently recovered to be no longer at risk. Japan and Norway have made similar proposals at past CITES meetings, all of which have been rejected. For the past 18 years, commercial whaling has been subject to a general ban by the International Whaling Commission (IWC). Given that CITES decisions on trade in great whales must be consistent with the decisions of the IWC (pursuant to a CITES resolution adopted in 2000), many Parties feel that trade cannot resume until the ban has been lifted.

Documents of the COP-13 are available at <http://www.cites.org>. Further information is also available on the TRAFFIC website at www.traffic.org/cop13/.

Establishing a Development Agenda for the World Intellectual Property Organisation

Marta Gabrieloni

Over recent years developing and least-developing countries, as well as the wider international community, have grown increasingly concerned about the implications of intellectual property rights on social, economic, technological and cultural development.

Practically all intergovernmental organisations have recognised that development is the most important challenge facing the international community. At the highest level in the United Nations, the Millennium Development Goals have established a firm commitment to address the significant problems that affect developing and least-developed countries (LDCs). The World Intellectual Property Organisation (WIPO), as a specialised agency of the United Nations since 1974, must be part of that international effort and achieve its mandate in the context of the development objectives of the UN. Article 1 of the Agreement between the United Nations and WIPO recognises the latter as being “responsible for taking appropriate action [...] for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development [...]”.

With the objective of assisting WIPO in fully implementing this mandate, as well as the one set out in the WIPO Convention, Brazil and Argentina on 26 August tabled a *Proposal for Establishing a Development Agenda for the World Intellectual Property Organisation*¹, and requested that it be included in the agenda of the WIPO General Assembly to be held on 27 September to 5 October, 2004. To date, the proposal has been co-sponsored by Bolivia, Cuba, Ecuador, Iran, Kenya and Venezuela, and broadly supported by other developing countries and LDCs. The proposal is open to co-sponsorship and support of all WIPO Members States.

Main Aspects of the Proposal

The core concept of the proposal is the integration of a ‘development dimension’ into WIPO’s activities (intellectual property norm-setting, transfer of technology and technical co-operation). The need to integrate that dimension into policy-making on intellectual property protection is increasingly recognised; the Doha Declaration on the TRIPs Agreement and Public Health represents a milestone in this respect.

Intellectual property rights (IPRs) should be an instrument to promote technological innovation and the transfer and dissemination of technology. Taking into account the fact that the ‘technology gap’ between developed and developing countries and LDCs is indeed significant, it must be ensured that the costs do not outweigh the benefits of IP protection. This has been recognised, *inter alia*, by the UK Commission on Intellectual Property Rights, which urged WIPO to give greater emphasis to the need for IP regimes to be appropriately tailored to the individual circumstances of developing countries. In its 2002 report the Commission clearly stated that WIPO “should act to integrate development objectives into its approach to the promotion of IP protection in developing countries”. In order further this goal, the possibility of amending the WIPO Convention should be considered.

Future Treaties

The development dimension also needs to be fully integrated in WIPO’s norm-setting activities. One of the organisation’s main functions is the negotiation of international IP treaties that will significantly raise the level of current protection at the international level. While developing countries and LDCs have sought to ensure the integration of the development dimension in the negotiations and debates in fora such as the WTO, this has yet to occur at WIPO.

The preservation of public interest flexibilities and policy space of all Member States should be pursued and acknowledged in current WIPO negotiations, with proposals submitted by developing countries and LDCs properly taken into account. In particular, the provisions on ‘objectives and principles’, reflecting the content of Articles 7 and 8 of the WTO’s TRIPs

Agreement, should be included in the Substantive Patent Law Treaty (SPLT) and other treaties under discussion in WIPO.

New treaties should also include provisions related to the transfer of technology and to anticompetitive practices to ensure that IP protection is supportive of transfer of technology to developing and least-developed countries, something that higher IPR standards have thus far failed to foster through foreign direct investment and licensing.

Similarly, IP enforcement should be approached in the context of broader societal interests and development-related concerns. The right of countries to implement their international obligations within their own legal systems and practices (as established in Art. 1.1. of the TRIPs Agreement) should be safeguarded. WIPO cannot approach enforcement exclusively from the perspective of right holders or the promotion IP protection; it must also give consideration to the obligations of right holders and abusive practices that unduly restrain legitimate competition.

Technical assistance should be both expanded and qualitatively improved. It should also be fully consistent with the requirements of UN operational activities in this field; i.e. neutral, impartial and demand-driven. Regimes set up to implement international obligations should be administratively sustainable and should not overburden national resources.

Finally, given the broad public policy implications of intellectual property, it is crucial to involve a broad range of stakeholders in the discussions at the national and international levels, including in all norm-setting activity. WIPO must respond to this challenge and, in particular, take appropriate measures to distinguish between user organisations representing the interests of IP right holders and NGOs representing the public interest.

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Specifically, the proposal suggests that the upcoming General Assembly consider at least the following actions:

- adoption of a high-level declaration on IP and development, addressing the development concerns that have been raised by WIPO Members States and the international community at large;
- an amendment to the WIPO Convention in order to explicitly incorporate the development dimension into the organisation's objectives and functions;
- inclusion of provisions on transfer of technology, anticompetitive practices and safeguarding the public interest flexibilities into treaties under negotiation;
- the establishment of a multi-year WIPO programme for technical co-operation with the aim of strengthening national intellectual property offices so that they can become an acting element in national development policies;
- the creation of a Standing Committee on IP and Transfer of Technology, which would consider, *inter alia*, the negotiation of an Agreement on Transfer of Technology to developing countries and LDCs;
- the organisation of a joint WIPO-WTO-UNCTAD international seminar on intellectual property and development;
- the adoption of measures to ensure the wide participation of civil society in WIPO activities and a change of WIPO's terminology with regard to NGOs; and
- the establishment of a Working Group for a further discussion on the implementation of the Development Agenda and work programmes for WIPO.

The proposal addresses some of the main concerns raised by WIPO Members States and the international community regarding the implications of IPRs on development. Beyond the specific suggestions, however, it will provide an important starting point for discussions within WIPO on an agenda to make IPRs a supportive of the international community's development objectives.

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ENDNOTE

¹ The proposal was distributed by WIPO to Member States as document WO/GA/31/11 of the General Assembly.

ASEAN Looks to Inward and Outward Market Opening

Trade ministers of the Association of South Asian Nations (ASEAN) vowed in early September to step up regional integration, while initiating new trade arrangements with other countries in the region and beyond.

Meeting in Jakarta, Indonesia, the ministers signed a framework agreement with a view to establishing an ASEAN Economic Community by 2020. The ten-member group committed itself to cutting duties and revising government regulations with regard to agriculture, fisheries, auto manufacture, wood processing, rubber processing, clothing, electronic products, tourism, telecommunications and healthcare. Singapore, Malaysia, Brunei, Thailand, Indonesia and the Philippines are to eliminate duties by 2007. The four remaining countries – Vietnam, Laos, Cambodia and Myanmar – will follow in 2012. Already in 2005, intra-ASEAN trade is predicted to rise from 23 percent of the region's total trade in 2003 to 27 percent.

ASEAN heads of state are expected to confirm the arrangement at their tenth summit meeting to be held in Vientiane, Laos, in November.

Extending Free Trade Beyond ASEAN

Outward expansion is also planned through a free trade agreement (FTA) with Australia and New Zealand by 2007. Negotiations could start as soon as next year if the heads of government give them a green light in Vientiane. Talks with South Korea and Japan are also planned. ASEAN reportedly wishes the agreements to come into effect between 2009 and 2017.

Talks on a free trade area are also scheduled between ASEAN and India next year, with the immediate aim of concluding an early harvest programme that would eliminate tariffs on 105 products by 2007. These are slated to include unprocessed agriculture products, as well as chemical and manufactured products.

In addition, by 2007 ASEAN hopes to conclude FTA negotiations with Japan, which is already conducting the fourth round of talks with the Philippines on a deal that could cover goods, services and investment (negotiations are also underway between Japan, South Korea, Malaysia and Thailand, as well as Indonesia). With regard to the Philippines, Japan is mainly interested in opening the market to investment, while the Philippines is seeking to expand access to nurses and other health care workers in Japan. According to media sources, however, Japan is expected to pose tough conditions on service providers, such as ensuring that workers can communicate in Japanese and meet local qualification standards. So far, Japan only has free trade pacts with Singapore and Mexico, while the Philippines has none.

Two years ago, China and the six more advanced ASEAN members agreed to eliminate tariffs by 2010, while import duties with Vietnam, Laos, Cambodia and Myanmar will be brought to zero in 2015 (Bridges Year 7 No.7, page 17). Talks between ASEAN and South Korea are to start next year.

The EU has also said it aims eventually to conclude a free-trade agreement with ASEAN. For the moment, though, the EU focuses on fostering convergence between the two regions' regulatory systems with regard to sanitary and phytosanitary measures (particularly in agrifood and fisheries), technical barriers to trade (in electronics and wood-based industries), as well as trade policy facilitation (implementation capacity). Other priority areas are co-operation on trade facilitation and investment. Singapore is to be the spearhead of the EU's eastward trade expansion, with a 'comprehensive partnership and co-operation agreement' that could cover a range of areas, including agriculture, transport, energy, industrial policy, science and technology, education and culture. Negotiations on this agreement could start before the end of the year.

Developments Involving the Americas

Free trade area negotiating sessions have recently been held both between the US and three Andean nations, and between the EU and Mercosur. Meanwhile, talks have stalled among the US and five Southern African countries, as well as on the pan-American free trade area.

The US, Colombia, Ecuador and Peru are to exchange revised market access offers on agricultural and industrial goods, as well as services, in November. After the fourth round of talks in September, the Andean countries expressed disappointment that initial US offers amounted to less than the trade concessions they currently enjoy under the Andean Trade Preference and Drug Eradication Act, which is set to expire in 2006. This could, however, change in the course of negotiations as the CAFTA countries eventually achieved market access beyond their unilateral preferences despite lower initial offers. As usual, the greatest sticking points are expected in sensitive products, such as sugar and textiles.

So far, the US has failed in its attempt to make the Andean countries abandon their agricultural price-band system, which allows them to adjust import duties for sensitive products so that these do not fall below a certain level. This mechanism is considered essential to protect farmers against imports that benefit from trade-distorting subsidies,

With the aim of protecting their goods and services sectors against anti-competitive practices, the three Andean countries have also tabled proposals on competition policy, which would guarantee their right to regulate and apply national competition laws.

Meanwhile, EU and Mercosur (Argentina, Brazil, Paraguay and Uruguay) negotiators claimed on 13 September to have achieved a breakthrough that should allow the negotiations to conclude by the end-October 2004 deadline. Neither side has made public the contents of the complete proposals that were exchanged on 20 September, but EU Agriculture Commissioner Franz Fischler said on 21 September, that the EU was “quite prepared to make meaningful trade concessions for products of ‘offensive’ interest to Mercosur. We are also ready to be flexible over the scale of the ‘first step’ of our offer on quotas for sensitive products or in the volumes allocated under the quotas. But this is conditional on a concomitant move from Mercosur in areas where we have our own offensive interests and where we also expect improvements – from protected geographical indications to wine, cereals or canned peaches, to name just a few points in the area of agriculture.” In addition to Mercosur’s demands for increased agricultural market access, the two trade blocs have been at odds over the EU’s ambitions in opening up Mercosur’s investment, services and government procurement markets.

FTAA, US-SACU Talks Stalled

The Brazilian and US co-chairs of the Free Trade of the Americas (FTAA) have not resumed their meetings in view of reconvening the full Trade Negotiations Committee suspended since February. Instead, Brazil’s Minister of Agriculture Roberto Rodrigues said the co-chairs had agreed that efforts should be made to get the process back on track after the US presidential elections. US Agriculture Secretary Ann Veneman said that the present 1 January 2005 target date for concluding the negotiations was not “carved in stone”, but added that she did not know whether a new date could be agreed later this year. She also said that, contrary to US hopes, the US had not seen any evidence that the WTO framework agreement on agriculture had had a positive impact on the FTAA negotiations. How to address agricultural subsidies has been one of the major points of contention in the pan-American talks.

And finally, the US and the five-member Southern African Customs Union have further postponed negotiations because the two sides cannot agree on which subjects to negotiate (Bridges Year 8 No.7, page 16). SACU members have offered to continue talks on market access, but have requested to leave out investment, intellectual property, labour and government procurement. The US has rejected this approach, arguing that it has a Congressional mandate to negotiate on all subjects.

US Trade Agreements Hit Snags

- The future of the trade agreement that was to ‘dock’ the Dominican Republic to the Central American Free Trade Area (CAFTA) may be jeopardised. At issue is the Dominican Republic’s intention to impose a 25 percent tax on soft drinks sweetened by high fructose corn syrup (HFCS, mainly imported from the US) rather than (domestically grown) cane sugar. The US has already challenged at the WTO a similar tax levied by Mexico, claiming that it violates the GATT’s national treatment principle.

Deputy US Trade Representative Peter Allgeier has warned the Dominican Republic that the “enactment and proclamation of such a discriminatory measure, in whatever context, would bring into immediate question the commitment of the Dominican Republic concerning reciprocal trade agreements and could prompt the United States authorities to suspend indefinitely action upon such an agreement with the Dominican Republic.” Under the bilateral agreement between the two countries, the Dominican Republic agreed to eliminate its 14-20 percent HFCS tariff within 15 years, with a safeguard mechanism in place during the phase-out period.

Consideration of implementing legislation for both the CAFTA and the Dominican agreement is likely to be postponed until the new Congress is sworn in next year.

- US authorities are yet to decide how to respond to Australia’s implementing legislation for the bilateral FTA that is meant to come into force on 1 January 2004. The Australian Senate added three amendments to the text initially proposed by the government, aimed at ensuring access to generic drugs and preventing brand-name companies from extending patent protection on frivolous grounds such as changing just one molecule in the drug’s composition (Bridges Year 8 No.7, page 15). The amendments have alarmed the US pharmaceutical industry, and the Administration is pondering its options. One of those options is a refusal to certify the Australian legislation, which would prevent the treaty’s entry into force.

The Socio-economics of Geographical Indications

Dwijen Rangnekar

WTO Members seeking stronger protection for geographical indications believe that they possess many products with strong commercial potential that will qualify for it. But these 'demandeurs', and developing countries among them in particular, need to be aware of the specific tasks and hurdles in realising this potential.

Like trademarks and brands, indications of geographical origin (GIs) play an important role in signalling a certain level of quality.¹ The collective reputation embodied in the indication requires protection from misappropriation and dilution. Protection of indications generates incentives for investments in maintaining a level of quality that consumers have come to expect. Further, misappropriation, while harming the reputation of the indication, leads to consumer confusion and increases search costs. This economic rationale for protecting GIs is evident in Judge Gault's 1991 decision in favour of Champagne producers:

"Champagne is a geographical name. [...] goodwill will be damaged if someone else uses the name in relation to a product in such a manner as to deceive purchasers into believing the product has the characteristics of products normally associated with the name when it does not."²

GIs and the Protection of Indigenous Knowledge

Many view GIs as a potential public policy instrument for the protection of indigenous and local knowledge. This is evident in the deliberations of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, where developing countries have remained ambivalent about the beneficial impact of using other intellectual

property rights (IPRs). Particular features of GIs, in contrast to other IPRs, account for this perception. First, knowledge underlying the GI remains in the public domain. Second, in most jurisdictions, the rights can be held in perpetuity as long as the product–place–quality link is maintained. Finally, the scope of protection, such as the absence of a right to assign and its basis as a collective right, make it consistent with cultural and traditional rights.

This role does, however, have its limitations. Fundamentally, as the knowledge remains in the public domain, it is not protected against misappropriation (*qua* biopiracy). Consequently, GIs should be considered as part of a wider policy framework that could, for instance, include the use of complementary IPRs covering inter-related subject matter. By way of example, consider handicrafts: the technical content may be protected as a 'technical idea', the cultural value as a 'form of expression' and its distinctive characteristics through GIs.

GIs as Club Goods: Organisation and governance of supply chains

Because of their collective dimension, GIs can be described as 'club goods': they are both exclusive (i.e. individuals can be excluded from enjoying the benefits) and non-rivalrous (i.e. one producer's enjoyment of the indication by one does not diminish the right of another to enjoy it). To be clear, the reputation embedded in the indication is collective, and accrues simultaneously to all firms in the geographical region identified in the indication. However, the use of the indication is only available to those firms that fulfil the GI's specifications.

Supply chains of GI-products compound collective action problems. First, the specifications defining the indication implicate the entire supply chain. Second, firms in the supply chain face conflicting tensions as they must co-operate to develop the product's identity while competing with each other. Competition occurs at two levels: between firms at the same stage in the supply chain for market share, as well as between firms at contiguous stages of the supply chain for better share of the product's value.

Two problems in particular can be highlighted in this context: redistribution of economic returns and achieving trust.

Parmigiano-Reggiano, a GI-protected Italian cheese, illustrates how differences in economic endowment between firms at different points along the supply chain influence the distribution of returns. Compared to dairy firms, wholesaler-ripeners have a superior bargaining position partly because they are fewer in number and because they have more physical and financial capital. Although some dairy firms have vertically integrated into ripening, it is the wholesaler-ripeners that control trade: seventy-six percent of dairies contact a single wholesaler-ripeners to sell most of their stock (77 percent); the enduring nature of relationships based on trust compensates for what might be considered adverse distribution of returns. Others suggest that agents and institutions tend to get locked into governance structures because of the time and costs involved in establishing new dependable relationships.

Teruel Ham from Spain sheds insights into the role of intermediaries in building trust. Despite a higher return and excess demand, breeders hesitated to produce pork under the protected indication. In 1996, the Regulatory Council (*Consejo Regulador*) facilitated regular meetings between participants at different stages of the supply chain and promoted contracts. This intervention succeeded in building trust between participants and improved co-ordination within distribution channels.

The protection of GIs requires more than the mere protection of geographical names because of the triple association between the product, its place of origin and quality-related factors. The inclusion of quality remains problematic as it is a highly contested, socially constructed and ambivalent notion. At issue is whether the product, with essentially similar characteristics, can be produced in a different physical or human environment.

Differentiating Products: The task of defining GIs

It is important to recognise that protection of GIs requires more than the mere protection of geographical names because of the triple association between the product, its place of origin and quality-related factors. The inclusion of quality – a socially constructed and ambivalent notion – is a highly contested. At issue is whether the product, with essentially similar characteristics, can be produced in a different physical/human environment.

Parma Ham offers a good example of the problems involved here. For Asda, a UK grocery chain owned by Walmart, the slicing and packing of Parma ham was considered a trivial stage in its production that did not impact the product's authenticity or quality. In contrast, the *Consorzio del Prosciutti de Parma*, the quasi-public body representing Parma ham producers, considered this stage as significant in controlling the way in which the product appears on the market, thus safeguarding the product's authenticity and the indications' reputation. The European Court of Justice ruled in favour of the *Consorzio*.

The definition of a GI, a requirement under EEC 2081/92 (Article 4), elaborates the product specifications (i.e. mode of production) and identifies the basis for product differentiation (i.e. typicity of the product). The specifications are the basis for membership of the 'club': (a) they articulate the obligations that must be complied with by all users of a given indication, and (b) they mark out the rights to be protected against third parties.

It is important to recognise the wider socio-economic impact of establishing product specifications whilst defining a GI. For instance, the (high) standards required by the specifications for *Tuscany extra virgin olive oil* lead to the exclusion of some firms: small producers accounted for less than two percent of the certified production while large producers accounted for more than 77 percent. The exclusion of small producers could be on account of 'self-exclusion' (disinterest in using the indication) or inability to access certification (explicit/implicit costs). On the other hand, product specifications can have positive implications on pricing, since products bearing the indication become the reference point for quality and thus earn a premium. However, this 'recollectivisation of cultural values' has been largely appropriated by regions that did not enjoy similar renown outside Tuscany and by firms at the bottling end of the supply chain.

Segmented Markets: The promotion and marketing of GIs

A dominant characteristic of the agro-food industry is its mass-produced and standardised food with globally dispersed supply sources. This weakens any territorial and land-based associations that consumers might link to products. In addition, GI-products must contend with the economic power of intermediaries such as processors, distributors and, finally, retailers. While processors substantially control most aspects of the production process, retailers – the final gatekeepers to consumers – grew rapidly through the 1990s and now dominate the supply chain.

Countering these trends of economic consolidation are growing reconfigurations of institutions, producers, intermediaries and consumers where novel socially-constructed quality labels have proliferated (e.g. fair trade, organic, ethically traded, no sweat shop). The recent emergence of labels that mix these different niche markets is an encouraging sign. Thus, for example, in the case of coffee and tea we note the emergence of *single-origin* labels (e.g. Jamaican Blue Mountain, Café de Colombia) that are also fair trade and organic. Equally encouraging is evidence of deeper product differentiation strategies through the development of a portfolio of products within and around the protected indication. Illustrative of this strategy is the case study of *Mezcal* from Mexico, where apart from the protected indications there are single estate *Mezcal* and blends.

The general conclusion of the literature is that success of policy measures promoting GIs may hinges significantly on effective marketing strategies. This would involve analysis of how to present the product, what communication strategies to develop, how to price the product in different markets and an assessment of the distribution channels of the product.

Conclusion

There is a growing interest in GIs across a number of inter-related policy arenas. This includes the GI-extension debate at the TRIPs Council³, as well as the debate at WIPO on indigenous peoples' knowledge. It is clear from the range of case studies and from the policy deliberations that GIs are promising. The mixed results that we have highlighted are testimony to the wide range of factors that must mobilised for success.

In particular, a number of tasks need to be successfully accomplished to actualise the (commercial) potential of GIs, such as organisation and governance of product supply chains, developing product specifications and the marketing of GI-products. The latter is considered most problematic because of the consolidation within the agro-food industries. However, proliferation of new socially constructed labels (e.g. fair trade, organic, etc.) is encouraging. It is important to recognise that the process of codifying existing practices and reorganising supply chains requires patience and commitment so that new institution and trust can be built. Intellectual property protection through GIs is an important element in this process; while necessary it is clearly not sufficient for ensuring success.

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ENDNOTES

¹ There are important differences between the two. For instance, trademarks belong to an enterprise and are not limited by any territorial link whereas geography is at the heart of GIs. More importantly, GIs are not limited to any particular enterprise, but enjoyed by all enterprises within the demarcated geographical area that meet the stipulated requirements for use of the indication.

² In *Wineworths Group Ltd. v. Comité Interprofessionnel du Vin de Champagne*, 2 NZLR 327 [1991]

³ This debate concerns the extension of the strong level of protection already granted to wines and spirits to other, mostly agricultural, products.

Toward Development-oriented Technical Assistance in Intellectual Property Policy-making

Following the adoption of the TRIPs Agreement, new and important resources have been channelled to assist developing countries in intellectual property (IP) policy-making, legal reform, administration, regulation and enforcement. However, a number of stakeholders have raised substantial concerns about whether this assistance has always been appropriately tailored to the circumstances and the specific needs of the developing country concerned. This article reviews some of these concerns and suggests ways to improve the design and implementation of IP-related Technical Assistance (IPRTA) programmes.

Policy- and law-makers in developing countries have a formidable agenda in intellectual property (IP) reform. This agenda includes the implementation and the review of the TRIPs Agreement, and the negotiation of new treaties such as WIPO's draft Substantive Patent Law Treaty. At the bilateral level, some OECD countries are encouraging developing countries to adopt higher standards of IP (TRIPs-plus), which limit their use of the flexibilities provided under the TRIPs Agreement.

In order to design IP legislation and regulations that adequately reflect their specific needs and commitments under the WTO and/or WIPO, developing countries must first and foremost clearly identify their national priorities as part of their overall sustainable development strategies; translate those interests into policies and negotiating objectives; and allocate roles and resources to advance them at the national and international levels.

In defining those needs, countries have to bear in mind that IP protection is not an end in itself but an instrument for achieving specific objectives, which can vary and evolve in time according to the particular interest of a country and its level of development. Different industrial structures, production models, and the availability of natural and human resources will call for different types and extent of IP protection.

Technical assistance is needed at six different but closely inter-related levels:

- **Analysis.** Policy-makers and influencers need to fully understand the concepts, possible options, as well as the benefits and costs associated with IPR protection.
- **Policy formulation.** This refers to the need to establish formal and informal processes for the identification of national interest.
- **Negotiation.** This includes the need to ensure active participation in international rule-making and standard-setting.

- **Legal and regulatory reform.** This refers to assistance needs in the field of implementation of binding commitments.
- **IPR administration and enforcement.** This refers to staffing and human resource issues, registrar services, operating procedures and automation models.
- **Strengthening national innovation systems.** This refers to the promotion of national learning processes, enhancing technological absorptive capacities and the commercialisation of R&D.

In practice, most TA addresses capacity-building needs with regard to legal advice on the preparation of draft laws; support for modernising IPR administration offices and enforcement. This is largely due to the fact that the main providers such as WIPO and the WTO have a fairly narrow mandate and can not intervene at other levels. From a sustainable development perspective, however, it would make sense to redirect some of the current assistance to address the other needs identified above. The following section suggests some elements for a development-oriented approach to IP-related technical assistance at the six levels identified above. It does not pretend to be exhaustive but rather to identify specific gaps and unattended needs.

Analytical capacities

Understanding the concepts, implications and the costs and benefits of strengthened IP protection is a *sine qua non* condition for informed decision-making. In practice, however, there is a tendency to overstate the benefits and avoid a real discussion on costs including social and environmental costs. In addition, most technical assistance programmes are still conceived as a transfer of knowledge and solutions from the North to the South and local analytical capacities are not created. Building such backstopping capacities requires strengthening centres of excellence (universities, think tanks) at the national or regional levels, which can provide informed inputs into the policy-making process. The creation of specific academic curricula addressing the issue of IPRs in the broader context of development in those countries universities might contribute to filling this important gap.

The IP policy formulation process

IPR regulations affect a broad scope of stakeholders concerned with multiple agendas, such as the protection of traditional knowledge, farmers' rights, patents on life forms, public health and technology transfer. This cross-cutting nature of IPRs calls for inclusiveness in decision-making. However, the main providers of TA have so far only paid very limited attention to stakeholders such as parliamentarians, consumers, farmers, indigenous people, or NGOs.

In this context there is an urgent need to establish formal and informal mechanism where this public-private dialogue can take place. Reichman has proposed the establishment of permanent Advisory Councils for Trade Related Innovations Policies to ensure interagency co-ordination and the integration of IP-related policies into the domestic legislation, as well as their relation with national innovation systems.¹ In practice, however, developing countries have devised very few mechanisms of this sort, and there are concerns among those who have, that they tend to remain 'empty shells' due to lack of political leadership or a low level of understanding of IP policy issues among the different stakeholders.

Negotiations in international rule making and standard setting bodies

From a developing country standpoint, the Doha Declaration on TRIPs and Public Health is one of the most successful negotiating outcomes. Surprisingly enough, traditional technical assistance providers only played a marginal role in this process. Most assistance was provided

by a broad coalition of IGOs, NGOs and IP experts. This group of non-traditional providers was particularly successful in helping developing countries translate their specific public policy concerns into concrete negotiating positions, as well as putting developed countries under pressure through highly visible public relations campaigns.

Legal reform and regulation

TA should incorporate in its design and content the guidance of the Millennium Development Goals, as well as obligations under human rights conventions and multilateral environmental agreements. Furthermore, when advising on the design of legal reforms at the national level, donors need to look at all rights and obligations including exceptions (e.g. patentability of plants), legal options (e.g. UPOV-type vs *sui generis* protection), flexibilities (e.g. use of compulsory licensing), transition periods and technology transfer clauses. Furthermore, developing countries have an interest in IP systems that are not limited to facilitating registration of foreign IPRs, but also encourage domestic innovation. In this context, donors should help design systems that are open to alternative models of protection, such as liability regimes and utility models.

The need for a pro-competitive approach to IPRs

The tendency to broaden the scope of IP protection raises might affect competition. In particular, inappropriately stringent IPRs foster refusal to deal, barriers to entry and thickets of rights, which discourage firms in developing countries from undertaking adaptations and improvements tailored to local interests. These apprehensions over potential anticompetitive effects of strengthened IP protection are common to both developed and developing countries, as reflected in a recent US Federal Trade Commission (FTC) report on Proper Balance of Competition And Patent Law and Policy, which highlights the need for a better balance between competition and patent law and policy. With only about one third of developing countries having competition laws in place, there is an urgent need to enhance TA in this field.

IPR administration and enforcement

A large, perhaps disproportionate, portion of IP-related technical assistance resources are currently allocated to IPR administration and enforcement. However, in low-income countries with few patenting and trademark applications, it might not be economically viable to establish and sustain an IP system comparable to developed countries in terms of capacity for administration, enforcement and regulation of IPRs. In those cases, donors might want to redirect some of the assistance provided in this field to other areas such as strengthening innovation systems and transfer of technology, as suggested in TRIPs Article 66.2.

Strengthening national innovation systems

IP policy should be designed as an important component of scientific, innovation and cultural policies and take into consideration issues such as:

- The role of foreign direct investment in technology-intensive sectors;
- The structure and functioning of the national innovation systems (national research and industry linkages, private investment in R&D);
- Education-related policies and supply of educational materials; and
- Incentives and economic instruments to promote research and innovation (subsidies, prizes, innovation shows, alternative R&D and creativity models, etc.).

A number of IP issues should be taken into account when designing scientific and innovation policies. These include the maintenance of, and access to, patent databases; the scope of research exceptions in patent laws; exceptions in copyrights laws; quality of patent examinations; the relationship of the IP offices with the private and public research sectors; possible limitations to follow-up innovations that might arise from overbroad protection; and alternative IP schemes such as utility models.

This article is a summarised version of a background note prepared by ICTSD for the DFID-sponsored IPR Technical Assistance workshop in Burnham Beeches, UK, on 15-17 September 2004.

¹ Reichman, Jerome, (2003), *Managing the Challenge of a globalised intellectual property regime*. ICTSD-UNCTAD. Paper prepared at the Second Bellagio Series of Dialogues, Bellagio, 18-21 September 2003.

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Meetings of WTO Bodies*

Oct. 4-5	Negotiating Group on Market Access
Oct. 7-8	Committee on Regional Trade Agreements
Oct. 8	Committee on Agriculture Special Session*
Oct. 12-15	Committee on Trade and Environment Special Session*, followed by a two-day regular session
Oct. 18	Dispute Settlement Body
Oct. 20-21	General Council
Oct. 26	Committee on Trade-related Investment Measures
Oct. 27-28	Committee on Sanitary and Phytosanitary Measures
Nov. 1-3	Negotiating Group on Rules (anti-dumping, subsidies, including fisheries subsidies)
Nov. 4	Committee on Technical Barriers to Trade

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

Other Meetings

Oct. 2-13 Bangkok	13 th CITES Conference of the Parties http://www.cites.org
Oct. 9-11 Rome	Interim Committee on the International Treaty on Plant Genetic Resources for Food and Agriculture http://www.fao.org/ag/cgrfa/docsic1.htm
Oct. 13-15 Cape Town	International Conference on African Development and Poverty Reduction – The Macro-Micro Linkage http://www.commerce.uct.ac.za/dpru/dpruconference2004/default.htm
Oct. 25-29 Mexico City	CGIAR Annual General Meeting 2004 http://www.cgiar.org/meetings/agm04.html
Oct. 25-29 Geneva	Seventh Conference of the Parties to the Basel Convention; http://www.basel.int
Nov. 1-2 Amsterdam	Second CAT&E Conference on Trade, Environment and Development: The North South Dimensions; http://www.cat-e.org/
Nov. 1-5 Geneva	Seventh Session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore http://www.wipo.int/documents/e/meetings/2004/igc/index-7.html

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