

Year 8 No.9 October 2004

In this issue

- 3 Evaluating the July Package from a Development Perspective
- 6 Considerations for Designating Special Products and Establishing the Special Safeguard Mechanism
- 9 Agriculture: Testing the Technical Approach
- 10 WTO News
- 13 Dispute Settlement News
- 15 Trade Facilitation: What Is in Store for Developing Countries?
- 17 Regional Integration News
- 19 Will What's Good for the US Be Good for Morocco?
- 20 MEA News
- 21 A Review of the Outcomes of WIPO Discussions on the Development Agenda Proposal
- 23 ICTSD and Partner News
- 24 Meeting Calendar and Resources

Published by the International Centre for Trade and Sustainable Development

Facts and Figures

- Developing countries now account for half of world textile exports and nearly three quarters of global apparel exports. The textiles sector earns 50 to 90 percent of the international trade revenues of Bangladesh, Cambodia, Laos and Nepal. Textiles exports are important to cotton-producing African countries such as Benin, Burkina Faso and Mali. Clothing exports are significant for Kenya, Lesotho, Madagascar and Mauritius.

Source: *Assuring Development Gains from the International Trading System and Trade Negotiations: Implications of ATC Termination on 31 December 2004*. UNCTAD, 2004.

- Women represent a major share of employment in this sector, particularly in countries that are strong exporters. In Bangladesh and Cambodia, women make up 90 percent of the textile and clothing industry's workforce. The corresponding figures are 67 percent for Mauritius and 87 percent for Sri Lanka.

Source: Michiko Hayashi et al: *Gender-Related Issues in the Textiles and Clothing Sector*. UNCTAD, 2004.

Textiles Take Centre Stage at the WTO

The elimination of textiles and clothing quotas next January is now the most hotly-debated topic in the WTO. Only a handful of countries, and China and India in particular, are expected to reap most of the benefits, while many smaller producers fear being shut out altogether.

The debate brings out in the open a long-standing division between developing countries regarding textiles quotas, which restrain competitive producers' market access but also guarantee a share of the pie to countries with a far smaller comparative advantage. The WTO Council on Trade on Goods is where the issue has been addressed in the last few weeks.

For Turkey, the WTO Is the 'Sole Address' for the Problem

An informal meeting of the Goods Council on 26 October ended in deadlock after Members failed to agree on how to tackle the potential negative impacts of quota removal. Turkey presented a paper describing the expected plight of smaller producers and suggesting some concrete steps Members could take to address the issue (G/C/W/497). In particular, Turkey emphasised the 'crucial' socio-economic role of the textiles and clothing sector in many countries' development efforts, not least by virtue of offering entry-level jobs for unskilled labour, the majority of whom are female.

At present, Turkey said, the sector was the main source of export revenue for many developing countries, sometimes accounting for up to 90 percent of manufacturing exports. It further noted the dramatic recent transformation of global production and sourcing patterns, with a particular emphasis on the rapid growth of China's market share in the most attractive export destinations. For instance, according to Turkey, the share of Japanese imports originating from 'a single country' soared from 31 percent to 79 percent between 1990 and 2002. Turkey also pointed to 'numerous credible studies' that had shown that after the removal of quotas, the global textile and clothing trade would be monopolised by "a WTO Member with an estimated share of 50 percent or more". As the remaining quotas destined to be dismantled cover "both the most sensitive and the highest value-added products", more than 30 million jobs around the world "are estimated to be lost to a few in a short span of time", Turkey asserted.

To remedy this situation, Turkey proposed options ranging from a WTO monitoring mechanism that would "concentrate on the threat of market distortions" to a unique safeguard mechanism with "a self-triggering structure". These and other options could be discussed in the context of a "comprehensive and exhaustive solution under a WTO work programme". Turkey concluded its presentation by stating that the WTO was "the sole address to solve problems originating from the conduct of trade relations among its Members in matters related to the WTO Agreements and other associated legal instruments." Therefore, all Member countries had a responsibility to address the justifiable concerns of developing and least-developed countries about the "sustainability of their economic growth and its main components such as textile and clothing exports".

China and India were critical about Turkey's suggestions. They argued that the integration of textiles and clothing under WTO disciplines for industrial goods represented a major achievement and was in the interest of developing countries. They noted that adjustment challenges could be met by encouraging investment by developing country textile producers in other developing countries (as China is already doing in a number of countries that benefit from the

Continued on page 2

Bridges

Between Trade and Sustainable Development

Published by the International Centre for Trade and Sustainable Development.

Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle
Address: 7 chemin de Balexert
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: ictsd@ictsd.ch
Web: <http://www.ictsd.org>

Regular ICTSD contributors include:

Heike Baumüller (TRIPs, MEAs)
Johanna von Braun (TRIPs)
Malena Sell (WTO rules, agriculture)
Mahesh Sugathan (investment)
David Vivas (TRIPs and services)

The opinions expressed in signed contributions to *BRIDGES* are the authors' and do not necessarily reflect the views of ICTSD. Manuscripts offered for publication are expected to respect good journalistic practice and be compatible with ICTSD's mission. Guidelines for contributors are available on request, as well as on ICTSD's website.

Material from *BRIDGES* can be used in other publications with full academic citation.

© ICTSD and contributors of signed articles.
ISSN 1562-9996

Annual subscription:

US\$225 for OECD country addresses
US\$75 for other countries
Courtesy subscriptions are possible thanks to the support of ICTSD's funders.

The *BRIDGES* series of publications is possible in 2003–2004 through the generous support of the Swiss Agency for Development and Co-operation (SDC), the UK Department for International Development (DfID), the Ministry of Foreign Affairs of Norway; the John D. and Catherine T. MacArthur Foundation and the Rockefeller Foundation.

It also benefits from contributions from ICTSD's core funders: the Development Co-operation Agencies of Denmark, the Netherlands and Sweden; Christian Aid (UK), NOVIB (NL), Oxfam (UK) and the Swiss Coalition of Development Organisations (Switzerland).

Please see inside back cover for information on other ICTSD publications.

US African Growth and Opportunity Act), as well as through improving the application of preferential rules of origin in major importing countries and ensuring greater coherence with institutions such as the International Monetary Fund and World Bank in supporting adjustment assistance.

The 26 October meeting was part of consultations undertaken by the Goods Council Chair Choi Hyuck after action was postponed on 1 October on a request from seven developing and least-developed countries for a WTO study on the adjustment costs arising from quota elimination, as well as the establishment of a work programme to seek solutions to problems identified in the study.¹ According to Ambassador J.B. Servansing of Malaysia, thirty-eight countries supported the proposal.

Brazil, China, Cuba, India and Thailand opposed it, just as they (and a number of other countries) had earlier objected to convening an emergency Goods Council meeting on the subject. These countries stressed that adjustment costs and challenges were inseparable from trade reform, including commitments undertaken in WTO Agreements, and underscored the importance of upholding the foundations of the rules-based multilateral trading system. Brazil suggested an exchange of national experiences in responding to adjustment challenges. It said that while the textiles and clothing sector was important, its adjustment considerations were not different from those in other sectors. Thailand stressed that any solution should enable comparative advantage to work.

Up to now, no consensus has been reached on either the study or the work programme. The Chair is to continue consultations with a view to reporting back to the formal meeting of the Goods Council on 11 November.

Industrialised Countries Also Seek Protection

Their efforts as well are mainly focused on containing China. While WTO rules require evidence of actual injury before safeguards can be established, China's accession protocol contains a controversial clause, which allows Members to impose import quotas when current data demonstrates "the existence or threat of market disruption". In such cases, Members may limit imports to 7.5 percent above the import level of the first 12 months in the most recent 14 months.

On 22 October, US authorities made the first positive determination of such a threat: they agreed with the petitioning industry that the US market for socks was being disrupted and that there was a threat of further disruption due to imports from China. They backed the finding with statistics showing that imports of Chinese socks had grown by more than 4000 percent between 2001 and August 2004, while imports from the world as a whole had doubled. A quota established on 29 October will remain in place for a year unless bilateral consultations yield another mutually satisfactory solution. At least 16 other threat-based petitions have been filed by US industries.

The EU has announced that it will set up a special monitoring mechanism using an escalating scale of alerts based on customs data for Chinese textiles imports so that it can act quickly in case of market disruption. The European Commission has also adopted a seven-step plan to enhance the competitiveness of the European textiles industry, including enhancing research and innovation in order to "enable a technology breakthrough for clothing manufacture and development of eco-efficient processes, high value products and associated markets with growth potential". In addition, the EU's new Generalised System of Preferences (GSP, see page 17 for further details) cuts China's tariff preferences for textiles, and notes that "graduation should also play an important role in regulating trade flows for textile products" once the quotas have been abolished. Due to its growing market share, India is the likeliest candidate for graduating out of the preferences in three years' time.

ENDNOTE

¹ The countries backing the request were Bangladesh, the Dominican Republic, Fiji, Madagascar, Mauritius, Sri Lanka and Uganda. Jamaica, Mongolia and Nepal have since joined as co-sponsors.

Evaluating the July Package from a Development Perspective

Faizel Ismail

Nobel laureate Amartya Sen sees development as the process of expanding human freedoms. Adapting his thinking to the world of trade, four types of 'unfreedom' must be removed to integrate a genuine development dimension into the work and rules of the WTO.

First, Sen argues that 'unfreedoms' or deprivations can result when people are denied the economic opportunities and favourable consequences that markets offer and support.¹ Second, he maintains that poverty should be understood not so much as low incomes but as a deprivation of basic capabilities. Third, while supporting government regulation to enable markets to work more effectively, Sen states that a system of ethics is required to build vision and trust for the successful use of the market mechanism. He urges policy-makers to base these values on social justice as the foundation and objective of public policy. And fourth, Sen argues against the view that the denial of political liberty and basic civil rights is 'good' for rapid economic development and states that the deprivation of the opportunity to participate in crucial decisions regarding public affairs is to deny people the right to develop and strengthen a democratic system.

Applying Sen's elements of development to the trade arena, it could be argued that fair trade would remove the obstacles that developing countries experience in exporting their products to developed country markets and create opportunities for them to advance their development. Increasing the capacity of developing countries, especially the poorest and most marginalised, to develop their comparative advantage to produce and export would provide the necessary, human, institutional, productive and export capabilities they need to level the playing field in the trading system. Establishing rules that ensure a fair balance between the costs and the benefits of new agreements, the values and interests of developed and developing countries, appropriate flexibility for developing countries to implement development policies and the need to strengthen the rules-based system, would ensure both the legitimacy and sustainability of these rules. And finally, by building a transparent and inclusive system of decision-making in the WTO, Members would contribute to the capacity of developing countries to participate effectively in the making of decisions, which would strengthen institution's legitimacy. In short, the four elements of the development dimension in the multilateral trading system are fair trade, capacity-building, balanced rules and good governance.

The concept of special and differential treatment (S&D) has long been established as an essential instrument to ensure proportionality in the commitments undertaken between developed and developing countries, reflecting their different levels of development and gains from the trading system.² However, S&D is only one aspect of the broader development dimension and should not be conceived as a substitute for it.³ Addressing the broader dimension requires us to focus on the core issues of the WTO and its functioning: i.e. market access, rule-making, capacity-building and governance.

The Doha Declaration called for the trading system to play "its full part in promoting recovery, growth and development". The section below evaluates the WTO's July 'package'⁴ from the perspective of the development dimension.

Fair Trade

Developing countries successfully negotiated framework agreements on agriculture and non-agricultural market access (NAMA) that are consistent with the Doha mandate and not *a priori* prejudicial to their interests.

While the agriculture text is often vague (it postpones the debate on many issues and raises the level of generality to avoid an impasse at this stage), it does provide some hope that the Doha promise of fair trade and development in agriculture can still be fulfilled. In addition, developing countries were successful in ensuring that the principle of proportionality was applied

to their commitments, in line with the principle of S&D. Importantly, a number of the provisions of the agriculture text went beyond traditional S&D provisions; the market access section, for instance, allows developing country Members to designate an 'appropriate number' of agricultural products as Special Products, based on the criteria of food security, livelihood security and rural development needs. In applying the criteria for special products, the levels of development of these countries and vulnerability will need to be taken into account.

In the industrial tariff negotiations, the debate on the substance of the framework has been postponed. Thus, the modalities for NAMA liberalisation will need to accomplish two things simultaneously. They must (i) address the issues of tariff peaks, tariff escalation and the remaining high tariffs that prevent developing country exports into developed country markets; and (ii) ensure sufficient flexibility to accommodate the diversity in levels of development of developing countries.

The cotton issue illustrated that trade-distorting subsidies can and do impact negatively on the livelihoods and development prospects of the poorest developing countries. By refusing to deal with this issue separately, the US underlined the inextricable link between fair trade and development. Thus the fate of the West African cotton producers is now inextricably linked to an ambitious and successful outcome of the Doha agriculture negotiations.

Capacity-building

The Doha Declaration confirmed that "technical co-operation and capacity-building are core elements of the development dimension of the multilateral trading system", and recognised that "sustainably financed technical assistance and capacity-building programmes have important roles to play" (paras 38 and 2). The July 2004

Continued on page 4

text calls for “developing countries and in particular least-developed countries to be provided with enhanced trade-related technical assistance and capacity-building to increase their effective participation in the negotiations, to facilitate their implementation of WTO rules and to enable them to adjust and diversify their economies”. In addition, the section on “other development issues” commits the WTO to ensure that “special attention shall be given to the specific trade and development related needs and concerns of developing countries, including capacity constraints”. It can thus be argued that the July text has taken on board the need to address the implementation and supply side needs of developing countries in addition to the WTO’s traditional role of capacity-building in compliance with the Uruguay Round agreements.

In addition to recognising the complementarity between the trade and development aspects of the cotton issue⁵, the July text also acknowledged that the WTO would need to work closely with the development community, including multilateral and bilateral agencies that assist developing countries in building institutional, productive and export capabilities.

The Annex on modalities for trade facilitation provides assurances to developing countries that the cost implications of their needs and priorities, technical assistance and support for capacity-building (including infrastructure development) will be addressed by developed country Members, failing which implementation obligations will be waived.⁶ These provisions hold the promise of more balanced new rules that could provide for the building of capabilities in developing countries, particularly the least-developed, to also benefit from international trade and the multilateral trading system.

The agriculture and NAMA framework agreements, as well as the July text’s section on development, recognise the issue of preference erosion and seek to address it in the negotiations. Preference erosion poses complex development challenges for several developing countries. In addition, for many of these countries, including the ‘new entrants’, the larger challenge to market access remains that of addressing their capacity constraints with regard to institutional,

productive and export capabilities. A range of measures may be needed to assist these countries to manage their adjustment and diversification strategies. These could include funding from the Bretton Woods institutions without immersing these countries into more unsustainable debt. Additional finance for supply side and diversification strategies may be required. New and creative ways of raising these additional funds is called for. The recent initiative by the UK Chancellor of the Exchequer to create an International Finance Facility to raise an additional US\$50 billion to fund the Millennium Development Goals, including trade policy capacity-building, is worth pursuing.⁷

In applying these strategies the WTO would need to fully implement the concept of coherence in multilateral decision-making, i.e. decisions made in the WTO should be co-ordinated with the other Bretton Woods institutions and vice versa. This would require the WTO to build formal relationships with institutions that have expertise in building supply-side capabilities for the countries most in need. A recent proposal by some WTO Members (the African Group) and academic observers⁸ to create a ‘monitoring mechanism’, which would evaluate the capacity constraints of these developing countries and recommend both more coherent strategies with other development agencies and temporary flexibility from WTO rules and obligations, would need to be seriously considered.

Balanced Rules

The Doha Declaration recognised that many of the rules inherited from the Uruguay Round (regarding, for instance, intellectual property rights, investment measures and anti-dumping) were imbalanced and needed to be reviewed. Ministers agreed that negotiations on all these “outstanding implementation issues shall be an integral part of the Work Programme”. In addition, the concerns of developing countries about the effectiveness of the existing S&D provisions were to be addressed through a review aiming at “strengthening them and making them more precise, effective and operational” (para. 44). While some progress has been made on S&D, the negotiations on implementation issues have been held hostage by a debate on enhancing protection for geographical indications (GIs), and has yet to begin in earnest.

In the pre-July agriculture negotiations, the G-20 group of developing countries was successful in ensuring that disciplines on domestic support and export competition must take into account the principle of proportionality and the levels of development and vulnerability of developing countries. On domestic support, it was agreed that “developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt”. With regard to export competition, they may maintain export subsidies for a longer period (to be negotiated) and their state trading enterprises that preserve domestic price stability and food security “will receive special consideration”.

The NAMA framework proposal recognises that reducing tariff barriers alone will not suffice to provide genuine market access for developing countries. Non-tariff barriers such as anti-dumping, technical barriers to trade and import licensing in developed countries often pose significant barriers to their exports. The outcome of the NAMA negotiations must include more balanced rules that support efforts made to cut tariffs through effective disciplines on non-trade barriers so that developing countries’ exports are not curtailed in an unfair manner.

The modalities agreed on trade facilitation make a strong effort to build more balanced rules in the WTO by stating that “the extent and timing of entering into commitments shall be related to the implementation capacities of developing and least-developed countries”.⁹ This makes an explicit linkage between the implementation commitments of developing countries and their capacity.

Some observers have argued that the application of such flexibilities in the rules would need to be monitored by a mechanism to be established in the WTO.¹⁰ Such a mechanism would assist in extending flexibilities to those countries who need it, and review the application of such measures and their continuation, based on criteria to be agreed. The same mechanism would also identify the capacity constraints and needs of developing countries as discussed above.

Global Governance

Another group of WTO observers¹¹ have argued that “the key to development is empowerment, i.e. giving to the poor the means to seize opportunities, improve their standards of living for the long term and to voice their expectations and aspirations”. It is only by participating actively in the negotiations that developing countries can effectively articulate their interests and engage with other countries to negotiate fair and sustainable compromises. Thus, the functioning of the WTO has to ensure that the principles of transparency and inclusiveness are adhered to. This is essential to ensure legitimacy and ownership of the decisions of the WTO. Transparency and inclusiveness has to be practised both in the process and the substantive implementation of rules.

In the agriculture negotiations, the lack of transparency of the implementation obligations of developed countries was one of the reasons for the frequent circumvention of Uruguay Round commitments and obligations. Thus in the July agriculture framework negotiation, developing countries insisted and obtained agreement that the transparency and monitoring of the commitments on all three pillars would be enhanced. While they succeeded in obtaining more balanced and fair agreements in the pre-July agriculture and NAMA negotiations, many of them felt in contrast that the negotiating *process* was not very transparent and needed to be improved in the future. The most intense part of the agriculture negotiations was conducted in a small group of five countries. Although Brazil and India represented the G-20, the detail and complexity of the negotiations and the differences in interest amongst the members of the G-20 required greater transparency and inclusiveness. Other major groups (the Africa Group, the African, Caribbean and Pacific Group, the least-developed countries and the G-10) were largely left out of these negotiations.

The negotiations on trade facilitation were more transparent and inclusive in the period before July. Learning the lessons of Cancun, developed countries did not underestimate the strong views of developing countries again, and thus the July text on trade facilitation modalities does take into account many significant concerns of developing countries.

WTO decision-making – called ‘medieval’ by Pascal Lamy in Cancun – is one of the major topics under consideration by the blue-ribbon Consultative Board set up by Director-General Supachai Panitchpakdi in June 2003 to advise him on institutional reform.¹² The group is expected to deliver its much-delayed recommendations for improvements “in the near future”. WTO Members will then have the opportunity to advance the debate much further to ensure that the organisation plays its role in contributing to global governance.

Conclusions

In the July General Council Decision, WTO Members made a significant contribution to the development dimension of the rules-based multilateral trading system. The Decision extended the Doha Development Agenda (DDA) to the sixth Ministerial Meeting to be held in Hong Kong, China in December 2005. While Pascal Lamy has said that the Doha Round could be concluded by that date, WTO Members still need to develop a work programme and set new deadlines, including those for agreement on modalities in agriculture and NAMA. In addition, a new work programme must be developed to ensure that some of the other areas of the DDA that were not part of the July package negotiations, such as rules, the environment and TRIPs, also gain some momentum.

The progress and successful conclusion of the Doha Round will also depend on the US elections and the ability of the new administration to renew the president’s fast-track negotiating authority in the second quarter of 2005. In addition, the EU, with a newly-elected executive Commission and ten new member states (up from 15), will need to develop the political will and mandate to negotiate an ambitious agreement in agriculture in line with its commitments in the Doha Declaration.

Developing countries too will need to maintain the momentum of their negotiating efforts and strengthen their delicately knit alliances on different issues. The success of the G-20 in the

agriculture negotiations will need to be built on, strengthening its alliance with the Cairns Group, the G-33 and the G-90 group of countries in order to create greater and more equal bargaining power between developed and developing countries in the WTO. Vigorous debate within these groups should result in balancing both the interests of developing countries for a more open trading system, including between themselves, and accommodating the need for greater flexibility for less developed Members. The active participation of civil society groups, including the private sector in developed and developing countries, will be crucial to ensure that the voice of those seeking a fairer, more balanced and strengthened multilateral trading system prevails over protectionist lobbies and delivers a successful outcome of the Doha Round.

Faizel Ismail is Head of the South African Delegation to WTO in Geneva and Chair of the WTO negotiations on special and differential treatment. He wrote this article in his personal capacity.

ENDNOTES

¹ A. Sen. *Development as Freedom*, p.3. 1999.

² P. Low and A. Kirk. *Special and Differential Treatment in the WTO: Why, When and How?* WTO Staff Working Paper. ERSD. 2004.

³ This view was also taken by Professor Hoda, Indian Council for Research on International Economic Relations, in his speech to the Afro-Asian Civil Society Seminar, New Delhi 13-15 April, 2004.

⁴ WTO WT/L/579. 2 August 2004.

⁵ WTO WT/L/579, 1b and Annex A 4 and 5. 2 August 2004.

⁶ Annex D, paragraphs 4, 5 and 6.

⁷ Speeches by Gordon Brown to the conference on Making Globalisation Work for All on 16 February 2004, and at the seminar on Poverty and Globalisation: Financing for Development at Vatican City, 9 July 2004.

⁸ Susan Prowse. *The Role of International and National Agencies in Trade-related Capacity-building*. World Economy 25 (9): 1235-1261. 2002

⁹ WTO WT/L/579, Annex D, para. 2.

¹⁰ See Susan Prowse 2002 above.

¹¹ V. Engammare and Jean-Pierre Lehman. *Does the Multilateral Trading System Promote the Interests of the Poor?* Afro-Asian Civil Society Seminar, New Delhi, 13-15 April 2004.

¹² See WTO press release of 19 June 2003 (PRESS/345) and an update in Bridges Year 7 No.7, page 9.

Considerations for Designating Special Products and Establishing the Special Safeguard Mechanism

Luisa E. Bernal

The July 2004 framework agreement on agriculture allows developing countries to designate a certain number of Special Products that will be subject to lesser tariff cuts, and establishes a Special Safeguard Mechanism to respond to import surges, but leaves the details of either instrument wide open.

It is of utmost importance that each developing country be prepared to engage in the negotiations on modalities for these instruments so as to guarantee that such provisions are really meaningful and respond to its particular needs and circumstances.

Provisions on Special Products

Paragraph 41 of Annex A of the General Council Decision reads:

“Developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment. The criteria and treatment of these products will be further specified during the negotiation phase and will recognise the fundamental importance of Special Products to developing countries.”

The endorsement of food and livelihood security and rural development needs as the basis for operationalising special and differential treatment (S&T) is a positive step forward in the multilateral system in recognising the particular circumstances and concerns of developing countries in relation to trade liberalisation in agriculture.

On the other hand, the Decision leaves many options open as to how the ‘appropriate’ number would be determined, including the possibility of negotiating a specific (and very likely, arbitrary) number applicable to all Members entitled to use the provision (this option has been discussed during the negotiations). The Decision also commits members to further specify the basic criteria of food and livelihood security for those products. Such specifications, perhaps together with a numerical restriction, would limit the scope of SPs. The challenge here is to genuinely build on the basic criteria of rural development and livelihood and food security for the designation of SPs, rather than to substitute it with entirely trade-based indicators.

Furthermore, there are no guidelines as to what ‘more flexible treatment’ for SPs will consist of. This will be negotiated as part of a broader package, including negotiations on the parameters for the designation of ‘sensitive products’ (another concept introduced in the July framework for some agricultural products) and the treatment to be accorded to them.

Sensitive Products

Paragraph 31 of the agriculture framework indicates that both developed and developing country Members “may designate an appropriate number, to be negotiated, of tariff lines to be treated as sensitive, taking account of existing commitments for these products.” According to paragraph 39, developing countries will benefit from S&D in the designation and treatment of such products. This could imply that these countries may designate more sensitive products and undertake lesser reduction commitments with respect to tariffs and tariff rate quotas than may be required for such products designated by developed countries.

The introduction of the concept of ‘sensitive products’ undoubtedly complicates the negotiations on SPs because it could be argued that, to a large extent, the purpose of both categories of products is the same: to provide flexible treatment to certain agricultural products with respect to further trade liberalisation. However, the justification for each is quite different, and this should impinge, in a meaningful and important way, on how the products under each category are to be designated and treated. The concept of SPs grew out of developing countries’ concerns about the impact of trade liberalisation on food security and the livelihood of poor and small farmers as reflected in the Doha Declaration and, now, in the July General Council Decision. The concept of ‘sensitive’ products, on the other hand, developed late in the negotiations out of the impasse in deciding how to incorporate in the overall tariff reduction formula flexibility for industrialised countries’ sensitive sectors protected behind tariff peaks.

Nevertheless, even though no formal link has been established in the agriculture framework between ‘special’ and ‘sensitive’ products, it is likely that the actual negotiations will progress very much in tandem and be quite intertwined.

Provisions on the Safeguard Mechanism

Paragraph 42 of Annex A of the July Decision only establishes the following:

“A Special Safeguard Mechanism (SSM) will be established for use by developing country Members.”

The vagueness of this language reflects the controversy surrounding the issue. The main contribution of the July Decision with respect to the negotiations on SSM is the clear commitment made by members to establish the new mechanism for developing countries which was not always guaranteed throughout the negotiation process until now.

Whereas proponents of SSM provisions insist on designating them on the basis of food and livelihood security and rural development needs, other WTO Members have insisted on establishing a link between these provisions and the extent of liberalisation already undertaken, or to be made in future, on any particular product. That is, it has been suggested that the SSM should be made available for products with rather low tariffs.

Once more, although no formal link has been established in the Decision between the provisions on sensitive products, special products and safeguards, the history of the negotiations show these may be negotiated as a package, particularly as some Members have argued that the instruments may be redundant.

Developing Countries Experience of Trade Liberalisation in Agriculture

Based on evidence from a number of studies¹, trade liberalisation has:

- further marginalised the poorest who lack the capabilities and assets to take advantage of opportunities opened by trade liberalisation and are unable to cope with its effects;
- eroded the ability of the state to intervene to correct pervasive market failures in markets relevant to the rural poor and small farmers;
- led to the promotion of agricultural systems oriented towards export with the side effect of neglecting domestic food production;
- led to increased penetration of food imports to local markets effectively eliminating outlets for the produce of the local farmers who may retreat to subsistence production; and
- increased food-import dependence, which for some countries has reached levels that when compared with the pattern of export earnings evidence significant vulnerability.

Basically, SPs and the SSM aim at protecting the livelihood and food security of the rural poor and small farmers by avoiding exposing them to the effects of further trade liberalisation when the state has limited capacity to support them in other ways. Both instruments can provide a breathing space for governments to implement the enabling policies necessary to allow the rural poor and small farmers to actually benefit from trade liberalisation. The viability of those enabling policies may also depend on the support of the international community. Of particular importance would be that industrialised countries move quicker with agricultural reforms by dismantling the barriers to developing country exports and eliminating subsidies to production and exports that contribute to import surges and dumping in the developing world.

Guidelines for Internal Discussion on the Selection of SPs

The identification of Special Products at national level would require first identifying the intended beneficiaries, and then identifying the products on which their livelihoods depend.

Identifying the intended beneficiaries would require a combination of indicators at three levels:

- **Definition of income level, with the objective of targeting the poor.** One option could be the standard World Bank poverty line of two dollars a day. On the other hand, each country has defined parameters to measure urban and rural poverty, which may respond better to its realities and particular circumstances.
- **Geographical context, with the objective of targeting areas where the poor are concentrated.** Several studies suggest that poverty is concentrated in particular areas and may be related to the lack of an adequate resource base for production such as fertile land and water, isolation, etc. More broadly, poverty is concentrated in the rural areas of developing countries, where agriculture is usually the mainstay of the local economy. The distinction between urban and rural areas is usually made at the national level for purposes of various policies, including the definition of poverty lines.
- **An indicator of production capacity, such as landholding size to distinguish between small and large farmers.** In the absence of an agreed international definition for 'smallholding', each country uses its own standards. An additional problem is that holdings of equal size may vary in productivity depending, for example, on whether the farm is irrigated or not. However, the danger that the scope of intended beneficiaries may expand beyond the poor is accounted for by the indicators on income level discussed above.

In order to identify the products that may be of particular significance for the livelihood of the intended beneficiaries, a combination of indicators will also be necessary to adequately assess the relative contribution of any specific product to the economy and the relative contribution of any specific product to the diet of the population.

Relative Contribution to the Economy

There are several indicators that can be used to assess the contribution of any particular product to the economy. From the production side, a standard indicator would be the value of production of a particular crop to the total agricultural GDP. Another important indicator would be the area of land dedicated to a particular crop. In both instances, and in addition to national level data, disaggregated values at the regional level are warranted in order to cover the areas where the poor are concentrated.

The contribution of a particular sector to employment is of utmost importance for purposes of the identification of SPs. These indicators are particularly important for capturing products on which agricultural wage labourers' and landless people's livelihoods depend, which production-based variables may fail to reflect. The relative importance of any particular product in terms of employment may be gauged by determining the number of people employed in the sector both in absolute terms and as a proportion to the total agricultural population. As above, in addition to national-level data, disaggregated analyses at the regional level are warranted to capture the importance of the sector for specific regions.

Relative Contribution to Diet

Indicators used to determine the contribution of a particular product to the diet of the population include its share in total consumption as reflected by the product's contribution to the total caloric intake.

Protecting staple foods through tariffs presents a dilemma for policy-makers since border protection on staples is likely to lead to higher prices for poor consumers. However, there seem to be good reasons to protect staple foods because these products constitute the livelihood base of the rural poor in many developing countries. Staple foods, which may include cereals, roots, tubers and pulses, constitute the main source of caloric intake in developing countries.

An additional issue to consider here is the situation of particularly vulnerable countries with high food import dependence as measured by low levels of self-sufficiency and insufficient and/or unreliable export earnings. SP provisions may be used by these countries to protect staple crops in an attempt to increase production and reduce vulnerability.

Finally, when attempting to identify SPs it would be important to keep in mind the problem of substitution, i.e. domestic products being displaced from local markets by imported substitutes. This would also affect non-commercialised produce to the extent that substituted imports in the local market create no incentives for investing in the production for markets.

Continued on page 8

This issue would require an assessment at two levels: first, the identification of the Special Product itself, and then the identification of the imported substitute against which it requires protection.

As the discussion above shows, the designation of SPs entails a context-specific analysis where a combination of variables needs to be considered. Furthermore, even if an agreement were feasible in choosing several indicators for the designation of SPs, deciding which thresholds to apply for each indicator would be very difficult and indeed arbitrary.

All of this lends support to an approach for the designation of SPs that is based on self-selection meaning that each developing country can analyse the variables indicated above and internally gauge the difficult trade-offs that will have to be made. In approaching such trade-offs, several issues might be considered with the objective of identifying the relative vulnerability of different SPs to further trade liberalisation. In particular, it would be important to place this analysis in the broader context of the country's strategy for agriculture development. This would include an assessment of whether other measures for the promotion of SPs are available and if so, whether those are sufficient (both in terms of resources available and the implementation capacity of the country concerned) to address the vulnerability of those sectors and the livelihoods of those who depend on them, in the face of further trade liberalisation. As part of this policy framework, the tariff profile of any particular SP of the country should be considered to the extent that it provides an indication of how exposed that particular product may already be to import competition. This does not mean that products with high tariffs must be necessarily excluded from the protection of the SP provisions since the adequate level of protection will depend on the extent of vulnerability of the sector and the availability or not of other policy instruments to support that sector. In addition, the international context relevant to a particular SP product or its substitute would also be relevant since the vulnerability of a particular sector in the face of further trade liberalisation will also be enhanced by the level of support provided by other countries to that particular product.

Problems Related to Availability of Data

As mentioned above, the identification of relevant SP products for protecting the livelihood of the rural poor and small farmers may require moving beyond national-level indicators to look at the relative importance of particular products at a more location-specific level. This poses significant problems in terms of readily available data that would allow reflecting the designation of SPs in each member's schedule of commitments.

However, data at the national is available level – if dispersed – through the statistics gathered in isolation by different departments as well as by NGOs and relevant international organisations such as FAO and IFAD. Pulling together the resources of these various organisations and increasing co-ordination between various governmental departments will be necessary to collect and process the necessary information. Assistance should be provided to developing countries for carrying this task by FAO and IFAD, for example, given their expertise in this area and their involvement in developing countries through various programmes of assistance.

Guidelines for the Identification of SSM Products

Once the significant importance of particular agricultural products has been determined on the basis of food and livelihood security and rural development concerns, it would be difficult to argue that such products may not be protected by the SSM.

The livelihoods of the rural poor and small farmers are indeed fragile and the lack of safety nets and other types of state support to smooth the effects of temporary shocks in prices and import surges (i.e. direct income support) on specific sectors may put the livelihoods of the rural poor and small farmers under considerable pressure. Furthermore, in addition to the significance of any particular product for the food and livelihood security and rural development needs of a specific country, it would be important to consider the need for safeguard measures in sectors that are highly subsidised and may be affecting otherwise viable industries.

Indeed, FAO analysis of recent import trends indicates that “import surges seem to be more common in product groups that are subject to high levels of subsidies in exporting countries, notably dairy/livestock products (milk powder, poultry parts), certain fruit and vegetable preparations and sugar.”² Notifications by WTO Members, well as indicators of the level of subsidies compiled by the OECD, can help identify particularly heavily subsidised agricultural products, which in principle creates justification for protection in developing countries.

Another way to identify sectors where the use of the safeguard measure may be warranted, would be the level of import penetration, i.e. the share of imports in total domestic consumption. A high level may indicate that the local industry is already under pressure and therefore sudden increases in imports may irremediably damage its viability.

In addition, it would be relevant to consider the overall result of the tariff reduction negotiations, which will entail reduction commitments of various degrees for different products. Developing countries may consider whether agricultural products for which deep tariff cuts are envisaged in the (to-be-agreed) formula would require protection under the safeguard mechanism to address unforeseen circumstances.

Luisa E. Bernal is Project Officer in Agriculture at the South Centre in Geneva. This article was written in her personal capacity and does not represent the official position of either the South Centre Secretariat or its member States. This article was extracted from a longer study written by the author for the ICTSD Roundtable on SPs and the SSM held on 30 September 2004 (see page 23).

ENDNOTES

¹ For more details, see Luisa Bernal *Guidelines for Approaching the Designation of Special Products And SSM Products in Developing Countries*, September 2004. http://www.agtradepolicy.org/output/ictsd/dialogues/2004-09-30/Bernal_paper.pdf

² FAO. 2003. *Some Trade Policy Issues Relating to Trends in Agricultural Imports in the Context of Food Security*. Committee on Commodity Problems, Sixty-fourth session, Rome. The study covered 28 developing countries in different regions.

Agriculture: Testing the Technical Approach

At the first negotiating session since the framework agreement on agriculture was adopted in July, Members focused mainly on how to structure the talks in the coming months, and had a preliminary exchange of views on some of the technical aspects left vague in the July text.

Members agreed in principle to the Chair's proposal to focus on 'technical' rather than political issues in the coming months (Bridges Year 8 No.8, page 11). Each meeting will review one topic related to the three 'pillars' of the negotiations: domestic support, export competition and market access (tariffs and non-tariff barriers), as well as the special and differential treatment (S&D) provisions attached to them in the July framework agreement. Ambassador Tim Groser, who chairs the negotiations, will announce the topics for each session in advance.

Ambassador Groser also called for very specific textual inputs from this point on. He felt that some parts of the so-called Harbinson text – which dates back to February 2003 – could serve 'as a basis' for the technical work needed to narrow down options before the next occasion to reach political decisions in the run-up to the WTO's next Ministerial Conference in December 2005. Members generally supported this approach.

A number of Members called for a transparent and inclusive process. Ambassador Groser agreed, but emphasised that negotiations involving all Members would have to be effective in order to avoid the discussions moving 'underground' with small groups holding closed meetings without a Chair to co-ordinate information exchange.

Clear differences appeared as to the overall approach to the negotiations. The G-20 group of developing countries, which includes Brazil, India and China, proposed that Members focus on general rules first, with exceptions being negotiated later. Mauritius, the Philippines and Zimbabwe emphasised that special and differential treatment (S&D) for developing countries should fall into the former category. Korea held that concentrating on the less controversial issues first would provide stepping stones for reaching compromises on more intractable core questions. Croatia, speaking for a group of newly acceded countries, called for flexibility for this group.

Some Members also identified controversial issues they would like to address in future sessions. The EU brought up geographical indications (which the July framework only mentions as 'items discussed' but not agreed as negotiating topics). Colombia and Ecuador stressed that further work was needed on tropical products and products grown for diversification from illicit narcotics, while Jamaica emphasised the importance of addressing preference erosion. Unless preferences were preserved, Jamaica said it could not see any benefits for some developing countries. Costa Rica noted that its own gains from preferences had been far less than the costs of the obstacles to market access.

Nigeria, speaking for the African Group, drew attention to the cotton issue, calling for a rapid establishment of the sub-committee on cotton and said it would submit proposals on this. Benin said it had agreed in June to discuss cotton in the agriculture talks on the understanding that the outcome would be substantial. Benin and the Africans said the sub-committee should discuss both the development and trade aspects of the cotton issue.

Specific Questions Addressed in October

The topics chosen for the October session under the domestic support pillar were the identification of technical issues that could be productively explored at this stage with regard to the Green Box; and how to define 'support for subsistence and resource-poor farmers'. With regard to export competition, Members focused on how to achieve 'parallelism' in phasing out export subsidies on the one hand, and export credits, export credit guarantees or insurance programmes; trade-distorting practices of exporting state trading enterprises; and trade-distorting food aid practices on the other. As to market access, Members were to offer suggestions for ways to convert specific duties to *ad valorem* tariffs, and the technical aspects of establish-

ing a Special Safeguard Mechanism (SSM) for the use of developing countries (this is an S&D provision, see page 6 for further details).

Despite the initial agreement to focus on the nitty-gritty, it quickly became clear that Members' understanding of the framework text's meaning varied so much that it would be difficult to concentrate only on the technical 'how' (to convert tariffs or clarify subsidy disciplines, say) while leaving out the political 'whether' – and to what extent – they were called to do so in the first place.

Market Access: SSM

This difficulty was particularly evident in the discussions on the SSM. Indonesia, which co-ordinates the G-33 group of its supporters, said initial talks should focus on how this new contingency mechanism should be designed, i.e. how it would be triggered, what it should do and how long it should last. Only after that should Members consider which products would be eligible. The Philippines, Barbados and India seconded this view.

Argentina, Malaysia, Costa Rica, New Zealand and the US were among countries arguing that the nature of the mechanism would depend on the tariff reduction formula agreed, as the safeguard would be pointless if tariffs remained high even after the application of the formula reductions. Croatia noted that recently-joined WTO Members should also have the right to use the special safeguard mechanism.

Ad Valorem Equivalents

The technical task is how to find a way to convert specific duties, such as a fixed amount of dollars per tonne, to percentages of the value. This is important as the formula for cutting tariffs will apply to percentage-based *ad valorem* tariffs. Despite the Chair's injunction to focus on the technical task at hand, some Members evoked the larger question of whether the equivalent *ad valorem* rates should be bound.

Continued on page 13

Among the technical questions listed were: what kind of reference price should be used, what kind of period should be used as a reference, and whether *ad valorem* equivalents need to be calculated for all products. Several Members also noted that only 25 members used specific duties and that the highest concentration was in developed countries such as Switzerland, Norway and the European Union. Argentina and New Zealand argued that the conversion should apply to all specific duties, while Switzerland said this might not be necessary for 'sensitive products'.

Domestic Support: Green Box

According to the July package, the Green Box should be 'reviewed and clarified' to ensure that it is at most minimally trade-distorting. The Agreement on Agriculture provides some indications of the type of domestic support that can be provided under the Green Box, but the criteria are vague (for instance, a dispute settlement panel recently ruled that the US had miscategorised some trade-distorting support for cotton growers under the Green Box, see Bridges Year 8 No.8, page 12).

Currently, all Green Box support is both uncapped and exempt from reduction commitments. During the October meeting, Australia and other Cairns Group members – who interpret the framework's mandate as requiring possible revisions of the Green Box – stressed that some payments under it had a 'cumulative' effect as they stimulated production when farmers were also receiving Amber and Blue Box subsidies. Australia proposed time limits on direct payments (de-coupled from production) in order to avoid farmers basing their production decisions on expectations of future support, as well as an overall cap for the total sum they could receive under the different support categories.

Switzerland (speaking for the G-10 of net-food importers) and the EU said these suggestions went far beyond the scope of the review agreed in July. They suggested that the technical exercise should rather focus on enhancing monitoring, as called for in para. 48 of the agriculture framework. Japan, Taiwan and Mauritius supported this view. The US felt there was some scope for revising Green Box criteria provided that its 'integrity' was maintained.

Export Competition: Disciplines on Export Credits

Discussions on export credits, guarantees and insurance did not go into any great detail. The EU presented a list of issues to be discussed both for credits with repayment periods of over 180 days (which have to be eliminated at the same time as export subsidies), and those with less than that (subject to disciplines in order to minimise other forms of subsidy). Most speakers agreed that a lot of useful technical work was already done in late 2002 and early 2003 and advocated basing current work on the annex in the Harbinson draft modalities text. The US, which is a heavy user export credits, broadly accepted the list of topics, but cautioned that differences would arise on some of the issues.

Exporting State Trading Enterprises

The main difference of approach was whether countries with exporting state trading enterprises (STEs) should supply information on how they work. While the EU and US argued that STEs' lack of transparency was precisely what made it difficult to assess whether or not a subsidy was implied, Canada, New Zealand and Australia (all of which maintain STEs) countered that it was up to the other side to prove that a WTO violation had occurred. They also maintained that more information was available on the operation of STEs than from private trading companies.

Switzerland said that a recent dispute settlement ruling in favour of Canada's Wheat Board (Bridges Year 8 No.4, page 11) was based on the current rules, which was the very reason that a tightening of disciplines was now on the negotiating agenda. According to Switzerland, the mandated examination of the enterprises' monopoly powers should look at *de facto* economic monopoly power and not just at whether the enterprises enjoy legal monopoly rights. Japan agreed.

Food Aid

Among the topics raised were how to narrow down broad references to 'operationally effective disciplines' and to avoiding 'commercial displacement' in the July framework; the need to consult other international agencies dealing with food aid; whether aid should be in fully grant form (proposed by the EU and others but opposed by the US and Japan); whether disciplines should be established to ensure that food given as aid being would not be subsequently sold on the domestic market to raise funds for the receiving government; ensuring that food aid does not displace production within the receiving country; and whether food aid should be given as money for purchasing locally or in neighbouring countries (Norway's proposal).

G-20 Preparing Submissions

The G-20 group of developing countries has already announced that it will be tabling a number of draft texts in the coming weeks, notably on the Green Box and on 'sensitive products', a category created late in the pre-July negotiations to accommodate the tariff protection needs of industrialised countries, but now available to all Members (see page 6). Further along, the G-20 plans to submit a proposal on how to achieve 'substantial reductions' in Blue Box domestic support, particularly as the July framework widened its scope to potentially cover the counter-cyclical payments that shield US farmers' incomes from world market price fluctuations. The expansion of the Blue Box was highly criticised by a number of developing countries, including the G-20, which had called for its elimination in the run-up to the Cancun Ministerial Conference.

The G-20 currently faces a challenge in maintaining internal unity after Brazil nominated its WTO Ambassador Luiz Felipe de Seixas Corrêa as a candidate to succeed Supachai Panitchpakdi as the WTO's Director-General. Uruguay had previously put forward former General Council Chair Carlos Pérez del Castillo for the post, and at least Argentina has already promised to stand by its initial support for the bid. All three countries are members of the G-20.

The next agriculture negotiating sessions are scheduled for 15-19 November and 13-17 December.

CTD Ponders Commodities and Sustainable Development

The regular session of the WTO's Committee on Trade and Development discussed in late September the organisation's future technical assistance programme, as well as the commodity crisis that undermines many developing countries' potential to trade their way out of poverty.

A number of countries said that in the light of the July decision to drop the Singapore issues of investment, competition policy and government procurement from the Doha Round negotiations, technical assistance (TA) in these fields should be terminated. Instead, they said assistance should focus on market access for non-agricultural products (NAMA), services, intellectual property rights, agriculture and trade facilitation (the only Singapore issue now under negotiation). The EU and Japan, both erstwhile demandeurs for negotiations on all four Singapore issues, reportedly were hesitant to abandon assistance to investment, competition policy and government procurement. China proposed concentrating TA on trade facilitation, agriculture and services, while Kenya backed assistance in the latter two fields. No decisions were taken.

The Director of the Common Fund for Commodities, as well as Tanzania's former WTO Ambassador Ali Mchumo, told the Committee about their concerns with regard to the commodity crisis. Their presentation was based on a 19 May 2003 submission of Kenya, Tanzania and Uganda on the need for urgent WTO action to counter-balance the alarming decline of commodity prices (WT/COMTD/W/113, see Bridges Year 8, No.3, page 9). Among the options discussed were financial compensation programmes. Members proposed two approaches for the CTD. First, they could invite other international agencies with expertise in commodities (such as the FAO, UNCTAD and the World Bank) to give their views, as proposed by Kenya, Tanzania and Uganda in May 2004 (WT/COMTD/W/130; see also Bridges Year 8, No.5, page 11). Canada suggested commissioning a study to look more closely into the experience of countries that had been successful in trading in primary commodities. Chile, Brazil and South Africa were mentioned as possible models for risk management in Africa. The CTD Chair Trevor Clarke was requested to consult with Members on the best way forward.

At the request of the Maldives, the CTD asked the WTO Secretariat to prepare a study on the implications of 'graduation' for countries transitioning from a least-developed country (LDC) status to that of a developing country. Last May, the Maldives drew attention to the additional costs resulting from added WTO obligations following graduation, and the loss of trade preferences it would face, and proposed that the CTD recommend a series of measures that would ensure it and other LDCs a smooth transition (WT/COMTD/W/128). Consideration of the problem at the UN has been suspended while the membership deliberates on a report presented by the Secretary-General to the Economic and Social Council (ECOSOC) on 15 July. The CTD agreed on the preparation of two papers, one on the ECOSOC graduation procedure and the other on the WTO's special and differential treatment provisions.

Para 51: What is the Meaning of Sustainability?

Paragraph 51 of the Doha Declaration mandates both the CTD and the Committee on Trade and Environment (see page 13) to "act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected". At the CTD's September session, Venezuela saw the CTD's task as focusing on environmental concerns as suggested by the term 'sustainable'. Other Members noted that 'sustainable development' was a much broader concept that embraced not only the environment but also questions related to equity, economic growth, social protection, stability, the well-being of developing countries and other questions under consideration in the CTD since its establishment. Chair Trevor Clark suggested that the Committee's interpretation of the term should refer to the work accomplished by the CTD during the last two years. No decision was taken on this subject.

The next CTD sessions are scheduled for 3 and 16 November.

Market Access Negotiations

The WTO Negotiating Group on Non-agricultural Market Access (NAMA) met on 4 October, for the first time after the July General Council meeting where Members agreed on the framework to continue negotiations under the Doha Round. Discussions centred on how to advance the work programme set out in Annex B of the July package.

While most of the delegations agreed that the text in Annex B could be taken as a starting point for a work programme leading up to the next WTO Ministerial Conference – scheduled for Hong Kong in December 2005 – a few developing country delegations argued that further interpretation of the text was needed before a work programme could be set.

On the substantive front, delegates discussed how to proceed with the additional negotiations required under Paragraph 1 of the Annex. This paragraph states that "the initial elements for future work on modalities" is contained in the framework agreed on in July, but that "additional negotiations are required to reach agreement on the specifics of some of these elements", including: the configuration of a tariff-reduction formula, the treatment of unbound tariffs, flexibilities for developing country participants, and participation in the sectoral tariff component.

There was some disagreement on sequencing of the talks. Members disagreed over whether future work should concentrate on first defining the formula for tariff reduction, and once that was decided, to address the issues related to flexibility for developing countries and then participation in the sectoral tariff component, or if future work should address the three issues simultaneously. No agreement was reached on this point.

During the meeting, the WTO Secretariat provided the delegations with a presentation on the technical aspects and mechanisms of different possible formulas to be taken into account for the NAMA negotiations.

Fisheries Subsidies Update

In late September, the WTO Negotiating Group on Rules discussed a new Japanese proposal on fisheries subsidies disciplines.

Japan proposed that each type of subsidy be evaluated and placed in a 'box' according to its effect (TN/RL/W/164). Subsidies supportive of sustainable development would end up in a permitted Green Box. These could include support that promotes "the conservation and sustainable utilisation of fisheries resources," including management plans, environmentally friendly fishing gear, surveys, research and monitoring, conservation measures, and the development and diffusion of new technologies. In addition, the Green Box could include measures that, as long as there is an adequate management plan in place, have no harmful effects.

Support for illegal, unregulated and unreported fishing or over-capacity would be placed in a Red Box of prohibited subsidies. Here, Japan differentiated between vessel construction when fisheries were properly managed and when they were not, with construction subsidies prohibited in the latter case.

Certain subsidies fall outside the remit of fishing subsidies, according to the Japanese paper. These subsidies include: capacity building/human resources development; relief for natural disasters; and certain types of structural adjustment and regional development assistance.

The US called the proposal a "significant step backwards" and maintained that Japan would be able to exempt most of its subsidies from any disciplines under the proposal (the EU and New Zealand made similar comments). Instead, these countries supported an approach proposed by New Zealand, which would prohibit all subsidies, spelling out certain exceptions only. In contrast, Taiwan and Korea supported the Japanese approach.

Brazil, Malaysia and Mauritius reminded Members of the need for special provisions for developing countries in any deal struck.

The next Rules meeting is scheduled for 1-3 November.

Differences Persist on Approach to Environment Negotiations

The mid-October meeting of the WTO Committee on Trade and Environment (CTE) made it clear that the July 'package' had not injected any renewed sense of purpose into the Doha Round negotiations on trade and environment.

According to the Doha Declaration, those negotiations are to clarify the relationship between existing WTO rules and specific trade obligations (STOs) set out in multilateral environmental agreements (MEAs). The CTE is also involved in determining what goods and services can be considered 'environmental', although actual liberalisation commitments will be negotiated in the Council for Trade in Services and the Negotiating Group on Non-agricultural Market Access.

MEAs-WTO: National Experiences versus Principles

Australia presented its national experience in negotiating and implementing the Basel Convention on trade in hazardous waste, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Montreal Protocol on ozone-depleting substances (TN/TE/W/45). The submission stressed the need for effective co-ordination between domestic agencies and stakeholders as a "key to achieving compatibility between countries' different international obligations and their smooth domestic implementation". While acknowledging the importance of national co-ordination, the EU stressed that co-ordination at the international level was equally important.

Australia, a firm supporter of the 'practical' approach, argued that country experiences could help improve understanding of STOs in MEAs and their relationship with WTO rules. While supporting this approach, the EU and Switzerland stressed the need for a complementary debate on the basic principles underlying the WTO-MEA relationship. Noting a widespread support for the practical approach, Chair Ambassador Toufiq Ali of Bangladesh encouraged Members to focus efforts on this avenue for the time being.

Environmental Goods: List versus Definition

Several Members welcomed Taiwan's approach to identifying environmental goods based on their role in directly controlling pollution. It submitted a list of such products, which included primarily traditional 'end-of-pipe' environmental goods.

The EU noted that Members might also want to consider the principles underlying their decision to include certain goods. Such principles could relate to the classification of goods under the Harmonised System (i.e. codes used by customs officials), non-tariff barriers, or goods with multiple end-uses. The US expressed concern that Members could get bogged down in the debate on principles, favouring instead a more concrete discussion.

Korea and Switzerland announced their intention to submit their lists by the next CTE meeting in February 2005. Qatar, supported by Venezuela, again referred to its submission on natural gas technologies, which it would like to see taken up in the negotiations (TN/TE/W/14). The EU also suggested that Members might want to hold an informal meeting between now and the next CTE meeting if they felt that enough material was available for further debate.

The representative of the World Customs Organisation, an observer at the talks, brought up difficulties in basing market access on the way goods were processed or produced. Most WTO Members staunchly oppose changing current rules, which prohibit distinctions between 'like' products on the basis of processing and production methods (PPMs). Nevertheless, some developing countries face a dilemma in that PPMs – in this case environmentally benign farming methods – may provide the only grounds for including their organic agricultural products in a list of environmental goods. According to the Doha mandate, the negotiations must result in the reduction or elimination of tariff and non-tariff barriers to environmental goods and services.

The EU proposed holding a workshop on the para. 51 mandate (see page 11) next year. The CTE Chair asked Members to suggest speakers to the Secretariat, which could prepare a draft agenda.

Panel Finds EU's Sugar Exports Vastly Overstep WTO Limits

The WTO ruling on the EU's export subsidies for sugar was made public on 15 October. The panel confirmed that the EU had subsidised sugar exports beyond the level formally notified to the WTO. The European Commission has also unveiled a controversial new tariff for banana imports.

The panel found that the EU had exceeded its scheduled commitments on sugar exports every year since 1995. For instance, in the marketing year 2000/2001, the EU had exported 4.1 million tonnes while its allowed limit was 1.27 million tonnes. The panel also said the EU had exceeded its budgetary outlay commitment of EUR499.1 million a year. The case was brought by Brazil, Australia and Thailand.

At issue were exports of heavily subsidised sugar produced in Europe. Brazil had argued that the domestic support allowed surplus domestic stock (called C sugar) to be exported below cost of production (cross-subsidisation). In addition, the EU provides direct export support in the form of export refunds, which make the up difference between EU and world prices. The refunds apply to all sugar refined in the EU whether sourced domestically or overseas.

Another aspect of the dispute had to do with 1.6 tonnes of sugar imported annually from the African, Caribbean and Pacific Group of States (ACP) and India under preferential trade arrangements, i.e. at prices close to those paid to EU producers, who are paid more than three times the prevailing world market price. The complainants alleged that this sugar was refined in Europe and re-exported into third countries, but did not appear in official EU export data.

Scheduling Error for C Sugar

The panel agreed with the claim that the EU's export subsidies for C sugar exceeded scheduled commitments. It dismissed the EU's counterargument that this alleged breach resulted exclusively from an "excusable and common scheduling error," which the complainants had always been aware of but failed to take action on. The panel ruled that the "fact that a Member does not complain about a measure at a given point in time, cannot by itself deprive that Member of its right to initiate a dispute at some later point in time".

ACP and India Sugar: Footnote to EU's schedule has no legal effect

According to the complainants, the EU should have included in its export subsidy calculations the amount of ACP/Indian sugar re-exported to third countries. The EU argued that a footnote in its schedule of commitments excluded 1.6 million tonnes of sugar – equivalent to the quantity that it imported from the ACP and India – from the scope of its subsidy reduction undertaking. The panel held that the footnote had no legal effect and could not enlarge or modify the EU's specified commitment levels. The panel, however, declined to rule on claims under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). This was because the findings under the AoA rendered such a ruling unnecessary, and because the parties had not sufficiently argued out their subsidiary claims relating to the SCM Agreement.

Enhanced Third Party Rights and Amicus Curiae Briefs

In its preliminary rulings, the sugar panel granted additional participation rights to all third parties in this case, going beyond what is currently available under the WTO Dispute Settlement Understanding (DSU). The panel refused, however, to consider an unsolicited petition – a so-called *amicus curiae* brief – from an association representing German sugar producers. Although the panel invited the parties to make comments on the brief in the interest of due process, it decided not to further consider the petition as it was filed late in the proceedings and based on confidential information that Brazil had submitted during the panel hearings.

Appeal Announced

The European Commission immediately said it would appeal the ruling. EU Trade Commissioner Pascal Lamy said the panel's findings called into question "texts and commitments unanimously agreed by all WTO Members during the Uruguay Round. The EU will abide by its international obligations. But at the same time we will defend the legitimate interests of

EU sugar producers and the preferential access enjoyed by developing countries."

ACP Countries Worried

ACP countries, fourteen of which were third parties to the case, have consistently cautioned that the survival of their economies would be threatened if the panel found in favour of the complainants. The ruling is indeed likely to stiffen the Commission's resolve to reform the EU's sugar regime, and ACP sugar producers fear that the reform will result in an export earnings loss of US\$90 million a year by 2008 (Bridges Year 8 No.7, page 16). The sugar panel exhorted the EU to honour its commitments to the ACP and India in the implementation of the ruling.

EU Unveils New Banana Tariff

In another development closely related to ACP preferential market access, the European Commission on 27 October floated its proposed new EUR230/tonne tariff for bananas once the present quota system is dismantled in 2006. Although ACP countries will keep their duty-free access, they fear that without guaranteed quotas their exports cannot compete with much cheaper Central and Latin American bananas. They had called for a EUR275/tonne tariff.

Costa Rica called the EUR230 tariff (Latin American exporters had proposed a EUR75/tonne) a "slap to the multilateral trading system" and said it would jeopardise the Doha Round. In particular, Costa Rica noted that a EUR230 tariff would violate the July framework agreement, which – as a special and differential treatment measure – calls on Members to achieve the "fullest liberalisation of trade in tropical agricultural products". If the EU did not abide by that commitment, Costa Rica said the Doha Round would be 'meaningless' for developing countries.

The EU is to start negotiations on a new tariff with affected exporters shortly. In view of the vast differences, the final tariff is likely to be set by WTO arbitration at a level designed to guarantee Central and Latin American exporters at least their current level of market access.

Disputes in Brief

- **EU – GMOs** The panel report in the dispute brought by the US, Argentina and Canada against the EU's approval and marketing restrictions on genetically engineered organisms (GMOs) is likely to be postponed to at least May 2005. The delay is reportedly due to the enormous amount of scientific evidence presented to the panel by the EU in defence of its practices. In related news, the panel has chosen five scientific experts to assist it in judging the case. The panel agreed to the EU's request for expert advice over the objections of the complainants, who argued that such expertise was unnecessary as they did not question the EU's science. The dispute, they stressed, was about national marketing and approval bans maintained despite favourable EU scientific assessments (Bridges Year 8, No.7, page 7).
- **US – Byrd** Following the WTO sanctions awards to the eight complainants in the Byrd Amendment dispute (Bridges Year 8 No.8, page 13), the European Commission will present member states with a retaliation proposal in November. The Commission said it wanted to put pressure on the US to repeal the law. The co-complainants (Brazil, Canada, Chile, the EU, Japan, Korea and Mexico) have already met to coordinate action and are reportedly aiming at spreading their sanctions over as wide an array of US exports as possible.
- **EU-US – Aircraft** On 6 October, the US and the EU filed WTO complaints against each other's government support for aircraft manufacturers. Claiming that the EU's start-up financing for the 555-seat A380 Airbus superjet exceeded the 33 percent (of total development costs) launch aid limit the two countries had set in a bilateral agreement, the US rescinded that treaty and filed a complaint under the WTO Agreement on Subsidies and Countervailing Measures. The EU promptly followed suit in order to "put an end to massive illegal US subsidies to Boeing, which damage Airbus, particularly those for Boeing's new 7E7 programme."

US Appeals the Cotton Report

On 18 October, the US appealed virtually every contrary finding of the panel report that ruled many of its domestic and export support programmes violated the WTO's subsidy rules.

Instead of presenting new arguments, the three-page appeal (WT/DS267/17) reiterates the main points made by the US during the panel stage. For instance, the US asked the Appellate Body to find that the panel erred on ruling that some US support programmes were not sufficiently 'de-coupled' from production to qualify for the Green Box, and thus had to be counted as Amber Box subsidies, which made the US exceed its commitments under the Agreement on Agriculture. The US insisted that the subsidies were correctly categorised as Green Box support, and thus the US had not exceeded its Amber Box limit. Therefore, the AB should reverse the finding that the support in question was not covered by the Peace Clause.

The US also argued, *inter alia*, that contrary to panel findings: there was no price suppression due to US subsidies that established 'serious prejudice' to Brazil's cotton exports; that US export credits and guarantees complied with WTO rules; and that the so-called Step 2 payments to millers and exporters who use US cotton did not constitute an export subsidy. The US argued that the payments were, first, not contingent on export performance and, second, complied with US reduction commitments under the Agreement on Agriculture and therefore did not fall under the scope of the Agreement on Subsidies and Countervailing Measures.

Some observers believe that Brazil may file a cross-appeal challenging the panel's finding that the US was not circumventing its export subsidies limits negotiated in the Uruguay Round by providing export credits to 12 commodities including wheat, vegetable oils and butter oil. Brazil could also appeal the finding that its producers are not 'threatened with serious prejudice' by future US subsidies to be paid under the 2002 farm bill.

EU Announces New FSC-ETI Challenge

On 22 October, President Bush signed new corporate tax legislation, which repealed the Foreign Sales Corporation (FSC) Act and its successor regime, the Extraterritorial Income (ETI) Act. Both were condemned by the WTO (the first in 1999 and the second 2002) for providing export-contingent tax breaks in violation of the Agreement on Subsidies and Countervailing Measures. Since March 2004, the EU has applied a wide range of retaliatory tariffs that have increased each month (at the end of October the tariffs stood at 12 percent).

While the American Jobs Creation Act 2004 (known as JOBS) removes the export-contingent provisions of the earlier regimes, it offers – at least initially – more generous tax breaks to US companies than the ETI. In a move meant to encourage companies with large offshore earnings to repatriate foreign income, the bill reduces the tax on such transfers from 35 percent in most cases to 5.25 percent, with some limitations. A New York Times OpEd blasted the Congress for replacing a US\$50 billion subsidy "with US\$77 billion in new tax breaks, much of it for companies that never qualified for the export subsidy. The bill allows non-manufacturers, like ExxonMobil and other oil and gas concerns, to get the new breaks by redefining their activities as 'manufacturing'. [...] General Electric is the biggest presumptive winner from a provision that allows it to use tax credits earned in offshore manufacturing operations to offset profits from its financial services arm."

EU Trade Commissioner Pascal Lamy welcomed the repeal of the WTO-inconsistent tax regime, but raised concerns about a 'grandfathering' clause that allows US companies to keep their FSC benefits for an unlimited time period for sales contracts signed before 17 September 2003. Of particular concern to the EU are FSC benefits to Boeing – a direct competitor of the European Airbus – for two contracts worth US\$9.5 billion that involve deliveries in 2008 or even later (see side-bar opposite for the WTO aircraft dispute). While indicating that he would ask the member states to lift the FSC sanctions on 1 January 2005 when JOBS enters into force, Pascal Lamy also said that the EU would request the WTO to examine whether the legislation properly implemented panel and Appellate Body rulings in the matter. At the time of this writing, the EU had not yet made a formal request for an Article 21.5 compliance panel.

Trade Facilitation: What Is in Store for Developing Countries?

Bipul Chatterjee

Between 1992 and 2002, global trade in goods and services has increased from US\$5 trillion to US\$8 trillion. At the same time, non-tariff barriers have grown apace. The implications for developing countries of the upcoming WTO negotiations on trade facilitation need to be analysed in this context.

According to the WTO, trade facilitation means “simplification and harmonisation of international trade procedures”. These procedures are “activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade”.

Trade facilitation first surfaced on the multilateral trade agenda at the 1996 Singapore Ministerial Conference, which mandated the WTO Council for Trade in Goods to “undertake exploratory and analytical work...on the simplification of trade procedures in order to assess the scope for WTO rules in this area.” During the exploratory process, many countries urged for a set of binding rules, while others raised concerns regarding implementation capacities (of binding obligations).

After lengthy discussions at the Goods Council, WTO Members agreed in Doha to review, clarify and improve the relevant GATT provisions and to identify the trade facilitation needs and priorities of Members, in particular those of developing and least-developed countries (LDCs).¹

Finally, in July 2004, WTO members agreed to develop modalities for negotiations on trade facilitation. Annex D of the Framework Agreement states: “Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expedite the movement, release and clearance of goods, including goods in transit.”

From the point of view of developing and least-developed countries, two issues stand out in the framework agreement on trade facilitation. First, it recognises that the principle of special and differential treatment should extend beyond granting longer transition periods for implementing commitments. “In particular, the extent and timing of entering into commitments shall be related to the implementation capacities of the developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.”

Second, for the first time in the history of GATT/WTO negotiations, there is an explicit mention of cost implications. “Members shall seek to identify their trade facilitation needs and priorities, particularly those of the developing and least-developed countries, and shall also address the concerns of the developing and least-developed countries related to cost implications of proposed measures.”

Implications

Generally speaking, a multilateral agreement on trade facilitation appears to be beneficial to all Members. The underlying assumption is that it will reduce transaction costs and increase revenue collection. For example, after introducing an electronic declaration system for traders, Singapore generated savings estimated at one percent of gross domestic product with an expectation that it would cover its costs in three years. Bolivia, after spending US\$38.5 million on a customs reform programme, found that revenue collection rose by 25 percent (in efficiency terms, i.e. after taking into account reduction in tariff rates). However, the experience of the Philippines was different; its new trade facilitation system reportedly led to a two percent increase in revenue collection, but the cost of sustaining the system triggered an immediate budget crisis and a cessation of funding for the system.²

It is quite evident that given the domestic nature of the implementation aspects of trade facilitation, as well as concomitant systemic and governance issues, country experiences are

bound to differ. This nature is evident from GATT provisions, which deal with transparency, public information, formalities associated with importing and exporting, and goods in transit. The main indicators of trade facilitation are: port logistics; customs procedures; standards harmonisation; business mobility; trade information and e-business facilities; and administrative transparency and professionalism.³

Do developing countries and LDCs have the necessary resources for undertaking improvements in all these areas? The answer is no, especially when many of these countries competing priorities for resources, in particular for human development needs. This is one of the reasons why most of them were reluctant to take on legal obligations under the WTO. At the same time, countries irrespective of their level of development are convinced that trade facilitation is important to economic development. This is why many developing countries wanted to pursue it as part of a unilateral trade reform agenda, based on available resources.

It is true that the modalities for negotiations on trade facilitation have recognised special and differential treatment (S&D) for developing and least-developed countries. The question is about the nature of S&D and its operationalisation. It appears that the onus of identifying S&D measures rests on these countries. This requires considerable skills and human resources and is of particular concern to LDCs. Not only do they have to calculate the one-time cost of a particular measure, but also the recurring costs of sustaining the system. A simple (only in economic terms) cost-benefit analysis is not sufficient because, given the nature of the issue, social costs of investment (opportunity costs) and social rates of return (in the sense of a better, corruption-free society) are important variables to fully understand the implications of trade facilitation measures.

Continued on page 16

This leads us to the all-important issue of technical assistance and capacity building (TACB). The July framework deals extensively with this issue, including the recognition that multilateral and intergovernmental agencies, such as the World Bank and World Customs Organisation, need to work in a harmonised manner. However, technical assistance and capacity-building programmes for trade facilitation should take into account three crucial factors.

First, there should be an institutional approach to TACB. Donor agencies should encourage the improvement of existing institutions in developing and least-developed countries rather than introduce new institutions. Second, developing countries and LDCs, which face largely similar problems, should learn from each other, rather than borrow concepts from advanced industrialised countries. In other words, donor agencies should follow a triangular approach to TACB: Northern donors – Southern recipients – Southern providers. This requires a high-level of co-ordination between and among donors, recipients and providers (of know-how and do-how). Third, before undertaking TACB activities, a comprehensive economic and social audit of existing trade facilitation instruments/institutions and associated systemic and governance issues should be carried out.⁴

Conclusion

No one can deny that unnecessary transaction costs cause difficulties in cross-border movement of goods. This is particularly true for small- and medium-size enterprises (SMEs), which do not have the means and resources for facilitating quicker movement of their produce. The challenge for WTO Members is to recognise, understand and integrate these development dimensions of trade facilitation during the Doha Round negotiations.

According to an UNCTAD report, direct and indirect transaction costs are adding up to ten percent of total value of global trade, which is equivalent to approximately US\$400 billion.⁵ Trade facilitation can significantly reduce these costs. But the question is who will benefit the most. It appears that big businesses will be the major beneficiaries, as they are in a better position to take advantage of such measures.

The challenge is how to channel the benefits of trade facilitation to SMEs, particularly in developing countries and LDCs. There should also be a mechanism to transfer resources generated (either through savings or through revenue generation) from trade facilitation measures at the domestic level to infrastructure and social development that benefit the poor. This will only happen if countries can take care of the systemic and governance issues at the domestic level.

Bipul Chatterjee is Director, CUTS Centre for International Trade, Economics & Environment in Jaipur, India.

ENDNOTES

¹ For an analysis of Articles V, VIII and X, proposals of WTO members and their implications for India, see Taneja, Nisha: *Trade Facilitation: Issues and Concerns*, Economic & Political Weekly, 10 January 2004.

² Data taken from Malhotra, Kamal (ed): *Making Global Trade Work for People*, UNDP 2003.

³ For description of these indicators and resource needs, see Roy, Jayanta: *Trade Facilitation: An Urgent Issue*, The Economic Times, New Delhi, 24 June 2004.

⁴ This analysis is based on country papers prepared as part of the CUTS programme titled *International Working Group on Doha Development Agenda* (IWOGDA, Phase II).

⁵ Roy, Jayanta: *Trade Facilitation: An Urgent Issue*, The Economic Times, New Delhi, 24 June 2004.

WTO TNC and General Council Outcomes in Brief

New Chairs have been appointed for three negotiating bodies and the WTO's sixth Ministerial Conference has been scheduled for 13-18 December 2005. Nominations for the organisation's next Director-General must be made by next December.

On 12 October, the Trade Negotiations Committee (TNC) appointed Malaysia's Ambassador Yacob Muhamad Noor as Chair of the new Negotiating Group on Trade Facilitation. As a first step, Ambassador Noor will hold informal consultations with WTO Members with a view to establishing a work programme and holding the Group's first meeting.

Seven days later, the General Council confirmed Ambassador Guillermo Valles Galmés of Uruguay as the new Chair of the Negotiating Group on Rules following the departure of Eduardo Pérez Motta, who has returned to Mexico to head the country's Federal Competition Commission. Hong Kong's new WTO Ambassador Tony Miller replaced Joshua Law as Chair of the TRIPs Council negotiations on a multilateral system for registering the protected names of wines and spirits, and South Korea's Ambassador Choi Hyuck took over from Argentina's Alfredo Chiaradia as Chair of the WTO's Goods Council. Ambassador Chiaradia has been appointed Argentina's new Secretary of International Trade.

At the General Council session, Chair Shotaro Oshima presented new procedures for the appointment of the WTO's next Director-General. Countries must name their candidates by December 2004. By 31 March 2005, Members are to achieve consensus on the person who will replace Supachai Panitchpakdi the following September. The procedures foresee the voluntary withdrawal of the candidates least likely to achieve consensus, but provide for a vote in case agreement cannot be found. The vote is, however, to be "understood as an exceptional departure from the customary practice of decision-making by consensus" and shall not constitute a precedent with regard to future decisions.

Uruguay has already announced the candidacy of Carlos Pérez del Castillo, who chaired the General Council in the run-up to the Cancun Ministerial Conference. Brazil has nominated its WTO Ambassador Luiz Felipe de Seixas Corrêa, while Mauritius has put forward its Trade Minister Jayakrishna Cuttaree. Unconfirmed rumours persist on outgoing EU Trade Commissioner Pascal Lamy's interest in the post, as well as the possible nomination of former Mexican President Ernesto Zedillo as a Latin American consensus candidate.

EU Proposes to Overhaul Its Trade Preferences Scheme

On 20 October, the European Commission adopted a proposal for reforming the EU's Generalised System of Preferences. If approved by the European parliament and EU member states, the reform will cut current benefits to large exporters such as China, while offering better access to vulnerable developing countries willing to ratify 27 'key international conventions on sustainable development and good governance'.

The WTO's Enabling Clause allows developed countries to maintain Generalised Systems of Preferences (GSPs) that give enhanced market access to developing countries. Although these schemes usually contain many conditionalities, the Enabling Clause requires them to be 'non-discriminatory'. Following a challenge by India, the WTO's Appellate Body ruled in April 2004 that the EU's GSP was unfair because it did not extend the same benefits to all developing countries that were 'similarly situated', and lacked objective, transparent and non-discriminatory criteria (Bridges Year 8 No.4, page 5). At issue was Pakistan's inclusion in a special EU GSP regime aimed at assisting countries fighting narcotics production and trafficking.

On 20 September, a WTO arbitrator gave the EU until 1 July 2005 to implement the ruling. Although the new regime covers the period from 2006 to 2008, the Commission hopes it will be approved in time for entry into force by July 2005.

Main Features of the New GSP

The Commissions' proposal attempts to respond to the WTO ruling, while maintaining the EU's prerogative to differentiate between beneficiaries. First, it reduces the categories of GSP benefits from five to three categories. Second, it spells out 'objective criteria' for each category and simplifies 'graduation' rules. Third, it allows 'regional cumulation' in rules of origin. And finally, it offers vastly enhanced benefits to a new class of 'vulnerable' developing countries willing to take on a large number of legally binding commitments in the fields of the environment, human rights, labour, narcotics and corruption.

The General Scheme

The 'general scheme' is open to all developing countries, for which preferential tariffs will be granted on 7200 products compared to 6900 under the current scheme. According to the Commission, the 300 additions are mostly agricultural and fisheries products "of interest to developing countries". Forty percent of these products can enter the EU duty-free, and the rest will have a 3.5 percent advantage over most-favoured nation tariffs.

However, countries that hold more than 15 percent of EU market share for a given 'group of products' (based on the EU's customs codes) will lose their tariff discounts for that group. For textiles, the ceiling is set at 12.5 percent, which will automatically cut out China. India, with a 10-11 percent market share, will keep its preferential status on clothing and textiles for the time being, but may well lose it when the GSP is reviewed in 2008 (see 'graduation' below).

LDC Regime Unchanged

The second category consists of least-developed countries (LDCs), which will retain their quota- and duty-free access for all products excluding arms. The present safeguards for 'sensitive' products, such as sugar, will remain in place.

GSP-plus: An Exercise of 'Soft Power'

The third category is an innovation. It replaces three previous EU schemes that provided additional benefits to developing countries undertaking sustainable forestry practices, those respecting core labour conventions and those engaging in the eradication of trade in illegal drugs. Under the new 'GSP-plus' programme, all 7200 products from qualifying developing countries will have duty-free access compared to 40 percent under the general scheme. Admittedly, this is a potentially huge advantage. The conditions, however, are tough.

First, the benefits are only available to 'vulnerable countries with special development needs'. The criteria for those countries include having poorly diversified economies, i.e. the five

largest sectors of the country's GSP-covered imports to the EU must represent more than 75 percent of its total GSP-covered imports. Furthermore, beneficiary countries' GSP-covered imports must not exceed one percent of total EU imports under the GSP.

However, few of these vulnerable countries are likely to fulfil the third requirement: the ratification and effective implementation of 16 core conventions on human and labour rights, as well as seven out of eleven treaties on the environment and 'good governance'. In addition, countries requesting GSP-plus status must commit to the ratification and effective implementation of the four remaining conventions by 31 December 2008.

The Commission described the GSP-plus category as an "exercise in soft power" to advance sustainable development through incentives rather than threats or demands. Nevertheless, there may not be many takers. The previous environmental incentive found no claimants at all, and only two countries (Moldova and Sri Lanka) took advantage of the labour scheme. Under GSP-plus, eight human rights-related treaties, eight labour conventions, seven multilateral environmental agreements, three conventions on narcotics and one on corruption must be honoured. Many of these treaties have not been ratified by major industrial countries.

The GSP-plus offers greater advantages for a wider range of products, but conditioning preferential market access on the ratification and implementation of such a large number of international treaties places a well nigh impossible burden on many of the weakest economies the scheme purports to serve.

Graduation

The GSP will operate for three years without any changes. After that, those countries that have reached the 15 percent market share ceiling (12.5 for textiles) will lose their tariff advantage. Vulnerable countries (i.e. those representing less than one percent the EU's total GSP imports) will not be graduated.

Regional News in Brief

- ASEAN will hold its tenth summit-level meeting from 29-20 November. Leaders are expected to confirm the start of the second phase of tariff cuts between China and ASEAN, which is to result in the world's largest free trade area with a combined population of 1.7 billion people by 2015 (tariffs will be eliminated between China and the six most advanced ASEAN economies in 2010). An 'early harvest' tariff cut programme has already been completed (Bridges Year 7 No.7, page 17).

The summit is also expected to approve the creation of an ASEAN Economic Community by 2020 (Bridges Year 8 No.8, page 18). ASEAN comprises Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

India's Prime Minister Manmohan Singh said on 13 October that he envisaged an even larger Asian Economic Community that would encompass not only ASEAN but also China, India, Japan and South Korea, thus constituting an 'arc of advantage' involving half the world's population.

- In October, US Congress approved an amendment to the African Growth and Opportunity Act, which gives Mauritian textiles products duty-free access to the US even if raw materials are sourced from outside the AGOA region or the US itself.
- US Congressman Collin Peterson (D-Minn.) announced on 13 October that he had received a letter from Senator Kerry confirming that "if he's elected, CAFTA will be scrapped. This agreement will not go forward." According to Mr Peterson, Senator Kerry wrote that he believed any negotiations on sugar should be done through the WTO.
- In other recent developments, Switzerland has started eyeing a bilateral free trade agreement with Japan, and Chile expects to conclude free trade pacts with China, India, New Zealand and Singapore in 2005.

Developments Involving the Americas

The free trade agreement between the Andean Community and the US will not be concluded early next year as initially envisaged, and the EU and Mercosur have already overshot their end-October 2004 deadline. Meanwhile, Latin America has moved closer to continental integration with the adoption of a tariff elimination agreement between the Andean Community and Mercosur.

Parties to the negotiations for the Andean Free Trade Agreement (the US and Colombia, Ecuador and Peru) admitted in late October that they would miss their original deadline and agreed not to set a new date for concluding the talks. Serious disagreements have arisen with regard to intellectual property rights, investment and market access. On the other hand, the US has reportedly stopped insisting that the three Andean countries abandon their practice of frequently adjusting tariffs for agricultural products to ensure that prices for imported sensitive products remain above a certain level (price-band mechanism).

Colombia announced in October that it would rather give up pursuing the FTA than accept the standard US demand for a five-year protection period for data disclosed in pharmaceutical patent applications. There was also disappointment that the US would not commit to using the present preferences under the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as a 'floor' for further concessions. The US refusal was apparently linked to Congressional action on ATPDEA renewal. Those debates have focused on outstanding investment disputes lodged by US companies against Peru's allegedly unfair tax treatment and Ecuadorian authorities' inconsistent application of 'opaque' regulations. US Representative Cass Ballenger has also warned that Ecuador's Solicitor General Jose Maria Borja's suggestion that the country abrogate its bilateral investment treaty with the US would "pave the way for expropriations", as well as questioned whether the two countries should continue to receive ATPDEA benefits.

EU and Mercosur FTA Fails to Make October Deadline

A last-ditch ministerial meeting in Lisbon on 20 October failed to bridge widening gaps between the EU and Mercosur, which in 2000 revived free trade area negotiations started in 1995. The EU's Pascal Lamy and Brazil's Celso Amorim reiterated their commitment to the FTA, but a negotiators' statement acknowledged that "much more needed to be done to reach the level of ambition that reflects the strategic importance of this agreement to EU and Mercosur".

Prior to the ministerial meeting, both sides accused each other of backtracking on previous offers, which themselves were found lacking (Bridges Year 8 No.6, page 19). Essentially, the parties disagree on Mercosur's demands for market access for farm goods such as beef, chicken and sugar, and, more recently, certain services sectors. The EU is frustrated about Mercosur's reluctance to open government procurement and services markets, as well as certain sectors of industrial goods such as automobiles.

The two sides will hold a technical co-ordination meeting in early December to set a schedule for continuing the talks. An FTA between the two trade blocs would create a market of 680 people and boost the present US\$40 billion trade.

CAN and Mercosur Pursue Integration

While talks between the Andean Community (CAN) and Mercosur had been ongoing for some time, differences in the agricultural sector had stalled progress. The 'Economic Complementarity Agreement' signed in October builds on previous bilateral arrangements between the countries involved, such as those between Mercosur and Bolivia, as well as Mercosur and Peru (see Bridges Year 8 No.7, page 12 for further details). The parties are to phase out import tariffs over the next 15 years, ultimately creating the world's fifth largest free trade area to be called the South American Community of Nations. The tariff cuts will start on 17 November 2004.

Mercosur consists of Argentina, Brazil, Paraguay and Uruguay. Peru and Bolivia are associate members. The Andean Community comprises Bolivia, Colombia, Ecuador, Peru and Venezuela.

Will What's Good for the US Be Good for Morocco?

Mohamed Said Saadi

After thirteen months of marathon negotiations, Morocco and the United States signed a free trade agreement last June. This brief note looks at the reasons behind the agreement, its main provisions and the likely impacts on the Moroccan economy.

The agreement with Morocco is an integral part of the US vision of creating a Middle East Free Trade Area by 2013. The US already has FTAs with Israel and Jordan, and negotiations are underway with Bahrain. In October 2004, exploratory talks were held with the United Arab Emirates and Oman.

From an economic point of view, the Morocco FTA should allow the US to fulfil the following objectives: opening new markets; stemming US firms' loss of market share to European competitors as a consequence of the EU-Morocco partnership; and lower consumer prices expected to ensue from the importation of cheap Moroccan products.

For Morocco, the objectives sought included the diversification of trading partners and less dependence on the EU, as well as improving Morocco's attractiveness for US, EU and Asian investors seeking a production and export platform toward countries in the region (North and West Africa), as well as the EU and the US itself.

The Main Points of the Agreement

The US-Morocco free trade agreement comprises 22 chapters. The main ones deal with agriculture, market access, textiles and clothing, customs, government procurement, trade in services, financial services, telecommunications, intellectual property rights, labour, the environment and legal issues.

The agreement provides free access to the US market for almost all Moroccan industrial and fisheries products (98.8 percent of US tariff lines). Textile products are guaranteed increased market access with a level of trade preference or a special quota. Tariffs on other products will be eliminated within 10 years. Morocco will eliminate tariffs on products that face no domestic competition within two to five years, but will keep them for ten years for products that are also produced locally.

With regard to agriculture, the FTA limits US farm exports to Morocco through long tariff elimination periods (from five to 25 years) and the maintenance of quotas on sensitive products even after the tariff elimination is complete.

For services, the approach consists of a controlled liberalisation of trade. The chapter on cross-border trade in services reiterates the basic provisions of the WTO General Agreement on Trade in Services (GATS), i.e. extending national treatment and most-favoured nation (MFN) treatment to the service providers of both countries.

Although the FTA also stipulates that the parties must comply with the provisions of the Agreement on Trade-related Intellectual Property Rights (TRIPs), the US slipped into the FTA more constraining 'TRIPs-plus' obligations that could, for instance, delay the arrival of generic drugs on the Moroccan market. This is due to the protection requirements for data on the safety, efficacy and new clinical information contained in pharmaceutical patent applications. The intellectual property chapter also provides that any delays in processing patent applications must be compensated by lengthening the 20-year protection period accordingly.

The Impact of the Agreement

One of the most surprising aspects of the FTA is that it was signed without a single prior impact assessment by the Moroccan authorities. While it is clear that the agreement opens real export opportunities to a very large market for Moroccan producers (particularly for textiles,

fish products and phosphates), it also gives rise to a few observations on the putative positive impacts on the Moroccan economy. First, due to their modest size, Moroccan enterprises lack the capacity to respond to the large orders that US companies are accustomed to place abroad. Second, despite the FTA, non-tariff barriers – most notably those based on phytosanitary standards – will continue to make US markets difficult to access.

In addition, the free trade agreement only reinforces Morocco's status as a country with a traditional international specialisation in primary products and labour-intensive goods. Of course, this specialisation could develop into new sectoral activities due to Morocco's enhanced attractiveness for foreign direct investment, which the FTA is supposed to bring about. However, international experience shows that the mere existence of an FTA is not sufficient to attract multinational companies. On the other hand, the development impact of the subsidiaries established by those companies in the host country is limited (weak spill-over effects on the local productive framework, sub-contracting of labour-intensive activities, etc.).

Perverse effects may occur particularly in the agricultural sector. The eventual liberalisation of cereal imports from the US may have serious consequences to Morocco's peasant agriculture, as many of the forty-six percent of Moroccans who still live in rural areas are subsistence farmers.

In short, it is by no means certain that the US-Morocco free trade agreement will have a favourable effect on Morocco's development. To the contrary, one is tempted to conclude that what is good for the United States may not be good for Morocco.

Mohamed Said Saadi is Former Secretary of State in Charge of Social Protection, Family and Children at the Moroccan Ministry of Social Development and now with the Centre d'Etudes et de Recherches Aziz Belal in Rabat.

CITES Further Ups Conservation Efforts But Tensions Remain

While conservation groups hailed decisions taken at the October meeting of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, delegates disagreed on the best way to attain conservation goals and balance them with trade rules and poverty alleviation.

Animal and plant species listed under CITES Appendix I are considered highly threatened by extinction and are excluded from trade, with the exception of very special circumstances. Appendix II species are subject to strictly regulated trade on the basis of quotas and permits to ensure that trade does not compromise their survival. Appendix III lists species that are subject to domestic regulation, and for which a Party requests the co-operation of other Parties to control international trade.

Main Species Decisions

South Africa, Namibia, and Botswana were successful in their proposal to list Hoodia, a medicinal plant long used by Africa's San people for its appetite-suppressing qualities, in Appendix II. In addition, the CITES Conference of the Parties (COP) passed Indonesia's proposal to uplist the Ramin tree from Appendix III to II. The ramin tree has long been one of Southeast Asia's major export timbers and Indonesia emphasised that the Appendix II listing would ensure better enforcement of conservation measures and benefit orangutan populations. In addition, the Irrawaddy dolphin was transferred from Appendix II to I despite opposition from Japan, Norway and Gabon. The great white shark, agarwood tree and humphead wrasse were added to Appendix II (for background on these decisions, see Bridges Year 8 No.8, page 16). These decisions reflect CITES Parties growing willingness to extend protection to heavily traded species, a trend that started with the inclusion of bigleaf mahogany in Appendix II two years ago.

Japan vowed to continue efforts to expand whaling after CITES again voted against downgrading three stocks of minke whale from Appendix I to Appendix II. In addition to enabling wider trade in the species, such a move would have put pressure on the International Whaling Commission (IWC) moratorium on whaling. "The West is trying to impose its unilateral standards on us. I regard this as cultural imperialism," Japanese delegate Masayuki Komatsu said.

Delegates also clashed on the best way to conserve key species in cases where CITES decisions provide signals that impact on illegal poaching and trading. The draft action plan for the control of trade in African elephant ivory was eventually approved. In contrast, Kenya's proposal that Parties refrain for six years from submitting down-listing proposals and engaging in trade of raw and worked ivory spurred controversy, and was eventually rejected. Discussion centred upon whether such a moratorium on elephant trade would cause illegal trade to thrive and require financial resources for enforcement.

Participants also considered alternatives to complete trade bans, such as economic incentives and sustainable use programs, along with *ex situ* breeding projects that co-operate with *in situ* conservation to ensure the survival of species. The CITES Secretariat introduced a document on economic incentives, which was adopted. With regard to the document, New Zealand stressed that economic incentives must be targeted and compatible with WTO rules. Indonesia noted that such incentives would require adequate regulation and law enforcement, while India emphasised the need to provide incentives for local stakeholders in conservation efforts.

Overlap with Other Agreements and Organisations

A key theme of the CITES decisions, and the meeting in general, was the increasing overlap between CITES, multilateral environmental agreements (MEAs) and environmental organisations. The need to retain consistency with the ongoing IWC moratorium on whaling, for example, contributed to the decision to maintain the highest level of protection for minke whales. In another example, the EU's proposal to exempt *in vitro* cultivated DNA of listed species from CITES regulation prompted vigorous debate and was eventually withdrawn, with some delegates anticipating that this issue will continue to be rejected as long as the discussions on access to genetic resources and benefit-sharing remain controversial under the Convention on Biological Diversity (CBD).

These questions are also under discussion at the WTO's TRIPs Council, which was mandated in Doha to continue to "examine, *inter alia*, the relationship between the TRIPs Agreement and the Convention on Biological Diversity", including the protection of traditional knowledge. Furthermore, the General Assembly of the World Intellectual Property Organisation agreed in early October 2004 to establish a framework for examining and, where appropriate, addressing the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications. Increased co-operation between CITES and the UN Food and Agricultural Organisation (FAO) was notable, especially during discussions on marine species and promoting capacity-building in developing countries.

CITES delegates also agreed to incorporate the CBD's Sustainable Use Principles and Guidelines, though Israel, Australia, India and the EU were concerned that the term 'sustainable use' might pollute the more scientific approach of CITES. However, some delegates pointed out that the concept was already being used by national authorities in managing CITES species.

Thailand to Lead Renewed Fight Against Illegal Wildlife Trade

In related news, Thailand's Prime Minister Thaksin Shinawatra proposed that his country could take the lead in forming a regional law enforcement network to combat illegal wildlife trade, offering to host a meeting in 2005 to work out the details of establishing such a network. According to WildAid Thailand, a non-profit group committed to fighting wildlife trafficking, organised crime is attracted to wildlife trade because of the high profits, which can reach up to 800 percent in some cases. Roger Lahanan from the Asian Conservation Alliance agreed that the region badly needed such a body and said his organisation would work with the government "to make sure it happens as soon as possible".

A Review of the Outcomes of WIPO Discussions on the Development Agenda Proposal

Sisule F. Musungu

The World Intellectual Property Organisation Assemblies held in September–October 2004 turned out to be one of the most significant in a long time and could herald a more development-friendly orientation of the institution.

The most high-profile issue at the Assemblies was the proposal by 13 developing countries to establish a WIPO ‘development agenda’. This article reviews the outcomes and the decisions that were made with respect to this proposal and maps out some of the challenges of taking the process forward.¹

The Development Agenda Proposal

On 26 August 2004, Argentina and Brazil presented a proposal for the ‘Establishing a Development Agenda for WIPO’ (Bridges Year 8 No.8, page 17). Co-sponsored by 11 other developing countries², the proposal for the first time in the institution’s recent history called upon its members to have a focussed discussion on how WIPO should place development at the heart of its activities. The closest equivalent to this initiative in living memory were developing country efforts in the 1970s and 80s to revise the Paris Convention.³

In terms of substance, the proposal laid a solid basis for crystallising the meaning and content of the development dimension of intellectual property policies and laws. Among its main suggestions were that WIPO members consider adopting a high-level declaration on intellectual property and development; amend the WIPO Convention; include provisions on technology transfer etc. in treaties under negotiation; establish technical assistance programmes based on the principles and objectives set out in the proposal; create a standing committee on intellectual property and transfer of technology; and establish a working group on the development agenda.

Strong Support from a Wide Range of Actors

The Assemblies took place on the heels of a hugely successful conference on the future of WIPO sponsored by the Transatlantic Consumer Dialogue, which not only brought together a diverse group of people and organisations to discuss WIPO’s programme and activities, but also focused significant media attention on the institution. The Geneva Declaration on the Future of WIPO⁴ inspired by this event stated that

“The proposal for a development agenda has created the first real opportunity to debate the future of WIPO. It is not only an agenda for developing countries. It is an agenda for everyone, North and South. It must move forward. All nations and people must join and expand the debate on the future of WIPO”.

Many others also expressed support⁵, but a counter-statement, called the Civil Society Declaration on the Future of WIPO, argued that “some aspects of the Development Agenda proposal would be positively dangerous”. At the time of this writing, the alternative statement had attracted 17 signatories while the Geneva Declaration backing the Brazil/Argentina initiative had close to 700 supporters ranging from Nobel laureates to students and politicians.

WIPO Debate on the Development Agenda Proposal

Presenting the proposal on behalf of the co-sponsors, Brazil made it quite clear that the proposal constituted a positive agenda and was aimed at addressing WIPO’s work in all dimensions.⁶ This is an important point as during the ensuing discussions a number of delegations seemed to confuse the development agenda as proposed and the technical assistance activities of WIPO, which in WIPO parlance are termed ‘development co-operation’. While technical assistance may have a role to play in ensuring that the implementation of intellectual property rules is development-sensitive, the development dimension in intellectual property goes far beyond technical assistance.

Discussions on the proposal also provided an important opportunity for WIPO members to express themselves, probably for the first time, on the question of the mandate of WIPO as a United Nations (UN) agency. Previously, the assertion that WIPO’s objective was ‘to promote intellectual property’ was taken as a given. By calling into question the compatibility of this conception and WIPO’s objectives as a UN agency, the proposal forced WIPO members, as well as the Secretariat and observers, to reassess that assumption.

No single member disputed the fact that the primary mandate of WIPO as a UN agency was “to promote creative intellectual activity and the transfer of technology to developing countries” as stated in the 1974 Agreement between the UN and WIPO, rather than promoting intellectual property protection as such. In essence, one can confidently conclude that WIPO members agreed, albeit implicitly, that although WIPO’s founding convention (before it became a UN agency) had the objective of promoting intellectual property, as UN agency the institution could only pursue that goal to the extent that such promotion was necessary to promote creative intellectual activity and the transfer of technology to developing countries.

Overall, although there may have been nuances with respect to the details, the proposal gathered very wide support. An overwhelming majority of countries supported the basic thrust of the proposal, which was to engage WIPO members in a focussed and comprehensive discussion on how the organisation should incorporate development into its various programmes and activities. Most of the countries that had difficulties with the proposal (mainly in the Group B of developed or industrialised countries) argued that WIPO already incorporated development into its activities.

Continued on page 22

These countries, however, indicated their willingness to engage in constructive discussions on the various issues raised in the proposal.

The strongest and most direct opposition came from the United States. Its delegation argued that the development agenda proposal “appeared to be premised on the misconception that strong intellectual property protection might be detrimental to global development goals and that WIPO had disregarded development concerns”. The US also asserted that “the thought that weakening intellectual property would further development was flawed as the idea that an intellectual property system alone could bring about development”. The criticism, however, seemed at best based on a misreading of the proposal.

In fact, the proposal did not call for weakening intellectual property protection as such. Nor did it suggest that intellectual property alone could bring about development or imply that WIPO had, without exception, disregarded development issues. The proposal’s main thrust was that intellectual property protection – intended as an instrument to promote technological innovation, as well as the transfer and dissemination of technology – could not be seen as an end in itself nor could harmonisation of intellectual property leading to higher protection standards in all countries, irrespective of their levels of development.

The US seemed to agree with this premise when it pointed out that “WIPO treaties had flexibilities and that in implementing intellectual property framework a country’s circumstances, needs and objectives had to be taken into account”.

It is also interesting to note that at the end of its intervention, the US indicated that it “believed that WIPO’s existing resources and mechanisms could and should be harnessed to address the concerns raised in the proposal by Argentina and Brazil.” Consequently, although the United States expressed strong opposition to the proposal, a closer look at its arguments reveals that its concerns were based on a misreading and did not fundamentally challenge the conceptual basis of the proposal.

WIPO Decisions on the Proposal: The Way Forward

In the end, the WIPO General Assembly decided that the General Assembly of WIPO would convene inter-sessional intergovernmental meetings to examine the proposal, as well as any other views on the issue that may be subsequently submitted by other member states. In essence, this means that there will be at least more than one meeting and that the discussions in those meetings will be aimed at further reviewing the proposal and, in particular, addressing the specific measures proposed as action points.

Seen in this context, although the decision was an important victory in terms of the acceptance of the validity and importance of the issues raised, the future direction of WIPO remains an open question. This means that the co-sponsors and other developing countries, as well as civil society and other organisations that supported the proposal, have a lot of work to do in ensuring that there are concrete outcomes. Further refining the ideas in the proposal, as well as maintaining the focus and political importance of the issue will be crucial. The fairly favourable decisions should therefore be seen as marking the beginning and not the end of hard work.

It is important to remember that there were other issues on the agenda of the Assemblies, which may have been considered by Group B, and the US in particular, to be of a higher priority. Given the attention that the proposal had attracted and the other issues on the agenda, it could be suggested that for Group B the basic interest was to ensure that no decision was taken on any specific action. They could therefore be reading the decision as having postponed the fight to another day, a day on which they may be better prepared.

Second, it was decided that the WIPO Secretariat would undertake immediate arrangements to organise, with other relevant international organisations, including UNCTAD, the WHO, UNIDO and the WTO, a joint international seminar on intellectual property and development, open to the participation of stakeholders including NGOs, civil society and academia. In strategic terms, this seminar will be important in at least three respects.

First, it will ensure that the issues raised in the proposal remain visible on the international agenda. Second, it will provide an important opportunity for widening the constituencies involved in these discussions. Although the number of civil society observers at WIPO has been increasing, there is still a way to go in ensuring adequate civil society representation. Since participation in the seminar is not tied to observership at WIPO, other groups can get involved. Finally, by bringing together other UN agencies, the seminar will force those agencies to start playing a more active role in WIPO activities and bringing their work to bear on their outcomes. So far, their participation in critical WIPO negotiations and processes has been wanting to say the least. Although some UN agencies may have attended the Assemblies sessions, none of them – including UNCTAD, the WHO, UNESCO and UNDP, which have carried out significant work on issues related to intellectual property and development – participated actively in the debate on the development agenda.

Sisule F. Musungu is the Team Leader, Intellectual Property, Investment and Technology Transfer at the South Centre in Geneva. The views expressed in this article are personal and do not necessarily represent the views of the South Centre or its Member States.

ENDNOTES

¹ For the outcomes of the other issues see Musungu, S., “The WIPO Assemblies 2004: A Review of the Outcomes”, *South Bulletin* 89, 15 October 2004, available at <http://www.southcentre.org>.

² The co-sponsors were Bolivia, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Sierra Leone, South Africa, Tanzania and Venezuela. The full text of the proposal (WO/GA/31/11) and additional documents are available at <http://www.wipo.int>.

³ See Musungu *supra* note 1 and South Centre, “Establishing a ‘Development Agenda’ for the World Intellectual Property Organization (WIPO): Commentary on Proposal by Argentina and Brazil”, *South Centre Analytical Note*, SC/TADP/AN/IP/3, September 2004.

⁴ Available at <http://www.cptech.org/ip/wipo/futureofwipodeclaration.doc>.

⁵ See, for instance, the NGO statement at <http://www.ciel.org>.

⁶ For a complete transcript of the discussions see the Draft Report of the WIPO General Assembly. WIPO document WO/GA/31/15 Prov dated 5 October 2004.

Sustainable Development Issues in the Agriculture Negotiations

In late September, ICTSD and the UN Food and Agriculture Organisation hosted a two-day informal expert consultation on special and differential treatment (S&D) in WTO agriculture negotiations. A second ICTSD consultation among G-33 countries, focusing on special products and a special safeguard mechanism, was held back to back with the S&D talks.

The consultations provided the participants with the opportunity to address a number of key developing country issues related to the agriculture annex of the WTO's July framework agreement. The annex provides the basis for the current phase of negotiations, seeking to eventually flesh out full agriculture modalities. It contains language recognising the right of developing countries to pursue "agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns."

The S&D expert consultation included presentations and discussions on specific developing country 'situations', based on economic and social criteria warranting S&D. Participants considered ways to craft needs-specific and context-specific S&D provisions, taking into account the particular food security and rural development concerns associated with the different situations identified. Each of the three pillars of the agriculture negotiations – market access, domestic support and export competition – was specifically addressed.

The consultation on SP/SSM took off with consideration of the specific situations in which the concepts are set to operate, recognising the wide variation in economic and social conditions between developing countries, and regions within developing countries. With respect to SP/SSM treatment. Participants highlighted in particular the need to establish domestic guidelines to facilitate internal discussions on the identification of those products from the point of view of food security, livelihood and rural development needs (see related article on page 6).

Key themes flowing from the discussions included the need to generate relevant knowledge and analysis for policy makers and trade negotiators, such as the identification of specific situations in developing countries relevant to the need for S&D and an understanding of the international and regional politico-economic framework that justified S&D. Also discussed was the issue of dealing with the diversity of needs within and among countries, the links between the agricultural and non-agricultural sectors and the issue of preferences. Participants pointed out that WTO rules should not constrain legitimate policy tools available to developing countries for promoting food security, rural development and livelihoods. Specific themes that arose in the SP/SSM context were the need to further understanding and analyse the nature of import surges and their relevance to food-security, rural development and livelihoods; the need to undertake research at the national level to identify possible SP and SSM products; the link between SPs and sensitive products, as well as possible linkages with products of export interest to developing countries and the treatment of SPs and operationalisation of the SSM, including in the case of substitutes. The issue of coherence between regional and WTO negotiations on S&D in general, and SPs/SSM in particular, was also frequently raised.

The two consultations were part of ICTSD's overall strategy on agriculture, which seeks to promote a pro-poor and sustainability-oriented agenda in agricultural trade. Integrating effective and meaningful special and differential treatment modalities in agriculture negotiations is one of the tracks within that strategy. The "Food Security and Rural Development: Linking Local Needs To Global Trade Rules" project focuses on enhancing multi-stakeholder capacity in developing countries to effectively integrate the notion of SPs and SSM in the agriculture trade rules. In addition to presenting expert papers and organising consultations – such as the ones described above – ICTSD will commission case studies in the field to help flesh out the Special Product/Special Safeguard Mechanism concepts.

Further information on the consultations, as well as background papers by experts are available at the ICTSD web portal on agriculture and sustainable development in the international trading system, located at www.agtradepolicy.org.

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

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

BRIDGES regional editions:

PUNENTES

entre el Comercio y el Desarrollo Sostenible

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

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

PONTES

entro o Comércio e o Desenvolvimento Sustentável

Co-publishers: Fundação Getúlio Vargas, São Paulo
Web: <http://www.edesp.edu.br>
CERBI, Rio de Janeiro, Brazil

Web: <http://www.cerbi.org.br>

PASSERELLES

entre le commerce et le développement durable

Co-publisher: ENDA – Tiers Monde, Dakar, Senegal
Web: <http://www.enda.sn>

Other ICTSD periodicals:

BRIDGES Weekly Trade News Digest

A weekly electronic news service on trade, sustainable development and the WTO.
Editor: Malena Sell, msell@ictsd.ch

BRIDGES BioRes

Co-publisher: IUCN – The World Conservation Union
A bi-weekly electronic news service on trade, sustainable development and biological resources.
Editor: Heike Baumüller, hbaumuller@ictsd.ch

TRADE NEGOTIATION INSIGHTS

Co-publisher: ECDPM
Bi-monthly publication with a particular focus on Africa and ACP countries, the multilateral WTO negotiations and the Cotonou process.
Editors: Yvonne Apea, Christophe Bellman and Sanoussi Bilal; yapea@ictsd.ch

ECLAIRAGE SUR LES NEGOCIATIONS

Co-publisher: ECDPM
Publication bi-mensuelle sur les enjeux des négociations multilatérales à l'OMC et le processus de Cotonou pour les pays d'Afrique et ACP.
Rédaction: Yvonne Apea, Christophe Bellman et Sanoussi Bilal; yapea@ictsd.ch

PASSERELLES SYNTHESE MENSUELLE

Co-publisher: ENDA – Tiers Monde
Publication électronique mensuelle sur les questions de commerce et développement durable d'importance particulière à l'Afrique.
Rédacteur: El Hadji Diouf, ediouf@ictsd.ch

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

Meetings of WTO Bodies*

Nov. 8-9	Negotiating Group on Non-agricultural Market Access (NAMA), informal session on 11 Nov.
Nov. 10	Working Group on Trade and Transfer of Technology
Nov. 11	Council for Trade in Goods
Nov. 15-19	Committee on Agriculture Special Session*
Nov. 16	Committee on Trade and Development
Nov. 22-25	Services Meeting
Nov. 25	Council for Trade in Goods
Nov. 25-26	Dispute Settlement Body Special Session*
Nov. 29	Council for Trade in Services Special Session*
Nov. 30	Council for TRIPs Special Session*, followed by a regular session 1-2 December.
Dec. 9-10	Working Group on Trade, Debt and Finance
Dec. 13-14	General Council
Dec. 13-17	Committee on Agriculture Special Session*

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

Other Meetings

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/tk/en/
Nov. 17-21 Geneva	First Meeting of the Conference of the Parties to the Rotterdam Convention http://www.pic.int
Nov. 17-25 Bangkok	Third IUCN World Conservation Congress http://www.iucn.org
Nov. 22-26 Prague	Meeting of the Parties to the Montreal Protocol http://www.unep.org/ozone/Meeting_Documents/mop/16mop/16mop.a
Nov. 29-30 Vientiane	Tenth ASEAN Summit http://www.aseansec.org/16474.htm
6-17 Dec. Buenos Aires	Tenth Conference of the Parties to the UN Framework Convention on Climate Change http://www.unfccc.int/cop10/index.html

Selected Documents Circulated at the WTO

Comm. on Trade and Environment. 7 October 2004. Proposed Initial List of Environmental Goods. Submission by Taiwan (TN/TE/W/44)

Dispute Settlement. 15 October 2004. European Communities – Export Subsidies on Sugar. Report of the Panel (WT/DS265/R)

Negotiating Group on Rules. 27 September 2004. Proposal on Fisheries Subsidies. Paper by Japan (TN/RL/W/159)

WTO. 25 October 2004. International Trade Statistics. WTO. Geneva

Other Selected Resources

Amani, Haidari K.R. September 2004. Critical Issues on Agricultural Trade – WTO: What does Africa want from agriculture negotiations? Trade Law Centre for Southern Africa. Stellenbosch

Bhattasali, Deepak; Li, Shantong and Martin, Will (eds.). China and the WTO – Accession, Policy Reform and Poverty Reduction Strategies. World Bank/Oxford University Press. Washington

Bilal, Sanussi and Laporte, Geert. September 2004. How Did David Prepare to Talk to Goliath? South Africa's experience in trade negotiations with the EU. ECDPM. Maastricht

Dunlop, Adam; van Hove, Kathleen and Szepesi, Stefan. September 2004. Organising Trade Negotiating Capacity at the Regional Level. ECDPM. Maastricht

Economic Commission for Africa. September 2004. Economic Report on Africa 2004 – Unlocking Africa's Trade Potential. ECA. Addis Ababa

Gallagher, Kevin P. 2004. Free Trade and the Environment: Mexico, NAFTA, and Beyond. Stanford University Press. Stanford

Jaffe, Adam B. and Lerner, Josh. 2004. Innovation and Its Discontents: How our broken patent system is endangering innovation and progress, and what to do about it. Princeton University Press. Princeton

OECD. August 2004. Biological Resource Management: Challenges and risks of genetically engineered organisms. OECD. Paris

OECD. 2004. Fish Piracy: Combating illegal, unreported and unregulated fishing. OECD. Paris

International Food & Agriculture Policy Council. 15 September 2004. A New Approach to Special and Differential Treatment. <http://www.agritrade.org/Publications/Position%20Papers/13%20SND.pdf>

Reeve, Rosalind. September 2004. The CITES Treaty and Compliance: Progress or jeopardy? Chatham House Briefing Paper. London

UN Conference on Trade and Development. 2004. Beyond Conventional Wisdom in Development Policy: An intellectual history of UNCTAD 1964-2004. UNCTAD. Geneva

