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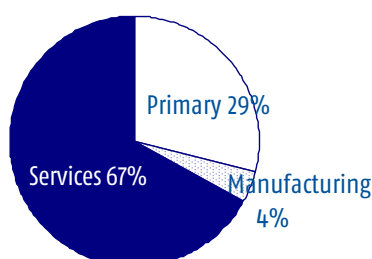
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## Facts and Figures

- In the early 1970s, services accounted for only one-quarter of global foreign direct investment (FDI) stock. In 1990 this share was less than half; and by 2002 it had risen to about 60 percent, or an estimated US\$4 trillion.
- The services sector is now the destination of two-thirds of outward FDI (see figure below). The US, the EU and Japan hold the vast majority of this stock, but developing countries' share has risen from just one percent in 1990 to ten percent in 2002.
- In dollar terms, China was the second-largest recipient of FDI flows in 2002/2003. Five other developing countries (including Hong Kong) were among the top 20 recipients.

Outward FDI Stock in 2002



Source: *World Investment Report*. UNCTAD, 2004. Data for 2002 or latest year available.

## Africa Calls for Action on Public Health

African countries created a stir in early December by proposing an amendment to the WTO's intellectual property rules in order to facilitate poor countries' access to generic medicines.

The proposal was a logical next step for the African Group, which not only brought the issue of public health to the WTO agenda in the run-up to the Doha Ministerial Conference, but also represents a region burdened with extraordinary health challenges. With more than 35 percent of the population HIV positive in the worst affected countries, Africa has by far the greatest incidence of AIDS in the world. More than 90 percent of malaria deaths worldwide occur in the region, where the disease is the leading cause of mortality of children under five. Sub-Saharan Africa also has the world's highest percentage of tuberculosis sufferers, as well as the highest TB death rate. Meanwhile, the most efficient AIDS medicines will remain under patent for years to come, as will new combination drugs for malaria (about 25 times as expensive as off-patent chloroquine). Treatment for multi-drug resistant tuberculosis would require 50 times the means currently employed to fight the disease.

### TRIPS and Public Health

The Declaration on TRIPS and Public Health adopted in Doha confirmed that WTO Members had the right to issue 'compulsory licenses' that allow the manufacture of patented drugs even without the consent of the rights holder to address these and other public health crises under the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). However, quite a number of countries lack the reverse engineering skills or manufacturing infrastructure to make production under compulsory license a realistic option. That is why the Declaration mandated the WTO Council for TRIPS to come up with an 'expeditious solution' to the difficulties that countries with insufficient or no manufacturing capacities in the pharmaceutical sector could face in making effective use of compulsory licensing. The problem stems from Article 31 (f) of the TRIPS Agreement, which requires production under compulsory license to be 'predominantly' for the supply of the domestic market.

After arduous negotiations, the General Council adopted on 30 August 2003 a Decision that provided an interim 'solution' to the problem through waiving the export restriction on pharmaceuticals produced under compulsory license. However, its procedural requirements are so stringent that not a single eligible country has notified its intention to use the system as an importer. WTO Members were instructed to prepare an amendment to the TRIPS Agreement "based, where appropriate, on this Decision" to be adopted by mid-2004. This deadline has since been extended until March 2005.

The Decision was accompanied by a Chair's Statement, which offered further reassurance that the system would be used in good faith and "not be an instrument to pursue industrial or commercial policy objectives." Disagreement over the Statement's legal status has been one of the points holding up progress on the amendment.

The August 2003 documents focus strongly on preventing trade diversion. A host of provisions – ranging from distinctive packaging requirements to monitoring exports and imports – aim to ensure that pharmaceuticals produced under compulsory license in country A for export to country B are in fact consumed in country B and not diverted to other markets where they could displace trade in brandname drugs under patent.

*Continued on page 2*

# Bridges

## Between Trade and Sustainable Development

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## Main Features of the Proposed Amendment

The African proposal (IP/C/W/437) argues that a number of the provisions in the Decision would be either “redundant in the context of an amendment” or would be otherwise served by existing TRIPS provisions on compulsory licenses and enforcement. It also says that the ‘appropriateness’ of the Decision’s components to be reflected in an amendment “should be understood to mean those elements [...] that are necessary to ensure that the amendment is legally predictable, secure and economically and socially sustainable.”

Most notably, the African amendment proposal cuts out all references to ‘trade diversion’ and, with the exception of a paragraph on distinctive packaging, to measures that Members using the system must take to avoid it.

Also gone is an entire section on notification obligations, including the requirement that the importing country must notify the name of the drug and the quantity it expects to need, as well as confirm that it has established a lack of domestic manufacturing capacity. Detailed notification obligations for manufacturing/exporting companies and governments are also dropped. In contrast, such provisions are at the heart of patent law changes adopted or planned by a handful of WTO Members to allow the export of pharmaceuticals under the system established by the Decision. The EU, for instance, is proposing even more notification and control measures than the Decision requires (see page 21).

Other omitted provisions include: procedures through which importing countries must certify their lack of manufacturing capacity (Nigeria argued orally that any Member notifying its intention to use the system would clearly and explicitly indicate that it lacks manufacturing capacity); measures importers must take to avoid trade diversion; and the requirement that the TRIPS Council must conduct annual reviews of the functioning of the system. The proposed amendment makes no reference to countries that have opted out of using the system as importers, although these were mentioned in a footnote to the 30 August Decision and further elaborated in the Chair’s Statement (see page 21).

## Few Outright Supporters

Reactions to the African proposal ranged from the cautious to the decidedly cool, with most developed and some developing countries insisting that any amendment must be a ‘technical translation’ of the Decision, and should also reflect the Chair’s Statement.

WTO Members broadly holding this view included Australia, Canada, the EU, Hong Kong, Japan, Korea, New Zealand, Norway, Switzerland, Taiwan, Turkey and the US. Their criticism of the African proposal focused on its having dropped many of the Decision’s provisions and not even mentioning the Chair’s Statement. Australia, Canada, the EU, Japan and the US were among those stressing that the original Decision represented a delicate balance and that negotiations should not be reopened on its content. Canada, the EU, Norway and Switzerland also noted that their (either planned or already adopted) legislative changes were based on the assumption that a permanent amendment would not change the waiver. The US expressed doubts on whether the amendment would help the TRIPS Council reach its March 2005 deadline, while the EU described it as “not a promising way forward”.

Nigeria and Kenya argued in defence that the provisions omitted were ‘superfluous’, and that the Statement had served its purpose in rallying consensus on the Decision and therefore did not need to be repeated. The US retorted that passages that some might consider to be superfluous were ‘essential’ to others. The Chair’s Statement was key to ending US pharmaceutical industry’s opposition to the 30 August Decision.

The Philippines was the only non-African country to formally support the proposal. Many developing countries, including Brazil and India, welcomed the move from procedure to substance but indicated that they needed more time to study the proposal in detail. They also supported Malaysia’s call for consultations on the amendment led by the TRIPS Council Chair Tony Miller. These are expected to take place in the next few weeks.

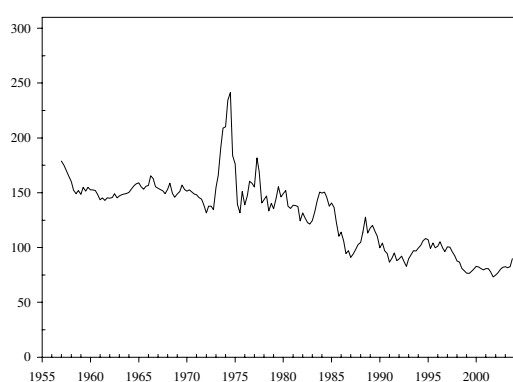
# Tropical Commodities and the WTO

Duncan Green

Considering its huge importance to many of the poorest countries in the world, the crisis in tropical agricultural commodities has so far received remarkably little attention in the WTO. This article sets out the principal issues involved, and discusses potential roles for the WTO.

The failure to tackle the link between agricultural commodity dependence and extreme poverty has been dubbed a 'conspiracy of silence' by President Chirac, and described as the 'major sin of omission' in current international efforts to reduce poverty (UNCTAD 2004). The crisis has spurred requests for WTO action from a number of African countries. The recent cotton and sugar dispute settlement rulings also spill over into the commodities issue, and tropical products are specifically mentioned in the July 2004 framework agreement. Beyond the WTO, the EU has launched an 'Action Plan on Commodities' and UNCTAD has pressed hard for greater attention to the plight of commodity producers.

## Real prices of non-fuel primary commodities, 1957–2003 (1995=100)



Source: IMF, International Financial Statistics (2004).

As this graph shows, the market for tropical agricultural commodities has shown a pattern of long-term price falls and short-term price instability over the past few decades. Agricultural production has increased due to improved technology, falling transport costs, new entrants (e.g. Vietnamese coffee), short-sighted encouragement from the international financial institutions, (also a factor beyond Vietnam's move into coffee) and a general fall in border

protection. Demand has, however, lagged behind supply as population growth has slowed and the number of substitutes has expanded. While declining and volatile prices are unfavourable conditions for any commodity-producing country, they have particularly adverse effects on agricultural commodity-dependent developing countries (ACDDCs), which often rely on revenue gained from exporting only one or two specific agricultural commodities.

In many ACDDCs the producers and workers directly affected by agricultural commodity exports are among the poorest of the population. Cocoa, for example, provides livelihoods for 14 million rural workers on big plantations and for a further 2.5 million small producers. Coffee provides income for 25 million small farmers. Price falls or fluctuations put exceptional strains on efforts to reduce poverty. In Peru, Colombia and Ecuador, farmers are diversifying into coca and poppies in the absence of any viable legal alternative. Finally, sharp falls in prices can threaten the ability of Heavily Indebted Poor Countries (HIPC) to exit from unsustainable debt (DTI, 2004).

These difficulties have been compounded by changes in the nature of the commodities trade. Over the last 20 years, many of the classical instruments for public intervention in agricultural commodities have disappeared as structural adjustment programmes have cut government spending and reduced intervention in markets, often at the behest of the IMF and World Bank. At the international level, a generation of International Commodity Agreements (ICAs) set up in the 1970s initially succeeded partially in both raising and stabilising prices, but subsequently collapsed, usually after the withdrawal of consuming countries (the ICAs included both producers and consumers).

Moreover, the international markets for agricultural commodities have become increasingly concentrated. In coffee and cocoa, four to five branded processing companies jointly control 60–70 percent of world production (Gibbon, 2003) and most of its processing at the end of

the food-chain. The concentration has combined with the withdrawal of the state and the atomisation of producer organisations to weaken producers' bargaining power. Even where they still exist, national authorities of any specific commodity often fail to represent the poorest farmers.

## Possible Remedies

Opinions are divided over whether the recent changes in the commodity sector are irreversible, in which case the best policy may be to try and manage price decline, smooth volatility and help countries and producers exit from commodity dependence. Others, such as UNCTAD and Oxfam, are more sanguine about the prospects for reversing price declines by reintroducing aspects of supply management at both national and international levels, tackling market concentration and encouraging the formation of effective producer organisations.

## Diversification

In the long run, diversifying into other activities often provides the best way to reduce dependence on agricultural commodities. There are three possible paths to diversification: horizontal diversification into alternative crops; vertical diversification into agricultural products and processes that capture a higher proportion of the value chain; and, diversification into non-agricultural activities such as manufactures and services.

However, diversification is a particularly intractable issue for ACDDCs, which are to some extent a residual category of those weak and vulnerable economies that have been unable to diversify in the past. Advocates of diversification are seldom able to identify what products or sectors countries should diversify into, leading critics to deride the exhortations of 'let them diversify' as akin to Marie Antoinette's 'let them eat cake' advice to the starving French peasantry.

*Continued on page 4*

### *The role of the state*

ACDDCs need to explore an enhanced role for the state, in contrast to the generally deregulatory and market-based approaches of the 1980s and 90s. Here, the challenge is how to ensure that the state does not replicate past mistakes, but equips poor producers to engage with the market on more beneficial terms.

Rather than get involved directly in production, successful Latin American initiatives in the 1980s/90s focused on providing services such as acting as an information point for new entrants and new buyers. Governments in Asia and Africa were more active. UNCTAD (2003) cites the example of Malaysia's levy on palm oil production, imposed in times of high prices and then used in periods of low prices to subsidise the use of palm oil for electricity generation. In West Africa studies by the French government (Gergely, 2004) have concluded that the remaining state marketing boards (*caisses de stabilisation*) offer a more effective means to protect small cotton producers from price volatility than new market-based risk management approaches.

If donors are to revisit the issue of state marketing boards, they need to consider the increasing pressures on state trading enterprises (STEs) within the WTO. Although these are largely targeted at developed country STEs, such as the Canadian Wheat Board, any move towards rules that stifle a new generation of more effective state interventions in ACDDCs may have disastrous consequences for the poor. The August 2004 Framework Agreement is unclear in this respect, calling for disciplines on government subsidies to STEs, but according special and differential treatment to developing country STEs in order to 'preserve domestic consumer price stability and to ensure food security' (Annex A, paragraph 25). Although this does not seem to cover other crucial roles of STEs in ACDDCs, such as stabilising prices for farmers (rather than consumers), exporting STEs can play a crucial role in negotiating better prices with over-powerful TNCs such as Nestle and Sara Lee.

### *Producer organisations*

Absent the state, strengthening the role of producers' and workers' organisations be-

comes central to improving the outcomes for small farmers and poor farm labourers. In cotton, post-liberalisation structures fall into three groups: geographical monopolies (Ghana, Mozambique), systems with numerous players (Tanzania, Uganda) and oligopolies (Zimbabwe, Zambia). Gibbon (2003) concludes that the last category produces the best outcomes, by combining the positive benefits of competition with a scale that can deliver price stabilisation and other benefits and that 'rebuilding local-level economies of scale is becoming a strategic issue in the wake of increasing buyer-drivenness on a global plane on the one hand, and the fragmentation that has frequently followed market liberalisation on the other.'

### *Revisiting supply management*

There is increased interest among the academic community, NGOs and some developing country governments in revisiting the feasibility of international supply management. International Commodity Arrangements (ICAs) are specifically permitted under the GATT, where they are subject to Article XX(h) of the GATT, which incorporates the Havana Charter of 1947. The Charter requires that ICAs shall include provisions for adequate participation of consumer and exporter countries. This may pose an obstacle in cases when producer-only ICAs (as in the case of OPEC) might be preferable.

Advocates of ICAs cite the qualified success of the International Coffee Agreement, compared to events since its demise. Oxfam (2004) has proposed a high-level review of the issue, involving UNCTAD, the WTO and the Common Fund for Commodities (CFC). For coffee, Oxfam proposes that a large proportion of export supply be removed from the market. A new generation of supply management agreements would also have to involve farmers' associations and small-scale producers' organisations to a far higher degree than the previous generation of ICAs. On each particular commodity, several multi-stakeholder initiatives are also under development. The Sustainability Committee under the umbrella of the international Coffee Organisation provides one interesting example, bringing together all actors involved in the coffee chain.

The main obstacles to such strategies are likely to be political. Without the assent of the consuming developed country members, international supply management is extremely difficult. Winning that assent may involve demonstrating that inadequate farm income can be linked to pressure to increase narcotic drug production, political and economic instability, and a shrinking market for goods and services from developed countries – all of which are of significant concern to the main consuming countries of agricultural commodities. In addition, there is likely to be resistance to such schemes from other competitive developing country producers, who would oppose controls on their production.

### *Proposals to reduce the adverse impact of market concentration*

A number of measures have been proposed that could help reduce market concentration and thereby increase competition. Within WTO negotiations a separate debate is under way on the issue of developing multilateral rules for competition policy. In their communication to the WTO (2003), Tanzania, Uganda and Kenya have requested the WTO to examine steps to deal with anti-competitive behaviour of large foreign firms and to improve the bargaining position of small producers vis-à-vis these firms.

However, competition policy was one of the 'Singapore Issues' initially proposed by the EU and Japan, but abandoned in the August framework agreement. Many developing countries see the WTO as an inappropriate forum for such a competition agreement, arguing that the agenda there is more likely to be driven by transnational corporations' desire for improved market access than by a concern to improve development outcomes. Some authors and NGOs believe a pro-development competition agreement is more likely to be achieved elsewhere in the UN system. They do, however see other roles for the WTO. Current WTO rules require governments to complete questionnaires about any state trading enterprises operating in their country. That approach could be expanded to include any company, public or private, with more than a given percentage of the import or export market. Such improved transparency would help in checking restrictive business practices at the international level.



## What Role for the WTO?

Part IV of GATT 1994 provides a comprehensive legal basis for dealing with the commodity crisis in the WTO. Article XXXVI recognises ACDDC dependence, and the importance of expanding and stabilising their export earnings. Article XXXVIII further obliges Members to develop a joint action plan to achieve the objectives of Part IV, including 'measures designed to stabilise and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products'. This has not happened.

Oxfam has in the past called for a Trade and Commodities working group at the WTO, which would address these issues in a comprehensive manner. Currently, however, there is little prospect of such a group appearing. Instead, some aspects of the commodities issue have been dealt with piecemeal, while others have been sidelined.

The most determined drive for a comprehensive approach to the issue has come from a group of East African countries (Kenya, Uganda and Tanzania), in two submissions to the Committee on Trade and Development in May 2003 (WT/COMTD/W/113) and 2004 (WT/COMTD/W/130). For reasons of space, it is not possible to outline their contents here, but they provide the best summary of a coherent developing country position on commodities in the WTO, touching on issues such as supply management, the impact of structural adjustment and market concentration (the two papers were discussed in Bridges Year 8 No.3, page 9 and No.5, page 11).

Aspects of the commodities issue have also surfaced in other guises – for example the sugar dispute demonstrates the difficulties tropical commodities face when they compete with a northern rival (in this case sugar cane v beet). The cotton dispute illustrates the impact of northern subsidies to 'competing' commodities (produced in both developed and developing countries). The banana dispute shows the damage that can be caused when preferences are removed without adequate assistance to preference- and commodity-dependent countries struggling to adjust to liberalised markets and lower prices for their products. Tariff escalation, an issue of great concern to ACDDCs trying to move into higher value-added products, is being dealt with in the negotiations on agriculture and non-agricultural market access (NAMA), while the Trade, Debt and Finance Working Group established in Doha has highlighted in its work programme the link between commodity prices and indebtedness.

At a WTO-wide level, the commodity crisis was recognised in the draft text for the Cancun ministerial, which instructed the Committee on Trade and Development to work on 'the dependence of many developing countries on a few commodities and the problems created by long term and sharp fluctuations in prices of these commodities'. That agreement fell with the collapse of the ministerial (although this paragraph was never disputed), and the subsequent July 2004 Framework Agreement gave somewhat less comprehensive recognition to the issue.

The paragraph on 'Other Development Issues' states that 'special attention shall be given to the specific trade and development related needs and concerns of developing countries, including... food security, rural development, livelihood, preferences, *commodities* and net food imports' [author's italics]. Paragraph 43 of Annex A, on the agriculture negotiations, also calls for 'full implementation of the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products.' The insistence on confining the discussion to liberalisation, rather than other aspects such as supply management, may prove a significant reverse in ensuring that the WTO plays its part in finding solutions to the commodity crisis.

One of the difficulties of most international commodity initiatives is that small-scale producers are not adequately represented at the national and international levels. The WTO, the EU and other international bodies tend to listen to agribusiness, which in most cases is a strong ally of the TNCs, rather than of small-scale producers. Organising small farmers to express a louder voice in the international arena is an essential part of any long-term, durable solution to the commodity crisis.

In response both to the rising pressure from developing countries in the WTO, and the broader rekindling of interest in the commodities issue, the South Centre, an inter-governmental organisation based in Geneva working with developing countries, has initiated a work programme on commodities and the WTO that should help highlight the issue during the remainder of the Doha round.

As with many other concerns of developing countries, when it comes to the commodities crisis, the WTO appears so far to be long on promises but short on delivery. Yet for many of the poorest countries in the world, the collapse and volatility of commodity prices is *the* most pressing issue. Until WTO members find a way to use the multilateral trading system to address it, talk of a 'Development Agenda' will ring hollow.

*Duncan Green is Head of Research at Oxfam GB. This article draws on Ian Gillson, Duncan Green, Nilah Pandian and Steve Wiggins, 'Rethinking Tropical Agricultural Commodities', available online at <http://dfid-agriculture-consultation.nri.org/summaries/wp10.pdf>*

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### Disputes in Brief

- **Mexico – HFCS** Mexico has requested the panel hearing the US complaint on its tax on high fructose corn sugar (HFCS) to send the dispute to a NAFTA tribunal instead of ruling on the case. The US claims that the 20 percent tax on soft drinks sweetened with HFCS violates the GATT's national treatment principle as corn sugar is a directly substitutable 'like product' to cane sugar, which is grown in Mexico and exempt of the tax (Bridges Year 8, No.6, page 12). Mexico regards the HFCS tax as a means to "level the playing field" in the face of US refusal to accept NAFTA-mandated imports of Mexican sugar equivalent to the amount of cane sugar displaced by cheaper American corn syrup. Mexico referred the case to NAFTA dispute settlement in August 2000, but the US has repeatedly blocked the appointment of panelist to hear the complaint. The WTO panel is unlikely to grant Mexico's request, however, as the Dispute Settlement Understanding limits its remit to assessing the compatibility of trade measures with WTO rules.
- **US – Byrd** On 25 November, the Dispute Settlement Body granted seven countries the right to start applying trade sanctions to a wide variety of US exports due to the latter's failure to repeal the Byrd Amendment, under which anti-dumping duties are distributed to petitioning industries (Bridges Year 8 No.8, page 13). The requests were made by Brazil, Canada, the EU, India, Japan, Korea and Mexico. Chile, the eighth co-complainant, declined to take retaliatory action, while the EU said the sanctions would probably enter into force early next year if the amendment is not repealed by then.
- **US – FSC** On 5 November, the EU requested the WTO to examine whether the US JOBS Act complies with panel and Appellate Body rulings condemning its predecessors, the Foreign Sales Corporation Act and the Extraterritorial Income Act for providing WTO-illegal export subsidies (for details, see Bridges Year 8 No.8, page 14).

## Beef-Hormones, Cotton Are Back

The EU has challenged the 'unilateral decision' of the US and Canada to maintain trade sanctions in the beef hormones dispute, and Brazil has filed a counter-appeal in the cotton case.

On 10 November 2004, the EU requested dispute settlement consultations over trade sanctions worth almost US\$125 million a year maintained by the US and Canada as a consequence of their view that the EU still has not complied with the Appellate Body's adverse 1998 ruling in the *Beef Hormones* dispute. The AB ruled that the EU's temporary import ban on beef treated with growth hormones was not backed by a scientific risk assessment showing it was necessary to protect human or animal health (the use of growth hormones in meat cattle is also prohibited in the EU). After the ruling, the EU conducted more scientific studies, based on which a new regulation entered into force on 14 October 2003 making the ban permanent for one of the hormones and indefinitely prolonging the temporary ban for five others (Bridges Year 7 No.7, page 13). At a DSB meeting on 7 November 2003, the US and Canada flatly refused to lift the sanctions, arguing that as there was nothing new in the studies presented to justify the regulation, they did not consider the EU in compliance with the ruling (Bridges Year 7 No.8, page 12).

In particular, the US and Canada have been extremely critical of the EU's permanently banning the hormone oestradiol 17 $\beta$  found to be a 'complete carcinogen'. Richard Mills, a spokesman for the US Trade Representative said the hormone also occurred naturally and that the levels the EU was concerned about were "50 times less than the acceptable daily intake and they represent a tiny fraction of what occurs naturally in an egg or one glass of milk." Andrea Lanthier, a spokeswoman for Canadian Trade Minister Jim Peterson also said there was "no scientific basis for the EU's hormone ban".

The two complainants refused to request a panel to assess whether the EU's Regulation 2003/74/EC amounted to compliance with WTO rulings and kept the sanctions in place. The EU thus initiated an entirely new dispute (WT/DS320) charging that the punitive tariffs now amounted to an illegal 'unilateral decision' to retaliate. Protesting this move, US Senator Max Baucus on 18 November wrote a strongly-worded letter to EU Trade Commissioner Pascal Lamy, stating that he was urging Congress to increase the amount of the sanctions due to the hormone regulations now extending to ten new EU members, as well as requesting that the "retaliatory tariffs be rotated among countries and commodities to further motivate EU reform."

### Brazil's Turn to Appeal the Cotton Report

As expected, Brazil has filed a counter-appeal on the September 2004 panel ruling, which found in its favour on most points concerning US government support to upland cotton (Bridges Year 8 No.8, page 13). While the US appealed those findings on 18 October (Bridges Year 8 No.9, page 14), Brazil's counter-suit addresses claims the panel either declined to rule on for 'judicial economy' reasons or found unsupported by evidence. For instance, Brazil challenged the panel's decision not to address all its claims regarding US export credit guarantee programmes' violations of the Agreement on Subsidies and Countervailing Measures (SCM).

The appeal (also questioned the panel's finding that US cotton subsidies did not cause serious prejudice to Brazil's export interests by allowing US cotton producers to increase their world share of cotton exports (although the panel found the subsidies had contributed price suppression). Other Brazilian claims included the finding that the US only had exceeded its export subsidy spending commitments for rice (disregarding similar allegations regarding pork, poultry and vegetable oil), and the assertion that export subsidies provided to the cotton sector through the FSC/ETI Act (see opposite) tax breaks should also have been considered as a *prima facie* violation of WTO rules.

In principle, the Appellate Body should issue its rulings by late January 2005.

## Antigua Wins Gambling Dispute

The November 10 panel ruling on US restrictions on internet gambling underscores both the problem of WTO Members' unequal possibilities to enforce favourable dispute settlement decisions and the pitfalls in taking on broad commitments.

Antigua and Barbuda had charged that the US had scheduled market access commitments in 'other recreational services', including gambling services, under the WTO's General Agreement on Trade in Services (GATS). The panel found that by not having explicitly excluded gambling and betting services, the US had indeed taken on a 'specific commitment' to allow the cross-border supply of such services. The panel ruled that restrictions on several means of supplying gambling services under various federal and state laws violated this commitment, and that foreign internet gambling service providers were treated less favourably than domestic ones in violation of the national treatment principle.

The US had argued that its GATS commitment to lift restrictions in recreational services' other than sports was never intended to open the US market to overseas betting or gambling enterprises, pointing out that even interstate gambling is prohibited by long-standing federal and state laws. Many states do not allow professional gambling at all. The federal government could not have even contemplated, the US asserted, that the internet would eventually make cross-border gambling easy and the authorities' efforts to curb it illegal under the GATS. While sympathising with US arguments about public morals and the importance of fighting organised crime, the panel concluded that the US might well have "inadvertently undertaken specific commitments on gambling and betting services. However, it is not for the panel to second-guess the intentions of the United States at the time the commitment was scheduled. Rather, our role is to interpret and apply the GATS in light of the facts and evidence before us". The panel stressed that it was "well aware of the sensitivities associated with the subject-matter of this dispute," and that it had "not decided that WTO Members [did] not have a right to regulate, including a right to prohibit, gambling and betting activities".

While the US has already announced that it will appeal the report, a senior trade official predicted on 10 November, that the US would probably not change its laws even if the appeal failed. This possibility again highlights the problem of enforcing WTO rulings between unequal players, an issue that developing countries are seeking to address in the ongoing review of dispute settlement rules. What kind of trade sanctions could Antigua and Barbuda (population 76,000) impose that would put enough pressure on the US to comply with the gambling decision? Its market is too small for US exporters to be affected by even prohibitive tariffs, and other avenues of compensation, such as greater market access for other services, are unlikely to make a difference.

The case also illustrates the difficulty of foreseeing the potential implications of scheduled commitments. Other WTO Members may be found to have made similar scheduling errors, particularly in sectors affected by rapid technological change.

Nevertheless, in its bilateral and regional free trade negotiations the US insists on a 'negative list' approach to services, which would mean that all sectors not specifically excluded would be open to cross-boarder trade (this is one the reasons for the delay in concluding an FTA with Southern African countries, see page 16). The GATS uses a 'positive list', under which Members only commit to opening specific sectors. Although this approach is less likely to lead to unforeseen consequences, it is not foolproof, as the inadvertent US commitment to allow cross-boarder gambling under 'other recreational services' clearly demonstrates. With their capacity constraints, developing countries would be even more vulnerable to that type of scheduling error under a negative list approach than under the GATS model.

The panel report on *United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services* (WT/DS285/R) is available on the WTO website.

### Interim Report Out on GIs

An interim panel report on the EU's protection for trademarks and geographical indications (GIs), handed to the parties in the dispute on 16 November, reportedly backed the US' and Australia's central claim that EU Regulation 2081/92 violated TRIPs Article 4, under which WTO Members must accord "immediately and *unconditionally* to the nationals of other Members any advantage [...] that it grants to the national of any other country." The panel agreed with the complainants' claim that in order to benefit from the high level GI protection accorded by Regulation 2018/92, other WTO Members must offer similar protection to GIs registered in the EU. Thus, the advantage granted was not 'unconditional'.

The US and Australia had also complained that the EU allowed protection for GIs that were confusingly similar to existing trademarks. That claim arose largely from the fact that while the US Budweiser trademark is protected in several EU countries, the Czech Republic has entered three of its Czech equivalents the EU's GI registry. The US feared that the Czechs would claim that the GI extended to translated names, such as Budweiser. The EU had argued that provisions preventing trademark holders from blocking the use of names for an EU-registered GI (on the grounds that such names could be confusing) fell under the 'fair use' exception recognised in TRIPs Article 17. According to sources familiar with the ruling, the panel held that 'fair use' protection did not extend to translated names of registered GIs.

In the WTO's Doha Round negotiations, the EU's quest to extend to other GIs the strong protection afforded by TRIPs to wines and spirits has divided Members along 'old world'/'new world' lines, with the former in favour and the latter adamantly opposed. Discussions on implementation concerns have largely been held hostage to this debate. GI extension is also a highly contested topic in the agriculture negotiations. In addition, both the EU and the US have sought to enforce their GI/trademark preferences through regional/bilateral free trade area agreements.



## WTO News in Brief

- **Textiles** Despite a round of consultations, the Goods Council Chair Choi Hyuck has been unable to rally consensus on how the WTO could – or more to the point, whether it should – ease the severe adjustment problems that a number of smaller exporting countries are expected to face once decades-old quota restrictions on textiles and clothing are dismantled at the end of this year. The debate opposes China and India to an almost 50-strong group of developing countries, which are seeking to put the post-quota textiles issue on the WTO agenda, starting with a study on the adjustment costs of quota elimination (Bridges Year 8 No.9, page 1).

Tanzania requested a Secretariat study along similar lines at the October meeting of the Sub-committee on Least-developed Countries. Brazil, China Hong Kong and India opposed it, but nevertheless consented to forward the request to their governments.

- **Implementation Concerns** On 4 November, the Committee on Subsidies and Countervailing Measures extended until end-2005 the phase-out period for 19 developing countries' subsidy programmes related to investment incentives, tax breaks, export processing zones and other tax or duty relief concessions (Bridges Year 6 No.1, page 10). Responding to another implementation concern, the Committee on Sanitary and Phytosanitary Measures has approved a decision (G/SPS/33), which sets out a Procedure to Enhance the Transparency of Special and Differential Treatment in Favour of Developing Countries.
- **Trade Facilitation** The new Negotiating Group on Trade Facilitation held its first meeting on 15 November. The negotiations will aim at clarifying and improving existing trade facilitation provisions under the GATT, technical assistance, S&D for developing countries, and the cost implications of the future treaty. Five negotiating sessions have been scheduled until late June 2005, with the first one taking place on 7-9 February.

## CTD: Focus on S&amp;D, Small Economies

Despite a less antagonistic atmosphere in meetings held in November, Members' positions on special and differential treatment, or vulnerable economies have not fundamentally changed.

In November, WTO Members requested the Chair of the Committee on Trade and Development (CTD) to hold further consultations in order to bridge continuing differences with regard to the process and substance of negotiations on improving the WTO's special and differential treatment provisions for developing countries. Members agreed that the underlying development challenges should be addressed when considering the 28 agreement-specific recommendations on which consensus exists in principle, and the 15 proposals on which agreement has proved the hardest to find. Since Doha, the CTD has already missed three deadlines for proposing 'clear recommendations' to the General Council on S&D.

## What Treatment for Small Economies?

The CTD also agreed in early November that its work on small economies would be included in the General Council's report to the Hong Kong Ministerial Conference in December 2005. Para. 35 of the Doha Declaration established a CTD work programme in this area, specifying that the objective was to "frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system". Proposals so far have focused on issues such as market access, the flexibilities necessary to secure benefits from multilateral trade and measures to address constraints, disadvantages and vulnerabilities.

On behalf of a group of small economies, Barbados noted that the first two components of the Doha mandate, namely the identification of issues or problems constraining the trade of small economies and the framing of responses or solutions to these constraints, had been completed. However, the third component, the formulation of recommendations for action, was outstanding and must be completed before Hong Kong. Saint Lucia and the US warned against duplication of work, especially with regard to S&D. They said that only the non-negotiation issues and problems affecting small economies should be addressed by the dedicated session. Paraguay noted that the negotiations were crucial for landlocked countries. It also expressed concern regarding a decision that certain aspects of issues from past dedicated sessions would be relegated to other negotiating bodies, such as those on agriculture and industrial tariffs.

## The sub-category question

Underlying the discussions is the question of the status of small economies within WTO rules. Although the Doha Declaration expressly states that a sub-category is not to be created, several landlocked, small island and/or geographically isolated WTO Members continue to argue that their particular problems (distance, transportation difficulties and vulnerability) need to be specifically addressed by WTO rules. At the meeting, the Chair suggested that the Doha mandate was 'conflictual' in that it forbids the creation of a new sub-category while calling for action on the needs of small economies. Canada, the EU, Japan and the US have pointed to difficulties in specifying who would benefit from provisions for small economies without engaging in constructive dialogue on how to define and reach the group of countries who need such provisions. One option small economies hope to use is a 'characteristic-specific' approach to link the needs of small economies with action-oriented provisions in the WTO and thereby surmount the sub-category issue. Differentiation amongst developing countries is a contentious issue within the WTO, including in the review of S&D provisions.

## Approval of Technical Assistance Plan Hostage to Textiles

Reflecting deep divisions in discussions related to textiles and clothing within the Council or Trade in Goods (see sidebar), the 2005 Technical Assistance and Training Plan still has not been approved by the CTD. China maintains that with the elimination of the Agreement on Textiles and Clothing in December, and given that technical assistance (TA) is generally provided on topics that are either referred to in the WTO Agreements or the Doha Declaration, there is no reason to give assistance to textiles and clothing. Brazil supports this position, perhaps due to concern that TA provided on this non-Doha-mandated issue could open the TA scope to other non-mandated areas such as three rejected Singapore issues.



# Agriculture: Tropical Products, Green Box & Export Credits

Meeting in the third week of November, WTO negotiators on agriculture for the first time addressed in any depth questions related to trade in tropical products and preference erosion, as well proceeded on the clarification of other issues left vague in the July framework text.

Costa Rica, on behalf of Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and Venezuela, presented a proposal on tropical products and products providing an alternative to illicit narcotic crops. Costa Rica noted that the issue was firmly grounded in the July framework, which recognised that the implementation of the long-standing commitment to achieve “the fullest liberalisation of trade” in such products was long overdue and would be effectively addressed in the Doha Round negotiations. To achieve this objective, Costa Rica proposed cutting tariffs on these products, removing tariff peaks, abolishing quotas, addressing non-tariff barriers and eliminating preferential trading arrangements. The submission further noted that Members should not be able to designate tropical goods as ‘sensitive products’ in the overall agriculture negotiations.

Latin American countries in particular responded positively to the proposal, with Peru pointing out that it showed how special and differential treatment could be operationalised in a proactive way (as opposed to just granting developing countries longer time periods for implementing agreements). Jamaica and Mauritius reacted against the non-discrimination call, saying long-standing preferences would have to be taken into account (as the July framework also calls for just after the paragraph on liberalising trade in tropical products).

## Domestic Support: Green Box

Members held ‘second reading’ technical consultations on issues first addressed in October (Bridges Year 8 No.8, page 9). The most political of these topics was the development of new criteria for the Green Box, which covers domestic support programmes that are considered at the most minimally trade-distorting. Green Box support is currently unlimited and free of reduction commitments. The main area of agreement was that the objective of the ‘review and clarification’ mandated in the July framework agreement was to ensure that Green Box programmes remained truly non-distortive (para. 1 of Annex 2 of the Agriculture Agreement). However, opinions diverged on whether this meant simply a ‘health checkup’ (the EU’s analogy and preferred view) or actual reforms. The G-20 and Cairns Group members want to see new disciplines on a number of programmes currently in the Green Box, particularly direct income payments and other programmes that encourage farmers to produce more because the supports are large enough to cover various costs and risks or if they are designed in a way that encourages farmers to expect more subsidies in the future. Those on the ‘health checkup’ side (EU and the G-10) stressed the need to preserve the Green Box as a tool for moving away from other more distorting subsidies (Amber and Blue Box supports).

## Export Competition: Credits, guarantees and insurance

According to trade sources, technical discussions on export credits were ‘constructive and useful’. As the July framework agreement already limits the repayment period of such credits to 180 days at most, delegates concentrated on disciplines to ensure that permitted credit does not contain hidden subsidies. Among the topics discussed: minimum cash payments, interest payments, minimum interest rates, minimum premium requirements, risk sharing, self-financing of credit programmes, foreign exchange risk and the period of validity for export finance offers. Most speakers agreed that the annex of the 2003 draft ‘modalities’ (the ‘Harbinson text’) was a good start, although some adjustments would be needed to reflect the fact that credit is now limited to no more than 180 days. Members also agreed to use LIBOR (the London Inter-bank Offered Rate) as a benchmark for a minimal interest rate, with an additional percentage to be negotiated to reflect commercial risk. However, there was disagreement over special treatment for developing countries, with some Members maintaining that leeway should be given for poorer countries, particularly if they are net food-importers. The EU and some others questioned whether credit (which increases debt), was the best way to deal with this, or whether, for example, concessionary pricing might be more appropriate.

## Tariff quota administration and expansion:

The G-20 group of developing countries called for non-discriminatory methods that are simple, practical, predictable and transparent, and do not hinder commercial transactions. Switzerland, which belongs to the G-10 group of mostly industrial net food importers, agreed on the need for transparency and predictability, but stressed that the quotas should be seen as market access opportunities rather than obstacles to trade. This question is at the heart of the debates on the end of the quota regime in textiles, and on the EU’s banana tariff (see page 11). Technical consideration of quota expansion focused on using a percentage of domestic consumption as the base for expansion, with differences over the formula to use.

## Product-specific Amber Box caps:

Members disagreed on the base period for setting the caps and whether the approach should be uniform for all. The G-20, the G-10 (minus Japan) and New Zealand proposed basing product-specific Amber Box caps on actual supports. Japan said that, to be consistent with other pillars, the base should be the final bound rate in existing Amber Box reduction commitments. Canada argued that some kind of harmonisation (narrowing the gaps by bigger cuts on higher supports) should be applied. Discussions on the base period for domestic support commitments was brief. The G-20 said its members were still looking at the question.

## Ad valorem equivalents:

According to the July framework, specific duties based on volume must be converted to tariffs based on value. Most Members preferred a ‘unit price’ method (i.e. comparing the dollar value of a specific duty with a reference price) over a ‘revenue method’ (i.e. total tax revenue over a period compared with total value of imports over the same period). Although problems persist about choosing the price and the period, as well as the availability of appropriate data, the most controversial issue was left aside: whether all tariffs should be bound as *ad valorem* rates.

*Continued on page 10*

**Exporting State Trading Enterprises:** All Members agreed that the objective was to find disciplines to ensure there are no subsidies. The issues discussed covered the basic approach to disciplines; definitions of entities to be covered; specifying which practices distort trade and how to eliminate these (generally agreed that this would parallel phasing out export subsidies); transparency; future use of monopoly power; and special treatment for developing countries.

**Food Aid:** There was broad agreement that the objective was to avoid displacing commercial transactions, i.e. to provide food aid when commercial transactions are not possible; and that bona fide food aid should not be obstructed (although there was some discussion of the meaning of 'bona fide'). Norway suggested that this might logically mean that food aid could only be given to buy the food locally, regionally or globally. Among the other topics discussed were the role of international organisations in the disciplines, whether to provide food in fully grant form, whether food aid could be sold to raise funds for development the prohibition of tied food aid, not allowing food aid to be re-exported (most agreed to this).

### **Cotton Sub-committee Created**

The November meeting established a Sub-Committee on Cotton to monitor progress on the July framework agreement mandate to address cotton "ambitiously, expeditiously, and specifically, within the agriculture negotiations". The Sub-committee's work is to encompass all trade-distorting policies affecting the cotton sector in all three pillars of market access, domestic support and export competition.

### **Process Issues**

The G-20 complained that too many topics had been announced at too short notice. Backed by Australia and some other Cairns Group members, the G-20 also said it was too soon to discuss topics 'of interest but not agreed', such as geographical indications (GIs) proposed for December. The EU, which is the main *demandeur* of negotiations on GIs, argued that since it had been prepared to discuss other Members' priority issues, the latter should reciprocate. Ambassador Tim Groser, who chairs the negotiations, promised to hold consultations on the list for the next meeting on 14-17 December.

## **Rules Results Expected Late in Doha Round**

Negotiations on changes to WTO's rules on anti-dumping, subsidies to industries and regional trade agreements are unlikely to yield concrete results until the end of the Doha Round.

Despite many negotiating sessions and more than 160 proposals – many tabled by the 13-strong group of Friends of Anti-dumping Negotiations<sup>1</sup> – seasoned trade watchers predict that decisions on any changes will not be made until the Doha Round nears its conclusion and the potential for trade-offs with agriculture and other areas is much clearer.

While some frequent users of anti-dumping measures, such as the EU and Canada, have shown interest in certain Friends' proposals – such as requiring 50 percent (instead of 25 percent) of a domestic industry to support a proposed anti-dumping investigation, for instance – the US and Egypt have sought to strengthen anti-circumventing disciplines and to guard against weakening of national authorities' scope to impose trade remedies (see, for instance, Bridges Year 7 No.2, page 9). India – currently second only to the US in the use of anti-dumping measures – has lately softened its calls for stricter WTO disciplines, and the EU and some other developed countries have joined the US in opposing more ambitious Friends' proposals, such as making it mandatory for anti-dumping orders to expire after five years.

### **Fisheries Subsidy Negotiations**

The Doha Declaration explicitly notes that the rules negotiations must also "aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries". WTO Members are essentially divided into two camps, with the majority largely siding with the nine-member group of 'Friends of Fish',<sup>2</sup> while Japan and – to a lesser extent – Korea have only recently resigned themselves to addressing fisheries subsidies as a specific issue within the overall subsidy rules negotiations (Bridges Year 8 No.6, page 13).

At an informal meeting on 3 November, Members discussed a new proposal by Argentina, Chile, Ecuador, New Zealand, the Philippines and Peru on a comprehensive approach to disciplining fisheries subsidies (TN/RL/W/166). The proposal presented an alternative to Japan's 'bottom-up approach' discussed by the group in September (TN/RL/W/159, Bridges Year 8 No.9, page 12). The new proposal warned that Japan's approach would take Members into areas outside the WTO's remit, such as defining what constitutes a 'properly managed' fishery.

Chile et al. proposed an approach based on a prohibition on all subsidies that benefit the fishing industry. Members would then negotiate exceptions to this rule. The benefits of this approach, according to the proponents, resided in its simplicity, enforceability, transparency and flexibility. The next logical step would be the identification of non-prohibited subsidies, which could include expenditures related to fisheries management, general infrastructure, social insurance programmes and decommissioning excess fleet capacity. The proposal also noted the need for special and differential treatment for developing countries.

Japan, Korea, and Hong Kong disagreed with the approach, with Japan arguing that a general prohibition would go beyond the mandate for the Doha Round. Korea reminded Members that efforts at the OECD to negotiate an agreement to discipline steel subsidies had ended in deadlock because participants were not able to agree on the exceptions. The US, the EU, Norway and Australia supported the submission, while India and Pakistan noted that 'artisanal fishing' should not be covered by disciplines.

The next meeting of the Negotiating Group on Rules is scheduled for 14-17 December.

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### **ENDNOTES**

<sup>1</sup> Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Korea, Norway, Singapore, Switzerland, Taiwan and Thailand.

<sup>2</sup> Australia, Chile, Ecuador, Iceland, New Zealand, Norway, Peru, the Philippines and the US.

## NAMA: Still Battling with the Basics

The Negotiating Group on Market Access for Non-agricultural Goods (NAMA) has yet to reach cruising speed in implementing the July framework agreement. Disagreements abound on all key elements of the tariff cutting 'modalities' that ministers are slated approve next year in Hong Kong.

At the group's November meeting, Members clashed on how to structure the talks. Chair Stefan Johansson had proposed to focus initial negotiations on a 'tripod' consisting of (1) the general tariff-reduction formula, (2) a sectoral tariff component (i.e. the elimination of tariffs in selected sectors) and (3) flexibilities for developing countries, with the possible addition of non-tariff barriers. A large group of developing countries objected to treating sectoral initiatives on par with the tariff cut formula and flexibilities for developing countries, while most OECD countries maintained that sectoral tariff elimination was an integral part of the balance established in the July framework (Annex B on NAMA confirms that work on the formula must "take fully into account the special needs and interests" of developing and least-developed countries, "including through less than full reciprocity in reduction commitments", but also requires Members to reach agreement on the "issue of participation in the sectoral tariff component").

In informal talks, the US reportedly managed to interest some developing countries in considering sectoral participation by raising the possibility of 'zero for x' tariff cuts, which would allow them to retain a certain tariff level while industrialised countries would eliminate theirs entirely.

The scope of sectoral tariff cuts is another contentious issue. Developing countries argued in November that the July framework agreement stated that "participation by all participants" would be important for achieving the goals set out in the Doha Declaration. The US, on the other hand, has suggested that it would be sufficient to create a 'critical mass' consisting of a large percentage of countries trading in given product willing to participate (this would inevitably include at least the largest developing economies, such as Brazil, China and India). The 'critical mass' approach was used in the 1996 Information Technology Agreement, which was initially signed by 29 WTO Members and now has 63 participants.

### No Agreement on Methodology for Tariff Conversion

Delegates also discussed the conversion of non-ad valorem duties into ad valorem duty equivalents during the November meeting. Ad valorem duties refer to tariffs based on a fixed percentage of the value of imports, while non ad valorem duties are based on volume. The July framework agreement calls for all non-ad valorem tariffs to be converted into ad valorem equivalents and bound in ad valorem terms, so that they can be reduced according to the overall tariff cut formula, on which serious work is yet to start.

The US proposed to establish a subgroup to study the technical implications of the conversion and come forward with a formula. The EU, however, opposed this idea, arguing that it would duplicate efforts already underway in the agriculture negotiations (see page 9).

Little progress was made on the treatment of unbound tariffs in the reduction exercise. The July framework calls for all unbound tariffs to be converted into bound tariffs. Sixty Members have more than one percent of tariff lines unbound. Argentina, India, Singapore, Hong Kong and Japan submitted new notifications on non-tariff barriers. Korea made a focused submission on the NTBs faced by its electronics industry (TN/MA/W6/add4).

Reacting to the four days of meetings, one developing country delegate affirmed that NAMA was "an area that we've taken for granted, but which could give us more problems than agriculture". Other negotiators noted, however, that disagreements were normal in evolving discussion on how to move forward and said they did not expect such differences to become real obstacles to further movement in the negotiations.

The next meeting of the Negotiating Group on Market Access is scheduled for 6 December.

### EU Banana Tariff Contested

The EUR230 per tonne banana tariff proposed by the European Commission is under fire from exporters of cheap 'dollar-bananas', the African, Caribbean and Pacific Group of States (ACP), as well as some EU member states.

Costa Rica, which said in October that the Commission's proposal violated the July framework's promise to prioritise the liberalisation of trade in tropical products, has now firmly linked the banana tariff debate to the WTO negotiations on agriculture (see page 9). In a move of great concern to the ACP, Costa Rica proposed that WTO Members should provide most-favoured-nation tariffs to all tropical products, i.e. this trade should not be included under preference schemes.

Sweden's position that the future tariff should stay at EUR75 has fuelled some ACP countries' apprehensions that EU members without colonial ties may find it more important to avoid potential WTO problems than to protect ACP market access through a huge tariff margin. In discussions within the EU, Sweden has argued that African bananas, which account for 62 percent of total EU banana imports from the ACP, are "possibly as competitive as several dollar banana producers". Sweden suggested that a high tariff would be an expensive and ineffective way of protecting Caribbean producers, whose share of the EU's ACP banana imports has declined – partly due to competition from Africa – by 24 percent in the last decade despite the preferences in place. Instead, the EU should refocus its assistance to traditional ACP producers suffering from a 'substantial competitiveness gap' toward diversification, Sweden proposed.

The EU is currently engaged in compensation negotiations with Latin American suppliers following the enlargement of the Union in May 2004, as well as tariff negotiations resulting from its commitment to install a tariff-only banana regime by 2006 (Bridges Year 8 No.9, page 13).



## What's the Sugar Dispute Got to Do With Sustainable Energy?

While Brazil is expected to benefit most from the EU's sugar sector reforms in the wake of the October 2004 WTO panel ruling, it may use the enhanced market access in a way that contributes to the fight against global warming and displaces less trade than many weaker exporters fear.

Although the EU has appealed the ruling, it is likely to be implemented eventually in tandem with the reform of the EU Common Agricultural Policy. As it stands, the EU's sugar regime is a mixture of massive subsidies, high internal prices and imports from African, Caribbean and Pacific (ACP) countries on favourable terms, as well as significant exports to the world market. Analysts disagree on the details regarding the impact of the reforms on global prices, but most do expect them to rise, and predict that the EU's withdrawal as a sugar exporter will provide the space and incentive for competitive developing countries to fill the gap.

The sugar case was initially touted as a pure win for developing countries, but the tone of the debate has changed. In particular, ACP countries – which currently export sugar to the EU at the high prices prevailing on the internal EU market – fear the destruction of an entire agricultural sector and related processing industry. These countries cannot achieve the scale and efficiency required to match competitors like Brazil, even at a slightly higher global sugar price.

### The Sugar-Ethanol Equation

Brazil claims, however, that it will not flood the world market with sugar following the anticipated reforms. Not only is the country the premier producer of raw and processed sugar; it is also the world leader in producing ethanol – a clean-burning, carbon-neutral biofuel derived from sugar cane and used to replace petrol. Soaring oil prices, expected to remain high at least in the medium term, have given a real boost to ethanol production, as has a new generation of 'flex-fuel cars' that run on either petrol or ethanol or any mix of the two, and Brazil plans to channel more sugar into ethanol. In fact, more than 50 percent of Brazilian cane already goes into ethanol production. All petrol sold in Brazil contains 25 percent ethanol and Brazilians have the option of filling their tanks with pure ethanol at most petrol stations. The major international car manufacturers have started producing a new generation of flex-fuel cars, set to be sold all over Latin America, in addition to Brazil.

The production of ethanol and other biofuels has a number of benefits: it reduces the need for fuel imports and increases energy security, promotes job creation, diversification and rural development, and reduces greenhouse gas emissions, thus helping combat global warming. In addition to directly replacing petrol, ethanol can be used to replace the toxic petrol additive MTBE (serving to improve oxygenation), which is increasingly being banned around the world.

### Kyoto Protocol to Boost Demand for Clean Energy

On 4 November, Russian President Putin finally added his signature to the Kyoto Protocol. Russia's ratification will bring the Protocol into force in early 2005. With its 120+ signatories, the Kyoto Protocol represents a powerful 'coalition of the willing' and its entry into force will add momentum to efforts worldwide to address the issue of climate change, even in non-Kyoto countries like the US. Under the Kyoto Protocol, developed-country parties are under obligation to reduce their greenhouse gas emissions by eight percent between 2008 and 2012, and much steeper cuts are expected in the future.

This new policy environment will significantly increase the demand for low- or no-carbon emitting energy, including biofuels. Currently, Brazilian ethanol is the only biofuel produced at a competitive price. The US is the second largest producer, mainly converting corn into ethanol. The production of biofuels in the EU is centred on biodiesel derived from oilseeds (such as rape seed). However, significant research is going into other options, particularly ethanol production based on dedicated energy crops, such as poplars or switch grass. This option promises extremely low "wells to wheels" carbon emissions, given that the woody leftovers can be used to fuel the conversion process.

China is the third largest biofuel (ethanol) producer in the world, following Brazil and the US. Thailand, one of the co-complainants in the EU-sugar dispute at the WTO, recently announced its intent to start producing ethanol from sugar cane; and India – another potentially significant producer – in 2002 instituted policies to boost domestic production and use. Overall, the greatest potential for the production of biofuels can be found in the South – whereas developed countries, under their Kyoto commitments, potentially provide the greatest markets.

### Could WTO Negotiations Help Create a Global Ethanol Market?

International trade in biofuels is currently very limited, due in part to tariff barriers and subsidies distorting the market. In the Doha Round negotiations, WTO Members are considering the liberalisation of environmental goods and services (EGS) at an accelerated pace, with a view to phasing out tariffs. These negotiations have the potential of promoting sustainable forms of energy, such as biofuels. Ethanol is included two indicative lists of EGS that Members are considering, originally negotiated under the auspices of OECD and APEC. A number of developing countries have, however, indicated their interest in crafting lists more geared towards their own export interests. Biofuels could very well be included in such a list.

Given that the production of biofuels is intricately linked to agricultural policy, it also ties into the ongoing WTO agriculture negotiations – in particular discussions related to the review of the Green Box (subsidies without a trade impact, including for environmental purposes). In addition, as biofuel production increases, more land and crops will be used to for the requisite feedstock. This will create complex interactions with the production of other commodities, and is likely to lead to higher food prices. This implies, in effect, a transfer of resources to rural areas and exporting countries – and would open up new export opportunities for developing countries currently unable to compete with subsidised developed country agricultural products, despite their comparative advantage in this area. Due to the potential for win-win solutions, these questions merit much further work and research.

# Is Virtual Water Trade a Solution for Water-scarce Countries?

Charlotte de Fraiture and David Molden

How can enough food be produced and at the same time ecosystems sustained given the growing global need for water?

Few people realise that we ‘eat’ between 2,000 and 5,000 litres of water each day. This is because plants convert liquid water to vapour in the process of growing and producing food. To grow a kilogram of wheat takes between 500 to 4000 litres of water depending on where and how it is grown. Producing a kilogram of beef requires about 10,000 litres because of the amount of feed the animals eat. The daily amount of water we drink (two to five litres) and use for washing, sanitation, and other household tasks (50 to 200 ltr/person) seems insignificant when compared to the amount of water we eat.

There is no avoiding the fact that producing food takes vast quantities of water. Water that would have supported rivers and forests is now being used to produce food. With a growing and wealthier population, it is no wonder that alarm bells are ringing over global water scarcity, driven largely by food production. How can enough food be produced, how can there be enough water for cities, and at the same time how can ecosystems be sustained given the growing needs for water?

## Virtual Water: Grow where water is abundant, sell where it's lacking

One simple idea is to grow food in places where water is abundant, and trade it to water-short areas. Instead of using 1000 litres of water to produce a kilogram of wheat, a country could simply import a kilogram of wheat. By importing, the country then imports 1000 litres of ‘virtual water’.<sup>1</sup>

A growing number of researchers suggest that international food trade can be used as an active policy instrument to mitigate water scarcity and reduce environmental degradation. Instead of striving for food self-sufficiency, water-short countries should import food from water-abundant countries. In fact, this is already happening. Egypt, a highly water stressed country, imported eight million tonnes of grains from the US in the year 2000. By importing grain, Egypt saved some 8.5 billion cubic metres of irrigation water – one sixth of the annual releases from the High Aswan Dam. Japan, the world's biggest grain importer, would require an additional 30 billion cubic metres of irrigation and rain water to grow the amount of food it imports.

In 1995 trade in cereal grains such as wheat, rice, maize, reduced irrigation water use by 11 percent globally. Four out of five major grain exporters (the US, Canada, France, Australia and Argentina) cultivate under highly productive rain-fed conditions, but many importers, such as Egypt, Mexico, Iran, Saudi Arabia and Algeria, rely on irrigation to produce the same food. Further, most exporters produce more food with less water than importers.

It seems that trade in virtual water is indeed an appealing option when compared to finding more water, or increasing efficiency of water use. Unfortunately, the story gets more complicated. As the 2003 WTO Ministerial in Cancun illustrated, the economical and political interests associated with agricultural trade are enormous. Is it realistic to assume that water scarcity will be an issue that will change the way countries trade? Will countries struggling with issues of food security want to rely on trade when they are vulnerable to fluctuations in world market prices? Or will these countries still see development of water resources as the more secure option to have enough food and promote income growth especially in poor rural communities?

Furthermore, while trade in virtual water does exist, most of it is not driven by water scarcity. Japan imports food because of its comparative advantage in sectors other than agriculture. In Japan, lack of agricultural land rather than water limits the amount of food that can be produced. Middle Eastern and North African countries simply do not have the necessary

water resources to grow the amount of food within their boundaries, and must import food. According to a study by the International Water Management Institute (IWMI) and the International Food Policy Research Institute (IFPRI) as part of the Comprehensive Assessment of Water Management in Agriculture, in 1995 less than one quarter of global cereal trade was water-scarcity related. Projections suggest that this share may rise to 35 percent in the year 2025.

Many countries remain wary of depending on imports to meet basic food needs. In China and India food self-sufficiency is still a national priority, in spite of growing water problems in both countries. There is also the question of whether the countries that will be hardest hit by water scarcity will be able to afford to import ‘virtual water’. For example, nine out of the ten countries that share the Nile basin are expected to face significant water scarcity by 2050. Six of these countries rank among the world's least developed nations, according to the UNDP.

Instead of shaping global trade flows, virtual water flows are most often a consequence of changes in prices, production levels and demand. Since agriculture is the major water consumer, these changes in trade flows will directly translate into changes in water demand and use. Change in production patterns in one country can adversely affect environments in that country or somewhere else on the globe. Thus it is worth considering the environmental impacts of changes in virtual water flows.

## Environmental Impacts of Changing Production Patterns

Changes in agricultural policy in the European Union potentially impact water use elsewhere. The EU recently increased its membership from 15 to 25 countries, adding Poland and Hungary, major grain and beef producers. At the same time the EU scheduled reforms in the Common Agricultural Policy (CAP), aiming to lower intervention prices and decouple compensa-

*Continued on page 8*

tory payments and production decisions. The Economic Research Service of the US Department of Agriculture (USDA-ERS) foresees a drop in grain production and exports as a result of these policy changes. The EU exports to China and Egypt, both countries facing water shortages. If the EU reduces exports because of changes in the CAP, water-short countries may be forced to produce more with their own water, or they will import from other countries causing environmental degradation elsewhere.

Likewise, the phase-out of the Agreement on Textiles and Clothing will significantly affect cotton production and trade. Cotton quotas that have significantly shaped trade flows over the past 30 years will be abolished by the end of this year. The USDA-ERS foresees an increase of cotton exports by the US and Sub-Saharan Africa. Because cotton is mostly grown under irrigation, shifts in cotton production will directly affect irrigation water demand.

### Monitoring Needed

Article 92 of the declaration issued by the 2002 World Summit on Sustainable Development states that agreements under the WTO should be evaluated on social and environmental impacts. Trade patterns will affect supply and demand of water, changing where and how food is grown. While increases in imports can reduce water-related environmental threats in one country, environmental consequences will appear elsewhere. The adverse effects of intensive irrigated agriculture on the environment are well documented – declining water tables, shrinking lakes, destroyed wetlands, salinisation and waterlogging.

Sometimes the net effect could be positive to the environment, but other times it could be negative. Thus, monitoring virtual water flows associated with agricultural trade should be an essential part of such an evaluation.

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### ENDNOTE

<sup>1</sup> The idea of ‘virtual water’ was coined by Tony Allan of the London School of Economics.

## WIPO: Protection of TK and Folklore

Meeting in early November, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) considered a set of draft provisions outlining policy objectives and core principles for protecting traditional knowledge and folklore.

The discussions followed from the Committee’s March decision to launch work on concrete policy-making on traditional knowledge (TK) and folklore, with outcomes expected by the end of next year. Delegates raised issues related to possible reforms of the intellectual property (IP) system, such as strengthened patent disclosure requirements for TK and genetic resources. In particular, they highlighted the need for a better understanding of the systems required to ensure that illegitimate patent rights are not granted. The Committee also discussed how to determine the beneficiaries of protection, the need to take account of the underlying rights of indigenous peoples, the appropriate legal form of protection and how a system that protects TK against misuse could cover past use retrospectively, as well as the relationship of WIPO protection with other legal systems and policy areas. Some participants suggested the drafts had a ‘pro-intellectual property rights bias’ because, for example, the requirement that any measures to protect TK and folklore be consistent with current IP instruments. One delegation noted that this could have adverse implications for sustainable development given that such instruments ‘can be supportive of biopiracy’.

The question of international versus national approaches was central to the meeting, especially given the WIPO General Assembly’s in 2003 instructed the Committee to accelerate its work and focus on the ‘international dimension’ of genetic resources, TK and folklore. Delegates raised questions on how to set an appropriate boundary between international and national legal measures. Paragraph 9 of the draft TK principles paper stresses that the document is only a collection of suggestions, and that countries must decide which elements are best considered at the international level and which at the national level. Some member countries fear that the desire to create a harmonised, predictable international system could risk the creation of an inappropriate ‘one size fits all’ approach to TK, ignoring the diversity of meanings around the world of ‘traditional knowledge’ and ‘protection’. In order to further the substantive work, the Committee agreed to invite written comments on the draft proposals before 25 February 2005.

### Little Action on Genetic Resources

No consensus was reached on the need to draft guidelines on contractual agreements on genetic resources, and some delegates suggested that a binding international instrument was needed. Delegates will continue to consider two documents, one on patent disclosure and the other on genetic resources guidelines for access and equitable benefit-sharing for the next meeting.

The Committee also heard updates on the process adopted by the WIPO General Assembly to respond to the invitation by the Convention on Biological Diversity to examine and address certain specific questions relating to disclosure requirements in intellectual property systems for genetic resources and associated TK. The invitation was forwarded to the General Assembly after some Committee members had suggested in March that the IGC was not the appropriate forum to consider the request. The EU announced that it would be submitting a proposal in this area, and Switzerland updated the Committee on its related proposal within the Patent Cooperation Treaty, but no decision was reached by the IGC itself on the topic.

### Efforts to Increase Civil Society Participation Continue

The Committee agreed on several procedural steps to enhance the involvement and influence of indigenous communities in its work. To address the need for funding to facilitate this enhanced participation, the IGC agreed to develop plans for a voluntary fund. The next meeting of the IGC will consider a full proposal on this question; in the interim voluntary donors were urged to provide funding in support of community participation.

For meeting documents, see at [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=6183](http://www.wipo.int/meetings/en/details.jsp?meeting_id=6183).



# Opportunities and Risks in Liberalising Trade in Services in Tanzania

*Josaphat Kweka and George Kabelwa*

With an underdeveloped services sector, inadequate regulatory framework and low capacity for trade negotiations, Tanzania faces a daunting task to make correct policy decisions in order to take advantage of the GATS. Nevertheless, the impact of WTO-led market opening will be cushioned by the fact that Tanzania has already undertaken substantial unilateral services liberalisation under the banner of economic reforms.

Services are the single largest contributor to Tanzania's gross domestic product (GDP) after agriculture.<sup>1</sup> For example, between 1988 and 2002, services contributed about 40 percent of GDP with a growth rate of about 4.3 percent per annum. Services also rank second in employment generation after agriculture with a share of about 16 percent of total employment. However, the sector has not performed well in international trade relative to goods exports, and has attracted only 30 percent of foreign direct investment (FDI) stock in 1999 – 2002. Exports and imports of services in the past decade have contributed less than half of the value of total exports and imports. Tourism holds the largest share of GDP (16 percent during 1988–2002 period) and the largest share of international trade (import and export share of 16.9 percent and 29.8 percent between 1997 and 2003). It also ranked second after public services in the contribution to wage employment (13.1 percent in 2001).

## Regulatory Framework for Services Sectors in Tanzania

Tanzania's services sector is characterised by an inadequate regulatory and institutional framework, and the regulations already in place need further restructuring. The sectors themselves are so underdeveloped that they cannot compete in the world economy. It was only in the late 1980s that economic management shifted towards a private sector-led economy, and a few years thereafter it was recognised that there was a need to develop the capacity to regulate the market as many players were now engaged in economic management in a liberalised economy. Most of these regulatory institutions were created in the 1990s.

## Tanzania in the Request-Offer Negotiating Process

The main participants in the GATS negotiations in Tanzania are small sections of the private and public sectors. Only a few ministries, government agencies and private organisations participate in the negotiations because of the work they are doing. As a result, a large part of the public and private sectors is still not aware of the GATS negotiations. The problem of low participation is compounded by the fact that understanding of the GATS Agreements is very weak within both the public and private sectors. The effective implementation of GATS commitments by Tanzania continues to be hampered by insufficient knowledge of trade policy issues particularly on the part of the private sector, as well as a lack of analytical and negotiation skills, legal expertise, strategic concerns and financial resources.

Tanzania has so far not issued any offers that would expand its GATS commitments beyond the tourism sector. However, the country is in the process of preparing these offers. Among the requests that the Tanzania has received – but has not yet responded to – are those from the European Commission (EC), Australia, China and Japan. The European Commission's request is the most comprehensive in terms of sector coverage; it covers professional services, business services, transport, telecommunications, environmental and financial services, tourism and movement of natural persons. The Japanese request covers professional services, construction and related engineering services, transport services, and horizontal issues (acquisition of land and infrastructure services). Australia and China each presented a single-sector proposal on professional services and engineering services respectively.

## Tanzania's Negotiating Strategy

Tanzania's negotiating strategy is based on (i) the use of its national development agenda; (ii) the use of development policy spaces as provided by the LDC modalities on GATS negotiations<sup>2</sup>, (iii) the strength of a particular services sector in terms of performance in international

trade; (iv) government-identified lead and priority sectors for foreign direct investment; and (v) building partnerships with other developing countries.

The national development agenda highlights the country's priorities and is defined in various policy papers including the National Poverty Eradication Strategy (NPES), which sets out objectives for poverty eradication efforts through 2010; the Vision 2025, which is the long term national vision of economic and social objectives; the Tanzania Assistance Strategy (TAS), which provides the framework for improving aid co-ordination and enhancing ownership of development processes; and the Poverty Reduction Strategy Paper (PRSP) – a medium-term strategy of poverty reduction developed in the context of the enhanced Highly Indebted Poor Countries (HIPC) initiative. Furthermore, Tanzania has committed itself to the UN Millennium Development Goals.

With regard to using the development policy spaces provided by the LDC modalities, it should be recognised that Tanzania's services sector is still in its infancy. Constraints facing the industry abound, including poor infrastructure, low level of human resource development, poor state of technology (and an inability to upgrade) and lack of capital due to an immature financial sector. Due to these constraints, the private sector is too weak to face the challenges of liberalisation and globalisation. Thus, the general strategy for the development of the services sector is rather protective.

Among the strategies that can make use of the LDCs modalities is imposing limitations on foreign services suppliers in order to give time for the government to implement necessary reform measures. These measures in-

*Continued on page 12*

clude efforts to allow increased participation of the local private sector, committing fewer sectors, making use of the national development agenda and establishing horizontal equity participation of local businessmen in foreign direct investment. In addition, the government is seeking financial support to develop local human resources capacity and export promotion programmes.

Other priorities include attracting strategic FDI with a view to benefiting from training, technology acquisition and employment. The government has also participated actively in regional integration in the Southern African Development Community (SADC) and East African Co-operation (EAC). One of the key concerns for Tanzania like for many other LDCs is to seek mutual recognition of qualifications and certificates to facilitate the movement of natural persons (mode 4 of the GATS services categories). Tanzania has also sought credit for autonomous liberalisation in some sectors (e.g. financial services) and technical support to identify barriers and opportunities for liberalisation in trade in services.

Despite the protective nature of the negotiating strategy, Tanzania could benefit from taking on additional GATS commitments in several sectors. We ranked these according to their potential:

- first rank: professional (legal) services and tourism;
- second rank: road transport, air transport and financial services;
- third rank: construction and telecommunications;
- fourth rank: business, marine transport, and environmental services; and
- fifth rank: capital markets and securities.

### Sustainable Development Impacts of Trade in Services

Interviews with local firms revealed that the telecommunications sector had a high potential impact on sustainable development based on employment generation, technology transfer and economic efficiency criteria. However, there is a need to address infrastructure problems, such as utilities and roads so that trade in other sectors, such as tourism and transport, can fulfil its potential to contribute to sustainable development.

### Development Co-operation and the Services Sector

The importance of donor support in facilitating services negotiating processes is significant. Currently, only the Joint Integrated Technical Assistance Program (JITAP), which is financed by UNCTAD and WTO, has been involved in building capacity in trade negotiations, whereas the World Bank and the IMF have focused on improving the necessary institutional framework. However, co-ordination of these efforts has been less efficient in identifying key strategic policies that would ensure increased benefits from service liberalisation and negotiations on trade in services.

The importance of donor support to developing the institutional framework for services is also significant. Tanzania particularly needs assistance to strengthen institutional reforms and good governance. Donor support in these areas has been massive. As liberalisation advances, there will be a need for new regulations to address public policy concerns and to reform regulatory institutions in particular sectors. Tanzania has also received considerable support from donors to build capacity for trade negotiations. The support has been mostly directed to the priority sectors identified in the PRSP.<sup>3</sup> However, financial support to infrastructure services remains limited.

There is a clear benefit in Tanzania's taking advantage of regional integration initiatives to develop the service sector. Pooling resources from member countries in the respective regional blocs can tackle some of the problems. Certain services can be provided across the border and hence take advantage of regional integration. Member countries can also pool capacity for negotiations and encourage intra-regional liberalisation and cross-border flow of investment supportive of their needs. Such services include transport and communication infrastructure, utilities (electricity, gas and water) and inland waterways. Development of these sub-sectors can have a bonus impact on the economy by boosting growth of other sectors and ensuring the efficient functioning of the economy. The problem with regionalisation in African countries is the existence of overlapping (memberships in) regional blocs. Co-ordination and harmonisation of various initiatives at the regional levels to develop the services sector is imperative.

### Conclusion

Tanzania lacks negotiating capacity and has a low level of awareness or involvement of the private sector in trade negotiations, as well as an underdeveloped services sector. Faced with these problems the government has adopted a defensive strategy to the GATS negotiations requiring more time and seeking recognition of autonomous liberalisation. However, Tanzania still has a potential to benefit from GATS commitments in sectors such as tourism, transport, telecommunications and financial services. Commitments to WTO Members should be geared towards increasing the competitive strength of domestic investors. At the multilateral level, support should also be extended to the establishment of a fair and efficient regulatory and institutional framework that can accommodate the disadvantaged position (and solicit increased support for capacity-building) of least-developed countries such as Tanzania.

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### ENDNOTES

<sup>1</sup> Tanzania is a least-developed country (LDC) with a population of 34.5 million and a per capita GDP of US\$270 in 2002. Its economy depends substantially on agriculture, especially for traditional export crops (coffee, cotton, tobacco, cashew nuts, tea and sisal).

<sup>2</sup> *Modalities for the Special Treatment for Least-developed Country Members in the Negotiations on Trade in Services*, adopted by the Special Session of the Council for Trade in Services on 3 September 2003.

<sup>3</sup> It should be noted that the approach for Poverty Reduction Strategy (PRS) has changed from sector-based in the first PRS to outcome-based in the second. Recognising the importance of growth in poverty reduction, the second PRS focuses on employment generation, private sector development and trade performance objectives. In contrast, the first PRS prioritised social sector services provision (especially health and education).

# The US-SACU FTA: Why the Hold Up?

By Tenu Avafia

The free trade area negotiations between the US and the Southern Africa Customs Union will in all likelihood miss their December 2004 deadline. Intellectual property rights, services and investment issues are the main reasons for the delay.

Comprised of Botswana, Lesotho, Namibia, South Africa and Swaziland, the Southern Africa Customs Union (SACU) is the oldest customs union in the world.<sup>1</sup> Its sphere of application remains restricted to goods and all duties collected in the common customs area are paid to the Common Revenue Pool. The revenue is shared among members according to a revenue-sharing formula.<sup>2</sup> The SACU market is a minor but a symbolically important one for the United States, with key US exports into the SACU region consisting of machinery, vehicles, aircraft, medical instruments, plastics, chemicals, cereals, pharmaceuticals, wood and paper products. Total two-way trade between the US and the SACU nations was approximately US\$7.3 billion in 2002.<sup>3</sup> The SACU states are beneficiaries of the Africa Growth and Opportunities Act (AGOA) and are the largest suppliers of non-fuel AGOA products to the United States.<sup>2</sup>

## The proliferation of FTAs and SACU

SACU is no exception to the proliferation of bilateral negotiations in the past few years. The US has concluded more than thirty bilateral FTAs with a number of countries including Singapore, Chile, Australia, Israel, Taiwan, South Korea, Jordan, Morocco and Bahrain. These are complemented by a number of regional FTA arrangements, including the recently concluded Central American Free Trade Agreement (CAFTA).<sup>5</sup> It is widely accepted that the FTAs with Morocco and SACU would form a blueprint for FTAs with other African states.

In a letter to Senator Byrd in November 2002, US Trade Representative Robert Zoellick indicated that negotiations for a SACU-US FTA stemmed from intentions expressed in AGOA to initiate negotiations with interested beneficiary countries to serve as the catalyst for increasing free trade between the US and sub-Saharan Africa. The letter placed an ambitious range of topics on the negotiation agenda.

Aside from goods and services, trade topics included agriculture, rules of origin, intellectual property, investment, government procurement, trade remedies, labour standards, environmental standards and dispute settlement. This long list includes many trade issues with an uncertain history within the realm of previous international trade agreements involving SACU countries. Critics saw the ambitious deadline as a confirmation that the primary motive of the US government was to conclude an FTA with SACU to equal the Trade, Development and Co-operation Agreement (TDCA) that entered into between the EU and South Africa in 1999.

## Status of the negotiations and areas of divergence

In June 2003, the first round of negotiations – led by Xavier Carim for SACU and Florizelle Liser for the US – set an extremely ambitious conclusion deadline of December 2004. After initial reports of good progress, during the sixth round of negotiations in early May 2004, reports surfaced that the parties were further apart than observers had realised and discussions were held on the need for a ‘fast-track’ process to complete the deal on time.<sup>6</sup> After the cancellation of two rounds later in the year, the negotiations seemed in trouble. Carim, in late September 2004, conceded that there were still large differences between the two parties on a number of issues but expressed a hope that both sides would use the opportunity to clarify their mandates before meeting to “keep the process moving.”<sup>7</sup> Most recent reports are that a round is now being planned for December 2004 for that purpose.

The reasons for the stalled negotiations appear to be twofold: on the one hand, there are procedural difficulties between the parties, with the SACU negotiators eager to sign a preliminary agreement on goods while leaving the door open for conclusion of an agreement on the more contentious topics at a later stage, while the US negotiators insist that their mandate does not allow for such an approach. Among the main areas where

the negotiations have encountered difficulties are intellectual property (IP), investment, services and government procurement.

## Intellectual property

In other FTAs, the US has been able to obtain bilateral concessions that extend well beyond WTO requirements and may prove contrary to both the Doha Declaration on TRIPS and Public Health, as well as the 30 August WTO General Council Decision on removing obstacles on the poorest countries’ access to generic medicines. Stated US objectives in the SACU negotiations include standards similar to those contained in domestic US provisions, as well as those found in WIPO treaties on patent co-operation, copyrights and phonograms. The US also seeks to obtain SACU commitments to strengthen domestic enforcement procedures such as compensation measures to right holders for infringements of intellectual property rights and to provide for criminal penalties that are sufficient to deter piracy and counterfeiting.

On the basis of concerns raised during the FTAA negotiations,<sup>8</sup> some of the more damaging TRIPS-plus provisions that may find their way into the US-SACU FTA are:

- a limitation on the circumstances under which compulsory licences on pharmaceutical patents may be issued by individual SACU governments;

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SACU's Trade with the US in US\$000			
Country	2000	2001	2002
Botswana	71,675	64,135	61,233
Lesotho	140,987	217,982	323,293
Namibia	120,639	287,179	111,041
South Africa	7,033,203	7,251,893	6,682,143
Swaziland	60,318	72,474	125,504
<b>TOTAL</b>	<b>7,426,822</b>	<b>7,893,663</b>	<b>7,303,214</b>

Source: USITC



- extending the minimum period of patent protection to beyond the 20-years required by TRIPS consequently delaying the introduction of generic pharmaceuticals;
- a new responsibility given to drug regulatory authorities (most of whom have limited expertise in patents) to consider the patent status of drugs before granting marketing authorisation to manufacturers of generics;
- prohibiting regulators from disclosing data on pharmaceutical tests, which generic companies traditionally rely on to prove the efficacy and safety of their products; and
- the potential restriction of parallel imports to limited geographical configurations which may prevent SACU countries from sourcing generics from the cheapest global supplier.<sup>9</sup>

The impasse on IP is certainly the most immediate issue given the fact that the SACU countries have the highest HIV/AIDS prevalence rates in the world. Another potential impact of the FTA would see Lesotho lose the important waiver granted to LDCs of not having to comply with the provisions of TRIPS until 2016. The FTA could also undermine other developments that have resulted in a lowering in the prices of essential medicines, such as the ruling by the South African Competition Commission, which found two pharmaceutical companies guilty of excessive pricing.<sup>10</sup>

### Investment

The protection that investment provisions would afford US-based multinational companies operating in SACU was always likely to result in protracted negotiations. Experience shows that the approach of the South African government in negotiating investment provisions has tended to be more reactive than proactive. Initial indications are that the US is seeking a guarantee that its investors will obtain favourable treatment while ensuring that investors from SACU countries do not receive greater substantive rights on the protection of their investments than local investors in the US are entitled to. Investment provisions in other FTAs concluded by the US have entrenched a dispute settlement mechanism into the FTA which allows US investors in foreign jurisdictions to sue governments directly, which for instance has implications on essential medicines and other issues.

### Services

One of the areas of disagreement in the services negotiations is likely to centre on concerns about the the future agreement's possible implication on public health in the SACU region. Another significant difference between the parties is likely to centre on the debate over whether to include all services in the agreement alongside a schedule excluding specific services (the so-called 'negative list' sought by the US) or whether to use a 'positive list' approach, which would spell out the specific sectors to be covered by the agreement while excluding all others from liberalisation commitments (approach favoured by SACU).

### Transparency in government procurement

The provisions on government procurement found in the US-CAFTA agreement are an illustration of how far-reaching the provisions can be. Provisions could demand the fair and timely notification of purchases, effective bid review procedures and criminalise bribery in government procurement under both US and SACU legislation. While this is a goal well worth pursuing, there are likely to be negative consequences for affirmative action and black economic empowerment policies. Inconsistencies with the constitutions and some pieces of legislation in some SACU countries could also occur.

### Conclusion

Missing the December 2004 deadline could prove to be useful to SACU in the longer term. At present, AGOA provides non-reciprocal access into the US for SACU exporters and although it should eventually be replaced by a reciprocal trade agreement, the extension of the trade relationship beyond goods to complex areas which have not been developed at the multilateral level should proceed with the necessary caution and only after a careful study on the implications on the economies of the various SACU countries has taken place.

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### ENDNOTES

<sup>1</sup> The predecessor of the SACU was created in 1889 and SACU was formally established in 1910. A 1969 SACU Agreement was replaced by a 2002 Agreement, which came into effect on 15 July 2004.

<sup>2</sup> Refer to <http://www.dfa.gov.za/foreign/Multilateral/africa/sacu.htm>

<sup>3</sup> Refer to the USTR website at: [http://www.ustr.gov/Document\\_Library/Fact\\_Sheets/2003/Free\\_Trade\\_with\\_Southern\\_Africa\\_Building\\_on\\_the\\_Success\\_of\\_AGOA.html](http://www.ustr.gov/Document_Library/Fact_Sheets/2003/Free_Trade_with_Southern_Africa_Building_on_the_Success_of_AGOA.html)

<sup>4</sup> See the Southern Africa Global Competitiveness Hub available at [http://www.satradehub.org/TradeOpportunities/TradeAgreements/SACU\\_FTA.aspx?NavBarMenu2B=Item10](http://www.satradehub.org/TradeOpportunities/TradeAgreements/SACU_FTA.aspx?NavBarMenu2B=Item10)

<sup>5</sup> US Trade Strategy after Cancun: Prospects and Implications for the SACU-US FTA, Peter Draper and Mills Soko, February 2004 available at <http://www.wits.ac.za/saiaa/online.htm>

<sup>6</sup> See Gary Yerkey 'US begins latest round of free trade talks with SACU less hopeful about year-end deal', available at [http://bilaterals.org/article.php3?id\\_article=510](http://bilaterals.org/article.php3?id_article=510)

<sup>7</sup> Article in the Business Day of 22 September 2004, available at: [http://bilaterals.org/article.php3?id\\_article=799](http://bilaterals.org/article.php3?id_article=799)

<sup>8</sup> Raised in an MSF document available at: [http://www.doctorswithoutborders.org/publications/reports/2003/FTAA\\_advocacy.pdf](http://www.doctorswithoutborders.org/publications/reports/2003/FTAA_advocacy.pdf)

<sup>9</sup> For an authoritative discussion on the topic, see Frederick Abbott, 'The Doha Declaration on the TRIPS Agreement and Public Health and the Contradictory Trend in Bilateral and Regional Free Trade Agreements' Occasional Paper 14, QUNO, available at: <http://www.geneva.quno.info/pdf/OP14Abbottfinal.pdf>

<sup>10</sup> Complainants including the Treatment Action Campaign (TAC) filed a complaint at the Competition Commission in September 2002 against GSK and BI for charging excessive prices for their patented ARVs. In a landmark decision in October 2003, the Commission found the two brand name pharmaceutical companies guilty of excessive pricing, denying a competitor access to an essential facility and engaging in an exclusionary act. Ultimately, a settlement agreement was reached between the two brand name pharmaceutical companies and the complainants.

## ACP and EU in Second Phase of EPA Negotiations

After a first phase of negotiations launched in September 2001, all six regional blocs belonging to the African Caribbean and Pacific Group of States (ACP),<sup>1</sup> have now started second phase negotiations with the EU – a process set to run through to 2005. Road maps detailing priority areas, negotiating structures and schedules have been agreed for the Economic Partnership Agreements that are to enter into force as of 2008.

As negotiations proceed in phase II, unresolved issues from phase I continue to resurface. On market access, for instance, ACP and EU views differed during phase I on how to address rules of origin, the time frame within which ACP countries should dismantle tariffs and the EU's sanitary and phytosanitary measures and technical barriers to trade. The ACP also called for additional resources to cover adjustment costs such as loss of customs revenue (this was not well-received by the EU). Other areas of concern to the ACP related to legal issues, such as the rules to govern the settlement of disputes under the Economic Partnership Agreements (EPAs) and the inclusion of a 'non-execution clause' in EPAs – whereby 'appropriate measures', including suspension as a last resort, would be used against a party that breached any of the core principles of the partnership such as human rights, democratic principles and the rule of law.

Moreover, while the ACP maintained that the first phase should result in a legally binding agreement on various issues of common interest, the EU viewed this phase as merely aimed at clarification, with no need for a binding outcome. In the end, ACP ministers agreed to continue discussions with the EU on these difficult issues at an 'all-ACP level' alongside region-specific negotiations.

Another important concern the ACP has decided to address at the all-ACP level, and more importantly within ongoing WTO talks, relates to the issue of asymmetrical liberalisation. Fearing that Article XXIV of the General Agreement on Tariffs and Trade (GATT) on regional trade agreements (RTAs) is not flexible enough to accommodate the trade relations they envisage under the EPAs, the ACP in April 2004 submitted a proposal to the WTO calling for an amendment to this provision to include appropriate special and differential treatment (S&D) mechanisms in favour of developing countries participating in North-South RTAs.

Recently, the ACP have also called attention to the problem of preference erosion at the all-ACP level of negotiations. At a joint ACP-EU Ministerial Trade Committee on 27 October, they sought assurances from the EU regarding the erosion of their preferences due to the impact of the EU's new reform proposals on sugar, bananas and textiles. The outgoing EU Trade Commissioner Pascal Lamy stressed that "whatever the results, the EU will be able to help countries benefiting from the sugar protocol when faced with the adjustment process at [new EU] reduced prices." Similar vague assurances were given on textiles and bananas.

### Priorities and Challenges in Phase II Negotiations

In all regions, negotiations on the key area of market access for both industrial and agricultural market access have been postponed to 2006 to enable the ACP to give priority to regional integration initiatives. Ranking high on the priority list of all road maps is the need to ensure that the EPA process enhances regional integration and promotes development. Other key phase II negotiating areas and challenges for the ACP are outlined below.

**Special and differential treatment:** the Pacific and Caribbean regions have emphasised the need for S&D mechanisms that take due account of the vulnerable states among them, such as small island developing states and least-developed countries. In addition, the systemic issue of asymmetric liberalisation with the EU is of great importance to all ACP countries.

**Singapore issues:** While the ACP as part of the G-90 group of developing countries, has successfully called for all Singapore issues, with the exception of trade facilitation, to be excluded from the entire Doha Work Programme, within the EPA negotiations the EU has emphasised that EPAs must address all Singapore issues on the grounds that these are essential tools for development.

**Other trade-related issues:** Intellectual property rights (IPRs) and services will also be negotiated between ACP regions and the EU. For the ACP, especially in Sub-Saharan Africa where HIV/AIDS has ravaged societies, access to medicines and the ability to pay for them will be prime concerns in negotiations on IPRs. In the area of services trade, it has been suggested that the ACP will have to consider at least the following issues if its members are to compete with Asian tigers like India: appropriate S&D options as provided for under the Cotonou Agreement; and initiating a study on mode 4 to examine the feasibility of a possible ACP travel card to facilitate access to the EU.<sup>2</sup>

**Agriculture and fisheries:** Judging from phase I results, addressing issues relating to the EU's sanitary and technical standards and preference erosion could be sticking points in negotiations on agriculture and fisheries. Most ACP regions are undertaking sustainability impact assessments that examine the impact of EPAs on agriculture. In this context, some have highlighted the difficulty, in terms of data availability and appropriate methodology, of identifying 'sensitive products' that would need to be excluded from the EPAs. Given the fact that developing countries have the space to exclude similar 'special products' from agriculture talks in the Doha negotiations, this could be a chance for ACP countries to establish the elements of such products first in national and then in regional fora, ultimately feeding into the multilateral trade talks.

### ENDNOTES

<sup>1</sup> The six regions are Central Africa, West Africa, Eastern and Southern Africa (ESA), the Caribbean, the Southern African Development Community (SADC) and the Pacific. For further details see reports on the negotiations at: [www.acpsec.org/GeneralForm.aspx?sessLang=1&CategoryId=77](http://www.acpsec.org/GeneralForm.aspx?sessLang=1&CategoryId=77)

<sup>2</sup> See Trade Negotiations Insights, Vol.3 No.3 at: [http://www.ictsd.org/tni/tni\\_english/TNI\\_EN\\_3-3.pdf](http://www.ictsd.org/tni/tni_english/TNI_EN_3-3.pdf)

## Regional News in Brief

- US and Andean officials failed to bridge differences on intellectual property rights and agriculture at their latest negotiating round in early December (Bridges Year 8 No.9, page 18). No formal deadline has been set to conclude the talks, although a US official said that March 2005 remained a 'working goal'. The next negotiating session is scheduled for January 2005.
- The Dominican Republic is poised to repeal its 25 percent tax on high fructose corn sugar (HFCS), which President Leonel Fernandez signed into law in October 2004 as part of a larger tax reform package, but simultaneously requested the Dominican Congress to drop from the bill. The likely repeal follows US threats to exclude the Dominican Republic from legislation that would allow the Central American Free Trade Area (CAFTA) to enter into force (Bridges Year 8 No.8, page 19). The Dominican Republic's reasons for the tax are similar to those of Mexico, currently embroiled in a WTO dispute over the matter (see page 6).
- Australia and the US have exchanged diplomatic notes that will allow the FTA concluded in February 2004 to enter into force in January 2005 as originally planned. That outcome was in doubt after the Australian Senate passed implementing legislation allowing patent authorities to impose fines on companies that file 'bad faith' pharmaceutical patent applications (Bridges Year 8 No.7, page 15). In a letter preceding the exchange of the diplomatic notes, US Trade Representative Robert Zoellick wrote to Australia's Trade Minister Mark Vaile that US remained concerned about the provisions, which placed 'unjustifiable' and 'discriminatory' burdens on pharmaceutical patent holders seeking to enforce their patent rights. Mr Zoellick emphasised that the US reserved its right to challenge the consistency of the amendments with Australia's international legal obligations, i.e. the FTA notwithstanding, the US may still bring a WTO dispute under the TRIPS Agreement.

## South Asian Trade Integration Boosted

Regional integration in South Asia took a great leap forward at the late November Summit of the Association of Southeast Asian Nations held in Vientiane, Laos.

On Monday 29 November, China signed a deal with the Association of Southeast Asian Nations (ASEAN) aimed at creating a free-trade area encompassing nearly two billion people by 2015. The agreement is set to reduce and eliminate tariffs on trade in goods between the parties, and establish a mechanism to adjudicate ASEAN-China trade disputes. Tariff cuts start 1 July 2005, and will aim to eliminate duties on some 4000 types of goods to between zero and five percent by 2010 for the six most advanced ASEAN members, i.e., Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand. The four poorer member states – Laos, Vietnam, Cambodia, and Myanmar – will have until 2015 to comply. Notably, tariffs on several 'sensitive goods', including important sectors such as sugar, iron, steel and cars, will not be subject to the same steep tariff reductions. As part of the tariff reduction agreement, each of the ten ASEAN members formally recognised China as a full market economy, which will make it far harder for them to impose anti-dumping duties against Asia's rising economic giant.

ASEAN and Chinese officials hailed the accord for the increased trade flows that they expected. Indonesian union groups, however, called it a "disaster," warning that a flood of cheap Chinese goods into Indonesian markets would lead to hundreds of thousands of lost jobs.

Not to be outdone, the prime ministers of Japan and India met with ASEAN leaders the very next day to announce trade deals of their own. Japan announced that it will start tariff-cutting talks with ASEAN next April, with the objective of liberalising trade in goods by 2012. India signed a comprehensive agreement with ASEAN called the ASEAN-India Partnership for Peace, Progress and Shared Prosperity, which plans to establish an ASEAN-India free trade area by 2011 for five of the six advanced ASEAN members and by 2016 for the Philippines and the four less advanced member states. However, plans for the early liberalisation of trade in certain goods have been delayed by a disagreement over rules of origin.

East Asia in particular has seen a dizzying proliferation of regional and bilateral trade negotiations in recent years – Mongolia and North Korea are the only countries in the region not currently engaged in trade talks. Another potential pact being mooted is the so-called 'ASEAN+3', which would establish a free trade zone among the ASEAN countries, China, Japan and Korea. A recent study by the Asia-Pacific Economic Co-operation (APEC) business advisory group concluded that the US stands to be the biggest loser if the ASEAN+3 free trade area is successfully established. The study projected that such a deal would cost the US economy about US\$4.3 billion, while netting a much larger gain for the Asian economies.

China's charm offensive on trade has reached across the Pacific Ocean. During President Hu Jintao's November visit to South America, China recently signed a number of deals with Brazil aimed at increasing their already rapidly growing bilateral trade. Brazil has also recognised China's status as a full market economy, as has Argentina; Chile has even gone a step further, announcing the start of talks towards a free trade agreement with China.

A Brasilia-based trade analyst told Dow Jones that the new Sino-Latin American agreements could mark an important shift in world trade, as emerging market economies substitute imports from rich industrialised nations with cheaper products from other developing countries. "Brazil can export airplanes and import sophisticated manufactured products from Korea and China," he said. However, the World Bank's new Global Economic Prospects 2005 report inserts a note of caution: it says that South-South preferential agreements can improve prospects for rapid poverty reduction, but only if developing countries integrate them into a strategy for liberalisation of trade on three fronts: unilateral, multilateral, and regional.

The texts of the China-ASEAN agreements are available at <http://www.aseansec.org/4919.htm>.



## EU Seeks to Implement WTO Decision on Access to Medicines

On 29 October, the European Commission proposed a new regulation to implement the WTO's August 2003 decision allowing companies to export generic copies of patented medicines to developing countries battling with health crises but unable to manufacture the drugs themselves

The draft regulation, which must still be approved by member governments and the European Parliament, would enable European generic medicine companies to apply to national authorities for a compulsory license in response to a developing country's stated need. However, reflecting the 30 August 2003 General Council Decision (and the accompanying Chair's Statement)<sup>1</sup>, there are many conditions to be fulfilled both by the developing country and the company requesting the licence (Bridges Year 8 No.1, page 21).

First, the country seeking to import generic copies under compulsory license must be a WTO Member. Second, it must have "made a notification to the Council for TRIPS of its intention to use the system as an importer". Most importantly, the country must also notify to the TRIPS Council the name and expected quantity of the product needed, as well as confirm (unless it is a least-developed country) that it lacks the domestic capacity to manufacture the product. The compulsory license will only cover the production and exports of the specific quantity of the product notified to the WTO. These requirements, copied directly from the 30 August Decision, were eliminated in the TRIPS amendment proposal put forward by the the African Group in early December 2004 (see page 1).

On the manufacturing side, a host of provisions are geared to ensuring that the drug exports are not diverted to other markets. While these too are based on the 30 August Decision, the Commission's interpretation of the Decision's requirements is particularly rigorous. For instance, the licensee must provide a customs certificate of exportation of the entire production, as well as proof of importation certified by an authority of the importing country. In addition, products made under the license must be clearly identifiable through specific labelling or marking, and packaging must carry an indication that the product is subject of a compulsory license, as well as specify that it is exclusively for export to and sale in the importing WTO Member concerned.

The applicant for a compulsory license must also provide evidence to the national authority that efforts were made to obtain authorisation from the right holder on 'reasonable commercial terms and conditions' and that such efforts had not been successful within a reasonable period of time. The licensee must pay the right holder an 'adequate remuneration' determined by the authority granting the license "taking into account the economic value of the use that has been authorised under the license to the importing WTO Member(s) concerned."

Many of the provisions on distinctive packaging and the like were already included a May 2003 EU regulation on trade diversification, which established a registry system designed to prevent low-priced drugs from flowing back to the EU. The system was necessary, the Commission argued, to instil confidence within the pharmaceutical industry that companies could offer much lower prices to developing countries without fear of compromising their rich country markets through illegal re-importation.

### Background

EU members and most other OECD countries have agreed to 'opt out' of using the system established by the 30 August Decisions as importers, while Hong Kong, Israel, Korea, Kuwait, Macao, Mexico, Qatar, Singapore, Taiwan, Turkey and the United Arab Emirates are only to use it in "situations of national emergency or other circumstances of extreme urgency".

The Decision is only valid until a permanent amendment to the TRIPS Agreement replacing its provisions takes effect. The TRIPS Council should adopt the amendment by March 2005, but this seems unlikely to happen as technical discussions have stalled, and the only amendment proposal on the table has raised a sea of objections (see page 2).

### System Too Complex, Critics Say

Many developing countries, as well as civil society health activists, have expressed serious doubts over the Decision's practical value, arguing that the procedures are so cumbersome that they will never be used. Indeed, while Norway and Canada have already changed their domestic legislation to reflect the Decision, not a single eligible country has notified to the WTO either its intention to use the system as an importer, or a specific shortfall of a particular drug.

The cuts and omissions in the African Group's amendment proposal indicate that poor countries are particularly worried about their ability to comply with the Decision's trade diversion provisions, which are further strengthened in the Commission's draft. On the supply side, EU generics manufacturers may also find them too cumbersome to seek compulsory licenses from their governments in the event that an eligible importing country actually notifies its need of a specific drug to the TRIPS Council.

### ENDNOTE

<sup>1</sup> The Decision (WT/L/540) and the Statement (JOB(03)/177) are available at [http://www.wto.org/english/tratop\\_e/trips\\_e/](http://www.wto.org/english/tratop_e/trips_e/)

### Canada Cuts Drug Export to the US

Bowing to pressure from US pharmaceutical companies, more than 30 Canadian internet pharmacies announced in October that they would no longer supply bulk orders of prescription drugs to US states or municipalities. Many welfare agencies had resorted to importing US-manufactured medicines from Canada, where they are significantly cheaper thanks to government price regulation and bulk purchasing power. The pharmacies took the action after some of the largest US manufacturers threatened to restrict sales to Canada to an extent that would leave local consumers in short supply.

# Talking to Strangers: The Conservation Community Continues to Strengthen Its Voice in Trade Talks

William Jackson

Does trade have a role in a World Conservation Congress? Yes, it does – and increasingly so.

When more than 4,800 participants assembled in Bangkok last November for the world's largest democratic environmental meeting, one main message emerged from the more than 600 events, 114 motions and the newly approved 2005-8 Programme for IUCN: conservation cannot succeed in a vacuum. It has to address the underlying causes of biodiversity loss, including the rapidly expanding global economy, and it has to make sure that its activities contribute not only to more environmental sustainability, but also to equity and poverty reduction in particular. International trade is one key aspect in this puzzle, and poses a challenge for the conservation community to respond to.

This challenge encompasses traditional conservation issues like alien invasive species or trade in endangered species and their relation to trade rules, as well as the use of economic incentives for the sustainable use of natural resources, but it does not stop there. Trade touches upon core questions of sustainable development. How do trade regimes alter the policy space for environmental regulation? How do trade flows and production patterns change with liberalisation processes? IUCN – The World Conservation Union has worked towards a better knowledge and understanding of these interlinkages, bringing together both scientific expertise and conservation practice. The figures are clear: international trade has grown 20-fold since the creation of IUCN in 1948, to an estimated value of over US\$6 trillion. Unsustainable trade in wildlife is growing rapidly, and costs of invasive alien species in India alone are estimated at US\$116 billion.

## International Trade: Friend or Foe of Biodiversity?

This was the provocative question addressed in a workshop jointly organised by ICTSD and IUCN at the World Conservation Congress. Ambassador Toufiq Ali, Chairman of the WTO Committee on Trade and Environment, urged conservationists to get

engaged and to take a position. "The answer is yes," Simon Tay of the University of Singapore summarised the workshop: "Trade is happening and it's here to stay. It is not a question of whether trade is a friend of biodiversity, but rather of how to make it friendlier".

While there still is a large gap to bridge until the trade and the conservation community speak the same language, both sides have started to realise the importance of a stronger engagement of the environmental community in trade policy-making. As a result, the IUCN Commissions on Environmental, Economic and Social Policy (CEESP) and on Environmental Law (CEL) explored mechanisms to strengthen their work on trade and investment policy in Bangkok.

## Building Bridges to the World of Trade

At the same time, negotiations under the WTO's Doha Agenda are defining frameworks for biodiversity conservation in talks about the global reform of agricultural policies and the incorporation of trade in services including those that concern key natural resources such as water and energy. With the ratification of the Kyoto Protocol, negotiations on the relationship between the multilateral regimes on trade and on the environment, as well as other aspects of conservation policy space have become even more critical (see related article on page 12). So far, biodiversity concerns have had little impact on trade negotiations. The conservation community has a constructive role to play to change this situation.

For several years now, IUCN with its members and expert networks has presented analysis, provided scientific input to WTO dispute settlement and organised policy dialogues on the link between the expansion of international trade and conservation issues at global environmental and economic fora, such as the World Summit on Sustainable Development or WTO Ministerial Conferences. Bangkok set a landmark for the preparations for 2005 – another important year on the international agenda for sustainable development. The WTO Ministerial Conference will take place in Hong Kong with great expectations for the Doha Development Agenda; while the UN General Assembly reviews the implementation of the Millennium Development Goal towards an improved trading and financial system (MDG8, target 12); and the 13<sup>th</sup> session of the Commission of Sustainable Development (CSD) will take policy decisions in relation to water and sanitation services.

Still, it would be short-sighted just to focus on the WTO and other international fora. After the collapse of the Cancun ministerial conference, trade and investment negotiations are increasingly taking place at plurilateral, regional and bilateral levels, marking a significant power shift often detrimental to the interests of small and weak economies. In Latin America, there is growing concern about the environmental, social and economic implications of regional trade agreements.

IUCN, with its decentralised structure, has a responsibility to assist in articulating and integrating these concerns into these binding frameworks, and its new IUCN Programme acknowledges this task. It aims to make non-environmental international arrangements promote biodiversity conservation as a key element of successful sustainable development. To reach this goal, it is crucial for the conservation community to understand the issues, to raise concerns and to propose ways forward. That's why IUCN focuses on capacity-building, organises training workshops for conservation practitioners and provides opportunities for exchanging experiences. Without empowerment, there is no change. Together, we can build a stronger voice for conservation in trade policy!

*William Jackson is Director, Global Programme, at IUCN – The World Conservation Union.*

## ICTSD Tackles Trade and Climate Change

Following Russia's recent ratification, the Kyoto Protocol is set to come into effect on 16 February, providing tremendous momentum to international efforts to combat climate change. ICTSD is involved in work on issues at the interface of trade and climate regimes, bringing together major stakeholders from both the trade and climate communities and helping facilitate new and innovative solutions in this area.

On the trade side, multilateral relations are governed by the WTO, as well as a growing number of regional and bilateral trade treaties. Measures to mitigate climate change are set out in the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. In addition, a growing number of countries and private sector entities are undertaking climate change mitigation measures on a voluntary basis. While WTO law embraces the principle of sustainable development, the UNFCCC stipulates that measures taken to combat climate change should not constitute "a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade." The implications of these principles are yet to fully emerge in practical terms.

On 14 October, ICTSD organised an exploratory roundtable on Emerging Issues in the Relationship Between the Climate and Trade Regimes in Geneva to take stock of developments to date and identify areas of potential synergies and conflict. The roundtable drew a large crowd, and included presentations on the implications of trade rules on both climate change mitigation and adaptation efforts. Specific issues addressed included: energy subsidies, pricing and related border-tax adjustments; carbon trading and investments; and the potential for promoting novel and sustainable forms of energy, such as biofuels, in the context of negotiations on environmental goods and services (EGS).

The was followed by a focused brainstorming session among a small group of experts - representing different parts of the world, and active in think tanks, academia, the private sector, international organisations, NGOs and governments - charged with identifying policy/research gaps and windows of opportunity for promoting sustainable development in the trade and climate interface. The group came up with a list of issues that required further analytical work, including energy taxes and border tax adjustment; non-actionable subsidies; labelling and non-product related production and processing methods (npr-PPMs); technical standards; the relationship between the two dispute settlement/enforcement systems. The group stressed the need for a close connection between research and analytical work and policy processes, to achieve policy relevant outcomes. In addition, participants identified the need for increased communication between the two regimes, as well as cooperative solutions that can meet the mutual objectives of the trade and climate regimes.

Together with UNCTAD, ICTSD will also organise a side event at the Conference of the Parties to the climate convention in Buenos Aires on 14 December. Entitled Trade Implications for Kyoto Implementation: Making it Work, the event will explore windows of opportunity in the international trading systems for promoting climate policy, as well as possible obstacles. The side event will zoom in on two case studies in order to bring the issues down to a more concrete level – one on the potential of biofuels, and another on the role of the CDM in promoting economic diversification and the transfer of climate friendly technologies.

In early 2005, ICTSD will release a think piece on emerging issues in the trade/climate interface, building on the outcomes of the roundtable and side event. ICTSD will continue to provide a link between, and introduce issues at the interface of the trade and climate communities over the coming year, both to our Geneva stakeholders and our readers of the BRIDGES publications. These activities on trade and climate change link in with other work at ICTSD in the areas of agriculture and environment, including on the potential for shifting agricultural food production into production of feedstocks for biofuels.

For further information, visit <http://www.ictsd.org/dloguel/2004-10-14/10-14-desc.htm>

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

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

### BRIDGES regional editions:

#### PUNENTES

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

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

#### PONTES

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Co-publishers: Fundação Getúlio Vargas, São Paulo  
Web: <http://www.edesp.edu.br>  
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#### 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](mailto: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](mailto:hbaumuller@ictsd.ch)

#### TRADE NEGOTIATION INSIGHTS

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Editors: Yvonne Apea, Christophe Bellman and Sanoussi Bilal; [yapea@ictsd.ch](mailto:yapea@ictsd.ch)

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Rédaction: Yvonne Apea, Christophe Bellman et Sanoussi Bilal; [yapea@ictsd.ch](mailto:yapea@ictsd.ch)

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### Meetings of WTO Bodies\*

Dec. 10	Working Group on Trade, Debt and Finance
Dec. 13-14	General Council
Dec. 13-17	Committee on Agriculture Special Session*
Dec. 14	Negotiating Group on Rules
Dec. 16	General Council
Dec. 17	Dispute Settlement Body
Dec. 17	Negotiating Group on Rules
Jan. 26	Council for Trade in Goods
Jan. 26-27	Dispute Settlement Body, regular meeting followed by Special Session*
Jan. 31	Negotiating Group for Market Access
Feb. 7-9	Negotiating Group on Trade Facilitation
Feb. 11-12	General Council
Feb. 18	Committee on Trade and Development

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

### Other Meetings

Jan. 10-14	International Meeting for the Ten-year Review of the Barbados Programme of Action for the Sustainable Development of Small Island Developing Countries (SIDS)
Port Louis	http://www.un.org/esa/sustdev/sids/sids.htm
Jan. 26-30	World Economic Forum 2005
Davos	http://www.weforum.org
Jan. 26-31	World Social Forum
Porto Alegre	http://www.forumsocialmundial.org.br/
Feb. 12	Meeting between the G-20 and the EU
Geneva	
Feb. 14	Third Meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing
Bangkok	www.biodiv.org/doc/meeting.aspx?mtg=ABSWG-03
Feb. 14-18	Second Session of the UN Conference for the Negotiations of a Successor Agreement to the International Tropical Timber Agreement, 1994
Geneva	http://r0.unctad.org/commodities/

### Selected Documents Circulated at the WTO

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Dispute Settlement. 10 November 2004. United States – Continued Suspension of Obligations in the EC–Hormone Dispute. Request for consultations by the European Communities (WT/DS320/1)

Dispute Settlement. 10 November 2004. United States – Tax Treatment for Foreign Sales Corporations. Second recourse by the European Communities to Article 21.5 of the DSU (WT/DS108/27)

Dispute Settlement. 10 November 2004. United States – Measures Affecting the Cross-border Supply of Gambling and Betting Services. Report of the Panel (WT/DS285/R)

Negotiating Group on Rules. 2 November 2004. Fisheries Subsidies. Communication from Argentina, Chile, Ecuador, New Zealand, the Philippines and Peru (TN/RL/W/166)

Council for TRIPS. 30 November 2004. Implementation of Paragraph 11 of the August 30 Decision. Communication from Nigeria on behalf of the African Group (IP/C/W/437)

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