



INTERNATIONAL CENTRE FOR  
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# Bridges

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### LEAD STORIES

#### **BEEF HORMONES DISPUTE HEARINGS TO BE OPENED TO PUBLIC**

On 2 August, the two WTO panels hearing the EU's identical challenges against continued retaliatory sanctions on its exports imposed by the US and Canada in the longstanding Beef Hormones dispute announced that their proceedings would be open to the public. This development, the first of its kind in the history of WTO dispute settlement, comes in response to a joint request filed by all three countries on 13 June.

According to the announcement from the WTO ([WT/DS320/8](http://www.wto.org/TradeDispute/WTDS320/8) and [WT/DS321/8](http://www.wto.org/TradeDispute/WTDS321/8)), panel meetings in front of which the disputants are invited to appear will be open to public observation via closed-circuit television broadcast. However, the panels' meetings with the third parties to the dispute will remain closed, as not all of them have agreed to open proceedings to the public.

Former deputy US Trade Representative Susan Esserman and University of Michigan law professor Robert Howse hailed the decision in the Financial Times, saying that it would "enhance the legitimacy of the WTO, bringing its practices more in line with today's value of good governance, transparency, and accountability."

The decision to open up the panels' proceedings was made against the backdrop of an ongoing debate on the issue of transparency in WTO dispute settlement processes. Some members of the trade community, including civil society groups and academics, have bemoaned the lack of public participation in WTO "courts" that make important decisions that can affect public interest concerns such as health and the environment.

#### **The beef hormones dispute and the trade, environment and health debate**

In recent years, several high-profile disputes have put the spotlight on the often polarised and intense debate around trade, environment and health issues, among them the Tuna-Dolphin, Asbestos and Shrimp-Turtle

cases, as well as the ongoing dispute between the EU and the US on genetically modified organisms.

The Beef Hormones dispute has been one such case since 1996, when the US and Canada charged that the EU's ban on hormone-treated beef was not based on a proper scientific risk assessment, and that the scientific evidence in support of it was insufficient. WTO panels and subsequently the Appellate Body ruled in their favour in 1997 and 1998 respectively. This decision was criticised by some civil society organisations which argued that the WTO was putting trade concerns before environmental and health protection, and also undermining the states' sovereign right to determine their own environmental and health policies.

Following these decisions, a WTO panel ruled in 1999 that the US and Canada could impose trade sanctions on certain EU products because it had failed to provide the necessary scientific evidence to justify the ban.

In October 2003, the EU presented new scientific evidence in an attempt to convince the US and Canada to end their trade sanctions. By that point, the duties amounted to over USD 116.8 million and CAD 11.3 million respectively (see [BRIDGES Weekly](#), 13 November 2003). Finally, in November 2004, the EU announced that it would challenge the continued trade sanctions at the WTO, arguing that it had complied with the 1999 ruling (see [BRIDGES Weekly](#), 10 November 2004). It is these hearings that will now be opened to the public.

### **Public participation and transparency in WTO dispute settlement**

Various stakeholders have tried to influence the decisions of panels and the Appellate Body in the closed dispute settlement process by submitting unsolicited legal arguments or amicus curiae briefs advocating a particular position often in support of environmental and health protection. Since 1998, the Appellate Body has taken the position that both it and regular panels have the authority and discretion to accept such legal briefs -- but no obligation to either accept or consider them.

This dimension of civil society participation in the WTO dispute settlement system has been the source of some disagreements between developed and developing countries, especially as most of these amicus curiae briefs have been submitted by Northern civil society groups (in the Shrimp-Turtle, Asbestos and biotech cases). Many developing country Members feel that the amicus process biases the system against them since people or groups in such countries may lack the resources to participate equally in this process.

Some trade observers have called for WTO Members to formalise the amicus process, such as the creation of formal rules for handling such briefs. However, nothing concrete has happened in this regard. Nonetheless, in the ongoing WTO dispute settlement review negotiations, some Members, including the US and the EU, have submitted proposals in favour of opening up the dispute settlement process to the public, as well as the establishment of guidelines for handling amicus submissions.

The issue of enhancing transparency in the dispute settlement process also found support in a recent report on the functioning of the WTO commissioned by the outgoing Director-General, Supachai Panitchpakdi. In the "Sutherland Report," which focused considerable attention on how to enhance the perceived legitimacy of the WTO, the group of experts called for the adoption of guidelines for formalising the amicus process. They did, however, note that such guidelines must address worries about the resource implications of doing so. They also recommended opening parts of panel and Appellate Body hearings to the public.

Some developing countries have been cool to the idea of opening up disputes to the public, arguing that rulings could then be subject to intense lobbying by interest groups which, once again, cannot be afforded by developing countries.

The first meeting of the Panels with the parties will take place on 12-15 September 2005.

All documents related to the beef-hormones dispute and other WTO cases mentioned above are available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_subjects\\_index\\_e.htm#hormones\\_meat](http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm#hormones_meat).

The US proposal on transparency is available at [http://www.ustr.gov/Document\\_Library/Press\\_Releases/2002/August/United\\_States\\_Proposes\\_Greater\\_Openness\\_for\\_WTO\\_Disputes.html](http://www.ustr.gov/Document_Library/Press_Releases/2002/August/United_States_Proposes_Greater_Openness_for_WTO_Disputes.html). The EU proposal is at <http://europa.eu.int/comm/trade/issues/respectrules/dispute/improving/contrib1.htm>.

ICTSD reporting; "The creative evolution of world trade," FINANCIAL TIMES, 22 August 2005.

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### **TRADE COMMUNITY SEARCHES FOR WAY FORWARD IN DOHA TALKS AS LAMY TAKES HELM**

Pascal Lamy formally took over as Director-General of the WTO on 1 September. The former EU Trade Commissioner faces a formidable challenge: goading

increasingly recalcitrant WTO Members into reviving the faltering Doha Round negotiations. Speaking to the press after taking the helm of the global trade body, Lamy reminded them that "Member states have the decision-making power" in the WTO, and that he had no "magic wand" to ensure success. "We can catalyse, we can broker," he continued, "sometimes, sometimes we can lead, but at the end of the day, they take the decision."

Trade negotiators and observers are searching for potential ways to move forward in the ongoing Doha Round trade talks after Members' failure to meet an end-July target date for reaching agreement on pivotal negotiating issues (see [BRIDGES Weekly](#), 3 August 2005).

### **Negotiators: agriculture will determine progress**

Geneva-based trade diplomats are girding themselves for what promises to be an intensive three months of discussions in the run-up to the WTO's Hong Kong Ministerial Conference in December. Several delegates said that progress in the talks would be impossible without a breakthrough in the deadlocked farm trade negotiations -- a breakthrough that would depend entirely on the US and the EU working out some sort of agreement between themselves on export subsidies, support to domestic production, and market access. The EU would have to come out in writing with their ideas on market access and domestic support, one delegate suggested, and the US would have to put forward some suggestions on food aid as opposed to merely defending its existing policies. An indication of meaningful progress on agriculture, it was thought, would spur progress on non-agricultural market access (NAMA) and services.

In one negotiator's view, progress on agriculture must be incremental, "step-by-step," in order to give developing country governments, with their limited capacity, enough time to make complex assessments about how they would be affected. 'Big bangs' of eleventh-hour concessions delivered in a take-it-or-leave-it fashion would likely end up being detrimental to the interests of poor countries.

### **Expert group, Blair underline importance of aid-for-trade**

Opinions on how to achieve success in the Doha Round negotiations have not been limited to trade diplomats. British Prime Minister Tony Blair wrote in the 5 September edition of the Financial Times that "it should be possible at Hong Kong to set a deadline of 2010" for the end of agricultural export subsidies. He also called for more aid to build African countries' capacity to take part in international trade, and for

"allowing them to determine their own economic policies."

A more detailed set of proposals of how the talks could successfully respond to developmental concerns came from a group of trade experts convened by the UK Department for International Development (DFID), and chaired by former Mexican President Ernesto Zedillo. The paper, which was circulated on 6 September to the ministers and Geneva missions of all WTO Member states, warns of a looming impasse in the Doha Round talks. It suggests that governments must "openly recognise and explicitly address" domestic adjustment costs, and garner support for substantial multilateral liberalisation on the basis that it would yield global gains that far exceed the losses that it would inflict. Subsequently, countries would need to set up mechanisms -- within and outside the multilateral trading system -- to enable 'loser' groups to adjust, in order for liberalisation to yield benefits across the world.

The panel suggested that a potential crisis resulting from conflicting interests could be averted if rich WTO Members substantially increased and institutionalised 'aid-for-trade' to boost their poorer counterparts' competitiveness and productivity. Developed countries would also have to agree to compensate developing ones outside the WTO for costs resulting from multilateral trade liberalisation, both financially and in terms of broader support to help developing countries identify and attain their trade-related objectives.

The group proposed that the uncomfortable issue of preference erosion could be addressed by having preference-granting countries provide beneficiary countries with additional bilateral development assistance equal to the "assessed value" of their preference schemes. They also urged governments to make data on trade policies, such as applied tariffs, antidumping measures and product standards, openly available free of charge, arguing that it would facilitate the analysis of the potential developmental impacts of different policies.

### **Agriculture week moved forward by two weeks**

Six major business groups from the US, the EU, Canada, Mexico, Japan, and Australia issued a joint statement on 6 September warning that the Doha Round talks were "on the verge of collapse. A failure to reach a deal at Hong Kong, they say, "may have serious consequences for worldwide economic growth and development and has the potential of striking a critical blow to the heart of the current round." The organisations suggested that sectoral approaches could speed up liberalisation in both NAMA and services, and called for "deep and comprehensive tariff reductions" on industrial goods. Echoing the sentiments of several

Member delegations, the business leaders' statement said that "the failure to resolve key issues in agriculture is seriously stifling progress in other areas."

In response to this sense of urgency around the farm trade negotiations, the group's new chair, Ambassador Crawford Falconer of New Zealand, brought forward its first session of the autumn by almost two weeks. The special (negotiating) session of the Committee on Agriculture will thus meet from 13-16 September, instead of 26-30 September as originally planned.

Meanwhile, Lamy announced that he was starting consultations with members of the WTO Secretariat, the chairs of the negotiating groups, trade envoys and regional groupings. He has promised to make a statement with "more precise views" about the negotiations at the 14 September meeting of the Trade Negotiations Committee.

Documents for the Project on Development and the Global Trade Architecture are available at [http://www.ycsq.yale.edu/core/global\\_trade\\_architecture.html](http://www.ycsq.yale.edu/core/global_trade_architecture.html).

The business groups' statement is available at <http://www.businessroundtable.org/pdf/2005090503WBLGJointStatement.pdf>.

ICTSD reporting; "Alarm bells raised over WTO talks," GLOBE AND MAIL, 6 September 2005; "Dates for Next Round of WTO Agriculture Talks Moved Up by Chairman," WTO REPORTER, 2 September 2005; "Gleneagles must be one step in a longer campaign," FINANCIAL TIMES, 5 September 2005; "A test of Pascal Zorro," FINANCIAL TIMES, 1 September 2005.

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## **CHINA SIGNS DEAL WITH EU ON IMPOUNDED TEXTILES; US NEGOTIATIONS STALLED**

The EU and China signed a deal on 5 September that will permit the release of nearly 80 million pieces of imported Chinese clothing that have been impounded at EU borders, thus ending an episode in what the British press has dubbed the "bra wars."

The agreement, which was approved by EU member states on 7 September, increases the quantity of Chinese textiles exports allowed into the EU in 2005. It thus effectively amends the terms of the 10 June agreement that limited ten types of Chinese textiles exports to the EU to annual increases of no more than 8 to 12.5 percent over the next three years (see [BRIDGES Weekly](#), 15 June 2005).

The impounded clothes, most of them ordered before the import restrictions were imposed, were held in EU ports after the quotas agreed to in June were filled. Under the new pact, 2005 import quotas were increased to allow the release of the blocked merchandise. China agreed to let half of this increase be counted against the import quotas for 2006, while the EU agreed to allow the rest to be imported over and above the previously agreed quantities.

Meanwhile, US-China negotiations on a bilateral textile accord collapsed on 1 September, after three days of negotiations failed to resolve key issues. The same day, the US Committee for the Implementation of Textile Agreements (CITA), a government body that manages the country's textile trade, imposed limits on imports of bras and synthetic filament fabrics from China using the textile-specific safeguard clause from China's WTO accession agreement that allows WTO Members to restrict Chinese textile exports to an increase of 7.5 percent per year. The CITA did, however, decide to postpone a decision on introducing limits for four other types of clothing.

### **"Bra Wars" invoke retailer wrath**

European clothes retailers have complained since June about the re-introduction of quotas, saying that the import restrictions were implemented so quickly that they did not have the time to adjust their supplies. They claim that orders for many of the impounded clothes were placed before the quotas were imposed. This situation was exacerbated by the fact that many retailers used the month between the 10 June agreement on textile quotas and the 12 July date for the actual introduction of import-limiting regulations to order large quantities of textiles, in an attempt to avoid the restrictions.

However, the quota limits came into force retroactively, as of 11 June. The quota limit specified for the June-December 2005 period was quickly filled and exceeded, and tens of millions of pullovers, trousers and bras were held at EU ports, infuriating European retailers who had ordered them. "The [European] Commission should have paid more attention to retailers' need for predictability," said Alessandro Bedeschi, secretary general of the AEDT, an organisation that represents European clothing retailers.

The ensuing political embarrassment prompted the European Commission to approach China in the hopes of renegotiating the June deal to liberate the impounded clothing. At question was whether any increase in permitted import volumes would be counted over and above 2005 quotas, or whether they would count against limits for the following year. The decision to split the difference was made early on 5 September. China



also agreed not to issue any more export licenses for sweaters, trousers or bras this year.

The pact also means that the quantity of Chinese textiles allowed into the EU in 2006 will be lower than anticipated. British retailers warned that it would, in the long term, lead to shortages of Chinese clothing and potentially higher prices for consumers. Concerns that a similar rush of orders could take place in early 2006, leading again to a forced renegotiation of the textile agreement, were raised by some EU importers and member states. "We are happy with the short-term solution," said Ferry den Hoed, an official of the EU Foreign Trade Association, a retail trade lobby group. "But in the end it still can be chaos next year."

### Value of quotas questioned

The value of quotas to protect uncompetitive developed-country industry has been questioned not only by EU retailers who have had to face uncertainty and increased costs, but by those who note that the WTO's Agreement on Textiles and Clothing (ATC) already gave the EU ten years to adjust to increased competition from large developing countries. The bilateral deal with China, while giving smaller developing countries that had benefited from guaranteed quotas under the ATC more time to adjust to an expanded Chinese market share, could nonetheless adversely impact Chinese workers as well as EU retailers and consumers.

These issues were at the fore during talks held in Brussels amongst EU member countries on 6-7 September, during which pro-liberalisation countries such as Germany and Sweden argued for the release of the impounded garments. Countries such as France and Italy, which have significant textile production sectors, originally argued for a rigid adherence to the original terms of the June agreement, but eventually agreed to the changes. Despite these tensions, all sides agreed to approve the China-EU deal, clearing the way for the European Commission's rubber-stamp approval on 14 September. EU Trade Commissioner Peter Mandelson described the deal as "satisfactory" and "equitable", though he lamented that the "textile wars" issue had been blown out of all proportion this summer.

### Stalemate in US-China talks

Elsewhere, the fourth round of US-China negotiations on an agreement to resolve their textiles dispute collapsed on 1 September in Beijing. The Chinese Ministry of Commerce cited "differences on matters of principles" and stressed that "open channels for negotiations" were still open. An announcement with

the date for the next set of negotiations is expected soon.

Key issues remain to be resolved before the talks can progress to technical details such as the permitted rates of increase in the import volumes of specific products. In particular, the US wants any accord to last until the end of 2008, while China wants it to expire by the end of 2007 like its deal with the EU. Furthermore, the US wants to retain its right to limit imports of Chinese textiles products that do not come under the scope of the bilateral deal, while China insists that the US should renounce the use of this instrument while the pact is in force. Also at stake is the scope of the agreement, with the US asking for 35 products to be covered and China hoping to limit it to 13. The Chinese government, along with US importers, have been suggesting that negotiators consider annual growth rates of at least 20 percent. US textile producers, however, want increases to be limited to 7.5 percent.

The US' two new safeguard measures follow earlier import restrictions imposed on seven other types of Chinese textiles. They are expected to put pressure on Chinese negotiators, given that US textile groups have vowed to petition for further safeguards if a bilateral agreement is not reached. Like their transatlantic counterparts, US textile and clothing importers are anxious about import restrictions. The US Association of Importers of Textiles and Apparel recently said that any agreement should not be overly strict, in order to avoid a repeat of the EU's recent predicament.

"US Imposes Quotas on Some Chinese Textiles," NEW YORK TIMES, 2 September 2005; "EU and China reach textile deal as summit starts," MSN MONEY, 5 September 2005; "US, China Make Little Progress In Textile Talks; New Safeguards Imposed," WTO REPORTER, 2 September 2005; "Talks End With EU, China Agreeing To Allow Entry of Blocked Textile Goods," WTO REPORTER, 7 September 2005; "Retailers Urge Administration Negotiators to Avoid EU Mistakes in China Textile Talks," WTO REPORTER, 29 August 2005; "China-EU near import deal," FT, 6 September 2005; "Unease persists as EU set to end China textiles impasse," FT, 7 September 2005; "To retailers, Mandelson mistimed the quotas," INTERNATIONAL HERALD TRIBUNE, 26 August 2005; "US, China to Hold Textile Talks in Beijing Aug 30-31," WTO REPORTER, 26 August 2005; "EU, China hail 'equitable' textile deal," REUTERS, 5 September 2005; "EU States Back Deal to Unblock Textiles," WASHINGTON POST, 7 September 2005; "EU quotas under fire as warehouses fill with blocked Chinese textiles," AGENCE FRANCE PRESSE, 26 August 2005.

## **NAFTA, WTO PANELS ISSUE SEEMINGLY CONTRADICTIONARY RULINGS ON SOFTWOOD LUMBER**

On 10 August, a North American Free Trade Agreement (NAFTA) committee ruled that Canadian softwood lumber practices did not justify US anti-dumping duties on Canadian exports. Three weeks later on 29 August, a WTO dispute panel released an interim ruling that supports the American position that Canadian softwood posed a threat to US producers and, thus, imposing anti-dumping duties was not a breach of international rules. These latest rulings on the decades-old dispute have elicited high emotion from both sides of the border as both parties involved claim that the seemingly contradictory findings vindicate their respective positions.

### **The NAFTA Ruling**

The 10 August ruling of the NAFTA Extraordinary Challenge Committee (ECC) concerns the 2002 determination by the US International Trade Commission (ITC) -- a US federal agency responsible for antidumping and countervailing duty investigations -- that Canadian softwood lumber posed a threat of material injury to the US lumber industry.

The US has consistently asserted that their duties on Canadian softwood were justified because "stumpage fees" -- fees the Canadian government charges forestry companies to harvest timber on state-owned land -- were too low and thus tantamount to subsidies (see BRIDGES Weekly, 14 January 2004, <http://www.ictsd.org/weekly/04-01-14/story2.htm>). On 31 August 2004, a NAFTA panel had ruled against this allegation by the US ITC and supported Canada's position. The Office of the United States Trade Representative (USTR) rejected these findings, asserting that the panel had not followed established dispute settlement rules and that one of its members was in a conflict of interest position. The ECC, which is part of NAFTA's appeals process, was established at the request of the USTR in order to review the decision. On 10 August 2005, the ECC unanimously dismissed the USTR's allegations, upholding the initial panel's finding that US anti-dumping duties on Canadian lumber were unfounded because Washington was unable to prove the existence of a threat of material injury.

Shortly after the ECC released its findings, the US announced that it would not comply. This, in turn, elicited threats of retaliatory duties from Canada. "We are not happy with the position of the United States to simply ignore what is a clear NAFTA ruling in Canada's favour," Canadian Finance Minister Ralph Goodale

said. He argued that the USD4.1 billion collected by US customs since softwood duties were established in May 2002 had been obtained illegally. Canada contends that the ECC ruling effectively requires the US to reimburse the duties.

### **The WTO Ruling**

The high spirits in Canada that were brought on by the NAFTA ruling were dampened on 29 August when a WTO dispute panel released its interim finding which pronounced that US duties were not in breach of international law. This is not an unprecedented position for the WTO. In fact, WTO dispute panels have a history of supporting both countries' positions when it comes to softwood lumber. In essence, the WTO agrees with the US that Canadian stumpage fees provide an advantage to the Canadian timber industry -- but not to the degree that the US asserts. This has led to confusion around the issue.

In March 2004, for example, a WTO decision had both Canada and the US claiming victory when they ruled that while the US was justified in imposing duties on Canadian softwood, the amount they had established was too high and must be recalculated. The following December the US Commerce Department responded by lowering its anti-dumping duties on pine, spruce and fir from 18.79 percent to 17.18 percent, which was based on a revised ITC determination. Canada countered that the small reduction did not amount to compliance with the WTO decision. On 1 August 2005 a WTO compliance panel agreed with Canada's position, which prompted Canada to file a request with the WTO to impose USD 169 million in retaliatory tariffs on the US. On 6 September 2005, the US appealed the 1 August ruling, which means it will likely be another three months before a final decision is reached. Meanwhile, a WTO ruling on Canada's retaliatory tariff request is expected in mid-2006.

### **Mixed reactions**

American officials remained tight-lipped after the NAFTA ECC findings were released, only maintaining that both parties should pursue a negotiated solution to the issue. However, Canada was resolute that the NAFTA decision was clear and absolute, and that the time for negotiating was over. "It's like playing a game of poker and, if you lose the hand, saying 'let's negotiate the pot'. It doesn't work that way. You lose the hand, you pay the money, then you go on to the next hand," said Frank McKenna, Canada's Ambassador to the US. However, with the WTO panel's preliminary report, some feel that the next hand might have already arrived. "The [WTO] panel's finding confirms that dumped and subsidised imports of softwood lumber

from Canada threatened to materially injure the US industry," said USTR spokeswoman Neena Moorjani.

The devastating hurricane in the southern US delayed a phone conference between Canadian Prime Minister Paul Martin and US President George W. Bush during which they were expected to discuss the softwood lumber issue. This has been re-scheduled for 8 September; the softwood issue is expected to share the stage with discussions about a Canadian assistance to reconstruction efforts. The dual-issue conference has led some to draw unexpected links. While US builders have long contended that duties on Canadian softwood lumber were inflating the cost of construction in the US, Susan Petniunas from American Consumers for Affordable Homes linked them specifically to the hurricane. "This tragedy, coupled with ongoing lumber tariffs, will only further harm lumber consumers - especially those needing affordable housing in the US," she stated in an interview.

#### **Uncertain future the result of overlapping trade agreements**

While both sides claim victory, confusion prevails on the implications of these seemingly contradictory rulings. According to Canadian trade lawyer Lawrence Herman, the WTO and NAFTA rulings should not be seen as contradictory, but rather as "mutually exclusive." He noted that NAFTA panels evaluate compliance with domestic laws while the WTO Dispute Settlement Body assesses Members' adherence to international trade laws.

The ensuing debate has also drawn attention to the logic of a country's engagement in overlapping trade agreements. Canada has been fighting US duties under both trade pacts with the hopes that a win from either body would bolster their case. However, the findings that have emerged call this strategy into question. Indeed, with multiple rulings emerging from multiple trade panels on multiple issues, a gloss of confusion appears to have washed across the debate. While the WTO and NAFTA rulings do not address the same exact issue, they conflict on the key issue of whether US duties on Canadian softwood -- regardless of the set amount -- are justified. Thus, both parties are pointing to the respective trade bodies' findings as proof of their vindication.

Canadian trade lawyer Barry Appleton stresses that "NAFTA states very clearly that in the case of a conflict between NAFTA and the WTO, NAFTA prevails." Meanwhile, Steve Swanson, of the American lumber lobby group the Coalition for Fair Lumber Imports contends that "this new [WTO] determination should put to rest any questions about whether duties are justified in this case."

"Canada Considers Retaliatory Tariffs," ASSOCIATED PRESS, 23 August 2005; "Canada Mulls Tariffs Over Lumber Spat, Emerson Says (Update 3)," BLOOMBERG, 23 August 2005; "Canada Scraps Softwood Lumber Talks with U.S.," REUTERS, 16 August 2005; "Canada may Retaliate with Tariffs in Softwood Battle," CBC.CA NEWS, 23 August 2005; "ECC Rules No Justification for Softwood Lumber Duties," INTERNATIONAL TRADE CANADA NEWS RELEASE, 10 August 2005; "WTO Compliance Panel Finds U.S. Countervailing Duties on Canadian Softwood Lumber Illegal," INTERNATIONAL TRADE CANADA NEWS RELEASE, 1 August 2005; "WTO Loss to U.S. Won't Change Canadian Position in Softwood War: Minister," CBC.CA NEWS, 31 August 2005; "WTO Compliance Panel Rules in Favor Of U.S. on ITC Lumber Duty Determination," WTO REPORTER, 31 August 2005; "U.S. Housing Advocate Wants Lumber Duties Dropped for Hurricane Reconstruction," CBC.CA NEWS, 6 September 2005; "U.S. Appeals WTO Ruling Against Import Duties on Canadian Wood," BLOOMBERG, 6 September 2005; "U.S. Appeals WTO Compliance Report," BUSINESSWEEK ONLINE, 6 September 2005.

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### **IN BRIEF**

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#### **AFRICAN CIVIL SOCIETY SPEAKS OUT ABOUT DOHA ROUND TALKS**

Several African civil society organisations adopted a statement declaring their beliefs and demands with regard to the ongoing Doha Round negotiations, following a 16-19 August strategy meeting in Accra, Ghana, hosted by Third World Network-Africa. The "Declaration of African civil society on the road to the 6th Ministerial Conference of the World Trade Organization in Hong Kong" targets African and other government officials preparing for the December WTO Ministerial Conference in Hong Kong. The signatories contend that in the run-up to the summit, African developing countries will come under intense pressure to undertake further and deeper liberalisation commitments in their industrial, agricultural and services sectors. This, they argue, would undermine their right to determine and implement development policies aimed at safeguarding the social and human rights and livelihoods of Africans.

The declaration also laments the lack of progress on issues pertaining to Africa's development concerns in the Doha Round negotiations thus far. It identifies areas of concern for Africans in the current talks including:

non-agricultural market access (NAMA); agriculture; services; special and differential treatment; implementation issues; and the WTO compatibility of their ongoing Economic Partnership Agreement (EPA) negotiations with the EU, as well as issues about the negotiating process itself. The declaration also urges African governments to ensure that their mandates in Hong Kong are guided by debates at the national level, including both parliamentary discussions and talks with civil society organisations.

The declaration was signed by trade unions, farmers' associations, women's organisations, faith-based groups, and non-governmental organisations.

ICTSD reporting; "Declaration of African civil society on the road to 6th Ministerial Conference of the World Trade Organisation in Hong Kong," THIRD WORLD NETWORK-AFRICA PRESS RELEASE, 25 August 2005.

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### **NAFTA TRIBUNAL UPHOLDS CALIFORNIA GASOLINE ADDITIVE BAN**

On 9 August, a North American Free Trade Agreement (NAFTA) tribunal upheld the state of California's ban on a potentially carcinogenic gasoline additive, unanimously dismissing a Canadian methanol producer's USD 970 million lawsuit against the US. It also ordered the company to pay USD 4 million in legal fees. In the lawsuit, Vancouver-based Methanex Corporation asserted that California's ban on "methyl tertiary butyl ether" (MTBE) -- a gasoline additive that reduces greenhouse gas emissions in vehicles -- violated its rights under NAFTA's Chapter 11, which sets out rules for the treatment of foreign investors.

California established the ban in 1999 after traces of the chemical were found in local water supplies. Then-California Governor Gray Davis justified it on the grounds that MTBE had been linked to cancer, and that it posed threats to both human health and the environment. Methanex, which produces a major component of MTBE, charged that the compound's carcinogenic links were not scientifically grounded and that the ban was instead influenced by political contributions from US-based manufacturers of ethanol - an MTBE substitute now widely used in California (see BRIDGES Weekly, 14 November 2002, <http://www.ictsd.org/weekly/02-11-14/inbrief.htm>).

The case drew much attention, as some perceived it as a company's attempt to influence a state's ability to effectively enforce its own health and environmental regulations. It was also notable because the tribunal granted 'amicus curiae' or "Friend of the Court" status to the International Institute for Sustainable

Development (IISD), a Canadian non-governmental organisation, on 15 January 2001, representing the first time a NAFTA tribunal has allowed formal public input in an investor-state dispute. IISD later praised the dismissal of Methanex's suit for clearly establishing that properly implemented regulatory measures for public purposes are not considered expropriation under international law.

"NAFTA Panel Rules Against Methanex in MTBE Case," REUTERS, 9 August 2005; "Trade Tribunals Must Not Trump State, Local Laws," SAN FRANCISCO CHRONICLE, 23 August 2005; "Methanex Loses US \$1B Fight Over Gas Additive," FINANCIAL POST, 10 August 2005; "Trade Panel Rejects Canadian Firm's Challenge to California MTBE Ban," ASSOCIATED PRESS, 10 August 2005; "The Final Decision in Methanex v. United States: Some New Wine in Some New Bottles," INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, August 2005.

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### **CAP REFORMS FAIL TO DIMINISH GAP BETWEEN RICH, POOR FARMERS: STUDY**

The recent 2003-04 reforms of the EU's Common Agricultural Policy (CAP) do not go far enough to diminish the gap between rich and poor farmers, according to a recent book entitled "CAP and the Regions: The Territorial Impact of the Common Agricultural Policy." A team from the British universities of Newcastle-upon-Tyne and Aberdeen found that the bulk of CAP subsidies are still going to the richer regions of Germany, the UK, France and the Netherlands, rather than to the poorer regions of Spain, Italy, Poland and southern and eastern Europe.

The book's release coincides with a campaign for more transparency in the distribution of CAP monies that sprang from the discovery that nearly 80 percent of such subsidies go to only 20 percent of Europe's farmers, with large agri-businesses receiving the largest share. The US has also been heavily criticised for their unequal distribution of agricultural subsidies, the lion's share of which go to agro-industrial corporations over small family farms (see BRIDGES Weekly, 1 December 2004, <http://www.ictsd.org/weekly/04-12-01/inbrief.htm#2>).

UK Prime Minister Tony Blair has called for more CAP money to be directed away from farming production towards technology and research in order to boost Europe's economy.

The authors of the book believe that their proposals, such as reducing the amount of direct subsidies for



farmers, decreasing market protection over time, increasing the amount of money available for environmentally-friendly farming and rural development measures, would aid the EU in meeting pressure from other WTO Members to cut subsidies and realign their food prices with world levels.

"EU farm subsidies unfair, need overhaul: British study," NEWSWIRE. 20 August 2005; "New Research backs further CAP reform," CORDIS NEWS 22 August 2005; "More transparency on EU farm handouts," EU OBSERVER 19 August 2005.

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## **EU, MERCOSUR TO RESTART STALLED FTA NEGOTIATIONS**

The EU and South America's four-country MERCOSUR (Common Market of the South) trade bloc have decided to restart their stalled free trade agreement (FTA) negotiations, following a ministerial-level meeting in Brussels on 2 September. There had been virtually no progress in FTA talks between the two groups since October 2004, when they fell apart over MERCOSUR's demands for greater access to Europe's agricultural markets and the EU's desire for expanded liberalisation in industrial goods, investment, and certain services sectors (see BRIDGES Weekly, 27 October 2004, <http://www.ictsd.org/weekly/04-10-27/inbrief.htm>).

At the meeting in Brussels, the South American bloc comprised of Argentina, Brazil, Paraguay, and Uruguay, managed to introduce the concept of special and differential treatment (S&D) into the talks. This could potentially mean that MERCOSUR countries would receive additional time to comply with obligations under any eventual agreement, as well as increased low-tariff access for agricultural products.

As before, MERCOSUR is asking for increased market access for its farm exports. The EU, for its part, continues to push for improved protection for its foreign investors, the elimination of tariffs on industrial goods, competition in government procurement, and increased services liberalisation particularly in the financial and telecommunication sectors.

The foreign ministers representing the two groups at the gathering agreed to meet again early in 2006. Lower-level representatives will meet twice in the interim to lay the groundwork for this summit.

An EU-MERCOSUR free trade area would cover 680 million people, with over USD 40 billion in annual trade between the two blocs.

PUNTES Quincenal, 7 September 2005; "EU, Mercosur Agree to Relaunch Talks," ASSOCIATED PRESS, 2 September 2005.

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## **EVENTS & RESOURCES**

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### **VACANCIES**

The European Centre for Development Policy Management (ECDPM) is currently recruiting for two positions: a JUNIOR PROGRAMME OFFICER (JPO) and a RESEARCH ASSISTANT (RA). The JPO will be responsible for the management, further development and operation of the Centre's ACP-EU Economic & Trade Cooperation Programme website [www.acp-eu-trade.org](http://www.acp-eu-trade.org), under supervision of its programme coordinator. The RA will be responsible for assisting the JPO in these tasks. Further information and applications can be found at [www.ecdpm.org](http://www.ecdpm.org) (go to "English version" > "About ECDPM" > "Vacancies"). Applications should be sent by email to Ms. Léonne Willems, Human Resources Officer to [lw@ecdpm.org](mailto:lw@ecdpm.org) or by fax to +31 43 350 29 02 no later than 10 September 2005.

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### **EVENTS**

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar at: <http://www.ictsd.org/cal/index.htm>. If you would like to submit an event, please email [events@ictsd.ch](mailto:events@ictsd.ch).

#### **Coming Up: 8 September - 14 September**

9-10 September, Murree, Pakistan: G-20 MINISTERIAL CONFERENCE ON WTO DOHA DEVELOPMENT AGENDA NEGOTIATIONS. The Government of Pakistan is hosting a conference of G-20 ministers and their counterparts from other developing country Members of the WTO. For further information contact the Conference Secretariat, tel: +92-51-9201953; fax: +92-51-9213785 email: [g20@commerce.gov.pk](mailto:g20@commerce.gov.pk) or see <http://www.commerce.gov.pk/g20>.

12 September, Geneva, Switzerland: ROUNDTABLE ON THE CURRENT STATUS OF THE MILLENNIUM DEVELOPMENT GOALS. This roundtable, organised by the UN Environment Programme (UNEP), will take a critical look at the efforts and approaches that have been undertaken by institutions and Member States to reach the Millennium Development Goals, with an emphasis on environmental issues. For further

information, contact Fatma Gordon, Geneva Environment Network (GEN), tel: +41-22-917-8326; fax: +41-22-797-3464; email: [fatma.gordon@unep.ch](mailto:fatma.gordon@unep.ch).

14-16 September, New York City: HIGH-LEVEL PLENARY MEETING OF THE 60TH SESSION OF THE UN GENERAL ASSEMBLY ON THE FOLLOW-UP TO THE OUTCOME OF THE MILLENNIUM SUMMIT. The Millennium +5 Summit is expected to undertake a comprehensive review of the progress made towards the commitments articulated in the UN Millennium Declaration. The event will also review progress made in the integrated and coordinated implementation of the outcomes and commitments of the major UN conferences and summits in the economic, social and related fields. Internet: [http://www.un.org/ga/59/hl60\\_plenarymeeting.html](http://www.un.org/ga/59/hl60_plenarymeeting.html).

### WTO Events

An updated list of forthcoming WTO meetings is posted at: [http://www.wto.org/english/news\\_e/meets.pdf](http://www.wto.org/english/news_e/meets.pdf). Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland, and are open to WTO Members and accredited observers only.

13 September: COMMITTEE ON AGRICULTURE - SPECIAL SESSION

14 September: TRADE POLICY REVIEW BODY - TRINIDAD AND TOBAGO

14 September: TRADE NEGOTIATIONS COMMITTEE

### Other Upcoming Events

21-22 September, Geneva, Switzerland: UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP) INTEGRATED ASSESSMENT AND PLANNING PROJECT REVIEW. This event is organised by the Economics and Trade Branch of UNEP. At this review meeting, participating countries will share the preliminary results of their work as well as their experiences from project implementation. For further information contact Cecilia Pineda, tel: +41-22-917-8103; fax: +41-22-917-8076; email: [Cecilia.Pineda@unep.ch](mailto:Cecilia.Pineda@unep.ch).

27-30 September, Rome, Italy: SECOND CONFERENCE OF THE PARTIES TO THE ROTTERDAM CONVENTION (PIC COP-2). The conference will discuss the 1988 Convention on Prior Informed Consent, which required exporters trading in a

list of hazardous substances to obtain the prior informed consent of importers before proceeding with the trade. For further information contact the Rotterdam Convention Secretariat, tel: +41-22-917-8296; fax: +41-22-797-3460; e-mail: [pic@unep.ch](mailto:pic@unep.ch) or see <http://www.pic.int/en/ViewPage.asp?id=386>.

25-27 October, Tokyo, Japan: WTO AT 10: DISPUTE SETTLEMENT, MULTILATERAL NEGOTIATION, REGIONAL INTEGRATION. The Fair Trade Center and Tokyo Keizai University, in collaboration with Aoyama Gakuin University, the United Nations University Institute of Advanced Studies, and the Institute for International Studies and Training is hosting the third of a series of regional conferences commemorating the 10th Anniversary of the WTO Dispute Settlement System and the establishment of the Appellate Body. For further information contact Takashi Iwamoto tel: +81-3-3591-4550; fax: +81-3-3501-8066; e-mail: [fvb6745@infoweb.ne.jp](mailto:fvb6745@infoweb.ne.jp) or see <http://www.iist.or.jp/info/wto10/index-e.html>.

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## RESOURCES

### ICTSD Resource

TECHNICAL ASSISTANCE FOR THE FORMULATION AND IMPLEMENTATION OF INTELLECTUAL PROPERTY POLICY IN DEVELOPING COUNTRIES AND TRANSITION ECONOMIES. By Tom Pengelly. International Centre for Trade and Sustainable Development (ICTSD), June 2005. This issue paper provides an overview of current policies and issues relating to technical assistance for the development of national intellectual property infrastructure, legal and policy frameworks and associated human resources. The paper discusses the need for intellectual property technical assistance, and overviews the main types of such activities and services. It review donor organizations and providers including the World Intellectual Property Organisation (WIPO), the US, the EU, the European Patent Office and IP Australia, and discusses the strategic issues relating to the improvement of such technical assistance in the context of developing and transition economies. Available online at [http://www.iprsonline.org/unctadictsd/docs/Pengelly\\_TA\\_FINAL.pdf](http://www.iprsonline.org/unctadictsd/docs/Pengelly_TA_FINAL.pdf).

### Other Resources

"Values and interests in attitudes toward trade and globalization: the continuing compromise of embedded liberalism" by Robert Wolfe and Matthew Mendelsohn in the CANADIAN JOURNAL OF POLITICAL SCIENCE 38 (3), 2005. This article asserts that many analyses of public opinion about global integration, and by

implication global governance, are based on the material factors or interests driving individual and collective political preferences. In contrast, the authors argue that values and ideology offer a better explanation of attitudes toward trade liberalisation than do economic interests, and that the material self-interest factors that do influence opinion about trade are not relevant for opinion about globalisation. The authors use regression analysis of original Canadian public opinion data to show that individuals of whatever skill or educational level who trust multinational corporations and the market, who like the US, who support more immigration, who oppose a larger welfare state, and who support Canada taking a more active role in the world are more likely to support globalisation. The article concludes that Canadians' continued support of free trade agreements but wariness about globalisation indicates that the compromise of embedded liberalism, a compelling metaphor about the foundation of twentieth century international organization, continues to shape their understanding of the world.

"See you in Geneva? Legal (mis)representations of the trading system" by Robert Wolfe in the EUROPEAN JOURNAL OF INTERNATIONAL RELATIONS 11 (3), 2005. This paper notes that when officials from different countries disagree about trade policy, some say 'see you in Geneva!' meaning 'see you in court!' In offering a pluralist alternative to this centralism of analysts and practitioners, the author represents the WTO not as a coercive court used for enforcement but as a site for the elaboration of a system of 'law' that arises from and provides a framework for self-directed human interaction. Trade law is shaped in the shadow of bargaining. Wolfe contrasts this legal representation with 'legalisation' to show the contribution it makes to constructivist international theory. An empirical probe of the contentious domain of the WTO Agreement on Sanitary and Phyto-sanitary Measures (SPS) asks about the relative importance of the few formal SPS 'disputes' compared with other ways that WTO law affects global food safety. A discussion of how the trading system responded to 'mad cow disease' (BSE) provides confirmation of pluralist insights. Far from being only in Geneva, the author contends that trade law is everywhere.

OECD TRADE POLICY WORKING PAPER NO. 20 - TRADE PREFERENCE EROSION: EXPANDED ASSESSMENT OF COUNTRIES AT RISK OF WELFARE LOSSES. By the Organisation for Economic Co-operation and Development (OECD), 18 August 2005. This paper presents additional findings from the on-going work of the OECD project on trade preference erosion. The purpose was to assess in more detail the situation of those preference-reliant countries seen as being most at risk of experiencing negative welfare effects from preference erosion as a consequence of

multilateral tariff liberalisation (building on a previous paper by Lippoldt and Kowalski, 2005). Based on a selection criterion, 7 developing countries were chosen for inclusion in the present study: Bangladesh, Madagascar, Morocco, Mozambique, Tanzania, Uganda and Zambia. For three of the seven developing countries, welfare losses primarily associated with the EU-15 tariff liberalisation are estimated to be more than fully offset by greater gains arising from improved market access in other sectors and markets. Available online at

[http://webdomino1.oecd.org/olis/2005doc.nsf/Linkto/tc-wp\(2005\)13-final](http://webdomino1.oecd.org/olis/2005doc.nsf/Linkto/tc-wp(2005)13-final).

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