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NOTE TO SUBSCRIBERS

This is the last issue of ICTSD's BRIDGES Weekly Trade News Digest for 2005. During the WTO's Hong Kong Ministerial Conference from 13-18 December, we will be producing BRIDGES Daily Updates. These will be sent to BRIDGES Weekly subscribers, and made available online at <http://www.ictsd.org/ministerial/index.htm>. The first issue of 2006 -- Vol. 10, No. 1 -- will be published on 18 January 2006. The BRIDGES Weekly team would like to thank our contributors and funders for the critical assistance they provide. We would also like to thank our readers for their interest and feedback, and wish you all the best for the holiday season and 2006.

LEAD STORIES

MEMBERS STRIKE DEAL ON TRIPS AND PUBLIC HEALTH; CIVIL SOCIETY UNIMPRESSED

WTO Members agreed on 6 December 2005 to amend the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) to allow countries with insufficient pharmaceutical manufacturing capacity to import generic versions of drugs still under patent (see BRIDGES Weekly 4 September 2003 <http://www.ictsd.org/weekly/03-09-04/wtoinbrief.htm#1>). WTO Director-General Pascal Lamy hailed it as confirmation that "Members are determined to ensure the WTO's trading system contributes to humanitarian and development goals." However, international humanitarian aid group Médecins Sans Frontières (MSF) has warned that the amendment is "based on a mechanism that has failed to prove it can increase access to medicines."

The mechanism in question is the '30 August 2003 Decision' -- a waiver of certain TRIPS obligations that allows countries to export drugs produced under compulsory licence, subject to a large number of conditions in both the exporting and importing country. The Decision's adoption was accompanied by a

statement from the chair of the General Council ('Chair's statement') assuring that it would not be misused, for example to divert low-cost medicines into rich country markets. However, even though several would-be exporters, such as Norway, Canada and India have altered their domestic laws to meet the waiver's conditions, and similar changes are imminent in the EU and Korea, not a single country has used it to import drugs. This is often blamed on the 30 August Decision's complicated eligibility requirements.

The recent decision, taken first in the TRIPS Council and then in the General Council after several extensions and an elaborate procedural process, directly translates this waiver into a formal amendment to the TRIPS Agreement -- the first such change to a core WTO agreement since the organisation came into being in 1995. Notably, the text of the amendment does not mention the Chair's statement -- this had been a key objective for many developing countries, which saw it as a restriction on the waiver. The process followed to amend the agreement, however, arguably establishes the Chair's statement as legal context for interpreting the amendment in the event of a WTO dispute.

According to WTO rules, the amendment will only enter into force once it is accepted by two-thirds of the Membership. Pending such acceptance -- through the respective domestic procedures of some 99 Members -- the amendment will not take effect, and the waiver will continue to be the legal basis for any trade in generic drugs produced under compulsory licence.

The agreement comes in the run up to the WTO's 13-18 December Ministerial Conference in Hong Kong. EU Trade Commissioner Peter Mandelson welcomed it "a first contribution for a Hong Kong Ministerial development package," saying that "the EU has worked hard for this outcome and welcomes that others have moved to make this possible."

Deal contains three written aspects...

The amendment, which came after two years of slow-moving debate, includes three main aspects: a five-paragraph 'Article 31 bis,' an Annex and an Appendix.

Article 31 bis provides for limited exceptions ("to the extent necessary") to Article 31(f), which stipulates that products produced under compulsory licence should be "predominantly for the supply of the domestic market of the Member authorising such use," thus facilitating the export of pharmaceutical products produced under compulsory licence. It provides a similar exemption for countries belonging to regional trade agreements (RTAs), the majority of whose members are least-developed countries, making it unnecessary to issue separate compulsory licences to export to each RTA

partner. Article 31 bis also provides for avoiding double remuneration -- by both the exporter and the importer -- to the patent holders.

Moreover, the new article addresses the issue of "non-violation," declaring that Members will not launch such complaints -- based on the loss of an expected benefit caused by another Member's actions, even if they do not actually violate WTO law -- against measures taken in accordance with the amendment.

The Annex outlines the detailed requirements for eligibility, notification, and control included in the original waiver, while the Appendix details how the 'absence or insufficiency of manufacturing capacity' may be factually established.

...and set out the 'choreography' of adoption

Members also agreed to a specific 'choreography' outlining the procedure through which to amend the TRIPS Agreement. This unusual process established that first, Members would make no statements while the TRIPS Council agreed to send the proposal to the General Council along with the controversial Chair's statement. Subsequently, in the General Council, the 11 Members who had partially 'opted out' of using the 30 August Decision as importers would reiterate in writing or through an additional statement their intention to only use the mechanism in cases of national emergency. Then, immediately before the adoption of the decision by the General Council, Chair Ambassador Amina Mohamed of Kenya would read out the Chair's statement from 2003.

The significant aspect of this 'choreography' is that delegations were as a result unable to make statements on the amendment before it was formally adopted and 'gavelled' by Mohamed. Some trade analysts suggest this could mean that, should the amendment ever come to dispute settlement, the Chair's statement (rather than a cacophony of dissenting views) could come to be seen as providing the main, if not sole, supplementary means for interpreting it -- even though it is not in the actual text of the agreement. Previous statements made in the course of the preparation of the 30 August Decision, such as those made in the TRIPS Council prior to and at the time of the adoption of the waiver decision in 2003, were deliberately not reaffirmed, and might thus have minimal interpretative value in case of a dispute.

If the two-thirds requirement is not reached by December 2007 -- the deadline for acceptance by Members set by the General Council decision -- Members could extend it to a later date. However, so long as the amendment does not take effect, the 30 August Decision waiver will remain operative. This is

significant, because the supplementary means for interpreting this Decision, in the event of a dispute, could include not only the Chair's statement, but also other statements made by Members prior to the Decision's adoption in 2003. These could include the statement made by the Philippines in the TRIPS Council on 28 August 2003 prior to the final adoption of the 30 August Decision (IP/C/M/41), which questioned several of the assumptions in the Chair's statement.

Informal consultations at last minute pre-Hong Kong

The amendment was the product of a series of informal and formal meetings held during the past month. Initially these meetings took place only between the African Group and the US, and sometimes the EU, but later on expanded to include other countries that were interested in participating in the process, such as Brazil, India, Hong Kong, and Israel. TRIPS Council Chair Ambassador Choi Hyuck of Korea played an active role in at least some of these meetings (see BRIDGES Weekly 26 October 2005, <http://www.ictsd.org/weekly/05-10-26/story3.htm>).

During these meetings delegations generally agreed that the legal meaning of the waiver should not be changed.

During the formal and informal meetings of the TRIPS Council that took place almost continuously from 29 November - 6 December, the African delegations expressed support for the agreement. Countries including Brazil, Mexico, Bangladesh, the Philippines, Sri Lanka, India, and Thailand expressed support for the amendment in principle, but requested additional time to allow for consultations with their capitals. The decision was finally adopted on the afternoon of 6 December.

A rushed compromise?

What remains unclear is the precise reason for the hurry to finalise the integration of the waiver into the TRIPS Agreement in time for the Hong Kong Ministerial Conference. The waiver itself had no time frame attached to it, and thus there was no particular need to convert it into an amendment at this time. One trade source suggested that since little progress is expected at the summit on issues such as agriculture and non-agricultural market access, developed countries were eager to support the amendment to demonstrate their commitment to a development package in Hong Kong.

The African Group originally claimed that the conditions required by the waiver were too burdensome to be of practical use. In December 2004, it had proposed a 'lighter' format of the waiver that received criticism from

some developed countries for omitting some aspects of the 30 August Decision (see BRIDGES Weekly, 8 December 2004, <http://www.ictsd.org/weekly/04-12-08/story1.htm>). It is likely that the African countries had to move away from this proposal in order to find a compromise with the US. Yet, it is notable that the US too moved away from its original demand that the Chair's statement be part of the text of any amendment.

Civil society sceptical

An MSF press release said that "...the decision shows that the WTO is ignoring the day-to-day reality of drug production and procurement. The amendment has made permanent a burdensome drug-by-drug, country-by-country decision-making process, which does not take into account the fact that economies of scale are needed to attract interest from manufacturers of medicines." In fact, since the 30 August Decision was taken over two years ago, MSF has been seeking to make use of the mechanism by placing an order with a generic drug manufacturer, and has described the process to be very 'long' and 'resource intensive.'

In a press conference after the adoption of the amendment, General Council Chair Mohamed insisted that even though no country has been able to use it to import medicines, the waiver had been effective, since drug prices have fallen significantly since it was adopted in 2003.

Nevertheless, 31 non-governmental organisations (NGOs) have issued a public statement urging governments to test the mechanism before turning it into permanent law. This group includes national groups, such as Kenya AIDS Intervention Prevention Project Group (KAIPPG), Assessor de comunicação Associação Brasileira Interdisciplinar de AIDS (ABIA) and the Ugandan Treatment Access Campaign, as well as international NGOs such as Oxfam and ActionAid.

The NGO statement can be found at: <http://www.cptech.org/ip/wto/p6/ngos12032005.html>.

ICTSD reporting; "WTO TRIPS Council meeting -- Bad deal expected, THIRU BALASUBRAMANIAM (<http://fromgeneva.blogspot.com/>), 6 December 2005; "External Opposition Rises to TRIPS And Public Health Deal," INTELLECTUAL PROPERTY WATCH, 6 December 2005; "African Countries Ready to Accept TRIPS and Public Health Deal," INTELLECTUAL PROPERTY WATCH, 6 December 2005; "WTO OKs measures to improve drug access," ASSOCIATED PRESS, 6 December 2005; "Amendment to WTO TRIPS Agreement Makes Access to Affordable Medicines Even More Bleak," MÉDECINS SANS FRONTIÈRES PRESS RELEASE, 6 December 2005.

WTO MEMBERS ENDORSE DRAFT HONG KONG TEXT AFTER SPAT OVER SERVICES

Following hours of discussions on 2 December, the WTO General Council agreed to endorse a revised version of the draft declaration text for the 13-18 December Ministerial Conference in Hong Kong -- albeit with some additional modifications in response to a disagreement over its language on services. Along with the text, WTO Director-General Pascal Lamy and General Council Chair Ambassador Amina Mohamed of Kenya will send ministers a set of questions about the agriculture and non-agricultural market access (NAMA) negotiations, in an attempt to guide their debate towards issues that are in particular need of resolution.

Lamy and Mohamed had circulated the text, changed to incorporate Members' reactions to the 26 November first draft, to delegations the evening before (see BRIDGES Weekly, 30 November 2005, <http://www.ictsd.org/weekly/05-11-30/story1.htm>). The revision includes new paragraphs that point to areas in the agriculture and industrial goods negotiations where Members' views overlap significantly. Nowhere in these additions, however, is there binding language -- instead, the text refers to "working hypotheses" on issues such as classifying farm tariffs into four bands for the purposes of reducing them.

The revised draft retains blank spaces for ministers to establish dates for agreeing on 'full modalities' on agriculture and NAMA -- the specific numerical values and formulae for cutting tariffs and subsidies that Members had once hoped to finalise in Hong Kong. Some progress towards these dates came during a 2-3 December meeting in Geneva of senior officials from the US, the EU, Australia, Brazil, India (the so-called Five Interested Parties, or FIPs) and Japan, when they set a 1 March 2006 deadline for reaching an agreement on eliminating agricultural export subsidies. Geneva sources continue to mention March and April as potential target dates for full modalities.

The legal status of the annexes to the draft declaration -- the reports submitted by the chairs of the Doha Round negotiating bodies on agriculture (Annex A), NAMA (B), services (C), rules (D), trade facilitation (E) and S&D (F) -- remained contentious. Although the introduction of the ministerial text explicitly stated that with the exception of the one on trade facilitation, none of the annexes "purport[ed] to be agreed texts," a number of Members objected to the phrasing of the reference to the services annex in the body of the revised draft, arguing that it implied a consensus that did not exist.

Lamy: agriculture, NAMA, S&D "most difficult issues"

In his speech to the General Council, Lamy identified agriculture, NAMA, and special and differential treatment (S&D) as the "most difficult issues" in the talks. He also attested to an increasing sense among Members that they should focus on the "wide divergences" that persist in these areas.

In spite of these differences, Members did manage to come up with new text to "capture" what convergence they had achieved in the agriculture and NAMA negotiations.

New paragraphs on agriculture refer to "working hypotheses" on three bands for classifying rich country Amber Box and trade-distorting domestic subsidies, with steeper linear cuts to be made to higher levels of support, and four bands for the tariff reduction formula. They also note "some convergence" on the actual extent of farm subsidy cuts.

The revised draft text reaffirms Members' earlier commitment to ensure the elimination of all forms of export subsidies and equivalent measures "by a credible end date." It also refers to "recent movements" on Special Products, which developing countries would be able to designate for reduced tariff cuts based on food security, livelihood security and rural development concerns; and a Special Safeguard Mechanism, which they would be able to use to protect themselves against import surges.

With regard to Members' 2004 July Package (WT/L/579) mandate to address the distortions in cotton trade, the text now provides for two bracketed alternatives -- continuing work largely as is, or agreeing on the specifics of an 'early harvest' agreement that would be implemented ahead of the deadline for other obligations that emerge from the Doha Round.

On NAMA, the new paragraphs refer to a "working hypothesis" on a 'Swiss' formula approach to tariff reduction, which would reduce higher tariffs far more sharply than lower ones. They do not, however, make any reference to the number or value of coefficients to be associated with the formula. These coefficients are a major determinant of Members' post-cut tariff rates. The draft text instructs the Negotiating Group on NAMA "to pursue discussions with a view to finalising [the formula's] structure and details, as well as the issues of unbound tariffs and flexibilities, as soon as possible."

The new language on both agriculture and NAMA notes the importance of S&D, though the African Group described the language as vague. It also refers to progress in both negotiating areas on how to go about

converting 'specific' tariffs based on import quantities into price-based 'ad valorem' equivalents (AVEs) -- a mathematical exercise that is a prerequisite for applying the reduction formula to such tariffs.

Lamy said that it had "not been possible to find more straightforward text in all points of Annex F," which contains a number of alternative versions of potential amendments to specific WTO agreements in response to proposals from least-developed countries (LDCs) for enhanced S&D provisions.

The draft text's section on LDCs, which is separate from the one dedicated to S&D, provides for "developed-country Members, and developing-country Members declaring themselves in a position to do so" to provide duty-free and quota-free access to LDC exports by the end of the round. This is a key LDC request, overlapping with one of the proposals in Annex F. It is also an issue that several countries have suggested could be part of a potential 'early harvest' agreement on development issues in Hong Kong.

Disagreement over services annex dominates discussions

In contrast to agriculture and NAMA, where the chairs' reports largely described the range of disparate proposals that had been made in each negotiating group, the services chair put forward non-binding qualitative targets for liberalisation and provided for allowing groups of countries to make requests for market access, in contrast to the currently bilateral request-offer process. Furthermore, while the draft text simply provides for ministers to "take note" of the reports on agriculture and NAMA, the link to the services chair's report was considerably more specific: Paragraph 21 of the revised draft reads "We are determined to intensify the negotiations in accordance with the above principles (a reference to previous agreements on the services negotiations -- ed.) and the Objectives, Approaches, and Timelines set out in Annex C to this document with a view to expanding the sectoral and modal coverage of commitments and improving their quality."

This raised the ire of some delegations, primarily from developing countries, which argued that the paragraph did not reflect the fact that Annex C -- as alluded to in the introduction -- was simply a document that the chair had put forward under his own responsibility. Brazil's representatives said that a change to Paragraph 21 to make this status of the services annex clearer would make it possible for them to endorse it. Several other Members and groups called for similar modifications, including the African Group, Venezuela, Jamaica, and the group of African, Caribbean, and Pacific (ACP) countries.

In the end, Members agreed to place the section of Paragraph 21 that refers to Annex C in brackets, thus indicating that they do not agree on it. The compromise, present in the final version of the draft declaration that Lamy issued to Members on 7 December (WT/MIN(05)/W/3), allowed them to agree on sending the text to ministers in Hong Kong. This saved Lamy and Mohamed from having to send it to the summit on their own authority.

Questions to guide agriculture and NAMA talks

Lamy said that consultations had produced a series of questions based on the requirements of the Doha mandate and the 2004 July Package that "might be useful" as "a device to assist debate" in Hong Kong.

On agriculture, ministers will be asked to identify "elements" of the formulae for reducing tariffs and trade-distorting domestic subsidies, as well as the flexibilities and disciplines that should accompany these commitments. They are also to be asked for guidance on the elements necessary to address cotton and S&D. With regard to export competition, the questions solicit input on what sort of agreement on 'parallelism' -- the word given to the need to discipline all kinds of support to exports, such as through food aid programmes or state trading enterprises -- would be necessary in order for countries to settle on an end-date for the elimination of export subsidies.

The NAMA questions ask ministers whether they can agree on "all the elements needed to finalise the formula and other elements that support it" and resolve their differences about the flexibilities to be accorded to developing countries when making the tariff cuts required by the formula. They also ask whether consensus is possible on the 'mark up' approach to dealing with unbound tariff lines -- this would have Members add a certain number of percentage points to the tariff rate that they apply, and then subject the marked-up total to the reduction formula.

These issues are roughly identical to those that the chairs had deemed to be in need of ministerial guidance in their respective reports.

Lamy indicated that he and Mohamed would send the questions in a letter to the chair of the Ministerial Conference, Hong Kong Commerce, Industry and Technology Secretary John Tsang. This letter will also reiterate that the annexes, save the one on trade facilitation, are not agreed documents, but rather presented by the chairs on their own responsibility. It will also refer to the continuing differences in Members' positions on a variety of issues.

The Ministerial Conference kicks off on 13 December. In the interim, many trade negotiators have returned to their capitals to prepare for the summit.

ICTSD reporting; "WTO General Council agrees to put services text in square brackets," THIRD WORLD NETWORK INFORMATION SERVICE, 6 December 2005.

MINISTERIAL CHAIR JOHN TSANG: DEVELOPMENT PACKAGE MUST NOT BE "BARGAINING CHIP"

With a comprehensive Doha Round pact increasingly unlikely at the WTO's 13-18 December Ministerial Conference in Hong Kong, more and more governments are looking to reach an agreement there on a number of development-related issues such as aid for trade and duty- and quota-free market access for exports from least-developed countries (LDCs). However, several developing countries are nervous that they could end up 'paying for' these concessions elsewhere in the negotiations. Hong Kong Commerce, Industry and Technology Secretary John Tsang, who will chair the upcoming meeting, has warned that any such deal must not become a "bargaining chip" in the overall talks.

Package already taking shape on TRIPS -- but is it useful?

WTO Members have already agreed on two issues that had been mentioned as potential elements of a Hong Kong development package -- giving LDCs a seven-and-a-half year extension to comply with most WTO intellectual property rules, and amending the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) to allow countries with insufficient pharmaceutical manufacturing capacity to import cheaper generic versions of medicines that are still under patent. However, critics argue that both of these decisions will be of little practical use to poor countries. The former, they say, is so circumscribed that it is of limited value (see BRIDGES Weekly, 30 November 2005, <http://www.ictsd.org/weekly/05-11-30/story3.htm>), while the latter is based on a 2003 agreement that not a single country has yet been able to use to import drugs (see related story, this issue).

Other measures that countries have suggested include unrestricted market access for LDC exports, an accord on some proposals for enhancing the special and differential treatment (S&D) provisions in specific WTO agreements (Members are currently focusing on five

such proposals from LDCs), and an aid for trade programme.

G-7, FIPs+Japan focus on concessions for LDCs

The potential development package featured high on the agenda at a London summit of finance ministers from the Group of Seven (G-7) industrialised countries as well as a meeting of senior officials from the US, the EU, Australia, Brazil, India (the so-called Five Interested Parties, or FIPs) and Japan in Geneva, both on 2-3 December.

The G-7 endorsed the concept of a "comprehensive development package that addresses the concerns of developing countries, in particular least developed countries," and promised to increase spending on aid for trade to USD 4 billion. The trade and agriculture ministers who met in Geneva indicated afterwards that they had spent a significant amount of time discussing concessions for LDCs in Hong Kong. However, in a recent interview with Agence France Presse, Tsang cautioned that a development package, though a worthy objective, "cannot be a substitute" for gains in trade, and should not be linked to other areas of the negotiations.

EU repeats commitment to development package to G-90, G-7

The EU has been one of the most vocal proponents of a development deal in Hong Kong, as Trade Commissioner Peter Mandelson recently reminded his counterparts from the G-90 group of African, Caribbean, Pacific, and LDCs, as well as the G-7 summit. In addition to the measures outlined above, Brussels has suggested that a package include measures such as accelerated subsidy and tariff cuts on cotton, and, more controversially, mitigating preference erosion by "reducing tariffs in a way that allows for adjustment" by G-90 countries that currently receive preferential access to the EU market -- or in other words, by making smaller tariff cuts.

Sceptics claim that the EU's enthusiasm is largely an attempt to deflect criticism for its refusal to make deeper cuts to its farm tariffs. On 1 December, US Trade Representative Rob Portman accused the EU of "hiding behind the least-developed countries" to avoid opening its agricultural markets.

The US, for its part, is reluctant to fully open its own markets to textiles exports from LDCs. It also insists that any deal on cotton be part of a broader Doha Round agreement on agriculture. The EU already offers duty- and quota-free market access to most LDC products, and pays out far less in cotton subsidies than the US.

A group of nine developing countries including Brazil, India and South Africa, recently criticised rich countries for having "hijacked" the development debate. Though agreeing on the need for a deal that addresses the development-specific issues currently in the spotlight, they argued that the most important development outcome that the Doha Round could produce was for developed countries to substantially reduce farm tariffs and subsidies as well as high tariffs on certain heavily-protected manufactured products without extracting onerous concessions in return (see BRIDGES Weekly, 30 November 2005, <http://www.ictsd.org/weekly/05-11-30/story2.htm>).

The G-7 ministerial statement is available at <http://www.g8.utoronto.ca/finance/fm051203.htm>.

ICTSD reporting; "John Tsang urges high Doha ambitions," NEWS.GOV.HK, 15 November 2005; "WTO host says Hong Kong trade talks must salvage development deal," AGENCE FRANCE PRESSE, 30 November 2005; "US seeks larger EU farm tariff cuts," BUSINESS STANDARD, 3 December 2005.

OTHER NEWS

BRAZIL TABLES LEGAL DRAFT FOR FISHERIES SUBSIDIES AGREEMENT

Brazil has put forth a draft version of a potential fisheries-specific annex to the WTO Agreement on Subsidies and Countervailing Measures (SCM), which would outline disciplines on fisheries subsidies. At a 29 November meeting of the Negotiating Group on Rules, many delegations reacted positively to the new proposal, the first attempt to draft legal text in this area. However, the EU, Korea and Japan argued that it was premature. Some delegations hope that the proposal will push fisheries subsidies into a more prominent position at the Hong Kong Ministerial Conference from 13-18 December.

In the submission (TN/RL/GEN/79), Brazil laid out its vision for comprehensive fisheries subsidies disciplines, translating it into legal, agreement-style language which, it suggested, could become "Annex VIII" to the SCM Agreement. The disciplines proposed by Brazil would cover all subsidies that are "given to or on behalf, directly or indirectly, of fishing interests." They would not apply to subsidies for inland fisheries and aquaculture. The submission also counts payments made by one government to another in return for their fishing fleets to receive access to foreign waters as

fisheries subsidies, while excluding the public service of fisheries management (such as stock assessments, regulatory enforcement, and licensing).

Agreement sets out rules for permitted, prohibited subsidies

The submission sets out rules for those subsidies that have a trade- or production-distorting effect (prohibited "red box" subsidies) and those that do not (permitted "green box" subsidies). "Production-distorting" subsidies are defined as having a negative effect on "the sustainability of fishing resources." In the case of fisheries managed by a regional fisheries management organisation (RFMO), a negative effect refers to "any violation of the quotas or other rights established by those RFMOs." For all other fisheries, such effects are taken to refer to an annual increase of more than 3 percent in the volume catch for a specific species.

The proposal outlines a top-down approach, banning all subsidies that do not fall within the "green box". Green box subsidies include grants to research activities that aim to improve fisheries management, or those to small-scale and artisanal fishing, "provided that such fisheries are not "patently at risk" (as defined in the draft text). It also sets out rules on how to define the country to which subsidies accrue, as well as outlining the information that subsidy notifications would have to provide. Any non-notified subsidy would be effectively prohibited.

In an attempt to develop a framework for effective special and differential treatment (S&D) for developing country Members, Brazil proposes a separate "S&D Box" of fisheries subsidies that only developing countries would be permitted to provide. The box allows for capacity-enhancing subsidies for developing country Members that are part of a RFMO, so long as the fishing capacity remains within the sustainable level of exploitation as defined by the RFMO. The S&D Box would also cover fuel, bait or ice supplied for fishing activities; payments received from other developing country governments for access to domestic fisheries; and assistance to disadvantaged regions. Developing countries would receive a longer transition period of five years to phase out prohibited subsidies, and least-developed countries a ten-year period during which ordinarily prohibited subsidies would be permitted, though actionable.

Broad support for Brazilian proposal

Many delegations that belong to the Friends of Fish -- a loosely defined group of countries including Australia, New Zealand, Iceland and Peru that support stronger disciplines on fisheries subsidies -- as well as some other developing countries welcomed the proposal but

asked questions regarding the interaction between RFMOs and WTO rules. Thailand called on Members to use the proposal as a basis for subsequent text-based negotiations.

Japan, Korea and Chinese Taipei, while not rejecting the proposal outright, asked for clarifications on a range of issues. Korea found the submission's notification requirements -- and the potential prohibition that could result from a failure to notify a subsidy -- too demanding. Japan questioned the role ascribed to RFMOs with regard to defining permissible subsidy levels and to determining whether vessels are found engaged in illegal, unregulated and unreported (IUU) fishing. They pointed out that the percentage of species dealt with by RFMOs was fairly low.

The three Asian countries continue to support prohibiting fisheries subsidies on a case-by-case basis and thus opposed Brazil's proposed blanket ban. They also felt that it was too early to move to text-based negotiations. This mirrored earlier discussions, in which the three countries had called for general issues regarding the approach to disciplining subsidies to be resolved before text-based negotiations get under way (see BRIDGES Trade BioRes, 28 October 2005, <http://www.ictsd.org/biores/05-10-28/story2.htm>).

EU criticism surprises Members

The strongest criticism of the proposal came from the EU. This came as a surprise to many Members, since the EU had not strongly intervened in favour of one or the other approach thus far.

The EU opposed the adoption of a top-down approach and expressed the view that the proposed legal draft was too long and complex, addressing difficult issues such as flags of convenience, IUU fishing and rules of origin. It contended that this complexity would make it difficult for developing countries to comply. Furthermore, it argued, the stringent rules would run against developing countries' legitimate interests to develop their fishing industries. At the same time, it felt that the proposed notification requirements would not ensure the enforceability of the new disciplines and that the rules related to RFMOs would be unlikely to function.

Brazil expressed its disappointment with the EU's reaction and announced plans for bilateral consultations in order to refine its proposal in the weeks to follow.

In addition, a brief discussion took place on a Korean submission on small-scale fisheries (TN/RL/GEN/92), which discussed the technical definitions of such fisheries and highlighted their importance for developing countries.

Friends of Fish hope to advance the issue for Hong Kong

Members seeking disciplines on fisheries subsidies hope that the Negotiating Group's move to discussing legal text will demonstrate the issue's importance to ministers in Hong Kong.

Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan, Peru and the US submitted a joint report (TN/RL/W/196) that outlines the progress to date and calls for a quick move to text-based negotiations. One source reports that this joint submission is intended to complement the brief general paragraph on fisheries subsidies in the progress report made by Chair Ambassador Guillermo Valles Galmes of Uruguay to the General Council. The report is present as an annex in the draft declaration text that Members agreed on 2 December to send to ministers in Hong Kong.

ICTSD reporting.

IN BRIEF

BRAZIL AND INDIA TO G-7: WILL CUT NAMA TARIFFS IF EU, US CUT AG TARIFFS AND SUBSIDIES

Brazil and India surprised representatives from the Group of Seven (G-7) rich countries at a 2-3 December summit in London when they unexpectedly offered to expand access to their industrial goods and services markets -- if the US and the EU make deeper cuts to their farm subsidies and tariffs.

The two developing countries and the EU have been blaming each other for the current impasse in the Doha Round negotiations. Brazil and India have argued that the EU's demands on non-agricultural market access (NAMA) and services are out of proportion to what it is willing to offer on its own farm tariffs (see BRIDGES Weekly, 2 November 2005, <http://www.ictsd.org/weekly/05-11-02/story2.htm>). The EU has hit back by criticising Brazil and India for not having made NAMA or services proposals of their own.

Brazil and India claim that they have already informally indicated to the US and the EU that they would consider halving their ceiling levels for industrial tariffs as part of the round. This would force reductions in the tariffs applied on several products in both countries. On 3 December, India told the G-7 summit that it would be willing to go beyond this 50 percent reduction from

'bound levels' if the US and the EU took steps to further liberalise their agricultural markets. Brazil too suggested that it too would be open to giving further ground on industrial tariffs, albeit with similar conditionalities.

The G-7 ministers also agreed to increase aid for trade spending to USD 4 billion. The UK was said to be considering a request from Brazil for a special meeting of the G-8 with five leading emerging economies before the WTO's 13-18 December Ministerial Conference in an attempt to make some breakthroughs in the Doha Round talks.

"Brazil and India surprise G-7 on trade," INTERNATIONAL HERALD TRIBUNE, 4 December 2005; "India ready to halve bound tariffs," FINANCIAL EXPRESS, 6 December 2005; "Brazil, India offer trade concessions at G7," REUTERS, 3 December 2005; "US urges EU farm trade move on Brazil, India offer," REUTERS, 5 December 2005.

KYOTO PROTOCOL MEETING UNABLE TO REACH AGREEMENT ON FUTURE

At the first Meeting of the Parties to the Kyoto Protocol (COP/MOP-1), scheduled for 28 November - 9 December in Montreal, representatives from about 140 countries have been debating a second phase of the climate change control mechanism, which would establish emissions reduction targets after the agreement's expiry in 2012. However, discussions are hampered by disagreement between those who back further targets and non-parties to the agreement, such as the US and Australia, which oppose such caps.

Although agreement on the future of the protocol remained elusive, parties managed to approve a series of decisions aimed at simplifying the implementation of the global pact, which was adopted in 1997 but only came into force this year. These include the establishment of a Joint Implementation Supervisory Board, a mechanism that allows industrialised countries to earn carbon allowances they can count against their own reduction commitments by investing in low-emission projects in other developed countries. Delegates also finalised details of the Clean Development Mechanism, a system that similarly rewards them for investing in sustainable development projects in developing countries.

Campaigners want to see governments commit to fresh emission reduction targets. Businesses also want clear long-term climate rules as soon as possible to guide investment plans. The US made clear at the meeting

that it would not be part of any new binding agreement after 2012, and would continue to support voluntary efforts to curb global warming through new technology.

Some EU Parliament representatives have wondered aloud whether countries that do not sign on to the Kyoto Protocol's binding limits are effectively giving their businesses a subsidy that could be subject to redress in the form of countervailing duties or border tax adjustments (BTAs) under WTO rules (see BRIDGES Trade BioRes, 18 March 2005, <http://www.ictsd.org/biores/05-03-18/inbrief.htm#3>). If countries cannot find a common approach for the post-2012 phase, BTAs may become a significant issue in the future.

ICTSD reporting: "Developing countries: pay us to save rainforests," MONGABAY.COM, 27 November 2005; "Montreal climate conference adopts 'rule book' of the Kyoto Protocol," UN FRAMEWORK CONVENTION ON CLIMATE CHANGE, 30 November 2005; "U.N. talks adopt Kyoto rules on global warming," REUTERS, 30 November 2005; "Australia says 'son of Kyoto' deal not possible," REUTERS, 1 December 2005.

WTO IN BRIEF

MINISTERIAL CHAIR JOHN TSANG ANNOUNCES FACILITATORS FOR HONG KONG SUMMIT

Hong Kong Commerce, Industry and Technology Secretary John Tsang, who will chair the upcoming WTO Ministerial Conference, announced on 2 December a slate of six ministers who will help him facilitate negotiations at the summit.

At WTO ministerial summits, such facilitators play a role somewhat similar to that played in Geneva by the chairs of the different negotiating groups, helping to broker compromise over particularly sticky issues in the discussions.

In Hong Kong, Pakistani Commerce Minister Humayun Akhtar Khan will deal with the negotiations on non-agricultural market access (NAMA). His Kenyan counterpart, Mukhisa Kityui, will address the even more contentious agriculture negotiations. Guyanese Foreign Minister Clement Rohee will try to facilitate the talks on specific development-related issues such as special and differential treatment (S&D) for developing countries. NAMA, agriculture, and S&D were recently

identified by WTO Director-General Pascal Lamy as the "most difficult issues" at this point in the Doha Round negotiations.

In addition, three ministers are to serve as "facilitators at large": Korean Trade Minister Kim Hyun-Chong, Norwegian Foreign Minister Jonas Gahr Store, and Chilean Foreign Minister Ignacio Walker. It is not clear how they will divide work on the other negotiating issues, including services and rules, among each other.

During the summit, negotiations will take place in a wide variety of formal and informal settings. In addition, two one-hour slots have been reserved each day for delegations to meet with each other. There will also be at least one informal heads-of-delegation meeting every day.

The Ministerial Conference will take place from 13-18 December.

ICTSD reporting.

EVENTS & RESOURCES

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.

ICTSD Events

12 December, Hong Kong, China: COTTON DAY: WHAT TO EXPECT FROM THE HONG KONG MINISTERIAL CONFERENCE? This event, organised by the International Centre for Trade and Sustainable Development (ICTSD), in collaboration with Enda Tiers Monde, the African Cotton Association (ACA), the African Cotton Producers Association (APROCA), Oxfam International and the Permanent Mission of Benin in Geneva, will provide a platform for dialogue and information exchange on the sectoral initiative on cotton. Discussion will be in French and English -- translation will be provided. For further information contact El Hadji Diouf, tel: (+41) 22-917-8509; fax: (+41) 22-917-8093; e-mail: ediouf@ictsd.ch internet: http://www.ictsd.org/ministerial/hongkong/cotton/cotton_day_en.pdf.

13-17 December, Hong Kong, China: HONG KONG TRADE AND DEVELOPMENT SYMPOSIUM. The goal

of this symposium, co-convened by the International Centre for Trade and Sustainable Development (ICTSD) and the University of Hong Kong in collaboration with the Institute for Agriculture and Trade Policy (IATP), is to encourage innovative thinking on issues related to trade and development that could be subsequently be translated into constructive inputs for the ongoing Doha Round negotiations. The main topics for discussions will be drawn from key development-related issues in the trade policy and trade rules arena. For further information contact Patrick Lunt, e-mail: plunt@ictsd.ch; internet: <http://www.ictsd.org/ministerial/hongkong/tds/>.

Upcoming Events: 8 December - 25 January

12-14 December, Geneva, Switzerland: EXPERT MEETING ON CAPACITY BUILDING IN THE AREA OF FDI: DATA COMPILATION AND POLICY FORMULATION IN DEVELOPING COUNTRIES. This UN Conference on Trade and Development (UNCTAD) Expert Meeting will focus on the compilation and analysis of foreign direct investment (FDI) data, and the role that such data plays in the formulation of FDI policies, from a development perspective. For further information contact UNCTAD, tel: (+41) 22-917-5809; fax: (+41) 22-917-0051; e-mail: info@unctad.org; internet: <http://www.unctad.org/Templates/Meeting.asp?intItemID=1942&lang=1&m=10496&year=2005&month=12>.

14 December, Washington, DC: CURRENT ISSUES AND TRENDS AT THE US COURT OF INTERNATIONAL TRADE. This Washington International Trade Association (WITA) event will feature an address by Leo Gordon, Clerk of the US Court of International Trade. Gordon will discuss past, present and future issues related to the Court since its inception in 1980. For further information contact WITA, tel: (+1) 202-312-1600; fax: (+1) 202-312-1601; e-mail: events@wita.org; internet: http://www.wita.org/index.php?tg=addon/4/form&idx=2&id_app=25&id_step=79&id_form=62&form_row=316&popup=0&parent_id_form=40&parent_id_step=78&form_menu=&trt_step=1&form_value=Current%2BIssues%2Band%2BTrends%2Bat%2Bthe%2BUS%2BCourt%2Bof%2BInternational%2BTrade.

WTO Hong Kong Ministerial Conference Side Events

9-10 December, Hong Kong, China: IP3: INTELLECTUAL PROPERTY, INNOVATION POLICIES AND INTERNATIONAL PERSPECTIVES. This conference, jointly organised by the China Information Technology & Law Centre at the University of Hong Kong Faculty of Law and the Intellectual Property & Communications Law Program at Michigan

State University College of Law, will bring together leading academics, legal practitioners, technology experts and policy makers to address the latest developments and challenges in the areas of intellectual property and information technology. For further information contact Eliza Li, tel: (+852) 2859-2951; fax: (+852) 2559-3543; e-mail: ewlli@hkusua.hku.hk.

12 December, Hong Kong, China: SEMINAR ON COMMODITIES AND DEVELOPMENT. The purpose of this seminar, organised by the South Centre, is to raise awareness about problems related to commodity dependency in the South and the related implications for the trade and development of commodity-dependent developing countries. Simultaneous language interpretation in English, Spanish and French will be available. For further information contact Luisa Rodriguez, tel: (+41) 22-791-8050; fax: (+41) 22-798-8531; e-mail: rodriguez@southcentre.org; internet: <http://www.southcentre.org/commoditiesseminar.htm>.

13 December, Hong Kong, China: HIGH LEVEL DIALOGUE ON THE WTO AND SUSTAINABLE DEVELOPMENT. This gathering, organised by the UN University, will examine the relationship between the WTO and sustainable development at this critical stage of the Doha Agenda. Key speakers will introduce the topic followed by an interactive discussion period where participants can react and express their views. The event will also launch the publication of the recent UN University Press book 'The WTO and Sustainable Development' by Gary P. Sampson. Venue: Plaza V, Novotel Century Hotel, Hong Kong, Time: 8-10am, breakfast will be provided. For further information please contact Rebecca Carter, tel: (+81) 45-221-2335; fax: (+81) 45-221-2302; email: carter@ias.unu.edu.

14 December, Hong Kong, China: 'SUSTAINABLE DEVELOPMENT IN WORLD TRADE LAW' SPECIAL COCKTAIL RECEPTION AND BOOK LAUNCH. This book launch is organised by the Centre for International Sustainable Development Law (CISDL) in partnership with the Canadian Consulate General and the Canadian Chamber of Commerce. The event will bring the new trade law book to the attention of international legal experts, academics, policy-makers and civil society organisations, as well as reaching out to engage the broader Hong Kong legal, academic and international community. The book makes an important contribution to current research on the impact that trade law may have on sustainable development. The event will be held at the Ritz Carlton Hotel, Canadian Delegation Room (15:30-17:00). For further information contact Marie Bourdeau, Communications Officer, tel: (+1) 514-398-8918; fax: (+1) 514-398-8197; e-mail: mbourdeau@cisdl.org; internet: <http://www.cisdl.org/seminars004.html>.

15 December, Hong Kong, China: THE DOHA ROUND DSU REFORM AND WTO AGRICULTURE DISPUTES INTERNATIONAL LAW EXPERTS PANEL EVENT. This event, organised by the Centre for International Sustainable Development Law (CISDL) in partnership with the UN Development Programme (UNDP), the UN Food and Agriculture Organisation (FAO) and the International Development Law Organisation, will provide a space for experts from the trade law and policy community to debate the conclusions of a new Legal Working Paper. The paper focuses on topics such as sustainable development issues in relation to the WTO Appellate Body's role in current Doha Round negotiations and the most significant WTO panel and Appellate Body decisions in the area of agriculture in the last decade. A report will be produced detailing the conclusions of the event. For further information contact Marie Bourdeau, Communications Officer, tel: (+1) 514-398-8918; fax: (+1) 514-398-8197; e-mail: mbourdeau@cisdl.org.

15 December, Hong Kong, China: BEIJING+10 MEETS WTO+10: POVERTY ALLEVIATION AND WOMEN'S RIGHTS IN THE RUBRIC OF TRADE LIBERALISATION. This International Gender and Trade Network (IGTN) workshop will bring together women's groups, trade activists and social movements for a discussion on the broad understanding of the link between women's rights, gender equality and trade regulations and the use of the Beijing Platform for Action as a tool for assessment and advocacy. For further information contact Kristen Sampson, tel: (+1) 202-635-2757 ext 128; fax: (+1) 202-832-9494; e-mail: ksampson@coc.org or Maria Pia Hernandez, e-mail: maria.pia@igtn.org; internet: <http://www.igtn.org/page/events/>.

18 December, Hong Kong, China: AFTER HONG-KONG: PROSPECTS FOR COMMON ACTIONS. This European United Left/Nordic Green Left European Parliamentary Group Group Parliamentary Group (GUE/NGL) -- a confederation of left-leaning EU parliamentarians -- of the European Parliament meeting will bring together "progressive parliamentarians" and representatives of social movements to discuss developing alternatives to the current international trade agenda in the wake of the WTO's Hong Kong Ministerial Conference. Location: South Pacific Hotel. For further information contact Paul-Emile Dupret, e-mail: pdupret@europarl.eu.int or Pierre Rousset, pierre.rousset@ras.eu.org.

For a more comprehensive list of WTO Ministerial side events in Hong Kong visit <http://www.ictsd.org/ministerial/hongkong/events.htm>.

WTO Events

An updated list of forthcoming WTO meetings is posted at: 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.

13-18 December: SIXTH MINISTERIAL CONFERENCE, HONG KONG, CHINA

21 December: COMMITTEE ON GOVERNMENT PROCUREMENT

Other Upcoming Events

16-20 January 2006, Geneva, Switzerland: UN CONFERENCE ON THE RENEGOTIATION OF THE INTERNATIONAL TROPICAL TIMBER AGREEMENT, 1994, FOURTH PART. Members of the International Tropical Timber Organisation (ITTO) will meet for the fourth time in Geneva to negotiate the provisions of a successor agreement to their current governing pact. For further information contact UNCTAD, tel: (+41) 22-917-5809; fax: (+41) 22-917-0056; email: correspondence@unctad.org.

23 January, Amsterdam, The Netherlands. SUSTAINABLE INVESTMENT AND GLOBAL ENVIRONMENTAL GOVERNANCE. This seminar, coordinated by the Institute for Environmental Studies (Vrije Universiteit, Amsterdam) and the UN Educational, Scientific and Cultural Organisation Institute for Water Education (UNESCO-IHE), will address the issue of how multilateral agreements can be designed to foster sustainable development while also promoting and providing protection for investment. For further information contact Kyla Tienhaara, tel: (+31) 20-598-8257; e-mail: kyla.tienhaara@ivm.falw.vn.nl; internet: http://www.sense.nl/SENSE_INCLUDES/060123poster.pdf.

25-29 January, Davos Switzerland: WORLD ECONOMIC FORUM: MASTERING OUR FUTURE. This annual meeting of the World Economic Forum will bring together leaders from business, government, international institutions, non-governmental organisations, universities and other communities to discuss key global challenges related to geopolitical, economic and environmental dilemmas. For further information contact the World Economic Forum, tel: (+41) 22-869-1212; fax: (+41) 22-786-2744; e-mail: contact@weforum.org; internet:

<http://www.weforum.org/site/homepublic.nsf/Content/Annual+Meeting+2006>.

RESOURCES

INTERNATIONAL TRADE NEGOTIATIONS AND POVERTY REDUCTION: THE WHITE PAPER ON COTTON. Edited by Eric Hazard. Enda Prospectives Dialogues Politiques, 2005. In 2001, US cotton subsidies, and to a lesser extent European ones, contributed to the biggest collapse in world cotton prices in constant terms since 1793. The cotton-producing countries of West and Central Africa, already amongst the poorest countries in the world, suffered direct losses of over USD 250 million. At the same time, 25,000 American cotton producers received cotton subsidies that represented three times the total budget of the US Agency for International Development (USAID). On 16 May 2003, four countries - Benin, Burkina Faso, Mali and Chad - appealed to the WTO to find sustainable solutions to this cotton crisis. This book is a revised collection of papers on the issue that were presented at a workshop organised by Enda Tiers Monde, the African Cotton Association (ACA) and the Association of African Cotton Producers (AProCA) in Saly, Senegal, on 6-7 May 2005. The essays first review the history of the Cotton Sectorial Initiative, and then discuss current issues such as power relationships, resistance to change and manoeuvrability in the context of the Sixth WTO Ministerial Conference, scheduled to take place from 13-18 December. The book will be officially released at the 12 December Cotton Day event in Hong Kong, China. Available online at http://www.ictsd.org/ministerial/hongkong/docs/cotton_book_en.pdf.

THE DERAILER'S GUIDE TO THE WTO. By Focus on the Global South, 2005. This publication argues that the Doha Round negotiations are heading in a direction that will have disastrous impacts on food security and sovereignty, industry, employment, the environment, livelihoods and the access of millions of people to essential services, technology and health-care. In this context, the book provides basic information about the WTO agreements, the issues on the negotiating table for the Hong Kong Ministerial Conference and the remainder of the Doha Round, and the main actors in these negotiations. The authors assert that in order to protect our ability to shape development to meet the priorities of our communities and societies, it is imperative that a new trade deal is not reached in Hong Kong or in subsequent negotiations. Focus on the Global South asserts that the WTO must be "derailed," and offers ideas about how people committed to social and economic justice can stalemate, or derail, the latest offensive for liberalisation through the WTO parading

under the guise of "development." Available online at http://www.world-psi.org/TemplateEn.cfm?Section=Whats_New&CONTENTID=10242&TEMPLATE=/ContentManagement/ContentDisplay.cfm.

FARMSUBSIDY.ORG. This new website, launched by an international network of journalists and activists, was established to improve public access to information on who gets what from the EU's Common Agricultural Policy (CAP). The website facilitates access to data on farm subsidy payments obtained through requests made under legislation on public access to information. In 2004, the CAP paid out EUR 43.5 billion in farm subsidies. However, unlike most other areas of EU expenditure, the payments have been kept secret. This began to change in 2004, when the Danish International Center for Analytical Reporting (DICAR) -- an organisation of Danish investigative journalists -- succeeded in their application for data on farm subsidy payments in Denmark. The website was built by DICAR in association with UK-based non-profit EU Transparency and a network of campaigners in other EU member states. So far, the data has revealed that many of the EU's wealthiest people (including royal families, nobility and senior politicians) are amongst the biggest recipients of taxpayer-funded handouts. Data has also shown that large multinational food companies and government agencies are amongst the biggest recipients of aid under the CAP.

TRADE FACILITATION PROJECT IN KENYA: STUDY OF ADMINISTRATIVE BARRIERS AND OTHER IMPEDIMENTS TO TRADE IN KENYA. Prepared by Emerging Market Economics and Almaco Management Consultants Ltd., July 2005. In recognition of the important role that trade facilitation could play in helping Kenya and other African countries reap the potential benefits from greater integration into the international trading system, the Commonwealth Secretariat commissioned this study on the administrative barriers and other impediments to trade in Kenya. The study describes the trade facilitation priorities expressed by many public and private sector stakeholders, as well as their recommendations on how to overcome these administrative and other trade barriers. Available online at http://www.tradeandindustry.go.ke/documents/report_administrative_barriers05.pdf.

THE UNESCO CONVENTION ON CULTURAL DIVERSITY, AND THE WTO: DIVERSITY IN INTERNATIONAL LAW-MAKING? By Joost Pauwelyn. An American Society for International Law Insight, 15 November 2005. This short paper discusses the implications of the UN Educational, Scientific and Cultural Organisation (UNESCO) convention to protect cultural diversity for established WTO rules. On the

premise that cultural goods cannot be treated as mere commodities, the text grants nations the sovereign right to protect and promote the diversity of cultural expressions within their territory. Some commentators view the new treaty as a thinly disguised attempt, led by France and Canada, to offer a shield against the spread of American culture, in particular Hollywood movies. The major bone of contention in the negotiations was not about finding the most effective policy for different cultures to flourish. It was rather about how the new treaty -- explicitly permitting the protection of cultural industries -- would relate to existing free trade rules at the WTO. The paper discusses this potential conflict and suggests that the WTO would have to "walk a fine line" between respect for validly created international law and the principle that no state should be held by international law that it has consistently objected to. Available online at <http://www.asil.org/insights/2005/11/insights051115.html>.

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