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## Facts and Figures

- The trend towards a 'new geography of trade' among developing countries appears to be the result, above all, of the above-average growth performance of a few Asian developing economies. Interpretations of this trend need to be treated with caution in order to avoid unrealistic expectations of its ultimate scope and impact.
- The important role of triangular trade in the measured rise of South-South trade in manufactures implies that the bulk of such trade has not reduced the dependence of developing countries' manufactured exports on aggregate demand in developed-country markets.
- The growth of South-South trade has not reduced the strong reliance of the vast majority of developing countries on primary commodity exports. However, the rise in their exports of primary commodities to the rapidly growing Asian developing countries is likely to evolve into the most resilient feature of the 'new geography of trade'.

Source: *Trade and Development Report 2005*. UNCTAD, September 2005

## What Now for the Doha Round?

As expected, the end-July deadline for agreement on the basic structure for agricultural and industrial tariff reductions was missed. The odds now appear dauntingly long that a foundation can still be laid for a successful WTO Ministerial Conference in Hong Kong next December.

The key objective of the Ministerial is the adoption of detailed modalities for completing negotiations on agriculture and non-agricultural market access. A failure to deliver on this will affect the ambition and precision of ministerial instructions for all other areas of the Doha Round, including the sluggish services talks, and the resolution of special and differential treatment for developing countries. Negotiators have little need for a Ministerial Declaration consisting primarily of exhortations to continue work in Geneva.

That everything in the Doha Round hangs on agriculture has never been more evident. For example, the Negotiating Group on Non-agricultural Market Access (NAMA), which is already behind schedule on the industrial tariff reduction formula, decided to postpone its late July session pending the – ultimately fruitless – outcome of negotiations on the structure of agricultural tariff cuts. Similarly, several key countries will not even consider improving their market opening offers in services until the level of ambition in liberalising agriculture is much clearer. A distinct lack of urgency characterises Members' examination of long-standing requests from least-developing countries for better and more effective special and differential treatment despite numerous missed deadlines. In short, without a breakthrough in agriculture, nothing else will move and time is running out.

### Political Decisions Needed in Agriculture

The then-Chair of the agriculture talks Tim Groser put it bluntly after a late July negotiating session failed to reach agreement on the 'first approximations' of a deal to be submitted to ministers in Hong Kong: "The agriculture negotiations are stalled – there is no way to conceal that reality." To restart the process, he again called for a 'set of clear political decisions' in each of the three pillars of the negotiations. With regard to domestic support, Members should decide – not discuss – the tiers into which the EU, Japan and the US should be placed to cut the most trade-distorting subsidies, and agree on disciplines to govern the use of the newly-enlarged Blue Box.

In the field of support to export competition, agreement should be reached promptly on what new rules are needed on state trading enterprises and food aid so as to enable Members in the run-up to Hong Kong to concentrate on the "over-arching issue" of this pillar of the negotiations: the schedule and modalities for phasing out all forms of export subsidies by a 'date certain'. Calling export subsidy elimination a "very political matter of major commercial significance", Mr Groser stressed the need to put ministers in a position where "the centre of the matter is the focus of their attention." A number of observers think that the European Commission already has a 'date certain' in mind – probably between 2010 and 2015 – but is still weighing the best moment to table a concrete proposal. EU authorities have not, however, either confirmed or dismissed such speculation.

Market access is the principal reason for the breakdown in the negotiations. Many months were spent in hammering out agreement on how to convert volume-based import duties into *ad valorem* equivalents (AVEs), i.e. tariffs expressed as a percentage of the good's value. Since

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# Bridges

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May, Members have focused almost exclusively on the structure of the tariff reduction formula. Hopes were briefly raised in early July, when some 30 trade ministers meeting informally in Dalian, China, called for negotiators to use as a starting point a new compromise proposal on agricultural tariffs put forward by the G-20 group of developing countries (Bridges Year 9 No.6-7, page 1). However, subsequent talks in Geneva quickly revealed that delegations had either not received any, or had received different “specific, detailed and concrete instructions” from the ministers who attended the Dalian gathering. How – or whether – to build in flexibility for ‘sensitive’ products in the formula itself has emerged as the key issue, although other fundamental questions also remain open (see page 7).

Unless the outline of the tariff reduction formula is agreed quickly, a host of other important issues – such as addressing the concerns of countries that stand to lose from the erosion of preferential tariffs – will be sidelined in the negotiations. Mr Groser warned against trusting that these issues could be settled through a last-minute pre-Hong Kong fix.<sup>1</sup>

Interestingly, the Global Trade and Financial Architecture project chaired by former Mexican President Ernesto Zedillo<sup>2</sup> recently identified squarely addressing the erosion of preferences as one of the key elements necessary to break the deadlock in the Doha Round negotiations. The group argued that the solution did not lie in continuing to exempt preferential trading arrangements from WTO disciplines, but in the preference-giving countries financially compensating, through a bilateral mechanism outside the WTO, those countries that had successfully used the preferences for any losses stemming from the erosion of preferential margins. At the same time, they should increase ‘aid-for-trade’ to those countries that had not been able to take advantage of the opportunities available to them under preferential trading schemes.

### Can Number-crunching Save NAMA?

The NAMA tariff discussions are even less advanced than those in agriculture. None of the six formula proposals officially tabled so far have commanded consensus. A seventh proposal, floated by Pakistan at the Dalian mini-ministerial, has not been formally presented to the negotiating group (Bridges Year 9, No.6-7, page 10). A fundamental difference of views prevails on whether the special and differential treatment flexibilities inscribed in the 2004 July Package will apply independently of any tariff reduction formula, or whether they should be revoked if the formula itself results in smaller tariff cuts for developing countries. There is no agreement on how to treat unbound tariff lines, and many details remain to be settled on AVE conversion, which will determine the reduction tiers where specific, volume-based duties would fall. In early July, NAMA Chair Stefan Johannesson acknowledged that the tariff formula negotiations were at an impasse, adding that “Members must now be aware that continuing our deadlock into the fall will cast serious doubts on [their] willingness to successfully complete the NAMA modalities by the Hong Kong Ministerial.”

Chairing his last General Council meeting on 29 July, WTO Director-General Supachai Panitchpakdi suggested that Members engage as soon as possible on the actual numbers rather than continue working on theoretical models: “A balance between ambition and flexibilities will only be found if we go deep into the numbers and engage in real discussions and trade-offs. This number crunching exercise should also lead us to a deeper understanding of the concerns and expectations of the different Members and, most importantly, will ensure that political masters are duly prepared when the time for final decisions come.” The 19-23 September NAMA session will tell whether delegates heeded this advice.

### ENDNOTES

<sup>1</sup> In 2001 in Doha, the African, Caribbean and Pacific (ACP) Group of States created an eleventh-hour stir by refusing to join consensus on the Ministerial Declaration until a waiver from WTO non-discrimination obligations was granted to the Cotonou Agreement, which offers ACP products preferential access to European markets.

<sup>2</sup> The objective of the project, which involved 20 well-known trade and development experts, was to explore options for enhancing the development dimension of the WTO. The group's major findings and recommendations were sent to WTO negotiators and trade ministers in early September; a synthesis of the research results and background papers are available at <http://www.ycsg.yale.edu>.

# An End to Dumping through Domestic Agricultural Support

Pedro Camargo Neto

The Uruguay Round had the merit of bringing agriculture within the rules-based multilateral trading system. However, while it took eight years to reach a compromise that mustered consensus, only minimal liberalisation of agricultural trade has occurred since.

The largest lost opportunity of the Uruguay Round was the failure to eliminate export subsidies. At the time, developing countries lacked the unity and sense of priority to focus on what would have been required for this major advancement in international trade. The Doha Round should at last deliver for agriculture what has long been the rule for other economic sectors.

The Uruguay Round saw the development of concepts such as the AMS (Aggregate Measurement of Support) and the multi-coloured boxes for domestic support policies. But acceptance of new concepts take time and many frustrating meetings took place between Punta del Este and Marrakesh. Nevertheless, the process led to the establishment of rules for the three pillars – export competition, domestic support and market access – that now govern international trade and negotiations under the Agreement on Agriculture.

The negotiating structure for the domestic support pillar in the Doha Round is complex: what started nearly twenty years ago as a simple categorisation of subsidies has been transformed, after years of creative domestic policy development and even more creative trade negotiating, into a nightmare.

Green Box subsidies – considered so minimally trade-distorting that they were left uncapped and no reductions were required – were originally to include agricultural research, extension services and other similar domestic policies that may alter a country's competitiveness, but should nonetheless receive incentives, and not be penalised with controls and commitments.

The Amber Box was to contain trade-distorting policies (with the exception of export subsidies) subject to reduction commitments. This simple traffic light rule was not enough to deliver consensus. After a couple of failed ministerial meetings agreement was reached with the creation of the Blue Box, clearly essential for European acceptance at that time.

## From Blair House to the July Package

The GATT Round Blair House meeting, where the US and the EU settled their theoretical differences and consequently exacted consensus from developing countries, became famous. An attempt to impose this type of bilateral agreement before Cancun ended in failure. The collapse ended up being fatal for the permanence of export subsidies. Wisely enough the European Union anticipated the need to accept their elimination, which was a key element of the WTO's July 2004 Framework Agreement.

That agreement also contains an enlarged Blue Box, which now includes different types of policies that seem to increase every day. This new structure will require the development of strict rules and product-specific caps if it is to represent honest progress.

The old 'common sense' Green Box seems not to be large enough. In addition to the original policies it was meant for, it now has to hold a number of others that subsidising WTO Members try to portray as 'minimally' trade-distorting. There are problems everywhere: direct payments that continue to be coupled to production; single farm payments that cover fixed costs of production; a variety of environment-related payments that certainly enhance production; animal welfare payments tied to different societal values; landscape payments and many other payments yet to appear.

The Green Box – which will stay uncapped – would require stringent new rules and criteria to avoid the nullification of benefits from cuts in trade-distorting subsidies. Considering the

broad scope some envisage for it, this will be a far from simple task. The creative arguments, and the power and the wealth of developed country treasuries, will probably frustrate the ambition promised in Doha.

The July Framework also created an important new measurement, the Overall Trade Distorting Support Payments (OTDSP). The OTDSP correctly includes both product- and non-product-specific *de minimis* support together with Amber and Blue Box subsidies, all of which must be reduced through a mix of methodologies and criteria. Historical commitments are still used for the AMS. For the new Blue Box and the old *de minimis*, a percentage of production value is used. This mix, created to satisfy the two major players, produces numbers that will require cuts of at least 80 percent for some countries to achieve real change.

The OTDSP was created to accommodate the very different realities and histories of the powerful players. Adding the historical AMS commitments of the Amber Box to a percentage of production limits of the new Blue Box and to the two forms of *de minimis* support created such a large base that the reduction percentage now required looks large but will in fact reduce little. It is not clear, if not impossible, that this negotiating structure can produce the essential results promised in Doha and demanded by developing countries.

So, what is a minimum step forward in trade-distorting support, of any colour or shade, for the negotiations, officially called the Doha 'Development' Agenda?

## Defining the Unacceptable

We should not challenge the rainbow trend. Blue is better than amber. Farmers need social policy safety nets. Shades of green should be permitted to accommodate different societal values and environmental concerns.

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But a clear line should be set for what is and what is not acceptable.

*A country should not be permitted to export production that received trade-distorting support covering production costs.* Domestic support can also be an export subsidy, as the jurisprudence in the cotton case plainly demonstrates. A clearer definition of ‘serious prejudice’ is necessary to solve through negotiation what will end up in litigation if the round fails.

If Brazil is persistent in the cotton challenge, and refuses a mediocre implementation result, the US will have to substantially reduce its domestic support for cotton. If this does not happen, the dispute settlement system will again have to produce essential jurisprudence on levels of trade-distorting support acceptable in international competition. Potential cases on rice, wheat or dairy would also have to go this route. Negotiation now is clearly preferable to litigation in the future.

### What Constitutes Serious Prejudice?

The Uruguay Round gave developing countries the opportunity to litigate when ‘serious prejudice’ occurs. Article 12 of the Agreement on Agriculture, the so-called Peace Clause, included – not by accident – a specific end date as a clear sign that in Marrakesh developing countries were frustrated and expected real progress in a decade. The built-in agenda obliged countries to start negotiations in 2000.

Developed countries paid no heed to the expiry of the Peace Clause and the built-in agenda, and should now be pressured to change accordingly. The future absence of serious prejudice from domestic trade-distorting policies was paid for in the Uruguay Round. There is no need to mention the priorities and other agreements – such as the TRIPS and services agreements obtained by developed countries – signed in Marrakesh.

Besides important subsidy cuts, rules and commitments, the Doha Round should produce a negotiated understanding of ‘serious prejudice’ in relation to the effects of domestic trade-distorting support for agriculture in order to avoid further litigation.

It could read: “*Serious prejudice in the sense of Article 6 of the Agreement on Subsidies and Countervailing Measures occurs when an agricultural product receives any kind of trade-distorting support of over 10 % (ten percent) of the cost of production and reaches the international market with at least a 2 % (two percent) market share.*”

The Hong Kong Ministerial must not necessarily fix the percentage levels but the acceptance of a negotiated understanding for ‘serious prejudice’ is essential.

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## Congress Ponders Fate of Step 2

Legislation repealing the Step 2 cotton subsidy programme is expected to be included in the budget reconciliation bill to be considered by US Congress in mid-September.

Step 2, which compensates US mills for using and/or exporting higher priced domestic cotton, was the key element of the US cotton regime successfully challenged by Brazil. A WTO dispute settlement panel ruled in September 2004 that prohibited subsidies in the case must be eliminated by 1 July 2005. However, Brazil agreed on 5 July to extend the implementation period for an indefinite period of time after the US Department of Agriculture (USDA) announced that it had sent to Congress a proposal to eliminate Step 2 ‘as soon as possible’ (Bridges Year 9 No.6-7, page 5).

While USDA has confirmed that the repeal will not be delayed until the end of the current farm bill in 2007 as requested by cotton farmers, the manner and timing of Step 2 elimination is still unclear. Most sources predict that Congress will mandate action by the year’s end, but it is possible that the legislation will propose a gradual phase-out of the popular programme rather than a one-off repeal.

Brazil has already signalled that its patience regarding Step 2 elimination is “not illimited.” A long phase-out process would be certain to trigger the resumption of retaliation proceedings put on ice on 5 July. As a first step, Brazil could request the establishment of a compliance panel to determine whether the measures taken by the US adequately implement the rulings of the panel and Appellate Body. Review panels must complete their work within 90 days from the date the matter is referred to them. If the compliance report is appealed, the dispute could last another three months.

Brazil could also ask the arbitration panel it requested on 15 July to resume its consideration of the appropriate level of retaliatory measures Brazil could take to compensate for the economic damage caused by US non-compliance with the panel ruling. In its arbitration request, Brazil evaluated that damage at roughly US\$3 billion annually. Importantly, it also argued that just raising import duties on US goods would not be practical or effective as the negative impact of such measures would be greater on Brazil than on the US. In view of the gravity of the violation, i.e. the maintenance of prohibited export subsidies, Brazil said it might resort, ‘to the extent necessary’, to countermeasures under the TRIPS Agreement and the General Agreement on Trade in Services. In the IP field, these measures could include the suspension of concessions on copyrights, trademarks, industrial designs, patents and the protection of undisclosed information. In services, concessions could be withdrawn, *inter alia*, in business, communication and financial services.

In related news, the Uruguayan government has accepted ‘in principle’ an industry petition to launch a case, modelled on the cotton dispute, against US support for rice. However, the two sides have agreed to first attempt to settle the issue bilaterally.



# Trade and the Millennium Development Goals

*Bill Morton and Ann Weston*

The UN Millennium Summit in September will review progress towards the Millennium Development Goals (MDGs) adopted by the international community in 2000. A new paper argues that the trade-related targets should encompass the broader trade concerns of developing countries and be made more specific and time-bound.

The trade-related targets under MDG 8 are welcome for three reasons. First, trade is a key tool for economic growth, as well as an integral aspect of the relationship between North and South. Second, the targets are fairly clear, and are accompanied by indicators that can be quantified. Third, they can be used to hold governments accountable for their commitment to a global partnership.

However, these trade targets also contain a number of weaknesses. The focus is rather narrow, with most attention given to the treatment of developing country exports of goods. In addition, the indicators are not specific enough and, unlike other MDGs, the trade targets have no deadlines. The UN itself has noted that MDG 8 targets and indicators are “subject to further refinement”.

The trade-related targets under MDG 8 are to:

- develop further an open, rules-based, predictable, non-discriminatory trading system;
- address the special needs of least-developed countries (LDCs), including tariff- and quota-free access for their exports;
- in co-operation with pharmaceutical companies provide access to affordable, essential drugs in developing countries; and
- in co-operation with the private sector make available the benefits of new technologies, especially information and communications.

## Narrow Focus

MDG 8's targets and indicators address access to Northern markets for goods, as well as agricultural subsidies and support for trade-related capacity-building. While these are critical issues, this focus represents a limited interpretation of the measures required if developed countries and the global trading regime are to deliver real benefits for developing countries. The Doha 'Development' Agenda agreed by WTO trade ministers in November 2001 recognised the importance of a broader approach, including 'balanced rules' and other efforts to address the needs and interests of developing countries, which form the majority of WTO Members.

A key concern for many developing countries not reflected in MDG 8 is the extent to which they themselves should be expected to open up their markets, and the importance of trade rules that allow them policy flexibility, i.e. the ability to determine the pace and extent of their own liberalisation. This has been hotly debated with respect to agriculture, as smallholder farmers are often unable to compete with heavily subsidised Northern crops. Strengthening the sustainable livelihoods of smallholder farmers, moreover, is regarded by the 2005 Millennium Project Report<sup>1</sup> as one of the key investments needed for the achievement of the MDGs. Even in the absence of Northern farm subsidies, when implementing obligations specified in the WTO Agriculture Agreement, developing countries should be allowed the flexibility to address their own needs in terms of food security, defence of rural livelihoods and poverty alleviation. Beyond this general issue, particular demands on developing countries, in terms of intellectual property obligations and commitments on services, may compromise their capacity to meet other MDGs, notably on health, access to water and education.

## Inadequate Specification

Another problem is that the trade-related actions targeted under MDG 8 are not very specific and there is no date by which they are to be taken. For instance, the extent to which tariffs on developing country exports should be cut is not specified, let alone by when. Similarly, there

are no details for the appropriate level of support, if any, to OECD agriculture, nor the ideal proportion of aid to be devoted to building trade capacity. Of course, one of the reasons for this weakness is that some of these issues are subject to ongoing negotiations at the WTO and typically governments have chosen not to limit their trade negotiating positions by making commitments in other fora.

In addition, the use of 'average tariffs' as one indicator of progress on MDG 8 in agriculture, textiles and clothing is an insufficient means of measuring developed country efforts. Developed countries have cut average tariffs from ten percent in the early 1980s to the present level of three percent, yet they continue to impose very high tariffs ('tariff peaks') on products of particular export interest to developing countries. These tariffs can reach 100 percent or more. Average tariffs also obscure the damaging effect of tariff escalation, in which the tariff on a product increases according to the level of processing, thus limiting developing countries' ability to add value to their products and maintaining their dependence on primary commodity exports, which face decreasing world prices.

Nor do the indicators adequately capture the interests of low-income countries and the responsibilities of more advanced developing countries. While it is clear that least-developed countries face greater difficulties in taking advantage of the international trading system than many other developing countries (as illustrated by their declining share of world trade), others may still need to be given special and differential treatment. For instance, some low-income countries may need exemptions from regular WTO obligations for a certain period during which they are given technical assistance to build their capacity to take on these obligations. Conversely, some of the

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more advanced countries are in a position to open up their markets to imports from other developing countries. Such changes should be encouraged by their inclusion in the scope of the MDG 8 trade commitments.

### Donor MDG Reports on Trade Performance

Preparation of reports is an important aspect of donor accountability for their efforts to contribute to the 'Global Partnership' that is central to meeting the MDGs. After five years, a number of key donors are yet to release reports. This reflects poorly on developed countries as a whole, and casts doubt on how seriously they view their accountability responsibilities and their overall commitment to the MDGs.

A review of some of the reports that are available – Norway 2004, Sweden 2004, the Netherlands 2004, Denmark 2003 and 2004, and the EU 2004 – suggests that, at least on paper, donors support the notion of a more development-oriented global trading system. All donors address the key trade-related aspects of MDG 8, stating their support to measures aimed at increasing market access for developing countries, including reduced tariffs and expanded quotas, and the elimination or reduction of trade-distorting agricultural support. They also address developing country access to affordable medicines, information and communications technologies and assistance with trade-related capacity-building. Some reports discuss additional issues, including policy coherence, and South-South trade.

There is some recognition that developed country efforts to date have been insufficient or, as is the case with the EU's Everything But Arms initiative, that they are not working effectively. Overall, however, the reports appear unwilling to tackle the underlying issues that hold back development-oriented trade reform. For instance, in the reports' relatively extensive discussion of market access issues, there is limited attention to the key developing country concern regarding trade liberalisation: namely the extent to which trade rules require them to open up their markets, and the need for a global trading system that allows them policy space to determine the pace and extent of liberalisation.

Donors also fail to explore the issue of agricultural subsidies in any real depth, although they openly acknowledge the negative impacts of trade-distorting subsidies on developing country exports and the need to eliminate or at least reduce them. With the exception of Norway, however, they are not prepared to discuss the political hurdles that must be overcome to realise these good intentions. Similarly, while the reports address donor efforts in important areas such as trade-related capacity-building and changes to drug patent legislation, they avoid questions that are central to whether these efforts will actually benefit developing countries: has capacity-building focused too strongly on governments' short-term needs and on larger producers? Will donors be prepared to amend drug patent legislation in ways that reflect the full scope of the WTO Declaration on TRIPS and Public Health?

Because of their failure to address issues in depth or to tackle the underlying problems, the reports all too often resemble standard policy statements, in which donors merely list what they have done. Furthermore, the information on trade performance often lacks detail, and when data are provided, analysis is not. The EU's superficial treatment of many key issues is particularly disappointing. Above all, the reports do not acknowledge that in many areas, much more needs to be done. For real progress to occur in reforming trade around a stronger development focus, developed countries must seriously address the central challenges of their trade performance, and adopt a more honest, transparent method of reporting on it.

### The UK: An innovative approach to MDG 8?

The UK appears to have adopted an innovative approach towards implementing its commitments. It has incorporated the MDGs into policy at a cross-governmental level, integrating them into the work of several departments, including into the departmental performance review criteria agreed with Treasury through the Public Service Agreements (PSA).

The overall aim of the draft 2005-2008 PSA by the Department for International Development (DFID) is to "eliminate poverty in poorer countries in particular through achievement by 2015 of the Millennium Development Goals". For each MDG, DFID has decided to "fine tune" and build on the goal and target indicators set out by the UN. On trade, the 2005-08 PSA target is to "ensure that the EU secures significant reductions in EU and world trade barriers by 2008 leading to improved opportunities for developing countries and a more competitive Europe." One of the agreed measures concerns reductions in trade-distorting support under the EU's Common Agricultural Policy. The aim is to have eliminated export subsidies by 2010 or at least to be on an agreed track by this date to reach zero; to reduce EU production-linked domestic support by an additional 10 percent over and above the cuts agreed to May 2004; and to be on an agreed track by 2008 to cut the average EU tariff on a range of important agricultural imports by at least 36 percent.

Another UK trade-related target is to increase, by 2010, the value of EU imports from LDCs by roughly 50 percent – to at least US\$6.5 billion – from the 2002 level. The measure is intended as a guide to whether the Doha 'Development' Agenda really builds up trade flows. This is based on the premise that more open EU markets, combined with capacity-building support for LDCs, should facilitate growth in LDC exports to Europe.

In general, these targets and indicators are more meaningful than those contained in MDG 8 itself, as they are accompanied by baseline measures, and are quantifiable and for the most part time-bound, thereby allowing straightforward measurement of whether progress has occurred. In incorporating the MDGs into its PSAs, the UK has taken a more sophisticated approach to interpreting the MDGs, which provides a possible model for other donors.

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### ENDNOTES

<sup>1</sup> Jeffrey Sachs et al, 2005, *Investing in Development. A practical Plan to Achieve the Millennium Development Goals*, Millennium Project, New York: UNDP.

# Large Number of Key Decisions Loom for Agriculture Talks

Due to the lack of agreement on even an outline of the agriculture deal to be submitted to trade ministers in Hong Kong next December, WTO delegates face an intense negotiating schedule in the coming weeks. Tariff reductions remain the greatest hurdle.

Summing up the situation at the end of July, Chair Tim Groser laid out his vision of what was needed in each of the pillars for a deal to emerge:

Market access: how to structure the tariff reduction formula remains the key priority. Although Members have agreed to use the formula proposed by the G-20 group of developing countries at the Dalian Mini-ministerial in July (Bridges Year 9 No.6-7, page 7) as a starting point, serious disagreement persists on several essential points, notably with regard to the flexibility mechanisms agreed in the July framework and the maximum tariff cap – 100 percent for developed countries and 150 percent for developing countries – proposed by the G-20 for all tariff lines subject to formula reductions. Furthermore, all Members have not accepted the G-20 suggestion that developed-country tariffs be classified in five tiers and developing-country tariffs in four such that developing countries would end up cutting their tariffs by two-thirds less than developed countries.

Certain countries, and the net food-importers in the G-10 group in particular, are still advocating for Uruguay Round-like flexibility for tariff reductions in each of the tiers, i.e. a mandated average cut for each tier, but with a lower minimum cut per tariff line (the G-20 proposed a unique percentage reduction for all tariff lines that fall in a given category). Building flexibility into the formula itself would allow the G-10 and others to shield some of their highest tariff lines from the steepest formula cuts without designating them as ‘sensitive products’, a limited category outside the formula. Tariffs on ‘sensitive products’ still need to be reduced, albeit by less than the formula would require. However, the greater the deviation from the formula, the more the country would have to expand its import quota, which a number of WTO Members are loath to do for products such as sugar or rice, for example.

In his assessment, Mr Groser noted that while countries with exporter interests at the forefront of their attention were “not going to give a blank check on flexibilities,” unless some ‘constrained flexibility’ for sensitive products were built in the formula, it would be even more difficult for “Members with the most difficulties in this area to agree to a higher level of ambition when the moment arrives to define the size of the cuts.”

The post-Dalian negotiating session in July also revealed that many Members continue to strongly oppose the establishment of tariff caps in the formula. Among those against were the G-10, which includes, *inter alia*, Japan, Korea and Switzerland, the EU and the ACP Group of States. Others argue equally strongly that caps are necessary to address tariff peaks.

As long as the structure of the formula remains undecided, other important questions will be sidelined, including criteria for the July framework’s other flexibility mechanism, i.e. the ‘special’ products that developing countries are allowed to carve out for ‘more flexible treatment’ under the July framework on the grounds of food and livelihood security, and rural development needs (see related article on page 21). Another aspect of great importance to a large number of developing countries is how to address the erosion of their tariff preferences resulting from significant generalised tariff cuts (see page 1). Mr Groser warned that as these and other open questions could not be left aside for a rushed last-minute fix, it was imperative that Members agree on the key elements of the tariff formula as soon as possible.

Domestic support: two decisions are needed here. Like tariffs, most trade-distorting Amber Box domestic support must be reduced according to a tiered formula, and Members must agree in which tier each of the three major subsidisers will be placed. While the EU will be in the highest bracket for cuts, disagreement persists over whether Japan should be placed in a tier of its own just below the EU, or grouped together with either the US or the EU.

The second decision concerns criteria for the Blue Box in order to ensure that it really is a ‘half-way house’ between the Amber Box and the Green Box, which is supposed to cover support that is at the most minimally trade-distorting. The July framework expanded the Blue Box – originally created to accommodate the EU’s production-limiting payments – to cover the counter-cyclical payments the US provides its farmers to shield them from the effects of world market price fluctuations. Blue Box support must not exceed five percent of the average value of a Member’s total agricultural production in a to-be-negotiated historical period, and will be subject to cuts as part of the mandated reduction in ‘overall trade-distorting support’, which also includes the Amber Box and permitted *de minimis* subsidies.

In addition, Mr Groser urged countries relying heavily on the use of the Green Box to give sympathetic consideration to the concerns of Members who question whether all of the support currently provided under the Green Box really is ‘minimally trade-distorting’. Members should also respond to developing countries’ need to devise criteria that will accommodate more of the domestic support they are in a position to provide. There are no plans to either cap Green Box spending or to impose reduction commitments on it in this round of negotiations.

Export competition: the main hurdle regarding this pillar of the negotiations was overcome in July 2004, when WTO Members agreed that export subsidies would be phased out by a ‘date certain’. The task before the Hong Kong Ministerial will be achieving agreement on disciplines to ensure that the subsidy component of state trading enterprises and food aid are phased out in parallel with export subsidies so that, come December, ministers can focus on the schedule and modalities for eliminating all forms of export support.

The first ‘agriculture week’ since July 2005 is scheduled to begin on 13 September. It will be chaired by New Zealand’s new WTO Ambassador Crawford Falconer.

## Still No Results in Special and Differential Treatment Review

The Committee on Trade and Development has failed yet again to present recommendations to the General Council on how to improve the WTO's special and differential treatment provisions, thus making the Hong Kong outcome of the Doha 'Development' Agenda more uncertain than ever.

Although special and differential treatment (S&D) for developing and least-developed countries is included in the Doha Round negotiating mandates for agriculture, industrial market access and services, many developing countries believe that unless S&D provisions in existing WTO agreements are also improved, the Doha 'Development' Agenda – as the round is called in WTO speak – will be severely compromised. It is due to their insistence that paragraph 44 of the Doha Declaration instructs the Committee on Trade and Development (CTD) to review all existing S&D provisions “with a view to strengthening them and making them more precise, effective and operational.” The Committee was to report to the General Council “with clear recommendations for a decision by July 2002.” This deadline has been extended and missed several times since, including in July 2005.

In all, eighty-eight proposals to amend specific provisions in existing WTO agreements have been tabled in the S&D review. Revised versions of 28 of these were presented to the Cancun Ministerial Conference in 2003 despite developing country complaints that the proposals had been watered down to such an extent that they were all but useless. As the Cancun meeting collapsed without an outcome, the fate of these amendments remains unclear. A number of developing countries would like to strengthen at least some of them, but several developed countries are unwilling to re-open the 'package', preferring instead to strengthen it by adding new proposals.

After a prolonged post-Cancun procedural debate, negotiations finally quickened in May 2005, when the CTD decided to start consideration of five proposals submitted by least-developed countries (LDCs) with the goal of finally having some 'clear recommendations' to present to the General Council in July.

In June, LDCs submitted redrafted versions of their original proposals to the CTD, which had asked for revisions to ensure that

each amended provision would match the specific problem it sought to address. However, a number of WTO Members complained that the revised proposals still relied too heavily on quasi-automatic, open-ended exemptions from WTO rules, pointing in particular to proposal number 84, which would permanently exempt LDCs from the disciplines of the Agreement on Trade-related Investment Measures (TRIMS). That agreement prohibits, *inter alia*, host governments from requiring foreign firms to include a certain percentage of local content in a manufactured good, or from obliging a foreign company to balance its imports with an equal value of exports (Bridges Year 9 No.6-7, page 8).

Intense consultations and negotiations followed in July, but ultimately to no avail. Wide disagreement persists with regard to the TRIMS proposal. Refusing a blanket exemption, developed countries argued for specific language describing the exact parameters of a possible exemption. As the negotiations came to a close, LDCs complained that the most recent language discussed not only failed to deliver substantive gains for LDCs, but actually detracted from their existing flexibilities under the TRIMS Agreement.

Paraguay, Costa Rica and several other Latin American countries reportedly remain dissatisfied with certain provisions in the most recent version on proposal 23, which calls for Members to give 'special consideration' to requests from developing and LDC Members for waivers of WTO obligations. The main issue underlying this debate is the Cotonou Agreement, which grants duty free access to the EU for all products, including bananas, from the African, Caribbean and Pacific Group of States until 2008 (see page 9).

On proposal 36, which repeats the long-standing LDC demand that WTO Member states grant binding duty-free and quota-free market access to their exports, the US said it opposed binding language on the issue within the WTO, suggesting that bilateral agreements would be better suited for the task. The US delegation added that it would be a challenge to gain Congressional approval for such a provision. Many other developed countries, as well as some Latin American Members, also expressed concern about adopting binding market access commitments just for LDCs in the WTO.

In his report to the General Council (TN/CTD/13), the Chair of the negotiations Faizel Ismail noted that while Members agreed that it was important to provide LDCs with a certain degree of flexibility and assistance in implementing the WTO agreements, there was a clear difference in perception about the nature and extent of this flexibility: “A number of Members feel that any flexibility should be transitional and should be provided on the basis of a need that is assessed collectively by Members. Other Members, including the LDCs themselves, believe that there must be a degree of automaticity in granting these flexibilities. The LDCs have also proposed that where they have difficulty in implementing obligations, it should be mandatory for the developed country Members to provide technical assistance. While most developed country Members accept the importance of providing technical assistance to the LDCs, they do not agree that this should be mandatory.”

Mr Faizel praised both LDCs and other WTO Members for showing good will and flexibility, which he said had led to “definite and discernible progress during the consultations towards greater convergence of positions, especially from Members' initial positions.” Nevertheless, he had to admit that 'certain key issues' remained unresolved, and consequently the CTD was “not in a position to make specific recommendations on any of the remaining agreement-specific proposals. But I am hopeful that we should be able to bridge most of the differences in the coming months, especially since Members have time and again expressed a strong commitment towards finding solutions to the development challenges faced by LDCs.”



## EU Must Revise Banana Tariff

An arbitration panel ruled on 1 August that the EU's proposed 230 euro/tonne banana tariff was too high, thus setting in motion yet another round of negotiations in one of the longest-running dispute settlement cases in the WTO.

Following a protracted dispute won by Ecuador and the US, the EU agreed in 2001 to replace its quota system for banana imports by a single import tariff in 2006. When the European Commission first floated the 230 euro figure in October 2004, Costa Rica called it a “slap to the multilateral trading system” and said it would violate the July Package agreement to achieve the “fullest liberalisation of trade in tropical products.” The most Costa Rica and other Latin American banana producers were willing to accept was the most-favoured-nation (MFN) 75 euro/tonne tariff the EU currently applies to bananas imported under quota.

The African, Caribbean and Pacific (ACP) Group of States has a separate duty-free quota. While ACP countries will keep their duty-free access, many of them fear that without guaranteed quotas they will need a huge preferential margin (such as a 275 euro/tonne MFN tariff) to be able to compete with ‘dollar bananas’ in the European market. Caribbean exporters are particularly worried that the tariff-only regime will spell the end of the industry in the region. Some African countries, where labour and transport costs are lower, could remain competitive even with a smaller preferential margin.

EU Trade Commissioner Peter Mandelson said that the 230 euro/tonne tariff was designed to be a “neutral and fair conversion that would maintain current market access for all banana suppliers to the EU” and maintain an ‘equivalent level’ of preference for ACP bananas. Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Venezuela, however, argued that the proposed tariff would reduce their current levels market access and requested WTO arbitration. Faulting the EU's choice of the reference period and data in calculating the new tariff, the arbitration award issued on 1 August agreed with the complainants, noting in addition that the 230 euros/tonne tariff would actually expand the margin of ACP countries' preferential market access at the expense of MFN banana suppliers. However, the arbitrator did not indicate what would constitute a reasonable tariff rate for MFN suppliers.

After the arbitration was issued, Ecuador's Trade Minister Oswaldo Molestina said that Ecuador and other Latin American exporters considered that the tariff could not exceed 75 euros and “according to our sums with the correct methodology it should not be more than 33 euros.” In contrast, Guyana's Minister of Foreign Trade and International Co-operation Clement Rohee noted that the arbitration was in keeping with “the constant attack against preferential arrangements which some countries benefit from in relation to sugar, rum, rice and bananas.” He urged Caribbean countries to stand united because the loss of jobs and income generated by trade preferences would lead to “economic and social dislocation.”

According to the WTO waiver that covers the Union's transitional banana regime, the EU was to hold consultations and revise the proposed tariff ten days after the arbitration award. However, a 5 August meeting between the EU and the Latin Americans yielded no results, and the Commission subsequently said that new consultations could only be held after member states had discussed the issue on 9 September. EU members are divided on how to proceed, with former colonial powers and countries with large distribution companies generally in favour of a high tariff and newer members arguing that uncompetitive producers should be helped to diversify rather than be protected through a large preferential margin.

At the time of this writing, some of the nine Latin American countries were considering a second WTO arbitration request as the ten-day limit had passed without a new proposal from the EU. Their main concern was more to safeguard the option of future steps than to immediately launch a second 30-day investigation of the matter.

### Disputes in Brief

- While the European Commission hopes to reach political agreement in November on its controversial proposal to reform the EU's sugar sector (Bridges Year 9 No.6-7, page 18), Brazil, Australia and Thailand on 11 August requested the WTO to arbitrate how long the EU should be given to comply with the panel and Appellate Body rulings that condemned a large part of its sugar subsidies (Bridges Year 9 No.5, page 10). WTO Members are usually given a ‘reasonable period of time’ of 15 months to implement rulings, but the time can be shorter or longer. In the EU sugar case the implementation period started on 19 May 2005, the date of the report's adoption.
- On 18 August, Mexico became the first country to impose trade sanctions on the US due to the latter's failure to repeal the Byrd Amendment under which anti-dumping duties collected by Customs are returned to the companies that petitioned for them. The Appellate Body condemned the practice in January 2003 (Bridges Year 7 No.1, page 7), but the US has taken no steps to comply with the ruling. In November 2004, seven countries were granted the right to take retaliatory measures amounting to 72 percent of the value of Byrd Amendment duties levied on their exports annually. While the other countries are still considering whether, or when, to use this right, Mexico has started imposing retaliatory tariffs on a number of US imports, including a 50 percent duty on baby formula, 20 percent on wine and nine percent on chewing gum. The 50 percent tariff is expected to make a sizeable impact on US baby formula exports, which were valued at US\$103.2 million for the first five months of this year.
- The dispute settlement panel considering the US/Argentina/Canada challenge of the EU's approval process for genetically modified organisms (GMOs) announced on 11 August that its report would be delayed yet again – until late December, i.e. nearly two years after the panelists were selected.

## Domestic Regulation of Services Trade: Key Issues and Perspectives for Hong Kong

Developing countries have for some time now been insisting that for the services trade negotiations to progress, emphasis must be equally placed on the market access aspect of the negotiations on the one hand, and the rules-related aspect on the other.

Indeed, these countries point out that the Doha Ministerial Declaration “reaffirm(s) the Guidelines and Procedures for the Negotiations (S/L/93) adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement.” S/L/93 in turn provides that WTO Members shall aim to complete negotiations on rules prior to the conclusion of negotiations on market access for specific commitments.

From a substantive point of view, many developing countries believe that agreement on further multilateral rules on services, such as the establishment of an emergency safeguard mechanism, would increase the comfort level of Members in undertaking commitments on market access, and thus could encourage deeper and broader commitments. Concrete rules on subsidies would contribute to evening out the conditions of competition. Disciplines on domestic regulation would facilitate trade by ensuring that market access commitments are not undermined through non-discriminatory regulatory measures, and could be of particular value to those developing countries interested in supplying services through the temporary movement of natural persons (Mode 4).

WTO Members obviously have different perspectives on the respective scopes of the various mandates on the rules negotiations and the desirability and feasibility of each set of rules. Once strategic negotiating considerations are taken into account, not only from a North-South perspective but even from within a South-South standpoint, understanding the dynamics, not to mention anticipating the outcome of the rules negotiations, becomes an even more complicated and challenging exercise. Hence, Members are confronted with a situation where negotiations on safeguards – by far the most exhaustive and lengthiest discussions among

the various rules issues – still appear to be farthest from garnering consensus. Meanwhile, negotiations on possible disciplines on subsidies, though relatively nascent, appear to be gaining increasing interest, if not favour, among a wider circle of Members.

Of all the rules-related questions on table, the debate on disciplines on domestic regulation appears to have gained the most traction among Members, to the extent that some predict it may be the only rules issue capable of showing concrete results at the end of this round of services negotiations. Others suggest that the Hong Kong Ministerial next December could, at the very least, include a specific instruction to conclude an agreement on disciplines on domestic regulation by a date certain.

### Services Trade and the Right to Regulate

Of course, a number of issues continue to present significant challenges to the membership. Foremost of these is that many Members still lack sufficient understanding of the various substantive technical issues and the repercussions of the choice of a particular option on their regulatory authorities. Even if the majority of developing countries are quite knowledgeable and several are very actively engaged in the negotiations, others have yet to concretise their positions. While hardened observers of the multilateral negotiating process may point out that this is inevitably the case in WTO negotiations, given the supposed potential impact these new disciplines could have on Members’ right to regulate, other experts believe that it is appropriate to at least ensure that all Members, to the extent possible, are aware of the issues and options available to them.

The most fundamental – and politically contentious – issue in the debate is whether, and the extent to which, new disciplines on domestic regulation would qualify (some say impinge on) a Member’s right to regulate. Given that the right to regulate is recognised in the Preamble of the General Agreement on Trade in Services (GATS) and generally regarded as a sovereign right, there are those who consider that the right cannot be diluted by any new disciplines. Others, of course, hold the contrary view that rules seeking to discipline the licensing and qualification requirements, and procedures and technical standards imposed by a country’s regulatory authorities, would by their very nature impose norms which must be complied with as a matter of legal obligation. For instance, to the extent that these norms may require a Member’s regulatory authority to allow an applicant to appeal if an initial application for a license to operate is refused, disciplines impose an obligation on that regulatory authority, and hence qualify a Member’s full discretion to regulate.

### What Would Be the Benefits?

If new disciplines do indeed qualify a government’s right to regulate, then a valuable trade-facilitating benefit must be anticipated to explain why Members want to establish them prior to the end of this round of multilateral trade negotiations. These benefits appear to cut across the North-South divide, as evidenced by the broad interest and engagement of both developed and developing countries, although *in fine* the anticipated benefits are clearly differentiated by the respective prisms through which WTO Members appraise the value of such disciplines.

The obvious and undisputed benefits should accrue to service suppliers who would be regulated on the basis of transparent and objective criteria, and have the assurance that these regulations are not more burdensome than necessary to ensure the quality of a service. Of course, the devil is in the details, and Members have had to grapple with how these elements

should be operationalised with greater specificity in legally binding form. Moreover, given that Members have their respective trade interests where new disciplines' trade facilitating value would be most relevant, there is a negotiating dynamic where Members try to nudge the outcome in the direction of the sectors or modes of supply of interest to them.

This is the context for the proposal from the European Communities on disciplines on licensing procedures, which are widely seen as the type of regulation that most impedes the supply of services through the establishment of commercial presence (Mode 3), the main mode through which the EC and other developed countries supply services to the world economy. India, Chile, Pakistan and Thailand, on the other hand, propose disciplines only on qualification requirements and procedures, which are regarded as the regulatory measures that most often hinder the ability to supply professional services, whether through the temporary movement of natural persons (Mode 4) or through cross-border trade (Mode 1).

### Should Disciplines Be Horizontal or Sector-specific?

Another overarching issue is whether the disciplines should apply horizontally, that is, across all services sectors, or on a sector-specific basis. All the proposals tabled so far in the Working Party on Domestic Regulation (WPDR) seek horizontal application. While most Members, particularly developing countries, appear inclined at this point on having horizontal disciplines, critics such as the United States, claim that this approach has no value-added towards facilitating trade in services, because the widely differing nature of the various services sectors render regulations in these sectors unsuitable to a generic set of disciplines. The US would thus prefer to extend to other professional services sector-specific disciplines modelled after the previously agreed Disciplines on Domestic Regulation in the Accountancy Sector. If horizontal disciplines are to be adopted at all, the US sees transparency obligations as the sole element that could apply across all sectors in a meaningful manner. Sources within the US maintain that even this notion of horizontal transparency disciplines was a tough sell to their domestic constituents, and that the US submitted a concrete proposal on it primarily as a sign of good faith about staying engaged in the negotiations, which at this time appear to be evolving towards horizontal disciplines.

Notwithstanding this trend, some WTO Members, such as Australia, are reportedly bent on proposing disciplines on certain specific sectors. While this has the obvious advantage of having a specific correlation with the kinds of regulatory measures existing in the targeted sectors, for a great number of developing countries it raises concern about the proliferation of specific disciplines, which would, more likely than not, be in sectors of interest to developed countries, which clearly have the resources to devote to developing such disciplines.

### What Scope for a Necessity Test?

Within the disciplines themselves, the most controversial substantive issue is the notion of a 'necessity test', or more specifically, the extent to which any disciplines should require that regulatory measures not be more burdensome than necessary. It is widely-recognised that GATS Article VI.4, which lays down the premise for negotiations on possible disciplines on domestic regulation, requires disciplines to provide for a 'necessity test'. However, Article VI.4 refers to the test in terms of requiring Members' domestic regulation to be not more burdensome than necessary 'to ensure the quality of a service'.

Some WTO Members question whether 'ensuring the quality of the service' is the limit within which the necessity of a regulatory measure could be justified. For instance, would a regulation which seeks to ensure universal access to a key service not be justified as a necessary measure? In this regard, the proposal made by Brazil, Colombia, the Dominican Republic, Peru and the Philippines<sup>1</sup> seeks to expand the necessity test as formulated in GATS Article VI by suggesting that domestic regulation should '*not be more burdensome than necessary to pursue national policy objectives*'. The disciplines proposed by this group of developing countries would necessarily have to accord deference to a wider scope of regulatory measures, and have as such appeared to assuage the concerns of civil society observers, who have been quite critical of the intrusive quality that a necessity test may have on the policy space needed by governments.

### On the Road to Hong Kong

With all these, as well as other, equally important substantive issues remaining unresolved in the Working Party on Domestic Regulation, the key proponents of domestic regulatory disciplines in the WTO, including Hong Kong, Japan, Switzerland, India, Mexico, the EC, the Philippines, Colombia and Brazil, among others, have over the last few months began intensive, small-group negotiations to try and find the threads of convergence in the various proposals, with a view to having some kind of common basis for further work in the WPDR.

Obviously, some participants within the small group, such as Japan, are more optimistic – and ambitious – than others and remain hopeful that a draft checklist of elements, which would form the basis for regulatory disciplines, could be agreed upon within the small group and subsequently the WPDR. Sources say that these participants believe that while it is improbable, there remains a chance that the draft checklist could still be a reference point for ministers in Hong Kong, when instructing the negotiators' future work in this specific rules area.

Other participants in the small-group negotiations are not quite as optimistic and are keenly aware of the US' reluctance to move forward on these negotiations, particularly if it is on the basis of the horizontal disciplines that the key proponents are working on.

Chances are that ministers in Hong Kong will provide an exhortation for the services negotiators to intensify their engagement in the rules discussions. Given the progress achieved in the regulatory disciplines debate over the last couple of years, it is possible that specific reference to this rules area will be made in the Ministerial Declaration anticipated to come out of the conference. While that may not satisfy everyone, it may be enough to see disciplines on domestic regulation – in some shape or form – agreed at the conclusion of the single undertaking.

### ENDNOTE

<sup>1</sup> Elements for Draft Disciplines on Domestic Regulation; Room Document, 26 April 2005.

# Liberalising Environmental Goods in the Doha Round

Robert Howse and Petrus B. van Bork

The Doha Declaration calls for the reduction or elimination of tariffs and non-tariff barriers on environmental goods, but no consensus currently exists on what constitutes an environmental good or the modalities for the negotiations.

A number of WTO Members have advocated basing the talks on existing lists of environmental goods (EGs) compiled by the Asia Pacific Economic Co-operation (APEC) forum and/or the Organisation for Economic Co-operation and Development (OECD). These lists focus on *established environmental technologies*, such as the control, abatement or remediation of pollution, or alternatively goods that use 'clean' technologies (renewable energy goods, for instance). The use of these lists for tariff bindings risks the entrenchment of obsolescence, given that this is an area of rapid technological and conceptual change.

A clearly broader approach is that of 'environmentally preferable products' (EPPs),

defined by UNCTAD as “products which cause significantly less ‘environmental harm’ at some stage of their life cycle than alternative products that serve the same purpose, or products the production and sale of which contribute significantly to the preservation of the environment.”

Most developing countries have only a modest export interest in established environmental technologies whereas they have many obvious export opportunities in the field of more broadly understood EPPs. Indeed, in an era of innovative new technologies, many developing countries will be *advantaged* by not having huge amounts of capital deployed in obsolete and obsolescent technologies.

## Impacts of Lowering Tariffs on Established Environmental Technologies

Environmental effects in developed countries: These are likely to be modest. Developed countries' applied rates are already low on many listed products. Furthermore, much developed country trade already occurs within free trade areas or customs unions.

Environmental effects in developing countries: significantly lowering high tariffs, which exist in some developing countries, *could* make a real difference to industry's burden of environmental performance in the short term. This, in turn, would allow the government to impose stricter regulations or at least boost enforcement (assuming, of course, that the technologies are not already obsolete). In the longer term, there will almost certainly be lower-cost, higher-efficiency technologies available to achieve the same goals, thus mitigating the extent of the positive effect from reducing tariffs on established environmental technologies.

Potential import/export consequences in developed and developing countries: The environmental goods industry in both developed and developing countries *will* gain from reductions of tariffs by developing countries where they are high. However, the advantage will be disproportionately in favour of developed country interests, as they dominate the markets in this field.

## Impacts of Lowering Tariffs on EPPs including PPMs

Environmental effects in developed countries: EPPs including production and processing methods (PPMs, see box) in which developing countries have a comparative advantage may be agricultural in nature, a sector where developed countries often continue to maintain high tariffs. Consumers in developed countries increasingly display preferences for EPPs on environmental grounds. Tariff reductions may empower lower-income consumers with such green preferences, who up to now may have been priced out of the market.

Potential import/export consequences for developed countries: Any lowering of tariffs in developing countries will benefit developed country exporters, particularly in categories of goods that have large 'high-technology' components.

Environmental effects in developing countries: Developing countries “are catching up with developed countries in the area of environmental protection”<sup>1</sup> but this process is uneven. The debate about genetically modified organisms in the developing world suggests that consciousness of environmental and biodiversity considerations may exist even in the presence of extreme poverty.

Potential import/export consequences for developing countries: According to Monica Araya, a former Costa Rican trade official now at the Yale Center for Environmental Law and Policy, a

### PPMs and the WTO

The issue of a WTO Member's right to discriminate between imports according to environmentally-preferable production and processing methods (PPMs) arose from the *Tuna-Dolphin* dispute, which concerned a US ban on imports of Mexican tuna on the grounds that the tuna was fished in a dolphin-unfriendly manner. The GATT panels seized with that dispute, as well as many GATT Contracting Parties, were concerned about the unilateralism of the measure, and the question of equity between developed and developing countries, as well as the possibility of hidden 'green' protectionism. But the *Tuna-Dolphin* panels were not adopted by the GATT Contracting Parties, and subsequently, in the *Shrimp-Turtle* dispute that raised similar issues, the Appellate Body deployed a different set of legal concepts for addressing those issues. A number of WTO Members still consider that ruling flawed due to its implicit acceptance of PPM-related considera-



production-based definition of environmental goods and services encompasses a wider range of environmentally-friendly goods, such as organic produce or eco-certified wood, and “the prevailing anti-PPM rationale in Geneva – and in the trade community more generally – has grown out of sync with market realities. [...]”<sup>2</sup>

Moses Ikiara of the Kenya Institute for Public Policy Research and Analysis suggests that “defining environmental goods on the basis of how they are produced could be important for developing countries.”<sup>3</sup> He provides examples such as organically produced food and cotton fibre, charcoal and briquettes made from wastes, and sustainably produced firewood.

### WTO Members’ Proposals on Modalities and Definitions

While a definition of ‘environmental goods’ remains elusive in the negotiations, and the issue of whether this includes EPPs – with or without PPMs – remains unresolved, a number of Members have nevertheless proceeded to submit detailed lists, often including EPPs, in their submissions. In general, EPPs based on PPMs have been avoided so far. Several Members have started to acknowledge the effect of technological change by proposing ‘living lists’. In a very recent and conceptually rich proposal India has attempted to break out of the list-based paradigm and has suggested the use of a project-based approach as an alternative (Bridges Year 9 No.6-7, page 12).

Members who continue to favour restrictive list-based approaches ostensibly do so for practical reasons such as customs administration or concerns about dual-use. However, given the divergence between lists that is already manifest in the negotiations, even among developed countries, it is difficult to imagine how agreement could be reached on a single list endorsed by all Members.

### A Criteria-based Alternative to Lists

As an alternative to reconciling lists, WTO Members could agree to a lower rate of tariff on certain goods, depending upon whether they conform to particular *criteria*, for example whether they are ‘environmentally preferable’. As a legal matter, instead of altering their MFN schedules, WTO Members could sign a protocol or separate treaty setting out this obligation of preferential treatment.

Such a protocol or treaty could contain a negative list of products that particular WTO Members are not prepared to grant preferential treatment to, even if (arguably) they would meet the indicated environmental-performance-based criteria. Such a negative list, subject to periodic review, might resolve debates about the practical issues of distinguishing products based on considerations such as dual or multiple use, PPMs, etc.

### Should EPPs include PPMs?

It is sometimes suggested that the very concept of non-discrimination built into GATT Articles I (Most Favoured Nation, MFN) and III (National Treatment) simply excludes the possibility of using PPMs as a means of distinguishing between traded products. It would, however, be ironic and certainly nonsensical if the PPMs concept, originally employed to shield developing countries against ‘green’ protectionism, were now used against developing countries to exclude from liberalisation products where developing countries have considerable export potential!

As well, some GATT cases on MFN and customs classification have been widely misread or miscited as excluding PPMs. One of these, *Belgian Family Allowances*, dealt with a measure that was not a PPM at all: the distinction in question was based on the system of social protection that existed in the *country of origin* of the goods, not their process and production methods. Another case often wrongly cited is the *Spanish Coffee* case (*Spain – Tariff Treatment of Unroasted Coffee*). In that dispute, Spain afforded differential treatment to different kinds of un-roasted coffee. Some of the differences between the kinds in question were physical and others related to PPMs, ‘cultivation methods’. The panel found that the two products had to be treated as like, not because of PPMs, but because even physical differences would not be

observable to the end-user, the consumer, who would be drinking the coffee in a blend.

### Dual Use & Customs Drawbacks Applied to EPPs including PPMs

Cases where the environmental value of the product depends upon its dedication to a specific use once inside the border raise important issues of administrability. The product must be tracked after it arrives within the country, or alternately a certificate of destination must be issued. However, certificates involve distinct practical problems, since the importer may be a wholesaler or other intermediary not well situated to certify the ultimate use, or user, of the product.

WTO Members already operate duty drawback schemes, where duty collected at the border is refunded, based on an application of the ultimate purchaser certifying a particular use for the goods. There is *no practical reason why duty drawback schemes could not be extended to deal with environmental products that are identified based on use criteria*.

The logic of duty drawbacks can be extended much further, to provide an innovative solution for EPPs based on PPMs. The normal, non-preferential rate of duty would be collected at the border, but the *producer* of the environmentally preferable product would be entitled to demand a duty drawback, based on credible certification that the products were manufactured in accordance with the PPMs in question.

### International Standards and Non-tariff Barriers

The European Union’s submissions to the negotiations rightly emphasise the importance of international standards. In our view, in an environmental performance criteria-based approach, the eligible products would include only those in respect of which the criteria for ‘environmentally-preferable’ are objective and articulated in credible international, regional or domestic standards in accordance with the principles of the Agreement on Technical Barriers to Trade.

It is especially important that poorer countries or their producers have the means to

*Continued on page 14*

credibly certify environmentally-preferable products; developing countries should have the opportunity to participate fully in the development of international and regional standards for environmental preferability, to ensure that standards do not arbitrarily favour products currently produced in developed countries.

In this regard, we are somewhat perplexed by the heavy focus to date on the issue of reducing tariff barriers; conceptual work on, and identification of, non-tariff barriers is urgent, whether subsidies, technical standards, or government procurement practices. In addition, structural barriers that relate to intellectual property and technology trans-

fer may have important impacts on the overall capacity of developing countries to benefit significantly from these negotiations.

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### ENDNOTES

<sup>1</sup> Ronald Steenblik, Drouet Dominique Drouet and George Stubbs, "Synergies Between Trade in Environmental Services and Trade in Environmental Goods," p. 19 OECD Trade and Environment Working Paper No. 2005-01.

<sup>2</sup> Monica Araya, "WTO Negotiations on Environmental Goods and Services: Maximizing Opportunities?," Global Environmental and Trade Study, Yale Center for Environmental Law and Policy, June 2003, pp. 1-2.

<sup>3</sup> "Realisation of Maximum Benefits from Liberalisation of EGS: Kenyan Case," Workshop on Environmental Goods, WTO (Geneva 11 October 2004).

## Environmental Goods for Development

For most developing countries, development would be best addressed in the field of environmental goods if the outcome of the negotiations leads mainly to: (a) improved market access for products that have low impact on the environment and/or that are derived from or that incorporate cleaner technologies; and (b) the use of technologies adapted to the needs of developing countries.

This approach aims at addressing the imbalances currently existing in the market of environmental goods, which has privileged the definition based, by and large, on 'end-of-pipe' technologies and products. Negotiations focused mainly on this 'traditional' view, as proposed by some Members, would not take into account the development aspects of the Doha Ministerial Declaration.

The exports of most developing countries consist, by and large, of natural resource-based products. Most of them are endowed with plenty of natural resources that include formidable stocks of biodiversity, water, landscape and soil. Moreover, the indigenous and local communities of these countries are rich in traditional knowledge. Paradoxically, many of these local populations have to endure dreadful famine, poverty, illness and other environmental setbacks. Environmental preservation under these conditions is hardly sustainable.

An adequate definition of environmental goods may constitute a relevant response to overcome this paradox, by allowing

mutually supportive outcomes and a triple win, i.e., trade promotion, environmental improvement and poverty alleviation. Improved market access for products that have low environmental impact and/or are derived from or incorporate cleaner technologies contributes to poverty alleviation through income generation and job creation for local populations.

Hence, it is proposed that the definition of environmental goods should cover products, such as natural fibres and colorants and other non-timber forest products, renewable energy, including ethanol and biodiesel. A FAO study for the Convention on Biological Diversity, using a loose concept of sustainable use product, indicates that such products would enjoy a market of around US\$19 billion. Albeit inaccurate and requiring further refinement, it shows that further liberalisation in the trade of these products would certainly have positive developmental effects.

Improved market access for products derived from or that incorporate cleaner technologies, such as 'flexi fuel' engines and vehicles could also encourage the use of environmentally efficient products and be supportive of the developmental concerns of the developing countries, as those vehicles are driven by a fuel obtained from the processing of natural resources available in the developing countries.

In order to achieve a balanced outcome in the negotiations, any definition of environmental goods should include products in which developing countries have special interest. Therefore, Brazil proposes to adopt the UNCTAD approach on 'environmentally preferable products' as a basis to develop a definition of environmental goods that encompasses the development dimension. UNCTAD has been studying this matter for a long time and has devoted considerable efforts in the support of negotiations on the matter, as well as in assisting to find technical solutions to this issue.

*Extracted from Brazil's proposal TN/TE/W/59 to the Special Session of the Committee on Trade and Environment on 8 July 2005.*

# Intrinsic Elements of the GATS: Some Notes for Reflection

Umberto Celli Junior

When WTO Members agreed to integrate the General Agreement on Trade in Services (GATS) into the rules governing the multilateral trading system, they were aware of the challenges involved in liberalising and expanding services trade. This recognition is reflected in the flexibility of GATS rules, which allow each Member to select the sectors and the degree of liberalisation most adequate to its domestic social and economic realities.

Accordingly, the ‘built-in agenda’ established in 1995 recognised that the result of the Uruguay Round was just the initial phase of a long-term process aimed at gradually eliminating barriers. The Preamble, and Articles IV and XIX of the GATS call for successive rounds of further negotiations, starting in 2000, in order to achieve ‘progressively higher levels of liberalisation’ that would, *inter alia*, “facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports.” The GATS also specifies that the liberalisation process shall be conducted with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. Moreover, there shall be appropriate flexibility for individual developing country Members to open fewer sectors, liberalise fewer types of transactions and progressively extend market access in accordance with their development situation (Article XIX.2 and paragraph I.2 of the Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on 28 March, 2001).

Thus, unlike the ‘formula’ approach applied in the agricultural and non-agricultural market access negotiations, which is aimed to bind Members to certain minimum commitments, under the GATS architecture, Members (especially developing countries) are accorded some flexibility to determine whether or not to make commitments. In case they decide to make commitments, Members have room to establish the timing, type and level in each sector. Such flexibility, considered as one of the most positive aspects of GATS, has been responsible for the substantial progress so far achieved in the services negotiations.

## Benchmarks Approach Contrary to GATS Architecture

Despite the appropriateness of such flexibility – especially for developing country Members – some developed countries have indicated their intention to propose certain elements for a ‘common baseline’ for the services negotiations that, in their view, would complement the ‘request-offer’ approach (see box). One of the cross-sectoral elements of this proposal is the “commitment to make offers in a minimum number of sectors and sub-sectors” (‘benchmarks’).

The adoption of a ‘benchmark’ or ‘formula’ approach would be totally incompatible and inconsistent with the inherent GATS architecture as it would affect the flexibility that Members currently have of making binding commitments whenever they believe such commitments are in line with their national policy objectives and social and economic situations. Moreover, it would erode the concept of progressive liberalisation, potentially leading to a loss of the still much-needed policy space for development.

In this regard, it should be noted that, as established in paragraph 1.4 of the Guidelines, the negotiations “shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply.” Clearly, as a practical matter, the adoption of benchmarks would imply a substantial change in the methodology of the services negotiations in violation of paragraph 1.4.

## Domestic Regulation Disciplines

The inherent architecture of the GATS would also be threatened if, as a result of ongoing negotiations, certain disciplines were adopted such that Members would be deprived of their capacity to regulate the supply of services in their territories in accordance with legitimate domestic policy objectives. In this regard, negotiations currently taking place in the Working

Party on Domestic Regulation (WPDR) give rise for some concern. Moreover, a recent panel report condemning the United States for banning Internet gambling – not on a ‘market access restriction’ basis but rather on the grounds of domestic regulation subject to GATS Article VI – generates further uncertainty about the potential effects on the regulatory autonomy of Members (see related article on page 10).

GATS Article VI (Domestic Regulation) contains unfinished provisions to the extent that further negotiations are still required to work on disciplines aimed to ensure “*that measures relating to qualifications requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services*” (Article VI.4). Moreover, these disciplines must ensure that such requirements are: (i) based on objective and transparent criteria, such as competence and the ability to supply a service; (ii) not more burdensome than necessary to ensure the quality of the service; and (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

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### The Request-Offer Process

According to the March 2001 Guidelines, “the main method of negotiation shall be the request-offer approach.” Members both request market opening concessions from each other and make offers – often predicated on domestic offensive interests – on the services sectors they are willing to open to competition. After bilateral negotiations, which may take more than one round, revised offers are issued. The final concessions will be inscribed in a Member’s Schedule of Commitments and will apply to all other WTO Members on a most-favoured nation basis.

In sectors where a Member has undertaken specific commitments, pending the entry into force of disciplines developed for these sectors, the Member must not apply licensing and qualification requirements or technical standards that may ultimately nullify or impair such specific commitments (Article VI.5).

There seems to be no doubt that the adoption of these disciplines is desirable. However, the central question is to how to strike a balance between the need to curtail protectionism and the need to preserve the right of Members to regulate the supply of services in their territories, i.e., their national regulatory freedom, taking due regard of their legitimate policy objectives.

Over the last few months, a number of Members and groups of Members have tabled domestic regulation proposals. In general, developed countries' proposals seem to depart from the original task destined to develop disciplines exclusively for professional services to devise disciplines governing domestic regulation covering all services sectors. Developing countries should pay special attention to these proposals as some of them go far beyond the original objectives inscribed in GATS Article VI and imply the adoption of highly intrusive disciplines in the domestic domain, such as allowing for comments by foreign governments or companies prior to the approval of regulations proposed by the national government. At the very least, before accepting such proposals developing Members should insist on the 'necessity test' issue, i.e., the specification of criteria for necessity, which, at a minimum, should include a non-exhaustive list of measures they may take to protect or preserve their policy space.

This is a crucial moment for the negotiations in the services sector. Developing country Members should co-ordinate and act jointly to maintain the original GATS flexibility to make commitments to the extent they are in line with their national policy objectives.

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## Regional Integration News in Brief

- Chile is likely to become the first individual country to sign a free trade agreement (FTA) with China at the end of this year. A fourth round of negotiations will start on 12 September on a deal that is to cover trade in goods, services and investment. Trade between the two countries has grown vigorously in the last couple of years, reaching US\$5.4 billion in 2004. The FTA is expected to result in a large short-term increase in bilateral trade and further spur Chinese investment in Chile. China's most important exports to Chile are textiles and clothing, high-tech goods, shoes and toys, while Chile mainly exports to China copper and copper ore, paper pulp, fish meal, iron ore and nitre. Chile has already signed over 30 FTAs while China is negotiating and carrying out feasibility studies for FTAs with a number of trade partners, including the Association of Southeast Asian Nations (ASEAN), Australia and New Zealand.
- The National Human Rights Commission of Thailand has issued an official statement expressing concern over "ongoing negotiations on the Thai-US Free Trade Agreement, particularly on the issues of intellectual property rights." Specifically, the Commission urges the Thai government (i) not to accept the US patent regime, which includes patenting of life forms, ratifying UPOV, and replacing geographical indication with trademarks and (ii) to play a proactive role in the protection of Thai jasmine rice, biological resources and traditional knowledge. The statement calls for both sides' intellectual property protection laws to "specify the origins of related biological resources and traditional knowledge in addition to requirements under which a patent may be obtained" and requests the Thai government to "forcefully affirm Thailand's legitimate authority, in accordance with the Convention on Biological Diversity (CBD), to adopt a precautionary approach by prohibiting the importation of products containing genetically modified organisms in case of uncertain health, safety and environmental impacts."
- Switzerland announced in June that it would seek to establish a free trade area with the United States, but according US Trade Representative Rob Portman no decision had been made to launch negotiations. Mr Portman said he was not sure whether a free trade agreement would make sense at this point, adding that Swiss officials were "probably equally uncertain." In any case, the US would need to hold 'considerable consultations' with Congress, stakeholders and the private sector prior to making a decision, he added.
- FTA talks are set to resume in September between the US and the Southern African Customs Union (SACU). An unofficial deadline of September 2006 has been floated for concluding the treaty, but many doubt that it can be met. Negotiations broke down a year ago over deep divisions concerning in particular intellectual property rights, services, investment and transparency in government procurement (Bridges Year 8 No.10, page 17). According to an unnamed US official linked to the process, the negotiations will resume in "bite-size fashion", with industrial market access issues to be tackled first.
- The EU and Mercosur (Argentina, Brazil, Paraguay and Uruguay) have also agreed to restart stalled FTA negotiations in September after a year's pause. Immediate breakthroughs are unlikely due to the Latin American bloc's intense focus on agriculture and the proximity of the WTO's Ministerial Conference in Hong Kong, which might result in some progress on subsidy and tariff reductions. In related news, Mercosur finance ministers agreed in June to set up a structural fund similar to those in the EU to finance investments in the bloc's poorer regions. Brazil is to pay 70 percent and Argentina 27 percent of the US\$100 million that the fund is slated to reach three years after it becomes operational in January 2006. The main beneficiaries will be Paraguay, which will receive 36 percent, and Uruguay with a 24 percent share. Brazil and Argentina will each get 20 percent for their disadvantaged regions.



## Modified CAFTA–DR Ratified by Five Countries

The US House of Representatives passed the implementing legislation for the Central America – Dominican Republic Free Trade Agreement on 28 July after the Bush administration promised more safeguards against sugar imports and tightened conditions for duty-free textiles. El Salvador, the Dominican Republic, Guatemala and Honduras have also already ratified the agreement. Costa Rica and Nicaragua are expected to do so in the coming months.

To overcome stiff resistance from the domestic sugar industry, the Bush administration assured US sugar producers that they would not be affected by CAFTA-DR imports for the duration of the current farm bill. Until the bill expires in 2007, the government's Commodity Credit Corporation will purchase sugar up to the 109,000-tonne quota negotiated under CAFTA-DR (less than one percent of US annual sugar consumption) if total US sugar imports exceed 1,532 million tonnes and the Department of Agriculture (USDA) decides that the domestic market cannot absorb the imports. The excess sugar will be made available for conversion into ethanol. By July 2006, USDA is to release a feasibility study on such a conversion.

The US textiles lobby was narrowly won over by changes in CAFTA-DR rules of origin for pocketing and non-visible lining in trousers, which now must be manufactured either in Central America or in the US – rather than third countries – to qualify for duty-free access to the US.

The rules of origin amendment was agreed between the CAFTA-DR countries and the US, which is soon to start negotiations on expanded market access for other textiles and apparel products to compensate for the change. Some US importers have proposed expanding the number of products that must only be assembled in Central America (currently just bras and boxer shorts) to be eligible for duty-free access.

A separate deal struck with Nicaragua requires that country's trouser manufacturers to increase their use of US fabric by as much as 200 percent in order to benefit from duty-free access. Currently, about two-thirds of Nicaragua's trouser exports to the US contain Asian fabrics.

### Playing the China Card

In the lead-up to the Congressional vote, proponents of CAFTA-DR argued that it would bring Central America 283,000 new textiles jobs. The US Trade Representative's (USTR) office claimed that, because garments made in the region would be duty- and quota-free only if they use US or regional fabric and yarn, the FTA would "provide regional garment-makers – and their US or regional suppliers of fabric and yarn – a critical advantage in competing with Asia."

However, the Washington-based Economic Policy Institute on 10 August highlighted new data showing that despite similar arrangements between Mexico and the US under the North American Free Trade Agreement (NAFTA), Mexico's clothing and apparel exports to the US had declined steadily since China's entry into the WTO in 2001, entailing a corresponding decrease of Mexico's imports of US fiber, yarn, fabric and textiles. Meanwhile, China's share of US apparel imports increased by 8.6 percentage points between 2000 and 2005. Given these trends, the Economic Policy Institute noted that it was "highly unlikely that textile and apparel producers in the CAFTA countries, or the US textile industry, will effectively 'unite to compete with Asia' as the USTR claimed. [...] Those who believed that this treaty will save US textile jobs or build up these industries in the CAFTA countries will be badly disappointed."

### What's in it for Central America?

The most powerful reason driving Central American countries to seek an FTA with the US was to permanently lock in and, hopefully, expand their existing preferential market access under the Caribbean Basin Initiative (CBI). In the textiles sector alone, scores of clothing factories and mills were set up in the region after the CBI entered into force in 1985, and now employ more than half a million workers and generate US\$10 billion in annual exports. The CBI's effect on a country like Honduras, for instance, has been significant: exports (principally

clothing, fruit and coffee) to the US have increased by more than six-fold since 1989, and the current figure of US\$3 billion represents nearly 20 percent of the country's economy. Uncertainty regarding the permanence of the CBI's market access preferences led the six countries to accept a treaty that will come with high costs in the form of opening domestic agricultural markets to subsidised US competition, eliminating most import duties on industrial products and taking on higher-level intellectual property protection commitments than is required under the WTO's TRIPS Agreement.

### Overall Effect on US Economy Will be Small

The accord is expected to have a modest impact on the US economy. Currently, US imports from the six partners together stand at US\$18 billion. In comparison, imports from Ireland alone amount to US\$27 billion, while Honduras's exports of US\$3 billion represent three days' worth those from Canada. On the other hand, US exports in goods and services to the region account for only US\$15 billion of the country's trillion dollar export trade. The agriculture sector is expected to benefit as the pact is estimated to boost US farm exports to the region by US\$1.5 billion annually. The pharmaceutical industry has also gained a means to delay generic production of brandname medicines – patented or not – through the provision of a five-year period (starting from the date marketing approval is granted) during which clinical test data on the safety and efficacy of a drug may not be disclosed.

In addition, US officials have stressed that the treaty has a significance beyond economic gains. Signing CAFTA-DR into law on 2 August, President Bush called the agreement "more than a trade bill – it is a commitment among freedom-loving nations to advance peace and prosperity throughout the region. By strengthening the democracies in the region, [this agreement] will enhance our nation's security."

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## Some Concerned in Central America

While the leaders of the Central American CAFTA-DR partners welcomed the treaty's approval by the US, many of the region's farmers fear that the elimination of tariffs on US exports will create a flood of new imports, driving small-scale rice, bean and corn farmers out of business. To address these concerns, CAFTA-DR exempts several sensitive crops – such as white corn and Costa Rican potatoes and onions – from liberalisation commitments. It also provides transition periods of up to 20 years for some goods, such as dairy products.

Concerns about small-scale farmers and access to affordable medicines drove civil society organisations, such as Oxfam and Médecins sans Frontières, to campaign against CAFTA-DR. Oxfam trade policy advisor Stephanie Weinberg said the pact would have “serious repercussions for those who are already disadvantaged in these highly unequal societies where most of the poor live in rural areas, rely on income from agriculture, and must pay for medicines out-of-pocket.”

## Entry into Force

El Salvador, the Dominican Republic, Guatemala and Honduras have already approved CAFTA-DR legislation. For them, the agreement will go into effect as soon as they agree on a date – 1 January 2006 is likely – with the US. The Dominican Republic has promised to compensate the sugar industry and other sectors that incur serious losses of market share due to increased US competition.

Ratification has been delayed in Nicaragua due to political strife between two factions of the ruling Liberal Constitutional Party. The biggest hurdle, however, may occur in Costa Rica, where President Abel Pacheco hopes to pass fiscal reforms before addressing the trade deal. President Pacheco is under pressure both from CAFTA-DR partners, which are urging him to move forward, and vocal domestic opposition from certain quarters. For instance, Costa Rica's former social security chief Guido Miranda has said that the country's neoliberal policies, and CAFTA in particular, would inexorably lead to the destruction of its social security system.

Costa Rica and Nicaragua have two years to complete their ratification processes.

# US– Andean Treaty Faces Hurdles

Despite the many major differences that persist on agricultural market access and intellectual property protection, US, Colombian, Ecuadorian and Peruvian authorities have affirmed their strong political will to conclude the Andean Free Trade Agreement in the near future.

Negotiations on agriculture take place in bilateral meetings between the US and each of the Andean countries. Evoking the small size of their economies and low level of development compared to the US, the latter seek ‘asymmetrical’ tariff reductions, that is the right to keep protective tariffs on more products and longer transition periods for reductions. One particularly controversial issue is the price-band mechanism, which allows countries such as Colombia to adjust tariffs within a certain range to keep import prices above a minimum level.

So far, the talks have made scant progress. Beef and dairy are sensitive sectors for both sides, and the US faces intense domestic opposition to any opening of its sugar sector. Worried about their smallholder farmers' ability to compete, the Andean countries seek to maintain protective tariffs for corn, rice and beans, as well as chicken legs, which they argue will be dumped to their markets below production cost due to US consumers' preference for breast meat. Ecuador wants to keep out US soy in order to protect its palm oil industry. Among the Andean countries' priority export products are cut flowers, coffee, tobacco and sugar, as well as beef.

## Intellectual Property Rights

The three Andean countries are still pressing the US for a formal response to their proposal on biodiversity, which would require patent applicants to disclose the origin of the genetic resources involved in them, and to share the benefits derived from their commercial exploitation. To back up this demand, Colombia, Ecuador and Peru point to the United Nations Convention on Biological Diversity (CBD) and the Andean Community's Industrial Property Regime in force since December 2000 (Bridges Year 4 No.9, page 11). The US, however, is not party to the CBD, and the Andean legislation only covers patents sought in its five member states (Bolivia, Colombia, Ecuador, Peru and Venezuela). Without a disclosure and benefit-sharing clause, the Andean countries maintain, indigenous communities would be deprived of their share of profits made using their genetic resources. At a July negotiating session, the US affirmed that it was willing to work toward ensuring that new US patents would not infringe on Andean patent legislation, but did not make a formal proposal.

Colombia, Ecuador and Peru are also still waiting for a US response on their proposal that clinical test data on the safety, toxicity and effectiveness of a medicine should remain confidential for three years from the date of marketing approval, and that data exclusivity for agrochemicals would be limited to six years. So far, the US has been successful in exacting a five-year data exclusivity period for pharmaceuticals and ten years for agrochemicals in its free trade agreements. Health officials and civil society activists are particularly concerned that a long data exclusivity period would delay the introduction of generic versions of brandname medicines even beyond the requirements of the WTO's TRIPS Agreement.

In addition, the two sides are at odds on what constitutes an ‘undue delay’ in marketing approval. The US originally wanted patents to be extended for products, which had taken more than four years to receive marketing approval, but has reportedly recently shown willingness to consider five years. The Andean countries have signalled flexibility with regard to their initial proposal that seven years could be considered ‘undue delay’.

## Investment

Investment is another area of disagreement. The US would like to include an ‘indirect expropriation’ clause, which would allow private sector investors to sue the host government if it enacts regulations that lessen the value of the investment. Indirect expropriation under NAFTA has given rise to several disputes, where companies have sought large compensation payments for health or environmental regulations they alleged to have negatively affected their invest-

ments. In its other recent FTAs, the US has specified that non-discriminatory regulatory actions by governments aimed at protecting public health, safety and the environment cannot be considered indirect expropriation 'except in rare circumstances'. The Andean countries want the qualifier about rare circumstances dropped due to its unclear scope.

Investment and IPRs, as well as services, industrial market access and government procurement are on the agenda of the September negotiating session in Colombia.

## WIPO and Development: Big Decisions Ahead

In late September, the General Assembly of the World Intellectual Property Organisation faces crucial decisions on how – or even whether – to proceed with the WIPO Development Agenda launched a year ago. While the membership is divided on both substance and process, for many developing countries the outcome of the Assembly will be a key indication of whether the institution is capable of adequately addressing their concerns.

In September 2004, fourteen developing countries including Brazil and Argentina (the so-called group of Friends of Development<sup>1</sup>) proposed that a 'development agenda' be established for WIPO (WO/GA/31/11). In response, WIPO's General Assembly created the Intersessional Intergovernmental Meeting (IIM) to examine this and other proposals related to development issues. The IIM was instructed to prepare a report for the consideration of the General Assembly in 2005.

At the heart of the proposal by the Friends of Development is the belief that WIPO needs to undergo fundamental reform in order to fulfil its role as a UN organisation guided by development goals, such as those set out in the Millennium Declaration. The proposal identified several ways to ensure that WIPO treats intellectual property as a tool for development, rather than simply promoting strict intellectual property standards. These substantive measures included a) amending the WIPO Convention to incorporate the development dimension; b) considering a treaty on access to knowledge and technology; c) establishing an Independent WIPO Evaluation and Research Office; d) adopting principles and guidelines for technical assistance; e) reforming WIPO norms and practices, including the development of principles and guidelines for norm-setting activities; f) making use of development impact assessments and g) encouraging wider civil society participation.

During the three sessions of the IIM, additional proposals have been put forward by the US, the UK, Bahrain and other Arab countries, and the African Group. These proposals address a range of issues from technical assistance to ways of bridging the 'digital divide' in information technology. However, lengthy procedural debates have meant that engagement on substantive issues has been limited and that some proposals have not yet been addressed at all.

### No Consensus on the Appropriate Body for Further Discussions

At the third session of the IIM, members agreed on the need for more discussion on the development agenda, but could not reach a consensus on the body in which those discussions ought to take place. Most developing countries, including the Friends of Development and the African Group, argued for an extension of the IIM process, while the US, Canada and Japan advocated moving the debate to the Permanent Committee on Co-operation for Development Related to Intellectual Property (PCIPD).

The choice between the two potential bodies reflects members' different attitudes toward the very idea of incorporating a development agenda into WIPO. The IIM reports directly to the General Assembly, and has an explicit mandate to examine a wide range of proposals and issues related to development concerns. In contrast, the PCIPD is mainly concerned with technical co-operation rather than substantive matters. Neither body has a specific mandate to negotiate IP standards.

The US and Canada have indicated that concerns about the PCIPD's mandate could be addressed either by reviewing its mandate or by means of a General Assembly statement confirming the Committee's competence to examine development-related issues. However, a

difference in mandates is not the only issue at hand: some developing countries fear that a move to the PCIPD would marginalise development issues by confining them to a single, ineffective body, and result in a loss of political weight and momentum.

By the end of the third session, most countries had expressed support for continuing the IIM process in some form. However, the US, Canada and Japan objected to this proposal on the grounds that the PCIPD was a more appropriate WIPO body for conducting extended discussions. Despite extensive informal consultations by the Chair, Ambassador Rigoberto Gauto of Paraguay, no agreement was reached and the IIM therefore made no recommendation to the Assembly on the matter.

### Prospects for the General Assembly

The General Assembly will have to decide on how to fulfil the unfinished mandate of the IIM: either by extending the IIM itself in some form, or through specific instructions to different WIPO bodies, such as the PCIPD. In an effort to bridge the gap between leading proponents on how the process should continue, a series of consultations have been initiated by the Director General of WIPO, Kamil Idris.

These consultations have focused on the possibility of agreeing on a package of trade-offs among various WIPO processes that would include the advancement of the WIPO development agenda, the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, and a fast-track harmonisation exercise in patents and copyright law. Reactions to these consultations have been mixed and

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results unclear due to the non-tradable nature and different treatment of the issues at stake. One trade source predicted that the September 2005 General Assembly would be a 'war of mandates'. There will be a strong political struggle to incorporate a development perspective in WIPO, particularly as similar processes have already taken place at other international fora, such as the WTO, the Monterrey Consensus on Financing for Development, or the UN Millennium Development Goals, just to name a few.

Given the polarised positions on the IIM, it is difficult to predict the outcome of this year's General Assembly. The fact that some proposals, such as that put forward by the African Group, are yet to be discussed could lead to a reopening of the substantive debate. This would not only reduce crucial negotiation space for process-related matters, but could also result in individual country positions isolating each other; at this stage it seems important to keep the focus of the negotiations on mandate and process, rather than substance.

Four potential outcomes from the General Assembly appear possible:

- The IIM process could be extended for a limited time in order to find options for action or consensus on how to integrate development into WIPO's activities and mandate. This option is clearly favoured by the Friends of Development, many other developing countries and some developed countries.
- Second, the debate could be moved to the PCIPD, along the lines argued by the UK and Canada, among others. This could include a broadening of the PCIPD mandate so as to issue recommendations or undertake negotiations.
- Third, there could be an attempt to find a compromise solution, such as prolonging the IIM process for perhaps an additional year with no changes in the mandate. However, the danger of this option is that discussions could easily be blocked until the extension ends. Hence the continuation of a limited process only makes sense if there is a true willingness to engage and negotiate by all parties, which currently does not seem to be the case.
- Fourth, the General Assembly could end in no agreement on how to proceed. This would freeze the process for an indefinite period, and it is not clear whether it could ever be taken up again. The stagnation

could potentially affect other processes, such as those on patent and copyright harmonisation. A mutual blockage could impact the functioning of WIPO and create undesirable temptations to initiate negotiations elsewhere.

### Conclusion

The debate on a WIPO Development Agenda is uncontroversial but, as Joseph Stiglitz recently observed, hopes for an IPR regime responsive to development concerns are high: *"Hopefully, in WIPO's reconsideration of intellectual property regimes, the voices of the developing world will be heard more clearly than they were in the WTO negotiations; hopefully, WIPO will succeed in outlining what a pro-developing intellectual property regime implies; and hopefully, the WTO will listen: the aim of trade liberalisation is to boost development, not hinder it."*<sup>2</sup>

Many feel that an orthodox view about intellectual property is struggling to survive in a new context where innovative approaches on promoting invention and investment must be balanced with development concerns and the defence of the public interest. A continuation of the debate on a WIPO Development Agenda and, more specifically, the IIM does not guarantee that this balance can be found, but at least it would provide a space where these issues could be discussed and incorporated into international IP policy-making.

### ENDNOTES

<sup>1</sup> The Friends of Development are Argentina, Brazil, Bolivia, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, United Republic of Tanzania, and Venezuela.

<sup>2</sup> In *Intellectual Property Rights and Wrongs*, Daily Times Pakistan, August 17 2005. See [http://www.dailytimes.com.pk/default.asp?page=story\\_16-8-2005\\_pg5\\_12](http://www.dailytimes.com.pk/default.asp?page=story_16-8-2005_pg5_12)

## Brazil Reconsiders Compulsory Licensing

Brazil has reopened negotiations with three US pharmaceutical companies in an effort to bring down prices for AIDS treatment. A resolution on compulsory licensing only needs the health minister's signature to enter into force.

In July, the Brazilian government and the US-based Abbot laboratories announced that a compromise had been reached on the price of the AIDS drug Kaletra (a combination of lopinavir-ritonavir) and thus Brazil would not issue a compulsory license for it, as it had threatened to do (Bridges Year 9 No.6-7, page 15). However, a new Health Minister, Jose Saraiva Felipe, took over only days later and demanded a bigger price cut per capsule (Abbot had agreed to decrease the price gradually from US\$1.17 to 72 cents by 2010). Minister Felipe said that a privately-owned Brazilian company had offered to manufacture generic Kaletra for 41 cents, i.e. less than two-thirds of the price (68 cents) previously quoted by the state-run FarManguinhos. The potential for savings to the country's widely-praised AIDS treatment programme made reopening the negotiations necessary, Mr Felipe said. In addition to Abbot, Brazil is negotiating price reductions with Merck and Gilead.

On 11 August, Brazil's 20-member National Health Council unanimously approved a resolution drafted by Minister Felipe that would allow generic production of patented brandname AIDS medicines immediately upon signature. Negotiations were still underway when this issue of Bridges went to press, but according to Brazilian sources the decision to issue compulsory licenses would be made if a deal was not concluded relatively soon.

Under the WTO's intellectual property rules, all Members may issue compulsory licenses to supply their domestic markets in case of health emergencies, provided that the production is for non-commercial purposes and an attempt to was made to obtain the right-holder's consent. The right-holder should be paid "adequate remuneration in the circumstances of each case, taking into account the economic value of the authorisation." Prior to the now-discarded Kaletra deal, Brazil had proposed Abbot a three-percent royalty payment.



# G-33 Agricultural Tariff Structures and Import Surges

Mario Jales

This article reviews some of the key findings of a new study<sup>1</sup> on the tariff structures of G-33 members, the level of effort the countries would need to make in order to reach a 40 percent reduction in bound tariffs, and the incidence of import surges in a number of G-33 members.

The 42 members of the G-33 include countries in Africa, Asia, Latin America and the Caribbean. Despite the fact that all members are developing countries, the group is very diverse: it brings together some of the world's largest (China) and smallest (Grenada) agricultural producers, as well as some of the developing world's most advanced (Korea) and deprived (Haiti) economies. The uniting force behind the group resides in their strong support for Special Products (SPs) and the Special Safeguard Mechanism (SSM).

## G-33 Bound Tariff Structures

Countries within the G-33 display a broad range of agricultural tariff structures. Table 1 presents the bound tariff structures of the 33 members of the group that are not least-developed countries, classified into six sub-groups according to their mean tariffs, degree of tariff dispersion, and percentage of tariff lines above threshold levels of 60 and 120 percent.

The average level of protection, as measured by the tariff mean varies from a low of 15 percent in China and Côte d'Ivoire to a high of 150 percent in Nigeria. Four countries have mean tariffs below 25 percent, 11 between 25 and 50 percent, four between 50 and 100 percent, and 14 above 100 percent.

Tariff dispersion, as measured by the coefficient of variation, also differs considerably within the group. High degrees of dispersion tend to suggest the existence of tariff peaks. Korea (2.2) and Botswana (1.5) have exceedingly high degrees of dispersion, so it comes as no surprise that they also have the two highest maximum tariffs in the G-33: 887 percent in Korea and 597 percent in Botswana. Turkey (0.8), China (0.8) and Panama (0.6) present moderate dispersion. All

other countries have a low coefficient of variation. Another indication of the group's diversity is that a tariff cap of 120 percent would affect roughly all tariff lines in Nigeria, Zimbabwe and Mauritius, but would distress less than one percent of agricultural tariff lines in 19 other G-33 members. Given such diversity, a one-size-fits-all response to the demands of the entire WTO membership is unlikely.

## Bound and Applied Tariffs

Although tariff reductions in the Doha Round will be made from bound rates, it is fundamental to analyse the applied tariff schedules of WTO Members in order to comprehend the forces shaping the negotiating positions of different countries. Tariff 'overhang', or the difference between bound and applied tariff rates, can help determine the degree to which a country is inclined to reduce bound tariffs. If applied rates are significantly below bound rates, a given country might have more manoeuvring space in market access negotiations. It is the interaction between the two schedules – and not the two schedules separately – that should be the focus of analysis.

The study analysed the bound and applied tariff structures of the 33 members of the group that are not least-developed countries, classifying them according to the degree of difficulty they would face in implementing tariff reduction commitments. It should be emphasised here that the exercise was based solely on a comparison of bound and applied tariff structures, not taking into account other important variables such as the contribution of agriculture to total GDP, the size of population economically active in agriculture, the share of customs revenue in total government revenues, food security concerns, or regional development needs, among others.

Countries were classified in four different subgroups in line with the overhang in their

Table 1: G-33 Bound Tariff Structures: Key Sub-groups

Sub-Group	Members	Mean Tariff	Coefficient of variation	Percentage of tariffs over 60%	Percentage of tariffs over 120%
1	Côte d'Ivoire, Mongolia, Suriname	Low (15–20%)	Low (0.0–0.3)	0%	0%
2	Cuba, Dominican Republic, Honduras, Indonesia, Nicaragua, Peru, the Philippines, Panama, Venezuela, Sri Lanka	Moderate (30–45%)	Low (0.2–0.3)	Less than 6%	0%
3	Botswana, Korea, Turkey	Moderately High (40–70%)	Very High (0.8–2.2)	20–40%	Less than 20%
4	Antigua & Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, Kenya, Pakistan, St Kitts & Nevis, Trinidad & Tobago, St Lucia, St Vincent & the Grenadines	High (100–110%)	Low (0.0–0.3)	Close to 100%	Less than 20%
5	Nigeria, Zimbabwe and Mauritius	Very High (120–150%)	Very Low (0.0–0.1)	Close to 100%	Close to 100%
6	China <sup>1</sup> , India <sup>1</sup>	Low (15%) High (116%)	High (0.8) Moderate (0.5)	2% 56%	0% 18%

<sup>1</sup> Despite different tariff structures, China and India have been grouped together as they are difficult to classify in any of the preceding sub-groups. China is a mix of sub-groups 1 and 3, while India is a mix of sub-groups 3 and 5.

Source: Author's calculations, based on WTO Members' Schedules of Concessions

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tariff structures and the corresponding reduction effort they would have to make in order to implement a 40 percent across-the-board cut on agricultural tariffs

Table 2 presents the four sub-groups and their respective members. It shows, *inter alia*, that Antigua and Barbuda, St Lucia and St Vincent and the Grenadines would not need to make any changes to their applied tariffs to achieve a 40 percent, or even 60 percent, linear cut in bound tariffs. Fourteen countries would need to make a minor effort related to a small number of ‘problematic’ product categories. Ten countries would need to make a ‘moderate effort’, defined here as having between seven and twenty problematic product categories. And finally, six G-33 members, including China and Korea, would need to make a substantial effort to achieve a 40 percent reduction in bound tariffs. This is so either because their applied rates are very close to bound rates, or because the country maintains a large number of import prohibitions (more than 130 products are affected by import bans in Nigeria).

Table 2: Effort Required to Implement a 40 Percent Bound Tariff Reduction

Sub-Group A No effect on applied tariffs	Sub-Group B Minor effect on applied tariffs	Sub-Group C Moderate effect on applied tariffs	Sub-Group D Substantial effect on applied tariffs
Antigua & Barbuda St Lucia St Vincent & the Grenadines	Belize The Dominican Republic Grenada Guyana Indonesia Jamaica Kenya Mauritius Mongolia Nicaragua Pakistan St Kitts & Nevis Trinidad & Tobago Zimbabwe	Barbados Botswana Cuba Honduras India Panama Peru The Philippines Sri Lanka Venezuela	China Côte d'Ivoire Korea Nigeria Suriname Turkey

Source: Author's classification

The relative difference between bound and applied rates can vary significantly from product to product and from country to country. Furthermore, some products can be considered more important than others in terms of production, consumption or trade value. Pakistan and Nicaragua serve as good illustrations: while both countries have the same number of ‘problematic’ product categories, the gravity of the problem caused by cuts in their tariffs could be quite different. In the case of Pakistan, only two (cotton and soybean oil) of the six

product categories represent an important share of total agricultural imports. Furthermore, both bound and applied tariffs on silk, wool, flax and hemp are currently set at five percent. A 40 percent tariff cut would require the Pakistani government to lower such tariffs to three percent. This should not be a difficult task to implement. In contrast, all six ‘problematic’ product categories in Nicaragua are important in terms of foreign trade. The applied tariff of 200 percent on chicken meat in 2003 was well above the final bound rate of 100 percent. A 40 percent tariff cut would require the Nicaraguan government to bring the applied tariff down to 60 percent. Therefore, reducing the tariff on chicken meat in Nicaragua has the potential to be substantially more cumbersome than reducing the tariff on silk or wool in Pakistan.

### Special and Sensitive Products

The Framework for Establishing Modalities in Agriculture agreed in July 2004 refers to two exceptional categories of goods as far as the market access pillar is concerned: Special Products and Sensitive Products. While the former are linked to the G-33 demand for special and differential treatment for selected strategic products in developing countries, the latter reflect pressures from developed countries to exclude key products from the Doha liberalisation effort. Two main features differentiate these categories of goods: (i) Special Products are reserved only for developing countries, while Sensitive Products are available to all WTO Members; and (ii) Special Products must be linked to food security, livelihood security or rural development needs, while Sensitive Products do not have to fulfil any qualification requirement. Whereas the Framework subjects Sensitive Products to substantial improvement in market access through combinations of tariff reductions and tariff quota expansion, all it says regarding Special Products is that they will be eligible for ‘more flexible treatment’. Although the text is not explicit, it is generally understood that the treatment to be negotiated for Special Products will be more flexible than that given to Sensitive Products.

The total number of products that countries will be able to designate as either special or sensitive remains to be agreed; it could be determined as a percentage of all tariff lines or as an absolute number. In either case, developing countries will benefit from special and differential treatment in terms of both the number and treatment of sensitive products. WTO Members will also have to decide at which level of the Harmonised System (HS) of tariff lines the designation of such products will occur. A list of ten Special Products at the 6-digit level of the HS has a coverage that is substantially greater than that of ten Special Products at the 8-digit level of the HS.

G-33 members, as well as other developing countries, are likely to make an effort to classify their most sensitive tariff lines as Special Products. Tariff lines that have a good chance of falling under this category are those for which tariff rates are relatively high and for which there is little or no tariff overhang. Once developing countries fill their allocation of Special Products, they will designate an additional number of products as ‘sensitive’. Nevertheless, some products will not be eligible to the Special Product category because they are not clearly linked to food security, livelihood security, or rural development needs. Products such as alcoholic beverages and carbonated soft drinks will have greater difficulty in being classified as Special Products than staple food items such as wheat and rice. This is because alcoholic beverage production does not play a prominent role in a country's dietary needs, nor does it employ a significant proportion of the rural labour force. Alcoholic beverages are not mainly produced by small landholders, nor are they typically the backbone of rural development programmes. The three product categories listed as ‘problematic’ for Jamaica – chicken meat, milk and vegetables – are more defensible as ‘special’ than those listed for Trinidad & Tobago (other food preparations, alcoholic beverages and ethyl alcohol).

## Import Surges

The G-33 was the main *demandeur* for the Special Safeguard Mechanism SSM for the use of developing countries, which WTO Members agreed to negotiate in the July 2004 Framework Agreement on agriculture. The SSM's main function will be to protect developing countries' against agricultural market instability and import surges.

An import surge is generally understood as a sharp temporary rise in import volumes above a trend level. Such surges tend to disrupt local markets, including the transmission of depressed world prices to domestic markets, with negative effects on local production. Nevertheless, it is not easy to isolate import surges among the many variables that can lead to production shortfalls, including unfavourable weather conditions, macroeconomic instability, and political and security volatility.

High food import trends are not necessarily negative if they occur in food secure countries and are associated with rising incomes, population growth, and increased export earnings. In contrast, sharp trends in food imports are problematic when they occur in relatively food insecure countries with a rising ratio of food imports to total exports, stagnant or shrinking domestic production, and little scope for productive resources to find alternative uses. Experiences among G-33 countries have been quite diverse.

In this study, an import surge was defined as a 20 percent positive deviation from a five-year moving average of import volume for each commodity and country. Not surprisingly, import surges were more widespread in sectors that receive substantial amounts of export subsidies in developed countries: the number of cases for pork or poultry meat was twice as high as the number of cases for rice or maize. Unfair trade practices by the EU and the US must be curtailed in order to alleviate pressures on the productive sectors of the developing world.

The Philippines (72) and Tanzania (51) registered the highest frequency of import surges of the 15 G-33 countries analysed in a 2003 FAO study. Mauritius (27), Jamaica (28) and the Dominican Republic (28) recorded the lowest numbers of sharp rises in imports. The other ten countries registered between 38 and 44 cases. However, the number of import surges in itself is not sufficient to reveal the magnitude of the problem. Import surges that damage or threaten to damage viable domestic production should lead, rather than lag, production shortfalls. If a production shortfall precedes or coincides with an import surge, then the shortfall could be the cause of the surge in imports.

A comparison between the incidence of import surges and domestic production shortfalls reveals that while Tanzania had the second highest frequency (51) of import surges, it only registered 9 production shortfalls in the same period. In contrast, Jamaica, while having the second lowest frequency (28) of import surges, registered the highest incidence (26) of production shortfalls in all 15 countries. This suggests that import surges in Jamaica had more severe impacts on domestic production than was the case in Tanzania. The effect of import surges on Jamaican production was particularly clear for onions. In 1985, nearly all onions consumed in the country were grown locally. In 2003, local production covered only 15 percent of domestic consumption. A similar pattern was evident in potatoes, where the share of local production in domestic consumption dropped from 100 to 35 percent between 1985 and 2002. Nonetheless, the study also reveals that – contrary to previous allegations – the milk and chicken meat sectors were not affected by import surges in 1985–2002 given that import volumes fell over time and that the share of domestic production in total consumption either increased (chicken) or remained at comparable levels (milk).

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## ENDNOTES

<sup>1</sup> Jales, Mario. 2005. *Tariff Reduction, Special Products and Special Safeguards: An Analysis of the Agricultural Tariff Structures of G-33 Countries*, commissioned by ICTSD and available at <http://www.ictsd.org/dlogue/2005-06-16/Jales.pdf>

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### Meetings of WTO Bodies\*

- Sept. 12-16 Agriculture Week\*
- Sept. 15-16 Committee on Trade and Environment Special Session\*
- Sept. 16 Council for Trade-related Aspects of Intellectual Property Rights, Special Session\*
- Sept. 19-20 Negotiating Group on Trade Facilitation
- Sept. 19-23 NAMA Week\*
- Sept. 19-23 Services Week\*
- Sept. 20 Working Party on Domestic Regulation (GATS)
- Sept. 21 Working Party on GATS Rules
- Sept. 22 Committee on Agriculture
- Sept. 23 Dispute Settlement Body, Special Session\*
- Sept. 26-30 Rules Week\*
- Sept. 26-30 Services Week\*
- Sept. 27 Dispute Settlement Body
- Sept. 29 Sub-Committee on Least-developed Countries
- Sept. 30 Sub-Committee on Cotton
- Oct. 3-4 Negotiating Group on Rules (Regional Trade Agreements)
- Oct. 10-14 NAMA Week\*
- Oct. 12 Committee on Trade and Environment
- Oct. 18 Dispute Settlement Body
- Oct. 19-20 General Council

\* Negotiations mandated in the Doha Ministerial Declaration.

### Other Meetings

- Sept. 14-16 High-level Plenary Meeting of the UN General Assembly on the follow-up to the outcome of the Millennium Summit  
<http://www.un.org/millennium/>
- Sept. 26-30 Second Conference of the Parties to Rome Convention on Prior Informed Consent (PIC)  
<http://www.pic.int/en/ViewPage.asp?id=386>

### Selected Documents Circulated at the WTO

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- Dispute Settlement. 19 August 2005. United States – Measures Affecting the Cross-border Supply of Gambling and Betting Services. Award of the Arbitrator. (WT/DS285/13)
- Dispute Settlement. 1 August 2005. United States – Final Countervailing Duty Determination to Certain Softwood Lumber from Canada. Report of the Review Panel. (WT/DS257/RW)
- Negotiating Group on Rules. 4 August 2005. WTO Fisheries Subsidies Disciplines: Architecture on Fisheries Subsidies Disciplines. Submission by Fiji et al. (TN/RL/GEN/57/Rev.1)

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