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## Facts and Figures

- Official development assistance (ODA) represented 67 percent of aggregate net resource flows to least-developed countries (LDCs) between 2000 and 2003, compared with four percent in other developing countries.
- Debt forgiveness, emergency aid, technical assistance and development food aid constituted 46.5 percent of total ODA disbursed to LDCs in 2004.
- Between 1992 and 2003, ODA commitments to economic infrastructure and production-oriented sectors in LDCs declined from 45 to 26 percent of total donor commitments.
- The share of industrial value-added within GDP has fallen in more than one-third of LDCs between 1980-1983 and 2000-2003.

Source: *The Least-developed Countries Report 2006*. UNCTAD, July 2006

## Members Signal New Flexibility

The Doha Round may have received a shot in the arm at the July G-8 summit in St Petersburg, where several leaders of the world's eight most industrialised countries, as well as key developing countries, said they were ready to give their negotiators more flexibility.

When the June ministerial gathering in Geneva failed to produce any breakthroughs in the negotiations, Members asked WTO Director-General Pascal Lamy to undertake intensive consultations to probe what flexibilities governments really had for a potential compromise. He summed up the results of his efforts to G-8 heads of state on 17 July: "I was given a mandate to hear confessions of negotiators [...] on how much room for manoeuvre they had when it came to reducing agricultural subsidies, opening up agricultural markets, and opening up industrial markets. There were some good news, but they remain marginal, and the beacons that have been lit have yet to mark out a landing zone for these three topics. Clearly, you need to move closer on these issues, which means that you must be willing to revise the instructions that you have given your ministers." He also asked the leaders to weigh the political cost of showing greater flexibility against the cost of failure of the Doha Round, which he said was "potentially worth two to three times more than the previous negotiations."

The G-8 – Canada, France, Germany, Italy, Japan, Russia, the UK and the US – had already issued a statement on trade, in which they urged all parties to "work with utmost urgency for conclusion of the round by the end of 2006." They also said the round should deliver "real cuts in tariffs, effective cuts in subsidies and real new trade flows," and called upon the WTO Director-General to report to the membership within a month.

On 17 July, the G-8 heads of state met with their counterparts from Brazil, China, India, Mexico and South Africa. In his closing press conference, UK Prime Minister Tony Blair said that both President Bush and President Lula da Silva, as well as India's Prime Minister Singh, the European Commission President Barroso and Germany's Chancellor Merkel, had all spoken "very strongly in favour of a trade deal and the necessary flexibility being given to their trade negotiators to secure one." President Lula of Brazil said that the time had come to "make a political decision, whatever might it be. We cannot leave in the hands of our negotiators only [...] it seems to me that they don't have any hidden cards in their pockets anymore. Now we're the ones that have to take our cards from the pockets." He also said he was ready to instruct his chief negotiator to "show the necessary flexibility with a view to reach an ambitious and balanced outcome for the development round, with gains for all."

Trade ministers of the G-6 group of WTO Members – Australia, Brazil, the EU, India, Japan and the US – agreed on 17 July to meet in Geneva from 23-24 July, and again from 28-29 July, in a renewed attempt to bridge differences.

### Seeking a Landing Zone

The talks are expected to focus on the size of industrial and agricultural tariff cuts, as well as the reductions that WTO Members would undertake in domestic support for agriculture.

Mr Lamy has long regarded a solution to this 'triangle' of issues as key to breaking the stalemate. Speaking to the press on the eve of the June mini-ministerial, he suggested that the 'landing zone' would probably revolve around the figure 20: the EU would need to accept

*Continued on page 2*

# Bridges

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something close to the 54-percent average agricultural tariff cut proposed by the G-20 group of developing countries, the US would need to agree to cap its future domestic subsidies for agriculture below US\$20 billion, and developing countries would need to lower their average bound industrial tariff ceiling to 20 percent.

Although the 20-20-20 approach was never officially submitted to ministers, many referred to the figures during the June negotiations, most often to deplore the little that would be required from others while finding the concessions demanded from themselves excessive.

The focus on Mr Lamy's potential 'landing zone' was perhaps inevitable given the nature and contents of the draft modalities texts issued by the Chairs of the agriculture and non-agricultural market access (NAMA) negotiations on 22 June. Both texts so faithfully reflected the wide disagreements prevailing among the membership on virtually all elements that ministers had little more to base their discussions on than they did in Hong Kong.

### The Geneva Deadlock

Agriculture and NAMA were the only issues on the June ministerial agenda, and half the specific items were never addressed as it soon became evident that the G-6 would not be able to agree on the extent of agricultural tariff or subsidy cuts. The issues left aside included such developing country priorities as cotton, tropical products, preference erosion and additional flexibilities for small and vulnerable economies, recently-acceded Members and least-developed countries (see pages 3 and 7).

The US rejected the 54-percent average agricultural tariff reduction for developed countries as insufficient to offset greater domestic subsidy cuts than it had already put on the table. US Trade Representative Susan Schwab also took aim at the exemptions from full tariff cuts available to Members through the designation of Sensitive and Special Products, as well as the Special Safeguard Mechanism that is to be established for the use of developing countries. She likened the lack of specificity on these to a Black Box, which would "create uncertainty and what appears to be a huge and unacceptable imbalance between market access and the other two pillars."

The EU said that it could bring its current 39-percent average agricultural tariff cut offer 'as close as possible' to the 54 percent proposed by the G-20, but did not specify an exact figure. In return, EU Trade Commissioner Peter Mandelson called for the US to lower its trade-distorting domestic farm subsidies below US\$15 billion.

High-tariff net food-importing countries, such as Switzerland and Japan, rejected the 54-percent average cut as far too demanding, and reiterated their opposition to tariff caps. They also emphasised the extreme importance they attached to sensitive products.

Under the July 2004 Framework Agreement, all WTO Members have the right to exempt a certain percentage of 'sensitive' tariff lines from full formula cuts. The EU has proposed designating eight percent of its tariff lines as sensitive, while the net food-importers have said they would need 15 percent. The US, in contrast, has proposed limiting sensitive products to one percent of a country's agricultural tariff lines. The only thing WTO Members seem to agree upon is that the number and treatment of sensitive tariff lines must be negotiated in parallel with the tariff reduction formula itself.

The G-20 stressed the 'fundamental importance' of redressing historical imbalances in agricultural trade. This should be achieved through significant improvements in developed countries' market access and domestic subsidy offers, including cutting US overall trade-distorting support to about US\$12 billion. In addition, the group strongly defended developing countries' right to self-designate an appropriate number of Special Products selected on the basis of food security, livelihood security and rural development, as well as their right to have recourse to the Special Safeguard Mechanism based on both import quantity and price triggers.

Overshadowed by agriculture, as usual in the Doha Round, talks on industrial market access made no progress (see related story on page 7).

# Agriculture: Developing Countries' June Proposals

Prior to the release of the draft modalities paper, several developing countries presented proposals on specific issues of particular importance to them in hopes that these would be reflected in the text forwarded to ministers.

## Treatment of SVEs

The 14-member group of 'small and vulnerable economies' (SVEs) suggested two alternative market access approaches that would respond to their special trade situation.<sup>1</sup> The first would consist of granting SVEs a more lenient tariff cut formula than that applicable to other developing countries. However, many WTO Members strongly oppose differentiation between the large, self-declared group of developing countries, and the Doha Declaration explicitly forbids the SVE work programme to create a new 'sub-category of Members'. The second alternative would get around this constraint by granting *all* developing a single low-ambition tariff cut formula, based on the needs of vulnerable Members rather than the capability of bigger countries. Such a formula would be well-below the 36 percent average developing country cut proposed by the G-20, Barbados indicated.

The entire three-paragraph section on SVEs in the Chair's draft modalities paper was bracketed and more brackets followed on the details. SVEs were tentatively identified as "economies that, in the period [1999] to [2004], had an average share of (a) world merchandise trade of no more than [0.16] per cent, (b) world trade in non-agricultural products of no more than [0.10] per cent and (c) world trade in agricultural products of no more than [0.40] per cent." Such economies could be entitled to smaller cuts than those required by the general developing country formula, with the percentage to be negotiated. In addition, they could be exempt from reducing bound duties on Special Products (SPs) – self-selected on the basis of food- and livelihood security and rural development needs – as well as any obligation to increase tariff quotas or cap SP tariffs.

## High Bound Ceilings

Kenya sought to address the problem faced by those developing countries that bound all their agricultural tariff lines at a single level at the end of the Uruguay Round. Many did so at 100 percent (or higher) of the import's value, although the applied rate for the vast majority of products is considerably lower. Kenya argued that countries with a high single bound agricultural tariff would be disproportionately affected under a progressive tariff cut formula since all their tariffs would fall into the highest tier and thus be subject to the deepest cuts. Instead, Kenya said that either the reduction should be the average developing country cut across the board, or the affected countries should be allowed to group their tariff lines into different tiers for reduction commitments. As a third option, countries in this situation could be dispensed from undertaking the level of cut required in the highest tiers. The draft text retained these alternatives within brackets.

## Commodities

The African Group proposed to include in the agricultural modalities exemptions from disciplines for supply management measures under commodity agreements between producer and consumer countries, or between commodity-dependent producer countries alone. Participants in such agreements should be allowed to maintain production and export restrictions, as well as export taxes in order to stabilise prices distorted by over-supply. The proposal was annexed to the main document entirely bracketed.

The African Group also called for the elimination of tariff escalation, which hinders primary commodity exporters' ability to move up the value-added chain because developed countries' import tariffs rise with each step of processing. For instance, while cocoa beans enter Canada, the EU, Japan and the US duty-free, tariffs on chocolate range from 14.6 to 52.8 percent. Bracketed language in the main document instructed Members to engage with commodity-dependent countries if tariff escalation still persisted after the application formula cuts and other measures agreed to address the issue more generally.

## Preference Erosion

On the eve of the Geneva ministerial meeting, the African, Caribbean and Pacific (ACP) Group of States issued a statement reiterating that it could only join a consensus decision on agriculture and NAMA, if the modalities took fully into account its vital concerns, including 'meaningfully and effectively' addressing the treatment of long-standing preferences. This is a divisive issue between developing countries, since the preferences received by some can harm the commercial interests of others. For instance, disagreement prevails on the indicative list of preference products submitted by the ACP Group, which includes many tropical products such as bananas, sugar, and rum (see related story on page 4).

All options on the treatment of preferences were bracketed in the Chair's draft modalities. These included the following measures that could be taken by preference-granting Members: (i) the application of a smaller reduction of [x] percent of the formula cut for the relevant tariff tier; (ii) the elimination of bound in-quota duties; (iii) implementing the tariff reduction over a longer period, possibly delaying the start of the implementation by [x] years; (iv) maintaining the preference margin to the extent technically feasible; (v) providing improved market access opportunities for non-preference-receiving products which are also of vital export interest to preference-receiving Members, and; (vi) taking fully into account the issue of preference erosion in designating Sensitive Products.

Preferences and tropical products were both on the agenda of the June mini-ministerial, but the meeting adjourned before either issue came up for detailed discussion.

## ENDNOTES

1 Barbados, Bolivia, Cuba, the Dominican Republic, El Salvador, Fiji, Guatemala, Honduras, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, and Trinidad and Tobago.

# Tropical Products and Preference Erosion: Toward Convergence Among Developing Countries?

Christopher Stevens and Jane Kennan

This article analyses trade in products that one group of WTO Members wishes to see substantially liberalised under the Doha Round and another group wishes to see regulated in a way that minimises preference erosion.

The objective of our analysis is simple: to identify ways in which the overlap between the list of tropical products prepared by a group of eight Latin American (LA) countries for full liberalisation on the one hand, and that tabled by the African, Caribbean and Pacific (ACP) Group to avoid preference erosion on the other could be minimised without requiring either party to abandon significant interests.

## Background

Eight LA countries proposed in April 2006 that the phrase “the fullest liberalisation of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops”<sup>1</sup> be interpreted in the modalities to mean:

- the elimination of all customs duties and quantitative restrictions on an MFN basis (in June, four members of the group proposed – instead of total elimination – a tariff reduction by the maximum amount required by the formula; see box on page 6).
- shorter implementation periods; and
- sensitive products not to include tropical (and alternative) products.<sup>2</sup>

At the same time, the ACP Group has expressed concern that the rapid and substantial liberalisation of some such items would seriously erode its preferences.<sup>3</sup> To the extent that the products identified by the eight LA countries and by the ACP overlap, it is difficult to see how the wishes of the one can be fulfilled without overriding the concerns of the other. The purpose of this paper is to provide information that may be helpful to negotiators seeking to identify a compromise by modest changes to the two lists.

We analysed the two most recent lists of tropical products for ‘the fullest liberalisation’ and of ACP ‘preference’ products to identify the following:

- the initial overlap between the two lists (i.e. the products on the Latin American list about which the ACP are concerned because of preference erosion);
- the extent to which the two would overlap if the ACP list were focused on those items actually exported under effective preference;
- the ‘cost’ to the ACP of preference erosion following full MFN liberalisation for the products identified in the step above; and
- the ‘cost’ to Latin America of deferring liberalisation on those items.

## The Initial Overlap

There are 86 product groups on the LA list and 43 on the ACP list – all of them set at the Harmonised System (HS) four-digit level. Sixty-one items are not on the ACP list and so are unproblematic. However, 25 items figure on both lists. Hence, were the Latin Americans to agree to exclude from ‘the fullest liberalisation’ all items that are on the ACP list, the scope of liberalisation would be narrowed by 29 percent.

## A Focused ACP List

Because the removal of 29 percent of the LA list would require a fairly substantial degree of compromise, the next step has been to see whether or not it could be possible to facilitate the process by identifying the items within the ACP’s list of HS4 heads that are of particular concern to them at the present time. Such ‘concern’ has been defined in the following way.

High-priority products have been selected as those that:

- the ACP currently export in other than trivial values (defined as group exports of €100,000 or more); and
- face a significant MFN tariff such that ‘the fullest liberalisation’ would result in a meaningful change in market access.

This filtering process was undertaken only on ACP exports to the EU. It could be extended to other developed country markets if the approach were considered an appropriate one by the ACP Group. However, it is unlikely that the analysis of exports to non-EU industrialised country markets would reveal products not identified from the analysis of trade with the EU. This is so because all the most important ‘preference’ products are exported to the EU as well as, in some cases, to other markets.

There are 78 eight-digit items falling within the HS4 heads that are common to the two lists in which EU imports from the ACP group exceed €100,000 and for which there is an MFN tariff of 10 percent or more.<sup>4</sup> These are concentrated in 13 of the 25 overlapping HS4-digit headings. Hence, were the ACP to agree to narrow their list just to four-digit headings within which they have exports on items facing significant MFN tariffs, the overlap would be reduced from 29 percent to 15 percent. The additional product groups that would become unproblematic in this way include, *inter alia*, a number of fruit and nuts (and products thereof), vanilla, and extracts or concentrates of coffee, tea or maté.

Could this overlap be reduced any further without either party having to make important concessions? Of the 78 eight-digit items common to both lists no fewer than 64 are covered by the EU’s Generalised System of Preferences (GSP). None of these enjoys zero percent tariff access under the EU’s Standard GSP and, hence, a cut in MFN tariff levels would have a



measurable effect on the market access of those non-ACP states that receive only the Standard GSP (plus any that are ineligible for the GSP). However, any state that qualifies for GSP+ (which currently includes all the Latin American signatories of the April 2006 communication) will obtain duty-free access for as long as they retain this status.

Simply removing these items from either the LA list (on the grounds that the signatories already have duty-free access) or the ACP list (on the grounds that the GSP+ has already eroded their preferences) would reduce the number of overlapping four-digit headings to six or seven percent of those on the initial LA list. The additional products that would be removed from contention in this way include, *inter alia*, cut flowers, palm oil and tobacco.

The analysis should be extended to other developed country markets to see if the LA countries have the same duty-free access to the US, Canada or Japan. If not, they would still want to keep these items on their list of tropical products. In addition, if other developing countries in

Asia and LA (such as Malaysia or Indonesia, which export palm oil, or Brazil and Argentina) do not benefit from the GSP+ on the EU market, there might be a risk of preference erosion for ACP countries.

### The Problematic Products

The remaining four-digit HS headings contain the problematic eight-digit items listed in the table opposite, which shows: the product (code and description), the value of ACP exports to the EU in 2005, and the MFN tariff. These are 'the usual suspects'. For either side to compromise on these items would involve significant concessions.

### High-priority ACP Exports Not Covered by the EU's Standard GSP

CN2005	Description	Import value 2005 (euros)	EU applied MFN tariff 2005
07099060	Fresh or chilled sweetcorn	4,067,992	9.4 EUR/100 kg/net <sup>a</sup>
07141091	Fresh and whole or without skin and frozen manioc, whether or not sliced, for human consumption, in packings ≤ 28 kg	1,848,172	9.5 EUR/100 kg/net
07141099	Fresh or dried whole or sliced manioc or in the form of pellets (excl. 0714.10.10 and 0714.10.91)	128,261	9.5 EUR/100 kg/net <sup>b</sup>
07149011	Fresh and whole or without skin and frozen arrowroot, salep and similar roots and tubers (excl. manioc, jerusalem artichokes and sweet potatoes) with high starch content, whether or not sliced, for human consumption, in packings ≤ 28 kg	9,141,178	9.5 EUR/100 kg/net
07149019	Roots and tubers of arrowroot, salep and similar roots and tubers with high starch content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets (excl. used for human consumption in immediate packings of a net content of ≤ 28 kg, either fresh and whole or without skin and frozen, roots and tubers of manioc, sweet potatoes and Jerusalem artichokes)	113,671	9.5 EUR/100 kg/net
08030019	Bananas, fresh (excl. plantains)	502,750,982	176 EUR/1000 kg/net
17011110	Raw cane sugar, for refining (excl. added flavouring or colouring)	775,379,475	33.9 EUR/100 kg/net
17011190	Raw cane sugar (excl. for refining and added flavouring or colouring)	60,992,704	41.9 EUR/100 kg/net
17019910	White sugar, containing in dry state ≥ 99.5% sucrose (excl. flavoured or coloured)	21,049,656	41.9 EUR/100 kg/net
17031000	Cane molasses resulting from the extraction or refining of sugar	32,500,285	0.35 EUR/100 kg/net
22084011	Rum with a content of volatile substances (other than ethyl and methyl alcohol) of ≥ 225 g/hl of pure alcohol "with a 10% tolerance", in containers holding ≤ 2 l	3,837,166	0.6 EUR/%vol/hl/alcohol + 3.2 EUR/hl
22084039	Rum and tafia, of a value ≤ 7.9 c/l of pure alcohol, in containers holding ≤ 2 l (excl. rum with a content of volatile substances [other than ethyl and methyl alcohol] of ≥ 225 g/hl of pure alcohol "with a 10% tolerance")	13,587,578	0.6 EUR/%vol/hl/alcohol + 3.2 EUR/hl
22084051	Rum with a content of volatile substances (other than ethyl and methyl alcohol) of ≥ 225 g/hl of pure alcohol "with a 10% tolerance", in containers holding > 2 l	3,815,473	0.6 EUR/%vol/hl/alcohol
22084099	Rum and tafia, of a value ≤ 2 c/l of pure alcohol, in containers holding > 2 l (excl. rum with a content of volatile substances [other than ethyl and methyl alcohol] of ≥ 225 g/hl of pure alcohol "with a 10% tolerance")	21,287,142	0.6 EUR/%vol/hl/alcohol

#### Notes

(a) The ACP preferential tariff for this item is 9.2 EUR/hookg/net

(b) The ACP preferential tariff for this item is 8.8 EUR/hookg/net

Sources: Eurostat COMEXT database; UNCTAD TRAINS database

We extended this analysis to the tariffs and principal *recorded* non-tariff barriers that apply to these items in Australia, Canada and the US to find out whether these markets were also protectionist for the products concerned (in which case a Doha deal on tropical products would be of even greater value to the Latin American group) and whether they offered preferences to some or all ACP states (if so, then the danger of preference erosion would be even greater, but if not, the possibility exists that some of the losses in the EU market could be offset by increased exports to other developed country markets following liberalisation).

There are special circumstances in relation to most of these products:

- Four of the items are rum, and their effective treatment in the US and the EU will be determined mainly by the implementation of the 'zero-for-zero' deal of 1997. This has left a residual tariff on non-ACP and non-DOM<sup>6</sup> rums below a certain price point until this is eventually eroded by inflation. These preferences are the subject of a continuing dialogue between the EU and the ACP rum industry with regard to the possibility of preference erosion in bilateral, regional and multilateral trade negotiations.
- Three of the other items face very low MFN and/or zero GSP tariffs in the three non-EU markets; hence, the issue between the LA group and the ACP arises largely in relation to the EU market alone (plus any developed countries not covered in the analysis, such as Japan).
- For two items (sweet corn and manioc) the ACP currently enjoy only a modest reduction on the EU MFN tariff. At

*Continued on page 6*

present, therefore, they have very little preference to be eroded. But if, as is expected, the Economic Partnership Agreements being negotiated with the EU offer full duty-free access to ACP exports from 2008, there would be a more substantial preference.

Sugar and bananas stand out clearly as major items on which there is a fundamental difference between the LA and ACP groups. In the case of bananas, the issue covers only the EU and so the ‘satisfactory’ implementation by the EU of the WTO Appellate Body’s ruling will provide the principal forum within which either a compromise is reached or the interests of one group are dominant. The reason for putting the word ‘satisfactory’ in inverted commas is to underline the different views of the two developing country groups.

In the case of sugar, strong MFN liberalisation would remove the preferences of some ACP states in the US, as well as the EU market, and provide little offsetting demand in Australia or Canada, where MFN or GSP duties are already low. It is hard to believe that a compromise on sugar could be reached between the two groups within the tropical products discussions of the Doha Round.

While the primary purpose of this article is to provide data and analysis that may facilitate any negotiations that do take place rather than enter into the realm of negotiating options, the draft modalities text (JOB(06)/199) provides plenty of scope to allow an accommodation on these items should the parties be minded to do so.

For instance, Members have the option of agreeing to staged liberalisation of tropical/diversification products, i.e. eliminating duties on a certain percentage of them, reducing tariffs at a higher-than-formula rate on others, and applying formula cuts to the remainder of the products (para. 33(c)). Para. 36 would address the negative impacts of this through preference-granting Members providing “targeted technical assistance, including additional financial and capacity-building assistance, to help address supply-side constraints and to promote the diversification of existing production in the territories of preference-receiving Members.” Moreover, the Latin American countries might think of using the provisions

on ‘diversification products’ in para. 34, which would involve importing Members granting preferential access to a certain percentage of such tariff lines for as long as an effective diversification programme is in place.

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### ENDNOTES

- <sup>1</sup> July 2004 Framework Agreement, Annex A, para. 43.
- <sup>2</sup> JOB(06)/129 by Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama and Peru.
- <sup>3</sup> JOB(06)/204 of 21 June 2006.
- <sup>4</sup> Or *any* compound or specific duty – *ad valorem* equivalents for which have not been calculated.
- <sup>5</sup> All except HS 2008 are entirely covered by the GSP.
- <sup>6</sup> Département d’outre mer (DOM)

## New Tropical Product Proposal Tabled

On 8 June, Colombia, Costa Rica, Guatemala and Panama issued a new proposal on the tariff treatment of tropical and alternative products (TN/AG/GEN/19).

Instead of total tariff elimination, the proponents said that an eventual deal on tropical products must bring about ‘substantially more ambitious’ tariff reductions than those required by the general formula. The paper did not address product identification.

For instance, duties on tropical products and products grown as alternatives for illegal narcotics should be slashed by the same amount as those in the highest reduction tier irrespective of the products’ actual bound tariffs. As reductions proposed by Members for the highest tier range from 42 to 90 percent, the degree of liberalisation of tropical products would depend strongly on the formula chosen. Under the G-20 approach, seen by many as a possible ‘landing zone’, the four-country formula would result in a 75 percent tariff reduction for tropical and diversification products.

Furthermore, tariffs on tropical/alternative products subject to escalation should be cut by an additional ten percent, and developed countries should not be able to designate them as ‘sensitive’ and thus shield them from the full effect of tariff reduction. And finally, developed countries should implement their liberalisation commitments for tropical/alternative products twice as fast as those for other farm products.

The draft forwarded to ministers included this proposal, as well as other options – none would necessarily result in total tariff elimination – for the treatment of tropical and diversification products. For the identification of such products, the draft presented the choice of using either the extensive list proposed by the Latin American group or a narrower list negotiated – but not agreed – during the Uruguay Round. It also retained two mutually exclusive options on the relationship between tropical and ‘sensitive’ products. The first would prohibit developed countries from designating tropical products as ‘sensitive’, while the second would explicitly state that such products could be declared as either ‘special’ or ‘sensitive’ and “be treated as such.”

Ministers did not address tropical products at their end-June meeting in Geneva.

## NAMA Draft Reveals Extent of Division

Ministers made no progress in narrowing differences on industrial tariff cuts at their late June meeting in Geneva. WTO Director-General Pascal Lamy was requested to help forge convergence on the tariff reduction formula and exceptions allowed for developing countries.

Even if Mr Lamy's efforts were to succeed, a large number of other issues will need to be resolved through further negotiations based on the draft text forwarded to ministers in June.

The Chair of the non-agricultural market access (NAMA) talks, Ambassador Don Stephenson of Canada, described the draft as 'a step in the direction of full modalities' at best. Virtually all numbers throughout the document are placed in square brackets denoting lack of agreement, and on many issues the draft proposes no text for a potential agreement due to unbridgeable differences among Members.

In a column of 'Chair's remarks', Ambassador Stephenson describes the state of the negotiations and sometimes offers guidance for further discussions. In a handful of cases, he proposes modalities language on his own responsibility, reflecting his feeling that "the points of divergence were not that entrenched and could be bridged at this time."

Ambassador Stephenson compared the large shadow cast by the agriculture talks to 'brackets' around the entire industrial tariff negotiations, conditioning the level of ambition in the formula and the overall degree of flexibilities, as well as more specific issues, such as the treatment of preference erosion, small and vulnerable economies, and recently-acceded Members. This characterisation was amply borne out by the June mini-ministerial.

The key elements of the NAMA modalities draft are outlined below.

### The Elusive Formula

The draft acknowledges that no consensus exists either on the 'architecture' of the tariff reduction formula or the 'coefficients' to be linked to it. On the former, three fundamental questions remain unanswered, namely:

- the interpretation of 'less than full reciprocity in reduction commitments' for developing countries;
- the extent to which 'real market access' (i.e. lower applied tariff rates) must also be achieved; and
- the comparability of any outcome in NAMA with the ambition achieved in agriculture.

With regard to the coefficients that will determine the future tariff ceilings of developed and developing countries, the Chair noted laconically that he did not believe that "the discussions in the Negotiating Group provided a basis on which to establish the coefficients, or even to propose a range of numbers within which to focus the discussion."

In the run-up to the June mini-ministerial, Canada, Hong Kong, New Zealand, Switzerland, Taiwan and the US tabled a new proposal calling for a maximum difference of 5 between the developed and developing country coefficients. The proposal was strongly rejected by Brazil and India, which argued that such a narrow difference would run counter to the principle of 'less than full reciprocity in reduction commitments' by requiring developing countries to cut their tariffs more steeply than developed countries. The NAMA-11 group of developing countries insisted at the June mini-ministerial that the difference between the two coefficients should be at least 25 points (see also Exceptions for Certain Members on page 8).

As to the 'architecture' of tariff cuts, there are two main alternatives on the table. Both are variants on the 'Swiss formula' that would reduce high tariffs more steeply than lower ones. The first would involve two coefficients – one for developed countries and a higher one for developing countries. This approach would likely reduce the gap between the generally higher average tariff levels in developing countries and the lower levels prevailing in industr-

ialised nations. The second is the so-called ABI formula proposed by Argentina, Brazil and India, which grants each country a coefficient based on its current average bound tariff. The latter approach would push each Member's own tariffs within a narrower range, but still ensure that developing countries' average tariffs would remain considerably higher than those of developed countries.

Members have agreed that currently unbound tariff lines should be capped at a certain number of percentage points above current applied rates, and then subjected to the tariff reduction formula. Although proposals for the mark-up range from five to 30 percentage points, the Chair noted that Members had signalled a 'great deal' of flexibility on this issue. Five percentage points would result in a 30 percent applied tariff being marked up to 35 percent, and a 100 percent applied tariff being marked up to 105 percent, before the application of the formula.

### Flexibilities

Along with the formula, flexibilities for developing countries have been at the heart of the NAMA impasse ever since they first appeared in Annex B to the July 2004 Framework Agreement. Paragraph 8 of the annex allows developing countries, as a special and differential treatment measure, to either exclude up to [5] percent of their tariff lines from formula cuts, or to reduce duties on [10] percent of their tariff lines by half the amount required by the formula.

Leading developing countries have repeatedly stated that these flexibilities are a core element of the modalities and that the bracketed figures are the lowest they could accept. In addition, the flexibilities should be available to all developing countries independently of the number and value of coefficients adopted for the formula. Most developed countries, and even some developing ones, share the view that a more lenient developing country tariff cutting for-

*Continued on page 8*

mula should be paid for by limiting the flexibilities.

In his Chair's remarks, Ambassador Stephenson observed that, with very limited exceptions, Members could probably agree to the numbers already in the brackets (i.e. either exempting five percent of tariff lines from reductions, or cutting tariffs on ten percent of products by half the amount required by the formula) if the coefficients in the formula were satisfactory. He thus suggested that ministers "treat these numbers as a working hypothesis and focus discussions on the coefficients."

### Sectoral Negotiations

Based on his conviction that Members broadly agreed on the core issues of sectoral initiatives, Chair Stephenson proposed compromise language of his own on modalities for such negotiations. The proposed text reconfirms that participation in sectoral initiatives is non-mandatory, and that the negotiations should aim to reduce, harmonise or eliminate tariffs "*over and above* that which would be achieved by the formula modality" (editor's italics). They should also aim at reducing or eliminating tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries. Work should intensify on all sectoral initiatives,<sup>1</sup> which still need to settle key questions regarding what would constitute the 'critical mass' of participants that would allow an initiative to go ahead; the scope of product coverage; the implementation schedule; and special and differential treatment for developing-country participants.

### Textiles

Due to deep differences in Members' views, the Chair proposed no specific modalities for the textiles and clothing sector. However, Turkey maintains its controversial 'reverse' sectoral initiative, which would result in textiles tariffs generally higher than what would have been achieved through the formula. This approach is contrary to the modalities proposed above, first because it would not lead to above-formula liberalisation, and second because it would require the participation of all 'competitive producers' despite ministers having agreed that participation in sectoral initiatives is voluntary.

Several smaller textiles-exporting countries support the Turkish proposal, but strong developing country exporters staunchly reject it. The EU and Japan also oppose the initiative. The US position is more ambiguous. USTR spokesperson Neena Moorjani said in June that although the US was not in a position to endorse the proposal without further study, it was an 'inescapable fact' that the textiles sector needed 'special consideration'. On the other hand, the US is on record as being 'extremely supportive' of Singapore's suggestion – reflected in the Chair's draft modalities – that sectoral deals should go further than formula reductions. Forty-four members of the US Congress have joined domestic textiles manufacturers in calling for a separate deal on textiles, but importers and retailers oppose such a move.

Turkey has also requested the WTO Goods Council to establish a work programme on textiles and clothing (Bridges Year 10 No.3, page 11).

### Exceptions for Certain Members

Four groupings of developing country WTO Members are seeking additional flexibilities in the NAMA negotiations, namely, 'small and vulnerable economies' (SVEs), least-developed countries (LDCs), recently-acceded Members (RAMs), and Members with a low proportion of bound tariff lines.

**SVEs:** Members have already agreed to use the share of world NAMA trade between 1999 and 2001 (or best available data) as the basis for designating which developing countries would be eligible for a tariff reduction a modality crafted for 'small and vulnerable economies' (SVEs). A bracketed reference puts that share at less than [0.1%] of world trade, but no language is proposed on the modality itself. The Chair noted that SVEs could either be allowed to undertake linear – instead of formula – tariff cuts, or be granted more exemptions than other developing countries. While either approach could yield a satisfactory result for SVEs, Ambassador Stephenson concluded that the central question was how great a contribution other Members wished these countries to make.

**LDCs:** The proposed modalities for least-developed countries (LDCs) contain no brackets. Members would reaffirm that LDCs will not be required to undertake tariff cuts, and will "determine the extent and level of tariff binding commitments in accordance with their individual development objectives."

The draft also commits developed countries to fully implement the *Decision on Measures in Favour of Least-developed Countries* adopted at the Hong Kong Ministerial Conference. By the time they submit their comprehensive draft schedules of commitments, they should (i) inform the WTO of the extent of their current duty- and quota-free (DFQR) market access for LDC exports; (ii) notify to the WTO the internal procedures by which they would implement the decision; and (iii) "provide an indication of the possible timeframe" within which they intend to extend DFQR market access from the initial minimum of 97 percent of tariff lines to all products originating in LDCs.

**RAMs:** It was recognised in the July 2004 Framework Agreement that recently-acceded Members (RAMs) would have 'special provisions' for tariff reductions due to the extensive market access commitments they had undertaken upon their WTO accession. In the modalities draft, the Chair said there was consensus among Members that all RAMs would have a longer implementation period for tariff cuts. It remains to be decided how much longer that period would be and whether it would apply to all tariff lines or just to those for which accession commitments have not yet been fully implemented.

In June, China proposed that RAMs should be granted a tariff reduction coefficient one and half times higher than that of developing countries, i.e., 30, if other developing countries had a coefficient of 20. In addition, they should be given more extensive para. 8 flexibilities in the form of a total exemption from cuts for ten percent of their tariff lines or, alternatively, be allowed to apply only half of the developing country formula cut to 15 percent of tariff lines. However, many countries remain uncomfortable about extending additional flexibilities to



China, although they are willing to accord more favourable tariff treatment to some of the economically weaker RAMs. For instance, Members have already agreed to exempt Armenia, Kyrgyzstan and Moldova of all tariff cut obligations.

RAMs currently consist of Albania, Armenia, Bulgaria, China, Croatia, Ecuador, Georgia, Jordan, Kyrgyzstan, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Taiwan and the Former Yugoslav Republic of Macedonia. Bulgaria will cease to be considered a RAM if it accedes to the European Union before the end of the Doha Round.

**Countries with low binding coverage:** It has already been agreed that countries that have bound less than 35 percent of their NAMA tariff lines need not make tariff reductions through the formula. Instead, they are expected to bind between 70 and 100 percent of them at an average level that does not exceed the overall average of bound tariffs for all developing countries (the exact percentage remains to be negotiated). The countries concerned by this provision are Cameroon, Congo, Côte d'Ivoire, Cuba, Ghana, Kenya, Macao, Mauritius, Nigeria, Sri Lanka, Suriname and Zimbabwe.

### Non-tariff Barriers

Together with the text proposed for sectoral negotiations, the modalities language for non-tariff barriers (NTBs) was the Chair's most extensive contribution to the NAMA draft. The language is loose enough not to prejudge the outcome on contentious issues, such as prohibiting/disciplining export taxes (Bridges Year 10 No.2, page14), but does suggest that "negotiations are now required" to carry out the Doha Declaration's mandate to reduce or eliminate NTBs, in particular on products of export interest to developing countries. To this end, Members would be instructed to finalise work on NTBs before the conclusion of the tariff negotiations in 2006.

### Preference Erosion

No modalities were proposed on this controversial issue. In his remarks, the Chair noted that the scope of the problem was clearer after the WTO Secretariat conducted an analysis of the key markets and products involved. However, there is no consensus on possible solutions despite a general agreement that targeted 'aid for trade' could address "the underlying challenges faced by preference-receiving countries – the diversification of their exports and strengthening of their competitiveness." Several Members are also ready to also envisage a 'trade solution' in the form of a longer implementation period for tariff cuts on products for which developing countries have long-standing preferences. Others, however, oppose any trade measures to counter the erosion problem due to concerns that the preferential tariffs granted to certain countries would have negative effects on their own key exports to major markets. The Chair noted that the resolution of this issue was "even more than others, intimately linked to a satisfactory approach being taken in the agricultural negotiations on the same questions" (see related articles on pages 3 and 4).

### The Annex

The draft also contained an annex presenting the various textual proposals submitted by Members to the negotiating group on issues where the divergence was too great for the Chair to bridge. These included the architecture and coefficients of the formula, credit for developing countries' autonomous liberalisation, paragraph 8 flexibilities, flexibilities for small and vulnerable economies and RAMs, solutions to preference erosion, and whether or not to set an end-date for tariff elimination on environmental goods (see related story on page 12).

### ENDNOTES

<sup>1</sup> So far, sectoral negotiations have been proposed on: autos and related part; bicycles and related parts; chemicals; electronics/electrical products; fish and fish products; forest products; pharmaceuticals and medical devices; gems and jewellery; raw materials; sports equipment; hand tools; and textiles, clothing and footwear.

## SDT Update

WTO Members still differ on the role that a monitoring mechanism should play in the implementation of special and differential treatment (STD).

At a 7 July meeting of the Committee on Trade and Development (CTD), some delegates called for more clarity about the objectives of the mechanism. While certain Members want the mechanism to evaluate the extent to which STD provisions are being used, others would prefer it focus on how developing countries are benefiting from them.

Kenya called for Members to also consider the possibility of a Framework Agreement for the operationalisation of STD, as proposed in 2001 by a number of developing countries (WT/GC/W/442). The proposal calls for a stand-alone agreement that would make all STD provisions legally-binding and enforceable through the dispute settlement system. It also seeks to protect sufficient policy flexibility for developing countries to promote economic development.

CTD Chair Ambassador Burhan Gafoor indicated he would hold consultations on both issues in advance of the next meeting, which is set to examine a new paper from the African Group that proposes changes to the STD texts that were present in the never-adopted Cancun Ministerial Declaration, in order to make them more effective and enforceable (TN/CTD/W/29).

A new submission from Zambia on behalf of the Group of Least-developed Countries, suggested that the 97 percent coverage of LDC exports required by the Hong Kong Ministerial Declaration mandate on duty- and quota-free market access should be defined as 97 percent of those tariff lines on which duties are still applied to existing LDC exports (TN/CTD/W/31). This would vastly reduce the number of products covered by the three-percent exception. There was little discussion on the proposal.

## No Consensus on TRIPS Agreement Amendments

A group of six developing countries, as well as Norway, have tabled formal proposals that would amend the TRIPS Agreement to make it mandatory for patent applicants to disclose the genetic resources or traditional knowledge used in their inventions.

Brazil, India, Pakistan, Peru, Thailand and Tanzania, subsequently joined by China and Cuba, proposed adding an Article 29bis to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), which would oblige WTO Members to require patent applicants to disclose the source (provider) and country of origin of any biological resources or associated traditional knowledge used in their invention (WT/GC/W/564/Rev.1). Patent-seekers would also have to demonstrate that they had received permission to use the genetic material or traditional knowledge according to the domestic laws of the country where they obtained it, along with proof of fair and equitable benefit-sharing arising from the commercial or other utilisation of the resources. Even after the acceptance of their applications, patent-holders would need to disclose any “new information of which they become aware.” Members would have to publish the disclosed information. The proposed amendment would also require Member governments to empower domestic authorities to deny and revoke patents “when the applicant has, knowingly or with reasonable grounds to know, failed to comply” with the disclosure requirements, or provided false information. Colombia and Ecuador supported the proposal.

The proposed amendment reflects a decade-long effort by biodiversity-rich developing countries to establish a ‘mutually supportive relationship’ between the TRIPS Agreement and the Convention on Biological Diversity (CBD). The latter requires access to genetic resources to be based on the prior informed consent of the country of origin. Parties to the CBD must also take “legislative, administrative or policy measures [...] with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Contracting Party providing such resources.”

The sponsors of the amendment proposal believe that mandatory requirements for

disclosure and proof of benefit-sharing are the best way to curb biopiracy and the uncompensated use of genetic resources. However, a number of other countries, such as Australia and the US, continue to argue that a new disclosure requirement would not help prevent ‘bad’ patents, and could instead generate burdensome procedures. In June, these countries, as well as Canada, Japan, New Zealand, Singapore and Taiwan opposed the start of text-based amendment negotiations on the grounds that Members remained too deeply divided on the issue.

### Norway Suggests Alternative Approach

Norway’s proposal differs from that of the ‘Disclosure Group’ on some significant points (WT/GC/W/564/Rev.1). Most importantly, it specifically rejects the notion of revoking already-granted patents. Instead, the proposal prescribes criminal sanctions or other administrative or legal measures that would not render the patent unenforceable. During the application stage, a breach of the disclosure requirements would be treated as a formal error, which would freeze the application process until the patent-seeker furnished the necessary information. Norway did not include benefit-sharing in its submission, arguing that it was unnecessary and unfeasible to discuss it at the international level.

The proposal called for the establishment of a TRIPS obligation to disclose the supplier country of traditional knowledge, even if the knowledge in question was not related to genetic resources, and suggested setting up a notification system under which patent offices would be required to forward all declarations of origin to the CBD’s clearing-house mechanism.

Countries such as India and Brazil expressed appreciation for the proposal, which they described as another step towards starting text-based negotiations on the issue.

Japan submitted a proposal on setting up a database to help patent examiners determine the veracity of ‘inventive step’ in patent applications involving traditional knowledge – an essential part of determining whether an invention deserves a new patent (IP/C/W/572). While the proposal was welcomed by US and Korea, Brazil observed that unless accompanied by a disclosure requirement, a traditional knowledge database would simply make biopiracy easier. Japan countered that the database would only be available to patent examiners, not to the general public.

### Efforts Stepped Up on GI Extension

Little has changed in Members’ positions regarding whether or not the higher level of geographical indication (GI) protection currently accorded to wines and spirits should be extended to other products. Nevertheless, some supporters of GI extension, including Bulgaria, the EU, Kenya, Morocco, Thailand and Turkey have urged Members to enter into text-based negotiations on the issue. One trade source reported that China had informally expressed support for GI extension and might soon make its position formal, and that Brazil and India had also shown willingness to discuss the issue.

Developed country proponents, such as Switzerland and the EU, believe that commercial opportunities arising from expanded GI protection for products such as ‘Parma ham’ could partially compensate their agricultural producers for subsidy and tariff cuts under the Doha Round. Developing countries that support GI extension hope that it would help them gain price premiums in export markets with respect to agricultural products and handicrafts, such as Darjeeling tea and Cuban cigars.

On the opposite side of the debate, Australia, supported by the US and Canada, continues to argue that text-based negotiations would be premature, since many questions regarding the

proposals on the table remained unanswered. These include the implications for names considered to be generic in many countries (such as feta cheese), and potential effects on exports to third country markets. They also argued in June that there was not enough proof that the current level of protection afforded to products other than wines and spirits was inadequate.

### Links between GIs, Disclosure and Other Doha Round Negotiations

Switzerland has explicitly linked WTO negotiations on disclosure requirements, which it would prefer to address under the auspices of WIPO, to progress on GI extension. Despite the staunch opposition, some trade observers have conjectured that a tradeoff between the two issues might break the deadlock on both.

Three GI extension proponents have also made broader linkages between different negotiations areas. The EU has controversially proposed bringing GI extension within the agriculture

negotiations, with the object of prohibiting the use of ‘a limited number of well known GIs’ by anyone other than the right-holders (JOB(6)190).

Switzerland stated on 13 June that a clear result on GI extension in the TRIPS context would have to be part of any framework deal for cutting farm tariffs and subsidies, and Bulgaria declared that it would not move forward on agriculture or NAMA modalities unless it was satisfied with the outcome on GI extension.

## Aid for Trade

The WTO Aid for Trade Task Force is in the process of refining the set of recommendations it is due to make to Members by the end of July.

The Task Force’s mandate is to provide recommendations on how to ‘operationalise’ Aid for Trade (A4T) and on how A4T might contribute most effectively to the development dimension of the Doha Development Agenda. According to the Hong Kong Ministerial Declaration, A4T “should aim to help developing countries, particularly least-developed countries, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade.”

A key point in the Task Force’s 13 July draft outline of Possible Aid for Trade Recommendations was that operationalising A4T depended on “substantial increases in additional financial resources for trade-related programmes and projects, for example, as pledged at the Hong Kong Ministerial Conference,” as well as other broader international commitments to significantly scale up development assistance by 2010. In their 16 July trade statement, G-8 leaders reaffirmed their commitment to A4T and trade capacity-building, and said they expected spending on A4T to increase to US\$4 billion.

Responding to developing country concerns about existing development assistance funding being diverted to A4T, the draft pointed to the need to “establish a border between A4T and other development assistance,” so that it could be reliably monitored and measured. A number of recommendations would establish a multi-layer monitoring system, including a body within the WTO that should conduct periodic global reviews of A4T, based on reports from recipient countries and donors, regional and global clearing house functions, relevant multilateral agencies and the private sector. Such reviews should be followed by an annual debate in the WTO General Council to give political guidance on A4T.

The draft also contained detailed recommendations on what the different reports should cover, including one that would have donors report on how they intend to meet their announced A4T targets. In addition, an assessment of A4T – either as a donor or as a recipient – should be included in the WTO Trade Policy Reviews.

Developing countries have generally expressed satisfaction over the recommendation that A4T should be guided by the Paris Declaration on Aid Effectiveness, which applies to donors, agencies and beneficiaries. Among its key principles are: recipient country ownership, mutual accountability, aligning aid to national development strategies, transparency, and predictable and multi-year commitments, which should be built into all programming.

The draft recommendations suggested that a separately funded mechanism comparable to the existing Integrated Framework for Trade-related Technical Assistance to Least-developed Countries (IF) could be established, upon a recipient country’s request, to assist the poorest WTO Members in the identification of A4T needs. The IF is administered by six international financial, trade and development institutions, including the WTO. The new mechanism would be available to ‘IDA-only’ countries, that is those eligible for loans provided entirely by the World Bank’s concessionary lending arm, the International Development Association.

The Task Force recommended that A4T should cover trade policy and regulation; trade development; compliance with commitments, rules and standards; supply-side capacity-building; trade-related infrastructure; and trade-related adjustment.

The draft text noted that a successful conclusion of the Doha Round would increase the need for assistance associated with implementation of the agreement, for adjusting to its effects and for making use of its new market access. However, the Task Force added that A4T was “a complement to the Doha Round but not conditional upon its success.” The final draft recommendations are to be sent to the General Council for possible adoption.

## Environmental Benefits Sought Through Liberalisation

Developing countries are increasingly converging on the view that 'environmental' product slated for more-than average tariff liberalisation must have a single end-use, and clearly benefit the importing country's environment.

This position emerged reinforced from the 12-13 June meeting of the Committee on Trade and Environment (CTE), where Members continued discussions on the overall approach and product criteria that would fulfil the Doha Declaration paragraph 31(iii) mandate to negotiate the "reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services (EGS)".

Developing countries are ever more concerned that the 'list approach' favoured by most developed countries active in the negotiations does not pay enough attention to many of their key concerns, such as special and differential treatment, non-tariff barriers and technology transfer.

Under the list approach, WTO Members would agree on a list of products for steeper tariff cuts/tariff elimination under the Doha mandate. Products proposed so far include pollution abatement or treatment equipment, as well as 'environmentally preferable products' based on end-use or disposal characteristics (for example, CFC-free refrigerators, jute bags or ethanol and other clean fuels).

In June, Egypt, India, Argentina, Brazil, Mexico and South Africa, along with several other developing countries, tabled a room document stressing the importance of only liberalising environmental goods that serve a single environmental end-use. If multiple-use goods were also included in the mandate, they argued that many products could be liberalised that would benefit the exporting country's economy rather than the importing country's environment.

In addition, they said that the proponents of the list approach had failed to demonstrate that the proposed products only had a single environmental end-use, nor had they shown the environmental or developmental benefits of arising from their liberalisation. The alternative proposed by India held more potential for generating such benefits, they contended.

### India Refines Project Approach

The core of India's approach to the EGS negotiating mandate is the temporary liberalisation of goods and services necessary for the realisation of an 'environmental project' approved by a national authority. The criteria and parameters for a WTO-compatible 'environmental project' would be agreed multilaterally.

In its third revision of the 'project approach', India argued that it responded to the objectives of paragraph 31(iii) in a much more effective and comprehensive manner than the 'list approach' (TN/TE/W/67). This was so, *inter alia*, because the approach included enhanced market access in environmental services, addressed non-tariff barriers and enabled dynamic coverage of changing technologies. Responding to some of the criticisms levelled against the approach's lack of predictability and transparency, India pointed out that the multilateral definition of the boundaries and parameters of policy space would allow Members to address their environmental problems in a way that supported developmentally-supportive way. The list approach, in comparison, could restrict their flexibility in this regard.

### A Possible Compromise?

In a paper that could help bridge the gaps between the proponents of the list and project approaches, Colombia addressed the concern that goods and services liberalised under the paragraph 31(iii) mandate must be 'clearly and obviously related to the environment' while taking into account the 'special situation' of developing countries (JOB(06) 149). To qualify for liberalisation as a good that has a single environmental use, it proposed that the product must have a direct and verifiable environmental application in the categories of environmental control and improvement in support of the objectives of multilateral environmental agreements.

For goods with dual and multiple uses, Colombia proposed they could only be liberalised if a designated national authority had approved a project, programme, plan or system with verifiable environmental benefits that uses the good.

### EGS and the NAMA Negotiations

Several developing countries have objected strongly to the May proposal from Canada, the EU, New Zealand, Norway, Singapore, Switzerland and the US that developed countries eliminate tariffs on environmental industrial goods by 2008, and developing countries do so a to-be-negotiated number of years later (Bridges Year 10 No.3, page 11).

In June, ten developing countries<sup>2</sup> submitted draft text to the negotiating group on non-agricultural market access (NAMA), expressing a preference for leaving environmental goods liberalisation out of the modalities at this juncture as views continued to differ widely. Alternatively, the modalities could simply encourage the NAMA group to work closely with the CTE, as well as note that addressing environmental goods in the NAMA negotiations before the CTE had agreed on the definition would amount to 'prejudging the outcome of negotiations', which paragraph 31 of the Doha Declaration explicitly forbids.

In the modalities draft forwarded to ministers, the NAMA Chair noted that consensus was still lacking and suggested that the two bodies be only instructed to collaborate closely "with a view to addressing the issue of non-agricultural environmental goods covered in paragraph 31 (iii) of the Doha Ministerial Declaration."

### ENDNOTES

<sup>2</sup> Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa, Tunisia and Venezuela



## WTO Negotiations on Rules

There is broad agreement that future rules should constrain fishing capacity, but convergence is still lacking on how to deal with practices that lead to overfishing.

Brazil and New Zealand would like to address subsidies aimed at both problems. Submissions from the EU (TN/RL/GEN/134) and from Japan, Korea and Taiwan (TN/RL/GEN/114/Rev.1) specifically target overcapacity by addressing fishing vessel construction, modification, and overseas transfers. This approach is based on the belief that reducing overcapacity would inevitably have a positive impact on overfishing, because fewer boats would translate into less fishing (see related article on 17).

However, a recent report by environmental group WWF stated that it was “plain nonsense to propose rules that discourage overcapacity while allowing the direct subsidisation of overfishing itself.” In the report, which caused a stir at the Rules Group’s June meeting, WWF called for WTO Members to ban those subsidies that most contribute to overfishing, subject the remaining subsidies to effective disciplines, and make the rules enforceable.

Another major challenge in the negotiations relates to improving the transparency of fisheries subsidies. While several proposals would require countries to notify subsidies to the WTO, the exact provisions are proving elusive.

Elaborating further on its March 2006 proposal, New Zealand sought in June to clarify and add to the Exhaustive List of Non-prohibited Fisheries Subsidies, which it proposes to annex to the Agreement on Subsidies and Countervailing Measures (TN/RL/GEN/141). Any subsidies not included in the annex should, in New Zealand’s view, be prohibited. Furthermore, some of those on the list would remain actionable, as well as subject to enhanced transparency provisions. The list proposed by New Zealand would not prohibit subsidies provided to vessel decommissioning programmes; conservation activities; certain types of infrastructure; social programmes for fishermen; disaster relief; crew and vessel safety, as well as ‘artisanal’ fishing (defined as traditional fishing activity related to the subsistence of fishermen and their families). With regard to access rights bought from developing countries, a subsidy would be deemed to exist in cases where a government transfers them to its domestic fishing industry free-of-charge, as opposed to selling or auctioning them off. New Zealand also specifically acknowledged that appropriate special and differential treatment (SDT) provisions would need to be elaborated for developing countries.

### Argentina Offers New SDT Proposal

Discussions on special and differential treatment advanced slightly with Argentina’s June proposal, which argued that SDT must be “so designed as to be consistent with the priorities of development, poverty reduction, and ensuring means of subsistence and improved food security for developing and least-developed countries: in other words it must not consist merely of longer transition periods or the establishment of statistical criteria that are unable to accommodate the different needs and priorities of the developing and least-developed countries” (TN/RL/GEN/138).

Argentina would allow developing countries to use subsidies for: fishing vessel construction, repair, and gear acquisition or improvement; fishing efforts that do not cause ‘serious prejudice’ to another WTO Member’s interests; and ‘artisanal’ fisheries (defined as by New Zealand above). Eligibility for SDT would be subject to certain conditions, such as compliance with notification and transparency provisions and the presence of a national fisheries management system.

In May, China and Mexico objected strongly to a proposal by Japan, Taiwan and Korea, which would limit SDT to those developing countries that account for less than a minimum percentage of the world market share of fish, or whose catches fall below a certain weight

threshold. In contrast, the EU would exempt developing countries from rules on subsidies provided that they do not increase fishing capacity “to the extent that it is an impediment to the sustainable exploitation of fishery resources worldwide.” Brazil would allow capacity-enhancing subsidies for all developing countries, subject to certain conditions such as prohibiting subsidies for fisheries that are ‘patently at risk’ according to the UN Food and Agriculture Organisation (Bridges Year 10 No.3, page 12).

The fisheries subsidy negotiations are a subset of broader negotiations related to WTO rules under the Doha Round. The other components of the rules mandate are clarifying and improving WTO disciplines on non-agricultural subsidies, countervailing measures, anti-dumping and regional trade agreements (RTAs).

### Rules Agreed on RTA Examination

In June, WTO Members agreed on a procedure for examining regional trade agreements. Signatories to such pacts will be required to provide the WTO with detailed information on their signing and implementation, including the treaty’s scope, rules of origin requirements and specific tariff concessions. Individual RTA members will have to provide data on imports from RTA partners, as well as the rest of the world.

The WTO Secretariat will use this information to prepare a ‘factual presentation’ (containing no ‘value judgments’) on each RTA, and circulate such documents to all delegations for questions and comments. Standardised reports from the Secretariat are expected to improve factual information on regional agreements, as the quality of the reports submitted by RTA participants themselves has varied widely.

Most RTAs will be examined in the Committee on Regional Trade Agreements. However, South-South RTAs such as Mercosur, will be looked at in the Committee for Trade and Development.

*Continued on page 14*

It should be noted, however, that the new procedure will not affect the ongoing debate on the criteria for a WTO-consistent RTA. GATT Article XXIV specifies that free trade areas must eliminate “duties and other restrictive regulations of commerce... [on] substantially all the trade” between the parties, and that these duties and regulations “shall not be higher or more restrictive” than those prevailing previously.

Members have inconclusively discussed what would amount to ‘substantially all the trade’, the length of transition periods, and

the inclusion of SDT provisions in GATT Article XXIV. The SDT proposal was tabled in April 2004 by the African, Caribbean and Pacific (ACP) Group of States, which sought to ensure that ‘asymmetrical’ trade agreements between developed and developing countries would be covered by WTO rules (see page 16). The issue is of particular importance to ACP countries, which are currently negotiating WTO-compatible Economic Partnership Agreements with the European Union. However, due to the lack of further specific proposals from Members, none of these systemic issues have been addressed since January 2006.

### Trade Remedies

Although Members have submitted several dozens of proposals on amending the WTO’s trade remedy disciplines, the negotiations have not significantly converged due to a fundamental divide between the ‘Friends of Anti-dumping Negotiations’, who would like stricter rules on the use of anti-dumping and countervailing measures, and those seeking new disciplines essentially geared to ensuring that Members cannot circumvent anti-dumping duties.

## Brazil and EU Square Off on Retreaded Tyres

*Brazil has defended its challenged import ban on retreaded tyres on environmental and health grounds.*

At the EU’s request, a panel was established in January 2006 to determine whether the ban violates GATT Article XI:1, which prohibits the establishment of quantitative restrictions, and whether Mercosur countries’ continued right to export retreaded tyres to Brazil infringes the national treatment principle inscribed in GATT Article I. The EU also challenged the US\$181 fine that Brazil imposes on the marketing, transportation, storage and warehousing of each tyre (Bridges Year 10 No.1, page 14).

At the first panel hearing on 5 July, Brazil argued that the import ban was justified under the general exception for measures necessary to protect ‘human, animal or plant life or health’ in GATT Article XX(b). No reasonable alternatives were available, it asserted, to counter the environmental dangers arising from the disposal and storage of used tyres. There was also a considerable human health problem, Brazil argued, as stored tyres provide ideal breeding grounds for the mosquitoes that spread malaria and dengue fever. Brazil linked the exponential growth in registered dengue fever infections – from 1,658 cases in 1992 to 528,388 in 1998 – to a six-fold increase in imports of used and retreaded tyres.

Brazil stressed that it lacked the capacity to dispose of its current annual lot of 40 million waste tyres in an environment-friendly manner. Reopening trade in retreaded tyres, which have a shorter life-span than new ones and cannot be reprocessed for subsequent use, would further exacerbate the problem, as up to 80 million used tires could enter the country.

With regard to the fines, Brazil maintained that they were necessary to secure compliance with the import ban and thus protected by GATT Article XX(d). Brazil used the same provision to justify the exemption for Mercosur countries. Mercosur, it argued, was a WTO-authorised customs union, and Brazil’s obligations under the regional trade pact were inscribed in its domestic legislation. Such measures were thus covered by the Article XX(d) exception for measures necessary to “secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement.”

The EU has dismissed all of Brazil’s claims, including the health and environmental arguments under GATT Article XX. In its first written submission to the panel, the EU argued that retreaded tyres were “a safe and environmentally friendly product. In terms of their safety and lifespan, retreaded tyres are in fact a perfect substitute for new tyres.” It further maintained that the importation of retreaded tyres did not in any way increase the number of waste tyres to be disposed of in Brazil, and thus “the import ban on retreaded tyres cannot be necessary for preventing any risks which might be associated with the disposal of waste tyres.” According to the EU there was “no objective basis for the requirement to dispose of ten used tyres for every imported retreaded tyre, whereas domestic retreaders which use imported used tyres would be required to destroy only one used tyre. This discrimination is manifestly arbitrary and seems to be inspired by no other motive than the protection of the domestic industry.”

Supporting the case made by Brazil, civil society groups have submitted two ‘amicus curiae’ (friends of the court) briefs to the panel, which has the right, but not the obligation, to consider such submissions. Brazil is considering making the briefs part of its own submission.

The next panel hearing is scheduled for September, and the panel report is expected in early 2007.

# The Last Push for Russia's WTO Membership?

Olga Ponizova

After the terms of Russia's WTO accession could not be finalised at the St Petersburg G-8 Summit, Russia now hopes the deal can be concluded by October.

From the start, the government's key objectives in its 13-year quest for WTO membership have been the following:

- less discrimination against Russian exports in foreign markets;
- increased business opportunities for Russian investors in other WTO Member countries;
- access to the WTO's dispute settlement mechanism;
- a better investment climate for foreign investors due to the harmonisation of national legislation with WTO standards;
- the creation of preconditions for improving the quality and competitiveness of Russian products as a result of an inflow of foreign goods, services and investment;
- participation in the development of multilateral trade rules to defend national interests; and
- improving Russia's international image as a reliable partner in international trade.

The government conducted wide-ranging consultations with business and policy experts to assess the possible economic and social consequences of WTO membership, and to identify the best possible terms from the point of view of national development goals. Some 600 meetings were held with business representatives since 2000, as well as 170 workshops, roundtables and conferences in 50 districts. Discussions have also started on Russia's potential position on the issues at stake in the Doha Round negotiations.

Most experts, civil society organisations and business representatives believe that accession would bring a number of advantages, although some have voiced serious concern over possible injury to domestic producers, as well as employment losses. In response, recommendations have been formulated to mitigate such negative impacts.

## The Long Road to the WTO

The working party on the accession of the Russian Federation was established in 1993, and negotiations for WTO membership started in 1995. The working party comprises 58 WTO Member States (counting the EU as one). More than 50 of them have participated in the market access negotiations on trade in goods, while more than 30 have taken part in negotiations on services market access. The substantive discussions have focussed on the WTO consistency of Russia's economic and trade instruments.

In 1998, Russia tabled initial tariff concession and agricultural support proposals. The offers for specific commitments with respect to trade in services were submitted in 1999, along with a list of exceptions from most-favoured-nation (MFN) status. Russia then entered into bilateral negotiations with all interested participants. Those negotiations have now been concluded with all parties except the United States.

Among the main difficulties encountered during the negotiations were:

**Agricultural support:** Russia's intention to set a ceiling of US\$9 billion (up from current spending of US\$3.5 billion) in order to create favourable conditions for domestic producers and establish a margin for potential future reductions.

**Tariff quotas:** Several working parties requested Russia to administer its tariff quotas in a more transparent manner, notably through notifications to the WTO, and called for a reduction in the use of such measures in the future.

**Internal energy prices:** Russia's state-controlled domestic energy prices are significantly below those prevailing in Europe. This led the EU to question whether the undervalued prices did not amount to a subsidy that gave a wide range of Russian manufacturers an unfair economic advantage. However, both Russian and World Bank experts believe that the prices set by GazProm follow international practice and roughly correspond to long-term costs, including investment.

**Access to the financial and insurance services markets:** Citing the risk of capital flight and money laundering, Russia is reluctant to allow foreign banks to open direct branches in the country. Subsidiaries, registered as Russian banks and subject to Russian law, are already allowed. Direct branches would fall under the jurisdiction of the banks' home country.

**Sanitary and phytosanitary measures:** Working party members have expressed concern about the WTO compliance of Russia's sanitary measures.

**Intellectual property rights:** Despite significant legislative progress in this area, some countries insist on guarantees of better enforcement of IPRs.

**WTO-plus agreements:** Russia has been requested to join plurilateral WTO agreements on trade in civil aircraft and government procurement.

Disagreements have also emerged over tariffs on aircraft, automobiles, iron, steel and aluminium. The US in particular has insisted on securing market access for finished airplanes. So far, the Russian side has only offered to open the market for certain components, such as engines, as well as some specific types of aircraft not manufactured domestically.

Russian leaders have repeatedly stated that the terms of accession matter more than the date, and that the government will only undertake negotiations under conditions that fully take into account the country's economic interests.

## The Last Hurdle

As prior to the G-8 summit, the US remains the only country with which Russia has not yet concluded bilateral accession negotiations. Among the outstanding issues are access to the financial services market, phytosanitary controls, intellectual property protection and access to the aircraft market.

Many observers have pointed out that political rather than trade reasons underlie the

*Continued on page 16*

US demands. For instance, while it is true that Russia needs to considerably improve its intellectual property protection, the US has already concluded a bilateral agreement with the Ukraine, where IPR protection is equally poor.

The Russian government has also expressed surprise over the fact that some US demands seem to exceed the needs of its business community. US negotiators insist on foreign banks' right to establish direct branch offices in Russia, although their Russian-registered subsidiaries or representative offices, including those of Citibank Société Générale, are working successfully. In a similar vein, the US has pressed for lower tariffs for fermented milk products and yoghurt despite the fact that Russia has never imported such products from the US and is unlikely to do so in the foreseeable future.

Republican Senator Bill Frist said in April that problems related to democracy and Moscow's position vis-à-vis Iran's controversial nuclear programme could have an impact on the US Congress decision on Russia's WTO accession, and 16 US business umbrella groups urged President Bush in July to delay the accession agreement until Russia had "demonstrated that it [would] be a reliable partner in the global trading community." In contrast, Nobel Prize-winning US economist Joseph Stiglitz, has characterised the US negotiating strategy as 'extortion at the gate'.

Many experts say the world is just as interested in Russia's WTO accession as Russia is keen to join. The country's large territory, vast capacity and rapidly growing market are attractive to international business. Some predict that Russia's WTO membership could provide impetus for developing both trade and broader economic co-operation. Besides, some trading partners hope to use the WTO's dispute settlement system to solve disputes over what they consider unfair market protection measures. Many experts also believe that Russia's accession could bring a significant shift in the balance of power at the WTO, which could strengthen pro-development coalitions.

Russian and US representatives had expressed hopes that the long drawn-out bilateral negotiations on accession conditions

could be concluded before or at the G-8 July summit. While that did not happen, both sides said that progress was made on several issues, including intellectual property rights and financial services. A blueprint is now being drawn in order to conclude the talks within the next two to three months.

*Olga Ponizova is Executive Director of the Centre for Environment and Sustainable Development 'Eco-Accord' in Moscow.*

## Regional Integration: EPA Update

The EU and ministers from the African, Caribbean and Pacific Group of States have disagreed sharply over a review of their economic partnership agreement (EPA) negotiations.

The negotiations are scheduled to conclude by 1 January 2008 with WTO-compatible free trade areas between the EU and six regional coalitions of ACP countries. These will gradually replace the unilateral market access preferences that ACP countries have enjoyed for decades under a succession of Lomé Conventions. The latter have submitted a proposal on special and differential treatment in the WTO negotiations on regional trade agreements in an effort to ensure flexibilities for developing countries that enter into free trade areas with developed countries.

The two sides' views diverged on 28 June on the scope of a mandatory review of EPA preparations and negotiations. While the EU wanted to focus on a narrow set of elements, the ACP sought a more comprehensive survey of the trade and development dimensions of the future EPAs.

ACP countries have raised concerns, *inter alia*, over the development implications of EU products flooding their markets under fully reciprocal market access concessions, as well as the costs of adjustment and implementation. At the June meeting, ACP Chair and Barbados Minister of Foreign Affairs and Foreign Trade Billie Miller objected in particular to the EU's attempts to extend the EPAs' scope to issues such as competition policy, government procurement and investment, all of which were dropped from the Doha Round agenda in the face of developing country opposition. She warned that "not all ACP regions [had] national policies let alone regional policies on these issues [...] regions should not be coerced to negotiate these issues unless and until they indicate their readiness to deal with these subjects."

In April, trade ministers of the African Union adopted a declaration on EPAs in which they expressed 'profound disappointment' over the inadequate way in which EU negotiators had addressed development concerns that "must be the basis of relations with Africa." The declaration urged the EU not to seek commitments in services and intellectual property that surpassed WTO requirements.

Minister Miller called for hastening the pace of negotiations, and examining potential alternative arrangements in the event that the 2008 deadline is missed. EU Trade Commissioner Peter Mandelson also suggested speeding up the negotiations. Arguing that preferential market access had not benefited ACP economies, he recommended making the EPA concept a 'modernised and effective development vehicle' through such measures as carefully-structured liberalisation; removing non-tariff barriers; delivering better services; agreeing the rules and economic governance necessary to make an attractive business environment; and deeper regional integration to build viable markets. Commissioner Mandelson added that he did not believe that the characterisation of EPAs as "the EU demanding ever more difficult policy choices from a reluctant and unwilling ACP" reflected reality.



# Fisheries Subsidies and Illegal Fishing

David J. Agnew

Illegal, unreported and unregulated fishing continues to undermine fisheries management, particularly in developing countries, and some WTO Members have called for the prohibition of subsidies that contribute to such fishing. However, what these subsidies are and how they should be disciplined remains unclear.

Fisheries subsidies distort the economics of fishing, artificially supporting levels of capacity that would not exist if the real economic value of fisheries were allowed to prevail. A wide range of subsidies can do harm to fisheries conservation even when the resources are not fully exploited.<sup>1</sup> Although the scale of this damage is often attributed to the type of management system – open access fisheries are thought to be highly vulnerable to overcapacity created by subsidies – all types of fisheries, including those with rights-based management, are vulnerable to damage from the economic distortions created by subsidies.<sup>2</sup> Furthermore, subsidies often considered as non-harmful, such as those for capacity reduction, can have a distorting effect on the economics of fishing vessels, since the expectation that governments will rescue fishermen from unprofitable businesses in itself feeds overcapacity.<sup>3</sup>

At the global level, illegal, unreported and unregulated (IUU) fishing, with an estimated catch value of US\$4.2 to 9.5 billion, has significantly reduced legitimate fishing opportunities and further contributed to overfishing, in particular in waters with weak management systems.<sup>4</sup> Incentives for IUU fishing – extensively explored by a recent OECD project<sup>5</sup> – include the lack of effective enforcement and a low level of sanctions; the low cost of IUU fishing; the high and increasing value of fish products and easy access to world markets; the ease of obtaining flags of convenience and hiding ownership details and, most importantly; the lack of opportunity or high cost of engaging in legitimate fishing opportunities.

Lack of opportunity is of course created by overcapacity, which also has the potential to artificially reduce the cost of IUU vessels. The cost of a 20- or 30-year old vessel may be an order of magnitude less than the profit that can be made from engaging in IUU fishing for a year. For instance, Agnew & Barnes estimate the price of a longliner at about US\$1 million, and the annual profit from illegal toothfish fishing possibly around US\$5 million.<sup>6</sup> Although the Ministerial High Seas IUU Task Force recently acknowledged capacity as a potential driver,<sup>7</sup> relatively little mention has been made of the link between subsidies and IUU fishing.

Through encouraging overcapacity and artificially low prices for fishing vessels and services, all eight types of subsidies identified by UNEP (fisheries infrastructure, management services, access to foreign waters, decommissioning, capital costs, variable costs, income support and price support) contribute in some way to the development of IUU. Those of most obvious influence on IUU fishing, however, are probably direct subsidies to fisheries infrastructure, decommissioning and capital costs. The difficulty of tracing ownership over a number of years complicates the task of proving that any particular IUU vessel was once a recipient of subsidies, or the extent to which those subsidies influenced its eventual vocation as an IUU vessel. Unsurprisingly, however, beneficial ownership of a number of IUU vessels has been shown to occur in countries that have traditionally provided subsidies across the whole range of subsidy types identified by UNEP, and have subsequently built up substantial distant water fleets and domestic fishery markets.<sup>8</sup>

The large-scale re-flagging of Taiwanese longline tuna vessels in the early 1990s in convenience states apparently did result from accumulated overcapacity and the need to reduce the size of the fleet.<sup>9</sup> Substantial scrapping programmes have since reduced the numbers of these IUU vessels by about 90 percent. The EU fleet also experienced substantial overcapacity in the early 1990s. While the EU has granted payments for the permanent scrapping of vessels under its multi-annual guidance plans, other subsidies may have until recently encouraged the transfer of excess/idle capacity from EU waters to fisheries in the Eastern Atlantic and the Indian Ocean through vessel exports and refitting, joint ventures and regional development

schemes.<sup>10</sup> Clearly, any transfer subsidy will depress the market value of vessels to IUU companies in an endless chain through subsequent sales and transfers.

Not all IUU boats are old vessels resulting from past subsidies and overcapacity problems. A number of vessels recently implicated in IUU fishing for toothfish have been built since 2000 in Taiwan,<sup>11</sup> although the extent to which – or whether – they benefited from subsidies is unknown. Attention has also recently turned to vessels supporting IUU fishing with re-supply/transportation services.<sup>12</sup> Although many of these merchant vessels may also have benefited from subsidies in the past, it is not clear whether such subsidies have been considered in the current round of WTO negotiations. These vessels are often owned by companies based in countries historically associated with subsidies. It has also been shown that some companies operate IUU, as well as legitimate, vessels and that in these cases subsidies granted to general fisheries infrastructure or markets help support both the legal and the illegal operations of the company. In considering the Red, Green and Amber subsidy categories, the effects of these types of subsidies on IUU fishing should be borne in mind.

As noted earlier, the subsidies with the greatest potential to ‘contribute to IUU fishing’ are those granted to offset capital or infrastructure costs, decommissioning and transfers. Subsidies for building even small vessels should be prohibited because such boats can engage in IUU fishing, and the capital cost subsidies can be transferred to the large vessel market through trading up. Subsidies for capacity reduction will normally lead to capacity enhancement in other countries or in the IUU fleet and should therefore be prohibited, unless they are purely one-off payments for dismantling vessels (one should beware, however, of generating an expectation that capacity reduction

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will always be subsidised, as discussed above). Whilst other subsidies – management services, income support and the like – may end up benefiting IUU vessels, the pathway of these benefits is less direct.

Financial incentives for sustainable equipment and practices are unlikely to encourage IUU fishing. Quite the opposite: as a number of commentators have shown,<sup>13</sup> the lack of adherence to conservation standards – such as using fishing gear with a low ecosystem impact – gives IUU vessels an economic advantage. Support for better use of sustainable equipment is likely to start to redress the imbalance between the economics of IUU and legitimate fishers by reducing the relative cost of legitimacy.

Since the drivers for IUU fishing are so varied and often indirect, it would probably not be helpful to attempt to ban all ‘subsidies contributing to IUU fishing’ since this would require an exhaustive catalogue over which there would be much argument. It would be more helpful to focus the WTO discussions on disciplining those subsidy categories that are known to fuel IUU fishing.

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## ENDNOTES

<sup>1</sup> UNEP. 2004. *Analysing the Resource Impact of Fisheries Subsidies: A Matrix Approach*

<sup>2</sup> G. Munro & U.R. Sumaila. 2002. *The Impact of Subsidies upon Fisheries Management and Sustainability: The Case of the North Atlantic*. Fish and Fisheries 3, pp 233-250

<sup>3</sup> C.W. Clark, G.R. Munro & U.R. Sumaila. 2005. *Subsidies, Buybacks and Sustainable Fisheries* in the Journal of Environmental Economics and Management 50, pp 47–58

<sup>4</sup> High Seas Task Force. 2006. *Closing the Net: Stopping Illegal Fishing on the High Seas*. Government of Australia et al.

<sup>5</sup> OECD. 2005. *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing*

<sup>6</sup> OECD. 2004. *Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing*, Chapt. 11

<sup>7</sup> Op. cit. supra note 4

<sup>8</sup> M. Gianni & W. Simpson. 2005. *The Changing Nature of High Seas Fishing: How Flags of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing*. Australian Department of Agriculture et al.

<sup>9</sup> K. Hanafusa & N. Yagi, op. cit. supra note 6

<sup>10</sup> B. Le Gallic, op. cit. supra note 5

<sup>11</sup> Gianni & Simpson, op. cit. supra note 10

<sup>12</sup> Idem

<sup>13</sup> Agnew & Barnes, op. cit. supra note 6

# Clash over Development Agenda at WIPO

The last week of June saw a serious clash between the advocates of substantial reform of the World Intellectual Property Organisation and those essentially content with the status quo.

The rift appeared at a meeting of a committee charged with preparing recommendations on how to proceed with the WIPO Development Agenda proposed in 2004 by 14 ‘Friends of Development’ (FoD).<sup>1</sup> The recommendations are to be considered by the WIPO General Assembly next September.

The thrust of the Development Agenda is that, as a United Nations agency, WIPO must integrate a development dimension in its rule-making, technology transfer and technical assistance activities. Future treaties should reflect this, including through more efficient provisions on technology transfer to developing and least-developed countries, as well a new approach to IPR enforcement that would not only consider the rights but also the obligations of right-holders. For instance, future agreements should take into account the need to prevent abusive practices that restrain competition. In addition, the FoD argue that the preservation of public interest flexibilities and policy space of all Member States should be pursued and acknowledged in current WIPO negotiations, with proposals submitted by developing countries and least-developed countries properly taken into account (Bridges Year 8 No.8, page 17).

So far, Member States have made more than a hundred submissions to the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA). At the committee’s June session, PCDA Chair Ambassador Rigoberto Gauto Vielman (Paraguay) put forward draft recommendation text containing a ‘selection of proposals’ on which he deemed consensus possible. While most developed countries expressed support for the Chair’s approach, several developing countries rejected it, arguing that the text disproportionately reflected developed country proposals and amounted to an attempt to dilute the Development Agenda.

FoD leaders Brazil and Argentina said the text illustrated the kind of behaviour the proponents of the Development Agenda were trying to address with their call for a decision-making process that is not primarily driven by the interests of developed countries. The two countries, as well as South Africa, said they could not continue discussions on the basis of the Chair’s text.

Before the meeting, the FoD had presented a summary of proposals and suggestions tabled by developing countries, in “an effort to facilitate the PCDA’s work through the submission of formulations for a decision to be taken on the 111 proposals identified individually by the respective proponents at the last meeting” (PCDA/2/2, 23 June 2006). Many of these suggestions were either not reflected – or were reflected in a much attenuated form – in the Chair’s text, including the recommendations that WIPO launch negotiations on a Treaty on Access to Knowledge and Technology, as well as initiate negotiations on “a multilateral agreement where signatories would place into the public domain, or find other means of sharing at affordable cost, the results of publicly funded research.” Among other controversial issues overlooked in the Chair’s text were, *inter alia*, (i) reaffirming the commitment of WIPO Members toward UN objectives and principles; (ii) adopting guidelines for the provision of technical assistance; (iii) establishing pro-development treaty-making principles; and (iv) separating the normative and technical assistance functions of the WIPO Secretariat.

Members were ultimately unable to reconcile their differences. Thus, instead of a set of agreed recommendations, all proposals made in the PCDA process will be forwarded to the General Assembly. These include the draft Chair’s text, which in a last-minute surprise move, was submitted to the committee as a Member’s proposal by the Kyrgyz Republic.

## ENDNOTES

<sup>1</sup> Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela. Uruguay joined the group later.

## South America and WTO Dispute Settlement

The interface between the broader Doha Round negotiations and the WTO dispute settlement system was the focal point of discussions at a late June dialogue held in Mogi das Cruzes in Brazil.

South American WTO Members engage in dispute settlement on a scale that more than outweighs their average trade volume. This can be attributed to some countries' deliberate effort to enhance their participation in the system through capacity-building, government reform and the use of outside and in-house counsel. Such strategies seem far more developed in South America than in many other developing-country regions. Nevertheless, many countries, and the more resource-constrained ones in particular, still face challenges that hinder more active engagement.

To counter this problem, capacity-building and training programmes already developed in Brazil and Chile could be replicated by other countries in the continent. The private sector's expertise should also be more systematically tapped to ensure a more effective identification and prioritisation of potential trade problems. In addition, both domestic and international academia, as well as NGOs, have capacities and knowledge that could contribute to skill enhancement at the decision-making level.

South American countries also need stronger support to take a more active part in the review of the Dispute Settlement Understanding (DSU), which lays down the rules and procedures for resolving trade disputes between WTO Members. The enforcement of dispute settlement rulings is a key area where developing countries have encountered major difficulties, which they have sought to address by proposing changes to the DSU. WTO Members should pursue further codification of enforcement provisions. This could be done either through strengthening current rules on compensation, or through changes to provisions on compliance or remedies.

In exploring alternative ways of solving disputes under the WTO regime, the idea of creating a 'small claims court' was floated. Such a 'court' would function in parallel to the current system, governed by simplified procedures to expedite the resolution of 'smaller' cases. This proposal was widely recognised as a viable option for developing countries, although dialogue participants emphasised that cases filed by developing countries were not necessarily 'smaller' in terms of economic impact, or legally less complex.

As a consequence of the proliferation of regional free trade agreements – many of which, including Mercosur and NAFTA, have their own dispute settlement mechanisms – an alternative to WTO dispute settlement may exist in certain cases. However, these mechanisms are systemically weaker, and perhaps even designed to be so. Furthermore, there is great concern about possible shifts in power balances among disputing parties when cases are adjudicated by regional mechanisms. In addition, governments face the challenge of tackling multiple regimes. It has also already become vividly clear in a number of WTO dispute settlement cases, that an overlap – and sometimes direct inconsistency – exists between WTO obligations and those under regional agreements. To avoid conflicts, a harmonisation between these regimes and the WTO would be desirable.

The Mogi das Cruzes meeting was part of a series of regional dialogues on WTO dispute settlement and sustainable development convened by ICTSD in collaboration with other institutions. The overarching aim of these dialogues is to facilitate the sharing of experiences and to brainstorm on strategies to enhance the participation of developing countries in the dispute settlement system. The South American dialogue was co-organised by DireitoGV and the International Trade Law and Development Institute with the generous support of the Geneva International Academic Network and the Swedish Ministry of Foreign Affairs.

Further information on the South American dialogue and ICTSD's dispute settlement programme is available at <http://www.ictsd.org>.

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy.

### BRIDGES Regional Editions

#### PUENTES

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

Co-publisher: Centro Internacional de Política Económica para el Desarrollo Sostenible (CINPE), San José, Costa Rica  
Web: <http://cinpe.una.ac.cr>

#### PONTES

##### entre o Comércio e o Desenvolvimento Sustentável

Co-publisher: Fundação Getúlio Vargas, São Paulo  
Web: <http://www.edesp.edu.br>

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Publication bi-mensuelle sur les enjeux des négociations commerciales pour les pays d'Afrique et ACP.  
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### WTO Meetings

- July 27-28 General Council
- Sept. 1 Dispute Settlement Body
- Sept. 14 Negotiating Group on Trade Facilitation\*
- Sept. 25-26 WTO Public Forum: What WTO for the 21<sup>st</sup> Century?
- Sept. 27-28 Public Hearing of scientific experts and parties & Oct. 2-3 in the Beef Hormones dispute
- Sept. 28 Dispute Settlement Body
- Sept. 29 Committee on Trade and Development & Oct. 4-5
- Oct. 6 Council for Trade in Services
- Oct. 6 Working Group on Trade and Transfer of Technology

\* *Negotiating session under the Doha Round. Meetings of other negotiating groups or the Trade Negotiations Committee had not yet been scheduled at press time.*

### Other Meetings

- Sept. 14-15 High-level Dialogue on International Migration and Development  
<http://www.un.org/esa/>
- Sept. 19-20 Annual Meetings of the International Monetary Fund and the World Bank  
<http://www.worldbank.org/>
- Sept. 25 Assemblies of the Member States of the World to Oct. 3 Intellectual Property Organisation  
Geneva <http://www.wipo.int/meetings/>
- Oct. 5-6 First Inter-American Meeting of Ministers and Santa Cruz High-level Officials of Sustainable Development  
Bolivia <http://www.oas.org/>

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Roheim, Cathy and Sutinen, John. May 2006. Trade and Marketplace Measures to Promote Sustainable Fishing Practices. ICTSD Project on Fisheries, International Trade and Sustainable Development. Issue Paper No.3

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- Agriculture. 8 June 2006. Proposal on Modalities and Implementation for the Fullest Liberalisation of Tropical and Alternative Products. Communication from Colombia, Costa Rica, Guatemala and Panama. (TN/AG/GEN/19)
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- Negotiating Group on Rules. 13 July 2006. Report by the Chairman to the Trade Negotiations Committee. (TN/RL/18)

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