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Facts and Figures

- Increasing temporary migration into industrialised countries by three percent of their current skilled and unskilled work force would generate an estimated increase in world welfare of more than US\$150 billion a year.
- In both partial and full trade liberalisation scenarios, the gains would accrue mostly to large countries already integrated in global markets, such as Brazil, China, India and Indonesia. Countries in the bottom two deciles of the international income distribution would benefit more from a doubling of aid than from full trade reforms.
- The Indian economy gained around US\$450 million from not following international patent protection standards, of which US\$400 million were a gain to consumers and the rest profit for domestic producers. Foreign producers' profit losses were US\$53 million.

Source: *World Development Report 2006 – Equity and Development*. The World Bank, September 2006.

Doha Doldrums: Others Should Act

Virtually all WTO Members have called for a rapid resumption of the Doha Round trade talks, but none of the likely deal-makers have given any signs that they are willing to take the first step out of the impasse.

Addressing the WTO General Council on 10 October, Director-General Pascal Lamy said that it was “now obvious that the costs of failure, and the missed opportunity to rebalance the trading system, would hurt developing countries more than others, which is probably why it is developing countries who have been the loudest in clamouring for a resumption of the negotiations.” He urged all delegations to “continue technical work, discreet calculations and private soundings to prepare the ground,” but admitted that such quiet diplomacy had not produced any visible signs of flexibility so far. In addition, Mr Lamy stressed that Members had a limited window of opportunity to achieve a breakthrough between November and next spring in order to finish the negotiations in 2007.

Inflexibility has also been a key feature of several recent meetings between trade ministers.

High Level Contacts Fail to Deliver Progress

In late September, EU Trade Commissioner Mandelson met with US Trade Representative Susan Schwab for ‘quiet exploratory discussions’ about the way forward. While Mr Mandelson and Ms Schwab declined to give any details regarding their discussions, the US Senate Agriculture Committee Chair Saxby Chambliss said he was “very, very pessimistic” about a new deal, and warned that the US would not consider improving its domestic subsidy offer until the EU “gives us true market access.” On 3 October, USTR Schwab quipped in a speech at the American Enterprise Institute: “Calls for the US to go first? Been there, done that. Bought the t-shirt. Didn’t work.”

Top officials from the G-20 group of developing countries, the EU, Japan and the US met in Rio de Janeiro on 9-10 September. The G-20 issued a statement, in which it laid the responsibility for the Doha Round’s outcome squarely on developed country Members, and called on “major trading countries [to] significantly improve their proposals especially in the two crucial areas of domestic support and agriculture market access, as well as be prepared to deliver on the development dimension” of the Doha Round.

The G-33 coalition warned that “any move to reverse or renegotiate the architecture of the negotiations cannot be acceptable.” The group stressed that special and differential treatment, as well as Special Products and the Special Safeguard Mechanism (SSM) for developing countries were integral components of the negotiations. According to the July 2004 Framework Agreement, developing countries may designate ‘an appropriate number’ of products as ‘special’, and such products will be eligible for ‘more flexible’ treatment. In June, Trade Representative Susan Schwab likened the lack of specificity about these provisions, as well as the uncertainty concerning the number of ‘sensitive’ products that all WTO Members may exclude from full tariff cuts, to a Black Box (see related article on page 15).

While generally endorsing the need to relaunch the talks, the US and the EU offered no insights into how this could be achieved beyond calling on each other to act first in making deeper concessions, and urging the G-20 to give ground on market access for industrial

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goods. Both the EU and the US insist that the offers they have made in agricultural market access (EU) and domestic subsidies (US) are significant and should not be dismissed lightly.

Australia's Five for Five Proposal Rejected

At the 20-22 September meeting of the Cairns Group of developed and developing agriculture exporting countries, Australia attempted to break the stalemate by suggesting that the EU cut its farm tariffs by five percent more than its latest offer of roughly 50 percent, while the US would agree to cap domestic subsidies at five billion dollars below its current offer of about US\$22.7 billion. Both countries rejected the 'five for five' compromise, although Susan Schwab insisted that the US offer remained 'negotiable'. However, greater cuts could only be envisaged "if and when there is significantly more market access on the table in agriculture." Unsurprisingly, the EU's WTO Ambassador Carlo Trojan called a US move on domestic support "a precondition for unlocking the deadlock." Ambassador Trojan also said there was no point in trying to revive the negotiations until after the US mid-term elections in November. Meanwhile, the European Commission has beefed up its bilateral negotiating agenda, with a particular emphasis on opening emerging markets in Asia (see page 13).

In a communiqué released at the end of the meeting, the Cairns Group urged WTO Members to "assess prospects for resumption of the Doha Round and take the necessary steps to resume negotiations no later than November." It also said that the EU, the US, Japan, Switzerland and "others with the highest levels of support and protection must make the necessary improvements to their offers on market access and domestic support, to establish the basis for the early resumption of negotiations. [...] This is especially true for market access, where the substantive differences in negotiating positions are most significant. For Sensitive Products we need a transparent and objective market-based approach that is capable of delivering substantial and meaningful improvements to access. [...] We are resolved, as a matter of priority, to establish convergence on Special Products and the Special Safeguard Mechanism in order to provide greater definition to these instruments, consistent with the mandates and the Group's objectives."

China Asked to Step Up to the Plate

USTR Susan Schwab called upon Beijing to take a more proactive role in reviving the Doha Round during her late August visit. She said that the negotiations could only be successfully concluded with "vigorous and positive Chinese participation," and urged China to "lead by example" by showing willingness to open its markets and thus allay the fears of those who see further liberalisation as adding to the competitive pressure exerted by Chinese exports. China's Minister of Commerce Bo Xilai asserted in a public statement that China was willing to co-operate, but also stressed that development should be the 'most important' element of the negotiations and that "developed members [should] take the lead and make an essential contribution to the negotiations' resumption as soon as possible."

A few days later, Pascal Lamy also appealed to China to play a stronger role, and received a response similar to that given to Ms Schwab.

Frustration over Crisis of Complacency

WTO officials are clearly frustrated by the lack of flexibility and seeming apathy of the negotiators. In his address to the World Bank/IMF International Monetary and Financial Committee on 18 September, Pascal Lamy said the challenge was 'not technical, but political'. He stressed that it was not enough to "express concern about the multilateral system and a willingness to continue talking," and urged countries to "engage in some political heavy lifting in constituencies at home. [...] We need to overcome a crisis of complacency."

Ambassador Crawford Falconer, who chairs the agriculture negotiations, told the WTO's September Public Forum that it would take 'a huge amount of ineptitude' to fail to reach an agreement. He warned that the political cost of failure was the most compelling reason for reaching a deal – the alternative being a world where political leaders 'picked their friends' while many weaker nations were left out. Such a scenario would not only be politically damaging but also dangerous, he said.

A Way Out of the Fruitless Debate on Services Safeguards?

Luis Pablo Niscovolos

It is no surprise that the debate on emergency safeguards in services has not made concrete progress. This article reviews the main problems that have arisen from the discussions and then suggest an alternative approach.

One of the reasons for the stalemate is the lack of clarity of the mandate in Article X.1 of the General Agreement on Trade in Services (GATS), which states in part that there “shall be multilateral negotiations on *the question of* emergency safeguard measures based on the principle of non-discrimination” (author’s italics). Many developed country delegations take the wording in italics to mean that there is no agreement on whether or not disciplines should be created in this area. Most developing countries hold the view that a long-standing mandate exists under Article X.1 to craft an emergency safeguard mechanism (ESM).

At the time of the GATS negotiations, the negotiators (the writer of these lines was one of them) could not foresee the many technical questions related to the functioning of a safeguard in services that were later encountered by the Working Party on GATS Rules. Had they known, they would certainly have looked for clearer language!

We should keep in mind that a number of concepts and principles of the GATS were incorporated directly from the General Agreement on Tariffs and Trade (GATT), in many cases without prior evidence justifying their inclusion in the WTO services world. This fact has given rise to a considerable amount of debate, particularly given the legal uncertainty surrounding safeguards under the GATT. Indeed, panel and Appellate Body rulings involving the existing Agreement on Safeguards, have not articulated a coherent legal interpretation on the application of safeguard provisions with regard to trade in goods.¹

What Measures Would Be Eligible?

Members have not been able to clearly determine what safeguard measures in services trade – beyond those already available in the GATS (i.e. general exceptions under Article XIV and trade restrictions imposed to safeguard the balance of payments under Article XII) – would be eligible for a mechanism originally designed for goods. The theoretical examples that could justify the application of the GATT’s safeguard approach to services do not seem to correspond to the little real life evidence we have.

When we try to visualise practical situations of an unexpected surge of services imports and the related injury (or the threat of injury) to domestic industry, and the causal link between the two, the arguments tend to get thin.

Of the four modes of services supply covered by the GATS², commercial presence is the most likely candidate for safeguard action. Let us, as an illustration, look at the potential injury caused by the market expansion of a foreign logistics enterprise. It may absorb some similar domestic companies or force others to leave, while significantly increasing employment in the sector. How can the injury be measured? In terms of employment, the number of enterprises displaced, or the turnover?

Could we be sure that the expansion was the result of a scheduled concession or could it rather be attributed to the trend of the economic environment that permitted the development of that activity? And, if the expansion creates new jobs, what other indicators could the authorities possibly evoke to justify the need to take a measure to protect the domestic industry?

The important number of formal and informal documents that have been presented at the WTO, as well as other fora, bears witness to these kinds of difficulties, but fall short when it comes to finding *workable* solutions.

One of the recurrent points made by those who are reluctant to enter into the discussion of the feasibility of an ESM is the lack of statistics reflecting the reality of trade in services under the GATS as defined by mode of supply. However, the lack of sound and reliable statistics is one of the weakest excuses given by the opponents since scant data does not seem to prevent progress in other areas. Take market opening requests and offers: on what commercial basis do they rely, apart from certain sectors’ specific trade interests? Nevertheless, the paucity of data is always presented as an impediment to progress on the ESM.

In spite of these complexities (and others of a technical and juridical nature outside the scope of this article), many delegations stubbornly try to stretch the ESM mandate instead of stopping to consider whether it is actually not the mandate itself that is inappropriate.

Protectionism or Need to Adjust Policies?

From a negotiating standpoint, the very word ‘safeguard’ has a protectionist connotation that derives from its definition.³ Quite frankly, this does not further the crusade of the developing countries interested in this matter. Developed countries continue to view ‘safeguards’ with suspicion, seeing – often with no justification whatsoever – the position in favour of an ESM as merely protectionist.

There is another point to be kept in mind from the perspective of negotiating tactics. Many developing countries argue that emergency safeguards must be kept firmly on the WTO agenda, partly because that is what the GATS establishes, and partly because developed countries are opposed to discussing the issue. So, in order to level the generally unbalanced playing field, developing countries continue to vigorously defend their position.

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Yet, there would be nothing worse than creating a diffuse, unclear and ineffective mechanism only because a negotiating mandate exists. It would not be wise to create new disciplines that might enlarge the few grey areas that are already contained in the GATS. Instead, new disciplines should only be created when they are necessary to maintain the agreement's global balance and add to legal predictability.

Although the use of certain types of argument can be a valid negotiating strategy, they should be used with care so as to avoid the debate on any issue turning exclusively into tactics and losing focus on the essence. The ESM debate is a typical example. Suppose that the developing country *demandeurs* (some developing countries are not) abandon for the time being, or definitively, their position. Would that bias the GATS balance against their interests? This would be very unlikely.

If this is so, could we not make the focus of emergency safeguards more pragmatic? Honestly, the risk that this would damage the GATS global balance for developing countries is not high, and is even lower with regard to the global balance among all WTO agreements. Of course, the consideration of an alternative should lead us to something more concrete than what we have now.

Many also argue that there is still enough 'water' protecting the level of the existing commitments. In other words, countries are far from having consolidated current regulatory regimes and even further from having consolidated 'pure liberalisation'. That means that the margin to exercise domestic regulatory policy continues to be generous. The threat that trade liberalisation could

pose is thus not clearly evident so far, which makes it difficult to envisage the need for an ESM at present.

There may be no need for measures now, but that will not be the case forever. It cannot be denied that developing countries need some kind of instrument that they could use to modulate the speed and the depth of liberalisation. While the effects of liberalisation cannot be predetermined with any precision, a flexibility instrument could be extremely valuable for all countries in the end, and developing and least-developed countries in particular.

So, what can be done?

Shift the Debate

Probably the best choice would be to call spade a spade so as to stop going around in circles. In that case, why not start with the assumption that it is possible that the debate on safeguards, in the strict sense of the GATT, does not have much concrete validity in the GATS world?

Perhaps the original sin was to name 'safeguards' something that was not intended to be a safeguard in the sense reminiscent of trade in goods. Therefore, I suggest freezing – but not closing – the debate on the classical GATT concept of safeguards.

The truth is that WTO Members, especially developing and least-developed countries, should have an escape valve not only to respond to unexpected cases (true, difficult to conceive in advance) but also to help them face the (legitimate) internal pressure from the regulators and politicians to whom we must present convincing evidence in order to gain their support for further liberalisation.⁴

There is no sense in assuming that there could be liberalisation without the willingness of governments. The GATS is first of all a challenge to the government's regulatory capacity. Underlying it is a permanent tension between different interests regarding the legitimate right to regulate and the exogenous stimulus coming from multilateral negotiations. This is why it is fundamental for the authorities to be able to count on assurances in order to support that process.

It is also undeniable that the speed of regulatory changes and the experience with the evolution of the services sectors are not the same among developing and developed countries. Therefore, why should we forego a mechanism that could help countries steer the pace of liberalisation and make the necessary adjustments that could perhaps determine the need to modify bound commitments in the GATS?

A Possible Solution

I consider it important to explore the possibility of a mechanism akin to GATS Article XXI on the modification of schedules. Why this, instead of an ESM? Because countries need an instrument more oriented to accommodating potential policy changes than one responding to unexpected circumstances.

So, we could think of a quick recourse to an instrument that could be used by all Members. But how?

The first step would be the submission of well-grounded elements to justify the request to impose an emergency safeguard measure. The submission should be documented by the modifying party, which could be required to notify the measure some time prior to its implementation, a month, say.

A subsequent multilateral consultation process (with a view to adjust the measure in order to minimise its potential negative effects among the Members concerned) could last from three to six months. The modification would be for a period no longer than three years. Once that period is over, the modifying Member would have to revert to the original situation. If necessary, an extension could be considered subject to negotiation with other

Instead of trying to apply the notion of 'safeguards' in a sense reminiscent of trade in goods, it could be more appropriate to devise a mechanism based on a temporary modification of a Member's schedule of commitments. Countries have a greater need for an instrument oriented to accommodating potential policy changes than of one responding to unexpected circumstances.

Members and, if it is used, compensation could be envisaged. The extension should be no longer than the duration of the original measure. Multilateral authorisation would be necessary in case of extension.

Instead of trying to design a monstrous mechanism⁵, too prescriptive, with theoretical procedures whose efficiency would be more than doubtful, I suggest we leave the burden of proof to the modifying Member. It would be up to that Member to present solid and complete evidence to support its petition. If it is weak or incomplete, other Members should request more data and information in order to clearly understand the nature of the request. What the Members would not be entitled to do is to block the implementation of the modification required.

Who would show interest in the question? Obviously, only those with concrete commercial interests. From this point, the distinctly over-rated questions of compensation and the scarcity of data become less complex. Why should we compensate on a most-favoured-nation basis, instead of leaving it up to the interested Members to solve the problem?

To recap, the main elements of my 'ESM' proposal are:

- It should not be a permanent change of the commitment, but one of a temporary nature.
- The possibility of the modification could not be blocked.
- Open period for consultations in order to minimise the effects of the measure.
- The mechanism should not be a blank check or a platform for abuses.
- Developing and least-developed countries should have the right to implement the modification without waiting for the expiration of the three-year period prescribed in GATS Article XXI.1.
- In practice, the mechanism would be applied only to fully bound commitments, as it would not make sense to apply a 'safeguard' to commitments scheduled as unbound.
- Compensation should not be necessary, except in the case of an extension that shall require multilateral authorisation.

The fact that the provision would apply to full commitments is also an incentive for countries to consolidate more, hence expanding the scope of their concessions. This is an important argument that could go down well with those developed countries that are reluctant to consider an ESM.

Naturally, from the legal point of view, the implementation of the suggested provision is not fully presented here. The relevant articles of the GATS would probably have to be amended. The past experience of other WTO Agreements could serve as a guideline to find a more appropriate legal mechanism. In any case, the aim of this article is to provide some food for thought by exploring an alternative path of analysis, not to provide an exhaustive diagnosis, or answers to all the possible questions.

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ENDNOTES

¹ See in particular Section II in Alan Sykes, *The Safeguards Mess: A Critique of WTO Jurisprudence*, Chicago University, June 2003.

² Trade in services comprises four modes of supply: cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and movement of natural persons (mode 4).

³ Safeguard: "a thing that serves as a protection from harm, risk or danger." *Oxford Advanced Learner's Dictionary*.

⁴ Recent crises in major developing countries (not to mention the intense debate in the developed world on privatisation) reinforce the need for some kind of an escape valve.

⁵ See Marconini, Mario. *Emergency Safeguard Measures in the GATS: Beyond Feasible and Desirable*. UNCTAD, March 2005.

The EMS Debate at the WTO

WTO discussions are based on the mandate in GATS Article X.1 that "there shall be negotiations on the question of emergency safeguard measures based on the principle of non-discrimination." The results of such negotiations were to enter into force no later than 1 January 1998.

After several deadlines for concluding the EMS negotiations had been missed, the Council for Trade in Services effectively made them part of the Doha Round by deciding on 15 March 2004 that their results would enter into effect "on a date not later than the date of entry into force of the results of the current round of services negotiations."

The issue has been on the agenda of the Working Party on GATS Rules since its establishment in March 1995, and it has been the item that the group has devoted by far the most time to. Many informal meetings have also taken place, and Members have tabled an impressive number of substantive submissions.

Nevertheless, neither the extensive documentation nor the heated discussions have succeeded in narrowing differences between those who question the need for, and the feasibility of, an Emergency Safeguard Mechanism and those who have conditioned their acceptance of any market access package in services on an EMS being in place. Members of the Association of Southeast Asian Nations (ASEAN) have been particularly active advocates for an ESM, which they have termed as an 'essential safety net for services liberalisation.' The US, the EU and Australia are among the greatest skeptics.

Lately, the EMS talks – like those on most other outstanding rule-making issues – have been largely dormant as attention has focused on bilateral and plurilateral negotiations on market access.

China's Introduction to Dispute Settlement

China's import regulations for car parts have been challenged at the WTO, but the country may also soon initiate dispute settlement proceedings of its own against anti-dumping duties on its shoe exports to the EU.

The two disputes illustrate the predicament of richer countries eager to exploit the export opportunities offered by China's huge market and rising purchasing power on the one hand, and the need to deal with the pressure from domestic industries for protection against Chinese imports the other.

Row Over Car Part Regulations

On 28 September, China rebuffed its first ever WTO panel request from Canada, the EU and the US. At issue are measures the complainants say are designed to bolster the Chinese automobile manufacturing sector through imposing two different tariff rates on imported car parts. While the ordinary MFN tariff for such items is around 10 percent, imported components that make up a certain numerical or value level of a Chinese-made vehicle – about 60 percent – are taxed at the MFN rate applied to entire cars, typically 25 percent. As a Member can block a panel request only once, it will be approved at the next meeting of the Dispute Settlement Body.

The complainants allege that China has violated its scheduled tariff commitments, as well as the national treatment principle inscribed in GATT Article III. For instance, the EU said that China had acted inconsistently with Article III:4 “by imposing specified thresholds for imported parts in an assembled vehicle above which an additional charge applies on each imported part included in the vehicle. In addition, the EU maintained that China imposed “additional administrative requirements on importers and manufacturers that may not meet the required threshold for domestic content.”

The US charged that the import policy was inconsistent with the Agreement on Trade-related Investment Measures (TRIMs) “by requiring motor vehicle manufacturers in China to purchase or use domestic auto parts in order to obtain advantages such as the avoidance of administrative burdens and the payment of additional charges and by imposing restrictions which generally restrict the importation by a manufacturer of

auto parts used in or related to its local production.” In addition, the import regulations are alleged to violate Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM) by giving car manufacturers incentives to use domestic over imported parts.

The Office of the US Trade Representative said in a press release that such regulations encouraged auto manufacturers in China to use Chinese parts in the assembly process, as well provided “an incentive for auto parts producers to relocate manufacturing facilities to China.”

China's WTO Ambassador Sun Zhenyu expressed regrets over the panel requests, and noted that China had provided ‘unprecedented opportunities’ in automobiles and auto parts for its trading partners’ since its WTO accession. Ambassador Sun also said that China's regulations on importing auto parts complied with WTO rules, and were adopted to prevent tax evasion by companies that import whole cars as spare parts to avoid the higher tariffs applicable to entire automobiles.

China Could Launch First WTO Dispute Over Shoes

China may initiate WTO dispute settlement proceedings against the EU following the imposition of a 16.5 percent anti-dumping (AD) duty on Chinese leather shoes as of 7 October 2006. The new duty replaces a temporary 19.4 percent duty in force since April 2006.

A spokesperson for the Chinese Ministry of Commerce said on 5 October that both the dumping investigation and the duty determination were inconsistent with the EU's own anti-dumping regulations, as well as WTO rules. He added that China would “closely watch this issue and see how it develops and will maintain the right to take corresponding measures.”

The new duty, which will be applied for two years, was approved by a 13 to 12 majority of EU member states after weeks of standoff between countries with leather footwear industries, such as Italy and Portugal, and those more inclined toward the interests of retailers – and the lure of affordable shoes. The 16.5 percent duty will be additional the 7.5 percent most-favoured-nation tariff the EU imposes on leather shoes from WTO Members.

Vietnam, which is nearing the completion of its WTO accession negotiations, will face a 10-percent AD duty, down from the 16.8 percent temporary tariff imposed in April 2006.

With regard to textiles, China's WTO accession schedule allows trading partners to impose safeguard measures until the end of 2008 despite the general elimination of textile quotas in 2005. To avoid safeguard action, China has concluded bilateral agreements with the US, the EU, Brazil and South Africa, under which it voluntarily restrains exports of several textiles and apparel categories.

The special safeguard only applies to textiles, however. China can thus challenge at the WTO both the ‘injury to domestic industry’ that the EU's claims has resulted from Chinese shoe exports and the level of the anti-dumping duty.

The European Commission claims that the trade remedy action is justified since Chinese leather shoe exports to the EU increased ten-fold between 2001 and 2005, while leather footwear produced in Europe decreased by about 30 percent and 40,000 jobs in the sector were lost. In 2005, China exported 1.2 billion pairs of shoes to EU countries, 145 million of which were subject to the 19.4 percent provisional AD duty. Vietnamese shoe exports amounted to 265 million pairs, and industry sources there are predicting up to 70,000 job losses, as well as bankruptcies of some small-scale manufacturers.

Biotech Panel Asks the EU to Conform with SPS Rules

The final report of the WTO panel assessing the complaint brought by the US, Argentina and Canada against the EU's 'de facto' moratorium on the approval of new GMO products essentially reiterated the findings of the interim ruling circulated to the parties in February.

The more than 2000-page final report, which was distributed to the parties in May but only released to the public on 29 September, assessed three issues for their compliance with WTO rules: (i) the alleged general EU moratorium on biotech approvals, (ii) the EU's failure to approve a number of specific biotech products (referred to as 'product-specific measures'), and (iii) national-level bans in several EU member states on the marketing and import of specific biotech products after the products had been approved at the EU level.

The panel concluded that the general and product-specific moratoria had led to an 'undue delay' in the completion of the EU's approval procedures for biotech products, thus breaching the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). In the only significant departure from its interim report, the panel requested the EU to bring the moratoria in line with the provisions of the SPS Agreement "if, and to the extent that" these measures had "not already ceased to exist." In the interim ruling, the panel had refrained from making any recommendations for future action, arguing that the moratoria as they existed in August 2003 (when the panel was established) had ended. As a caveat, the interim ruling also noted that the panel had not assessed whether amended or new moratoria were now in place. The US insists that the moratoria continue to exist in light of 'unjustified, politically-motivated delays' in the processing of applications for various products.

Regarding the national-level bans, the panel felt that sufficient scientific evidence was available to carry out a risk assessment. The panel therefore rejected the EU's defence of the bans as precautionary measures under Article 5.7 of the SPS Agreement, which allows WTO Members to provisionally adopt SPS measures in the absence of sufficient evidence. The report called on the EU to bring the measures in conformity with the SPS Agreement, which would imply revoking them or providing an SPS Agreement-compliant risk assessment to justify the measures.

US government officials and farm groups welcomed the ruling, which according to US Trade Representative Susan Schwab favoured "science-based policy-making over the unjustified, anti-biotech policies adopted in the EU." EU officials did not appear overly concerned about the ruling's implications for the EU's current rules and procedures, stressing instead that as biotech approvals had resumed, the report had little bearing on its GMO approval regime.

It remains unclear whether any of the parties to the dispute will challenge the ruling. They have 60 days to lodge an appeal.

Civil Society Rebuked

In a strongly worded statement, the panel rebuked the civil society groups that had leaked the interim report earlier this year, pointing its finger specifically at Friends of the Earth Europe (FoEE) and the International Institute for Agriculture and Trade Policy (IATP). Deploring their action as 'unacceptable', the panel warned that these breaches of confidentiality threatened to "damage the integrity of the WTO dispute settlement system as a whole." The panel also noted that both organisations had submitted *amicus curiae* briefs which the panel had accepted. "In the light of this, it is surprising and disturbing that the same NGOs [...] found it appropriate to disclose, on their own website, interim findings and conclusions of the panel which were clearly designated as confidential," the panel stated.

Greenpeace, FoEE and IATP said the panel ruling undermined the Cartagena Protocol on Biosafety and the precautionary approach. They were particularly critical of the panel's conclusion that it was not obliged to take into account the Protocol or the Convention on Biological Diversity since not all parties to the dispute were also party to these agree-

ments. The panel did, however, stress that it had the option of taking other treaties into account, as the Appellate Body did in the landmark 'shrimp-turtle' dispute.

The next issue of Bridges will carry an in-depth analysis of the ruling.

GMO Rice Raises Questions

The discovery of contamination of US long-grained commercial rice supplies by a genetically-engineered variety not approved for human consumption has raised concerns about the strength of US regulation of biotechnology. In a report released last December, the US Department of Agriculture Inspector General stated that USDA lacked "basic information about the field test sites it approves and is responsible for monitoring, including where and how the crops are being grown and what becomes of them at the end of the field test."

Japan has banned long-grained rice imports from the US, and started testing short- and medium-grained rice shipments due to a lack of proof from Washington that such varieties are free from contamination. The EU is also stepping up testing requirements – in place since August – for long-grained rice following the discovery of contamination in two barge loads that had been certified GM-free. The largest Swiss supermarket chain took US long-grained rice off the shelves in September after its own tests revealed traces of contamination in storage silos. Traces of the unauthorised GM rice have also been found in Germany.

The modified rice, developed by Bayer CropScience, contains a protein that makes it resistant to weed killer. The company now faces three lawsuits filed by US rice farmers, two of which are seeking class action status. According to US regulatory authorities, the variety poses no risks to human health.

Brazil Tyres Update

Brazil continues its spirited defence of the import ban of retreaded tyres, which has been challenged by the EU.

In its second submission, which was filed on 11 August, Brazil reiterated that the ban and the fines it imposes to secure compliance with the import prohibition were justified under environmental and health grounds, and thus covered by the general exceptions of GATT Article XX. It dismissed the EU's claim that the import ban was merely a measure to protect the Brazilian retreading industry. Brazil also stressed that no economically or environmentally sound alternatives to the ban were available, noting that the EU itself has not been able to identify any alternative that would allow Brazil to achieve its chosen level of protection (see Bridges Year 10 No.4, page 14 for further details).

Seven Brazilian civil society organisations, together with the Center for International Environmental Law, have submitted an *amicus curiae* brief to the panel, in which they argued that the retreaded tyres exported by the EU were 'in the final life-cycle stage' and would thus augment the tyre waste problems of the importing country. In effect, the groups said, "trade in retreaded tyres shifts the tyre waste disposal problem from Europe to South America. For this reason, Brazil and a large number of other developing countries ban or restrict the imports of used and retreaded tyres, to allow for retreading of tyres in their own territory. In light of the life-cycle approach, an Article XX defense avails to safeguard these environmental and public health measures."

The Brazilian government has taken the unusual step of making all of its written submissions and oral statements in the tyre dispute publicly available. They can be accessed in English and in Portuguese at http://www.mre.gov.br/portugues/ministerio/sitios_secretaria/cgc/pneus.asp.

The panel ruling is expected in December.

Russia Sets Accession Ultimatum

Russia has threatened to rescind the United States' current chicken and meat quotas unless the two countries can agree on the terms of its WTO accession by the end of October.

At the end of yet another negotiating round between the two countries in late September, Russia's chief negotiator Maxim Medvedkov said the number of questions still to be settled was 'reduced to a minimum'. That minimum, however, promises to be a tough nut to crack. The US continues to insist on greater market access concessions for chicken, beef and pork, and appears to have hardened its stance on intellectual property and financial services. Russia's Minister of Economic Development and Trade German Gref said after the meeting that his government may terminate existing quota agreements on poultry (the US counts for three-quarters of Russia's imports), pork and beef – and possibly other agricultural products – in October if the US does not lower its demands.

When the two sides failed to finalise a bilateral agreement at the St Petersburg G-8 Summit last July, the principal reason appeared to be Russia's reluctance to open its market wider for imported meat. Since then, US politicians have reminded the administration that more progress has to be made on other issues as well.

On 13 September, a bi-partisan group of four House Representatives wrote in a letter to US Trade Representative Susan Schwab and Treasury Secretary Henry Paulson that Russia's financial services offer contained 'several serious deficiencies', which could jeopardise Congressional approval of the WTO accession deal. The letter highlighted two of those shortcomings in particular: the 49-percent ceiling for foreign ownership of a number of financial services sectors including subsidiaries of foreign insurance firms, and Russia's refusal to allow foreign banks to open direct branches, rather than operate through Russian-registered subsidiaries. The letter said that Russia must agree to phase out the 49-percent cap, allow 100-percent foreign ownership of subsidiaries in all financial services sectors, as well as allow foreign banks to establish direct branches within two years. So far, the Russian government has strongly resisted such demands.

Intellectual property is another US priority, and its accession negotiators are demanding steps that demonstrate Russia's seriousness with regard to enforcing IPR legislation. However, in July, President Putin warned that Russia would stop abiding by WTO rules if its accession bid were blocked: "If for some reason we cannot reach agreement, we will no longer be responsible under accords that we have not only approved but that we are fulfilling, despite the fact that we are not a member of this organisation."

Vietnam's Accession May Be Delayed

Vietnam's Trade Minister Truong Dinh Tuyen said in September that his country would not join the WTO 'at any cost', and could miss its unofficial deadline for wrapping up the WTO accession process by the November Summit of the Asia Pacific Co-operation Forum, which will take place in Hanoi.

Vietnam had hoped to reach a multilateral agreement on its terms of accession at the 10-11 October meeting of the WTO General Council. Bilateral negotiations have already concluded with a number of WTO Members, but the results still need to be 'multilateralised', i.e. accepted by the WTO membership as a whole. However, Minister Tuyen told the press on 29 September that, during the latest round of multilateral talks, some trading partners had raised issues already resolved bilaterally. Agriculture, intellectual property protection, textiles and financial services have been the key issues of the negotiations. In the US in particular, textile producers are requesting guarantees that the government will react if domestic manufacturers are injured by a flood of cheap imports once the quotas currently imposed on Vietnamese textiles are eliminated. Vietnam – already a frequent target of anti-dumping duties by both developed and developing countries – fears that such measures will further increase after WTO accession.

Aid for Trade Endorsed at World Bank and IMF Meetings

Meeting in Singapore in September, the ministerial advisory bodies of the World Bank and the International Monetary Fund called on WTO Members to resist calls for protectionism and endorsed increased Aid for Trade separate from the Doha Round's conclusion.

Media attention focused heavily on the increase of IMF voting rights for China, Mexico, South Korea and Turkey, and the endorsement of World Bank President Paul Wolfowitz's controversial anti-corruption drive.

While the move to strengthen developing country influence in IMF decision-making elicited near unanimous approval, many governments (led by the UK), as well as civil society organisations, expressed serious concern about conditioning World Bank loans and grants to poor countries on their corruption record. This, the critics said, would amount to punishing people for the double misfortune of being poor and having a corrupt government. Under the Wolfowitz initiative, some aid has already been suspended to Bangladesh, the Democratic Republic of the Congo and Ethiopia. The Development Committee, which provides advice to the Boards of Governors of the Bank and the Fund, stressed the importance board oversight on the further development and implementation of the anti-corruption strategy, and requested it to report on the matter at the Development Committee's next meeting.

The Development Committee also called upon WTO Members "to avoid backsliding and provide trade ministers with the necessary flexibility to resume the [Doha Round] negotiations by the end of the year." The International Monetary and Financial Committee, which advises the IMF Board of Governors, underscored that reinvigorating the momentum of multilateral trade liberalisation was 'critical' to sustaining the foundations of global growth. It expressed 'deep disappointment' over the suspension of the Doha Round, and called for leadership from the major trading nations to work urgently toward an early resumption of the negotiations.

Aid for Trade

In his address to the Development Committee, WTO Director-General Pascal Lamy stressed that Aid for Trade (A4T) was not formally part of the Doha Round and would continue to move forward despite the suspension of negotiations. He noted that the question of "who gains what?" from trade liberalisation could not be left to market forces only, and that an effective international response was needed to "address concerns about adjustment costs, capacity constraints and supply responses in developing countries and LDCs." Mr Lamy also said that A4T should contribute to increasing the capacity of LDCs and developing countries to take advantage of new market opening opportunities.

Director-General Lamy characterised the WTO's role in A4T as predominantly one of advocacy for additional resources and enhanced co-ordination both at the multilateral level and at the domestic level in the case of beneficiary countries, and said he expected the General Council's consideration of any institutional role for the WTO to focus on monitoring A4T as no direct development assistance role was foreseen for the institution. Generous additional development assistance for trade projects would be particularly important once the results of the Doha Round started to be implemented, he said.

The development and finance committees both welcomed the recommendations of the WTO Task Force on Aid for Trade (Bridges Year 10 No.5, page 8), but provided no details on how they should be operationalised. They did, however, stress the importance of grounding A4T firmly in national development strategies, independent of progress on the Doha Round.

What Mechanism for Strengthening Regional A4T?

A specific Aid for Trade issue on the Development Committee's agenda was strengthening support for regional, sub-regional and cross-border needs.

Presently, both the Bank and the Fund, as well as the regional development banks, interact almost exclusively with national governments. In a report prepared for the Development Committee meeting, World Bank and IMF staff noted that using country-based instruments to support multi-country co-operative projects could generate high transaction costs. For example, World Bank support for strengthening the Eastern Caribbean Telecommunications Authority (ECTEL) involved loans and credits to five member countries of the Organisation of Eastern Caribbean States although the primary recipient was ECTEL, a non-sovereign regional body. The need to develop a series of linked country loans/credits generated substantially higher costs than would have been necessary if there had been a regional or multilateral facility to support ECTEL directly.

Infrastructure projects involving several countries may also be negatively impacted by the lack of a regional grant facility, particularly when the project is perceived as benefiting one country more than the other(s).

The WTO Task Force on Aid for Trade had recommended exploring the merits of establishing a Regional Aid for Trade Committee, comprising regional and sub-regional organisations and financial institutions, to monitor the implementation of the regional aspects of A4T. While World Bank and IMF staff agreed that there was a rationale for strengthening channels and capacity for regional A4T initiatives, their report firmly rejected the establishment of "new and unproven institutional arrangements to manage and deliver aid for trade," and recommended building on existing donor co-ordination structures instead. At the WTO, regional and cross-border A4T should be monitored by the 'overall effort', which envisages periodic global reviews based on reports from multiple sources, an annual General Council debate to provide political guidance, and an assessment of

Continued on page 10

A4T in the trade policy reviews of both donor and recipient countries.

The World Bank/IMF staff report proposed three different solutions to addressing regional needs.

The first would involve donors responding to proposed regional projects through existing bilateral and multilateral facilities. However, Bank and Fund staff warned that this option might “do little to directly address the co-ordination or capacity constraints that affect co-operation in regions where grant funding mechanisms to support regional cooperation do not exist.”

The second option would be the establishment of a dedicated grant financing mechanism that would essentially fund analysis on such topics as the costs and benefits of regional co-operation on policy integration, infrastructure, joint regional facilities, project preparation, and capacity-building and technical assistance.

The third option would, in addition to analysis and capacity-building, “extend the scope of grant financing to cover a share of the costs associated with large-scale infrastructure projects,” where the costs involved would fall disproportionately on a country compared to the benefits it would receive from the project. This option should only be envisaged as “part of a re-direction of ODA that is already being pledged to Aid for Trade, and should not be entertained if it came at the expense of crowding out other existing development efforts.”

The trust fund facility under options two or three could be established in an existing development institution, such as the World Bank or regional development banks, but should be flexible and open to any implementing body designated by the governments involved.

While the staff of the two institutions had sought the ministers’ views on these options, the Development Committee’s final communiqué only noted that there was agreement on “the need to improve existing instruments to address cross-country and regional projects and strengthen the monitoring of regional initiatives and funding.”

Financing A4T

The communiqué also reiterated donors’ commitment to expanding funding and strengthening mechanisms for Aid for Trade, but made no additional financing pledges. UK Chancellor of the Exchequer Gordon Brown, however, said separately that his government would raise its A4T commitment by 50 percent over the next three years, which would take total UK support for infrastructure, such as roads, ports, power and telecommunications, to US\$750 million by 2010.

Previous pledges, made at the WTO’s Hong Kong Ministerial Conference, include US\$10 billion over three years for trade, production and distribution infrastructure from Japan, US\$2.7 billion from the United States by the year 2010, and EU trade-related development assistance spending worth • 2 billion (about US\$2.56 billion) by 2010.

WIPO General Assembly Highlights

The General Assembly of World Intellectual Property Organisation has agreed to continue discussions on the proposed WIPO Development Agenda for another year. Member governments had sent no recommendations on the way forward to the meeting due to the sharp differences that emerged in a preparatory session in June (Bridges Year 10 No.4, page 18).

It was agreed that the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) would hold two five-day sessions to allow for structured in-depth discussions on all 111 proposals made so far. The first meeting is to cover the 40 proposals that were included in a Chair’s draft text in June, and were later tabled as a government submission by the Kyrgyz Republic. The 71 remaining proposals – mainly put forward by the so-called Friends of Development, which seek more substantive changes to WIPO’s orientation – will be discussed at the second meeting.

According to WIPO, the committee will seek to narrow down the proposals in order to ensure that there is no repetition or duplication; separate ‘actionable’ proposals from those which are declarations of general principles and objectives, “and note those proposals, which relate to existing activities in WIPO and those which do not.” The committee is to report to the 2007 General Assembly, with recommendations for action on the agreed proposals, as well as a framework for continuing to address on the remaining proposals. Meanwhile, the Permanent Committee on Intellectual Property and Development, which has dealt with co-operation for development, will cease to exist.

The General Assembly also agreed to convene a diplomatic conference from 19 November to 7 December 2007 to finalise negotiations on a new treaty that is to enhance protection of broadcasting and cablecasting organisations. Developing country delegates and civil society activists expressed satisfaction at the decision that the treaty would take a ‘signal-based’ rather than a ‘rights-based’ approach, as the latter would have had a greater likelihood of substantially raising the costs of using broadcast material for personal or educational purposes, as well as restricting the entry of information into the public domain.

WIPO members decided not to hold a formal meeting next year of the Standing Committee on the Law of Patents, which is the main WIPO body working on the Substantive Patent Law Treaty (SPLT) aimed at harmonising patent laws worldwide. Those talks have been adrift since April.

The next issue of Bridges will cover the General Assembly outcome in more depth.

Abidjan Waste Dump Reveals Many Loopholes

The late November 2006 Conference of the Parties to the Basel Convention is likely to see a renewed push for a total ban of hazardous waste shipments from developed to developing countries.

The new impetus stems from the illegal disposal of toxic substances in open pits around the Ivory Coast's former capital Abidjan. Contamination from the waste is thought to be the cause of at least seven deaths, dozens of hospitalisations and tens of thousands of medical consultations.

According to Ivorian authorities, the dumping occurred on 19 August, when more than 500 cubic metres of wastes from the Probo Koala – a Panamanian-registered vessel contracted by a Dutch-based energy trading company called Trafigura Beheer BV – were deposited in 14 sites, some of which were near water sources. Trafigura has denied any wrong-doing, and insists that it had obtained all the necessary authorisations to release the consignment to a certified Ivorian processing company called Société Tommy. However, instead of being processed, the waste ended up untreated in ordinary rubbish tips around Abidjan.

It is still unclear exactly where the waste was generated or what its precise nature was. Trafigura maintains that it consisted only of gasoline, spent caustic soda and water, resulting from cleaning the tanks of the Probo Koala. The company said on 24 September that its own analysis of a sample of the waste showed no presence of hydrogen sulphide. An initial analysis by an Ivorian laboratory found hydrogen sulphide and other toxic chemicals compounds in several samples. Hydrogen sulphide is thought to be the reason for the foul smell emanating from the waste, as well as the main cause of the respiratory difficulties experienced by thousands of Abidjan residents.

While the legal responsibilities are still being determined, domestic, regional and international laws are likely to have been infringed. The case is complicated due to uncertainty over the origin of the waste, the exact role played by each of the actors involved, as well as the multiple legal regimes that may apply (see box). Trafigura Beheer BV is registered in the Netherlands, while the Greek-owned tanker chartered by the company sailed under a Panamanian convenience flag.

The incident is being investigated by the Dutch public prosecutors office, Amsterdam city authorities, the Basel Convention Secretariat and the criminal police of the Ivory Coast, where ten people are in custody. On 28 September, Estonian criminal police impounded the Probo Koala in the port of Paldiski to investigate possibly toxic slops it was trying to unload there.

The Basel Convention & Ban

Cross-border trade in toxic waste is regulated – but not prohibited – by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The so-called Ban Amendment goes further: it prohibits the movement of any hazardous wastes from OECD member states to all other parties. The amendment was championed by African countries, as well as civil society organisations, due to concerns over weak monitoring, enforcement and/or disposal capabilities. Eleven years after its conclusion in 1995, however, the Ban Amendment has not yet entered into force due to an insufficient number of ratifications, including those of many African, Latin American and South Asian countries. Australia, Canada, Japan and New Zealand are among the developed countries that have not ratified the amendment. The US has ratified neither the Basel Convention nor the Ban Amendment.

The Ban has been controversial from the very beginning. Its defenders see it as a means to ensure that developing countries, particularly those with weak monitoring capacities and poor disposal facilities, are not used as a convenient dumping ground for dangerous waste from rich countries. In addition, requiring developed countries to treat hazardous waste in an OECD member state, where disposal costs tend to be much higher than in most developing countries, would incite companies to reduce toxic waste generation in their production processes.

A number of developing countries, however, see hazardous waste trade as a legitimate business opportunity. In India and Mexico, for instance, waste processing is an industrial speciality, and companies have invested heavily in treatment plants and technology. So far, only 30 developing and least-developed countries have ratified the Basel Ban.

- Ivorian legislation dating from 1988 prohibits all acts related to the purchase, sale, import, transit and warehousing of hazardous industrial or nuclear wastes and harmful substances.
- The import of “all hazardous wastes, for any reason” into Africa from non-Contracting Parties is prohibited by the Bamako Convention.
- The International Convention for the Prevention of Pollution from Ships (MARPOL) regulates waste from onboard operations on ships. It covers, *inter alia*, the prevention of pollution caused by harmful substances, sewage of garbage carried by sea.
- The Basel Convention requires the generator/exporter of hazardous waste to declare the exact nature and quantity of the waste to competent authorities in the importing country, and to obtain their prior informed consent. Each person who takes charge of the waste must sign a movement document upon delivery/receipt of the wastes in question. The disposer of the wastes must inform both the exporter and the competent authority of the exporting country that it has received the waste and, in due course, of the completion of disposal.
- The European Union has already implemented the Basel Ban. All hazardous waste shipments from EU member states to non-OECD countries are prohibited.

EPA Negotiations Complicated by Doha Collapse

Negotiations on a new trade relationship between the European Union and countries belonging to the African, Caribbean and Pacific (ACP) Group of States face new uncertainties due to the Doha Round delay.

Briefing the joint ACP-EU Parliamentary Assembly on 13 September on the current state of play of the negotiations for Economic Partnership Agreements (EPAs), the Chair of the ACP Subcommittee on Trade and Commodity Protocols Joseph Ma'ahanua told the audience that the high likelihood of the EPA negotiations concluding before the Doha Round does make it "extremely difficult to conclude WTO-compatible EPAs when WTO compatibility remains a moving target."

WTO-compatibility is inscribed in the EPA negotiating mandate, which aims to replace the EU's long-standing unilateral preferences for ACP exports with six regionally-based free trade areas. Least-developed ACP countries need not participate in EPAs, and will keep their duty-free access.

Current WTO rules – adopted when North-South trade agreements were virtually inexistent – require parties to regional free trade areas to eliminate duties and other restrictive regulations to commerce on 'substantially all the trade' between them. In April 2004, ACP countries submitted a paper to the Negotiating Group on Rules calling for special and differential treatment provisions to be added to Article XXIV of the GATT with regard to 'asymmetrical' free trade areas formed by developed and developing countries. Key points of the proposal were (i) more flexibility for developing countries in meeting the 'substantially all the trade' requirement in respect of trade and product coverage; (ii) interpreting the term 'other restrictive regulations of commerce' in a manner that allows the developing country parties to apply "contingency protection measures including safeguards and other non-tariff measures"; and (iii) extending the maximum transition period for developing countries to at least 18 years after the agreement's entry into force.

The proposal aimed to ensure that 'less than full reciprocity' in commitments under the EPAs could not be challenged in the WTO.

However, the rules negotiations at the WTO are now suspended together with other Doha Round issues, which leaves EPA negotiators without guidance as to whether EPAs "will end up being WTO-plus or WTO-minus and in either case whether this would mean a renegotiation or revision of EPAs when the Doha Round is concluded." The EPA scheme is scheduled to enter into force on 1 January 2008.

ESA Obtains Trade Financing

Different EPA areas have repeatedly stressed the need for specific and additional financing for the EPA process to cover adjustment and other costs.

Eastern and Southern African (ESA) countries said on 28 September that a breakthrough was made in their EPA negotiations when the EU made a commitment to mobilise up to five billion euros in order to enhance trade within the region. The bulk of the money will be destined to infrastructure projects identified by ESA members, and at least some of it is likely to be counted by the EU as Aid for Trade spending. The negotiations are now expected to focus on other areas. Both sides said they hoped to conclude the talks on schedule.

The ESA consists of four developing nations – Kenya, Mauritius, the Seychelles and Zimbabwe – and 12 least-developed countries (LDC's) – Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Rwanda, Sudan, Uganda and Zambia.

Criticisms and Counterclaims

On the eve of the EU-ESA meeting, the international development NGO Oxfam released a report, which called on the EU to "use the formal review of the EPAs process over the next few months to redirect negotiations onto a different path." It charged that the EPAs as currently pursued would: force farmers and producers in many of the world's poorest countries into direct and unfair competition with efficient and highly subsidised EU producers; undermine regional integration amongst ACP countries, and; cause substantial revenue losses to ACP governments due to tariff reductions on EU goods, as well as a loss of policy tools needed to support economic and social development. Oxfam also said the European Commission should drop its ambitions of having reciprocal market access with ACP countries, and stop insisting on the inclusion of competition policy, investment, and government procurement in the final agreement. WTO membership has already rejected these issues from the Doha Round negotiations, and most ACP negotiators have stressed that they are not ready to undertake new commitments in these areas.

In response, the EU Trade Directorate posted a press release on its website refuting much of the criticism. The document described EPAs as "broad agreements, helping build regional markets and diversify economies in the ACP regions and ultimately opening trade between the EU and these markets in a way that reflects regional sensitivities while integrating ACP economies into the global economy in a sustainable way." DG Trade maintained that ACP tariff reduction was a joint decision, motivated in part by the experience of emerging Asian economies, where 'progressive and targeted reduction' of customs duties had benefited consumers and companies (via cheaper machinery, raw materials and parts for assembly) and made local products more competitive. DG Trade stressed that it had never proposed either a total elimination, or symmetry of commitments. It also denied proposing that the lowest applied rates of ACP states become the basis for a single new external tariff.

In addition, the document asserted that the transition period for ACP countries would be a 'decade or more' and would "maintain exceptions that reflect particular needs – exceptions that Peter Mandelson has said he will defend in the WTO if necessary."

EU Joins the Pursuit of Free Trade Agreements in Asia

Signalling a new orientation for EU trade policy, Trade Commissioner Peter Mandelson has urged EU member states to consider “new free trade agreements designed to deliver more open markets and fairer trading conditions in new areas of growth, particularly in Asia.”

The proposal is part of the EU’s latest ‘external competitiveness strategy’ adopted by the European Commission on 4 October. In addition to traditional market opening, the strategy aims to ‘sharpen’ the Commission’s ability to “identify and remove new barriers to trade in key markets and sectors whether in relation to fair competition, public procurement, IPR or restrictions in trade in energy goods.”

The ground has already been prepared for an FTA with the Association of Southeast Asian Nations (ASEAN), and Mr Mandelson said in May that he would seek member states’ approval for opening negotiations with the 10-member bloc this fall (Bridges Year 10, No.3, page 15). Exploratory technical level talks are also underway with South Korea.

On 13 October, Indian and EU leaders are expected to ‘launch positive signals’ about beginning free trade negotiations sometime in the not-too-distant future as technical experts from both sides have already concluded that there is “a strong case for launching bilateral FTA negotiations.” However, the EU Trade Directorate said on 27 September that further preparatory work would be needed in sensitive areas, such as services, intellectual property rights and government procurement, before the talks would be formally launched.

Negotiations were announced at the September 2006 Asia-Europe Meeting (ASEM) on a new EU-China Partnership and Co-operation Agreement, which is to “encompass the full scope of their bilateral relationship, including enhanced co-operation in political matters.” The Commission will issue a comprehensive ‘China strategy’ before the end of October.

Intra-Asian Integration

ASEM 2006 also saw the signing of an FTA between Japan and the Philippines, the first such agreement where Japan has included provisions for the movement of labour. The first categories of service-providers to benefit from the new market opening are expected to be Filipino nurses and caregivers.

Meanwhile, FTA talks between India and ASEAN continue to inch forward. Negotiators are expected to tackle next the so-called ‘negative lists’ of sensitive agricultural products – 854 for India and 600 for ASEAN – that both sides are proposing to shield from full tariff cuts. The ASEAN list is identical to the one the bloc negotiated in its FTA with China. India has agreed to divide its list in two, proposing to gradually reduce tariffs on 454 items after five years of implementation of the agreement, while the list containing the remaining 400 tariff lines would be reviewed after five years. In addition, India has offered to reduce duties on tea and pepper to 50 percent, and 60 percent on palm oil, over a ten-year period starting five years from the agreement’s entry into force.

Mauritius is poised to sign preferential trade agreements (PTAs) with India and Pakistan in October and November respectively. Both agreements are expected to provide duty-free access or other concessions on dozens of Mauritian exports. In addition, the US and Mauritius signed a Trade and Investment Framework Agreement (TIFA) on 18 September, under which a special council will be set up to address such issues as trade promotion and development, export diversification, trade capacity-building, intellectual property protection, labour, investment and the environment.

US-Asia Snapshot

Despite continuing disagreement over several key issue areas, the US and South Korea are still hoping to conclude FTA negotiations in time for the deal to be approved by Congress before the expiry of the President’s Trade Promotion Authority (TPA) in July 2007.

During a third negotiating round in early September, Korean officials described the tariff cuts offered by the US on industrial goods as insufficient in both scope and depth, while US negotiators balked at Korea’s proposal to exclude 284 agricultural products, including rice, from tariff reductions. The US is also trying – so far in vain – to induce Korea to increase its cap for foreign ownership of cable and satellite companies, while the Korean side has been unable to obtain concessions on US anti-dumping practices.

Another point of contention is Korea’s intention to move to a ‘positive list’ reimbursement system for medicines. Drugs on the list must be reasonably priced. The US pharmaceutical sector is pushing for changes and guarantees that the new approach will be implemented in a ‘non-discriminatory and transparent manner’. The next negotiating round is scheduled for 24-27 October.

Negotiations between Washington and Bangkok, started in 2004, were suspended in February 2006 due to political uncertainty in Thailand. US Trade Representative Susan Schwab said on 20 September that it was too early to assess the impact of the military coup there, but did not rule out a resumption of the talks if a government emerged that was “ready, willing and able to negotiate a free trade agreement.”

It also looks increasingly unlikely that the US-Malaysia FTA will be finalised in time for Congressional approval before TPA expiry. Among problem areas, the US is pressing for greater access to Malaysia’s government procurement market, and Malaysian civil society opposes the treaty due to concern over stricter intellectual property protection for medicines, which would make access to generic drugs more difficult.

In related news, the Office of the US Trade Representative has recently expanded the scope of its intellectual property division to include in particular innovation in pharmaceuticals and medical technology issues.

US-Uruguay TIFA

Uruguay has renounced its ambition to negotiate a free trade agreement with the US. According to President Tabaré Vazquez, the country's cabinet concluded on 28 September that the schedule imposed by the US Trade Promotion Authority "didn't give us the sufficient time to analyse in depth the different chapters involved in the overall trade operation". Instead, Uruguay and the US will negotiate a Trade and Investment Framework Agreement (TIFA), which can be a stepping stone for a full FTA, but does not need Congressional approval. The TIFA negotiations could conclude within eight to twelve months.

Uruguay had been at odds with its Mercosur partners – Argentina, Brazil and Paraguay – over the US-Uruguay FTA plan, which would have meant concessions beyond the common external tariff that Mercosur members apply to imports from other countries. In announcing the TIFA, President Vazquez specifically pointed out that this option did not "have an impact on the common external tariff, which is the heart and soul of Mercosur, as was recently defined by the Brazilian foreign affairs minister." The US is currently the main destination for Uruguayan goods, as well as the largest foreign investor in the country.

In related news, the US Senate approved a bilateral investment treaty (BIT) between the two countries on 14 September. According to the Office of the US Trade Representative, the investment protections in the BIT will offer "current and future US investors in Uruguay a more stable and predictable legal and regulatory environment, thereby promoting increased investment in Uruguay, greater two-way trade, and expanded economic growth and prosperity in Uruguay." USTR Susan Schwab also said that the BIT would advance the Bush Administration's policies to "strengthen trade and investment ties across Latin America."

Uruguayan lawmakers have already overwhelmingly approved the BIT, which will enter into force 30 days after the exchange of instruments of ratification.

New US GSP Proposal Draws Opposition

The US House of Representatives has postponed the consideration of a proposed new General System of Preferences law due to opposition from textile states.

Ten Conservative representatives from Alabama, Georgia, North and South Carolina, and Virginia requested the postponement, because the bill under consideration (H.R. 6142) would extend until September 2008 duty-free access under the African Growth and Opportunity Act (AGOA) for apparel made with fabric from anywhere in the world up to a limit amounting to 3.5 percent of all US apparel imports. After that, a new 'value-added' rule of origin would be introduced, limiting duty-free access to goods in which 50 percent of value is added either in AGOA or another US FTA partner. The bill would also grant duty-free entry for three years to apparel made in Haiti, provided that 50 percent of the value is added there.

The textile-state representatives called these two provisions a 'dramatic change' in the rules of the game that would allow "apparel assembled in Haiti and Africa from Chinese fabrics with Chinese yarns duty-free access to the United States" and be devastating to the US textiles industry.

Brazil and India Targeted

H.R. 6142 would also extend the US Generalised System of Preferences (GSP) for two years, but change certain provisions so as to limit Brazil's and India's access to GSP benefits. The two countries are currently the greatest GSP beneficiaries, with exports under the programme in 2005 amounting to US\$3.6 billion for Brazil, and US\$4.1 billion for India.

The bill would make countries with per capita incomes above US\$3,400 – Brazil's was US\$3,460 in 2005 – ineligible for the 'competitive need limit' (CNL) waivers they need to keep (or to obtain) GSP benefits for certain products. In principle, US legislation requires the termination of GSP market access for any product that accounted for more than 50 percent of all US imports of that product in the previous year, or the imports of which exceeded a certain dollar amount (currently US\$100 million). The president may, however, waive the application of these CNLs, and 83 such waivers are currently in force. Brazil stands to lose 19 waivers, including one that covers auto part exports worth US\$300 million. Waivers would also be terminated for Argentina, Turkey and Venezuela under the income cap criteria.

In addition, the bill would not allow CNL waivers for a specific product from a single country that exported more than US\$1.5 billion of that product in the previous year. According to US sources, this provision would cover Indian precious metal jewelry, imports of which in 2005 amounted to US\$1.59 billion, by far the greatest single GSP export from any individual country, and about 40 percent of all Indian GSP exports.

Senate Finance Committee Chairman Charles Grassley said on 21 September that instead of tightening the rules on product eligibility, he wanted Brazil and India graduated out of the GSP programme altogether. Along similar lines, Senate Agriculture Committee Chairman Saxby Chambliss has said that the GSP should focus on countries that needed preferential treatment, and not reward those that threaten litigation against the US, work against its goals in the Doha Round or do not protect intellectual property rights.

Alternative Proposed

An alternative proposal introduced by Senator James Inhofe in late September would extend the current GSP for three years, but allow the administration to consider "a country's position and level of co-operation with the United States in multilateral negotiations" as a factor in determining a country's GSP benefits. This provision could make it easier to terminate all GSP privileges for countries such as Brazil and India, but not only them, if they were found to lack co-operation in the Doha Round negotiations or other fora such as the World Intellectual Property Organisation.

Shining a Light into the Black Box

M. Ann Tutwiler and Lauren Rosapep

Market access is the most important, most complex and most political issue the Doha Round agriculture talks. It is no wonder that the US Trade Ambassador characterised the market access pillar as a Black Box when the Round slouched toward suspension in July.

The market access pillar became a Black Box in part because of the successes and the shortcomings of the Uruguay Round Agreement (URAA). Developed countries consented to cut agricultural tariffs by 36 percent on average, with a minimum 15 percent cut in each tariff line. Countries (mostly developed) were allowed to apply special safeguards to guard against import surges, and agreed to provide minimum market access through tariff-rate quotas. There were a few commodities and countries that obtained special treatment, but by and large, this relatively simple framework applied equally to all countries and all commodities.

However, the Uruguay Round framework did not increase market access as much as expected. In an effort to obtain a more meaningful agreement in the Doha Round, the number of parameters expanded. But, no sooner than one measure expanding market access was added, another measure closing market access sprang up alongside it.

The New Negotiating Parameters

Tariff Caps: The URAA did not reduce prohibitively high tariffs that blocked all trade. To remedy this, Doha Round negotiators proposed a cap on extremely high tariffs. Up for negotiation: the level of the cap; whether it should be the same for developed and developing countries; whether it would apply to Sensitive and Special products; and whether it would be implemented from the beginning or at the end of the Round.

Tiered Formula Cuts: In the URAA countries could make deep percentage cuts in a large number of relatively low tariffs, and shallow percentage cuts in a small number of highly protected commodities. Tariff differences across commodities became more trade-distorting and there was little market access in the most highly protected commodities. Doha Round negotiators proposed a tiered tariff cutting formula, with larger cuts in higher tariffs. Up for negotiation: the level of the bands; whether the bands would be the same for developed and developing countries; the type of formula cut within the bands.

Special Safeguard Measures: Under the URAA, only countries that converted non-tariff barriers into tariffs were eligible to use the existing special safeguard mechanism. Because many developing countries did not convert their tariffs by this formula, they could not make use of that provision. The proposed solution: a special safeguard mechanism (SSM) for developing countries. Up for negotiation: the price and volume triggers for the proposed SSM.

Sensitive Products: The tiered formula cuts and tariff caps were designed to increase market access in the most highly protected commodities. The Group of Ten, led by Japan, feared that these measures would force them to make significant cuts in the high tariffs that protected politically important products. The proposed solution: Sensitive Products. Up for negotiation: how many tariff lines could be designated as 'sensitive' and at what level of the tariff code? To what extent (if any) would they be subject to tariff caps, tariff rate quotas or formula tariff cuts? (Note: Both developed and developing countries could designate Sensitive Products.)

Special Products: For their part, the Group of 33 developing countries feared that the tariff caps and tiered formula cuts would subject their subsistence farmers to competition from subsidised developed country farmers and commodities. They advocated and won a Special Products designation based on livelihood, food security and rural development needs. Up for negotiation: how many such could be designated, and how would they be chosen and treated.

Market Access for LDCs: In Hong Kong, least-developed countries (LDCs) obtained a commitment for duty-free/quota-free (DFQF) access to rich country markets for 97 percent of

their products. Separately, developing countries argued that tropical products should have DFQF treatment to help poor countries and those trying to diversify out of drug production. Up for negotiation: whether the DFQF commitment could be increased to 100 percent; over what time frame such an expansion might occur; and whether middle-income developing countries should also provide DFQF access to LDCs. And, what is a 'tropical' product, and does it include the politically sensitive commodities of rice and sugar?

This complex (and partial) web of negotiating parameters has made it impossible for any country to know what another country's proposal to cut average tariffs by 40 or 50 or 60 percent really means without knowing how many (or which) products might be exempted as Special or Sensitive. It is impossible for countries to agree on how many tariff lines should be designated as Special or Sensitive until an agreement is reached on how they would be treated. It is also impossible for a country to know whether a tariff cap will be meaningful, if the most highly-protected commodities would be 'sensitive' and possibly exempted from capping.

Back to Basics?

This is troubling because improving market access delivers the bulk of the benefits of trade liberalisation to both developed and developing countries. From an economic point of view, both groups are better off with fewer market access barriers and fewer exemptions rather than more market access barriers and more exemptions. (This is particularly important for developing countries because they face higher tariffs in developed and other developing countries.) Unfortunately, the negotiating dynamic is focused on the offering the lowest possible reductions in tariffs and creating the highest possible exemptions from tariff cuts.

Protection for 'sensitive' commodities (such as rice, beef and sugar) accounts for most of

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the welfare lost due to trade barriers; conversely removing those trade barriers would yield the greatest gains from improved market access. Many of these ‘sensitive’ commodities are of vital interest to developing countries. A World Bank study estimates that exempting only two percent of tariff lines reduces the gains from reform by two-thirds.¹ Ironically – given the fierce debate over whether fifteen, eight or one percent of tariff lines should be sensitive – the study indicates that the biggest losses occur when the exemptions go from zero to two percent – not from 15 to eight percent, or even eight to three percent.

‘Special’ products emerged from the Development Box concept as a means to provide developing countries with ‘policy space’, and allow them to ‘protect’ potential losers from trade reforms. But, exempting Special Products will not convert economic losers into winners. Rather, developing countries will lose the benefit of their own reforms. Nor is it clear that allowing countries to maintain high tariffs and other border measures will help subsistence farmers unless governments use this policy space to invest in rural infrastructure, to help subsistence farmers improve their productivity, and to create vibrant markets. Raising prices of staple foods may hurt poor consumers.

A widely-circulated study on Special Products concluded that allowing even a substantial number of tariff lines as Special Products would have relatively small costs.² However, the study’s benchmark Doha scenario was so unambitious that abandoning all agricultural trade reforms in developing countries would make little difference.

Not Knowing Your Own Needs

Seen through this lens, the positions taken by some countries become hard to understand. For instance, the US focus on improved market access in the EU and Japan is certainly misplaced. If current demographics persist, both will lose population over the next 50 years, and US farmers will be left to fight for a share of already saturated, and shrinking, stomachs. The position of some developing country exporters, who have stood by quietly while their negotiators have demanded huge (and in some cases unlimited) exemptions for Special Products, is equally mystifying.

Current and potential exporters have more to gain from broad-based economic growth in developing countries than from increased access to developed country markets. Such growth will come from improved access to OECD countries through deeper formula cuts, fewer Sensitive Products, more duty- and quota-free access, improved world commodity prices, lower trade-distorting subsidies, as well as more open markets in the developing world, fewer Special Products and stronger formula cuts.

Asking for Too Much Flexibility?

For their part, developing countries have been demanding more flexibility than many actually need to address their political and economic concerns. When the exclusion for Sensitive Products is one percent and that for Special Products is five percent, the gains to middle and low-income countries are no greater than when both parameters are set at one percent.³ A larger exclusion for Special Products buys middle- and low-income developing countries little economically and costs a lot politically.

Moreover, many of these measures are likely to be redundant. Most developing countries import a fairly limited number of products. If these countries wish to protect their markets from subsidised imports, the combination of traditional special and differential treatment and new special safeguard measures (not to mention high bound tariffs that would mean little in terms of real tariff cuts) would be more than adequate. If a developing country wished to protect commodities deemed important for livelihoods, the Sensitive Products designation would suffice. While the Doha Round is suspended, developing countries should evaluate which tools they need to address their political and economic concerns. The cost for insisting on all possible measures is not being able to demand that developed countries make deeper cuts in their own tariffs, or to demand that developed countries provide 100-percent duty- and quota-free access, nor to demand deeper cuts in trade-distorting subsidies.

Turning the Black Box into a Transparent Box

The principal goal of the WTO is to create an enforceable, rules-based trading system that applies to all Members, with special and differential treatment for developing country implementation. This principle should apply to all market access measures. If Sensitive Products are limited to a certain number of tariff lines, with no other criteria, then Special Products should also be limited to a certain number of tariff lines, with no other criteria. There should be a direct relationship between these numbers: if a certain percentage of tariff lines can be designated as ‘sensitive’ then some multiple of that percentage could be designated as ‘special’. Similarly, if TRQs are required on all ‘regular’ products, then they should be required on Sensitive and Special Products.

Returning to the Uruguay Round

These complexities crept into the market access pillar in response to economic and political demands to make the Uruguay Round Agreement tougher on the one hand and softer on the other. Given this tug of war, it might be better to return to a simpler framework that is meaningful, predictable and enforceable, while retaining enough flexibility to deal with legitimate concerns.

If countries demanded Special and Sensitive Product exemptions to address political concerns about tariff caps and tiered formulas, then the interests of trade reform would be better served by a return to a Uruguay Round formula, without Sensitive and Special Product exemptions and without a tariff cap. To ensure real improvements in market access, the average and minimum tariff cuts could be set at higher levels, say 66 percent for developed countries (the upper end of the average cut proposed in the current talks) and 50 percent, respectively. To make the cuts more meaningful, the average could exclude tariff lines already at zero and include products now covered by *ad valorem* tariffs. Tariff escalation could be addressed within the Uruguay Round formula by requiring countries to make, for example, one-third higher cuts on processed products than they make on the raw product. While returning to the Uruguay Round formula would undermine the great innovation of the ‘tiered’ formula cuts, but it might be worth it, for more predictability.

While abandoning the tariff cap would undermine another significant innovation of the July 2004 Framework Agreement, the benefits of a tariff cap could be completely undone if Sensitive and Special Products were exempted from it. The 2005 World Bank paper indicated that a tariff cap applied in conjunction with Sensitive and Special Products would decrease the gains from trade reform by one-third, and an earlier IPC study demonstrated that the caps would have to be set below 100 percent for developed and developing countries to affect many products.⁴ If this is the case, returning the Uruguay Round formulation of a minimum market access requirement might be more effective for many products.

Market Access as if Development Mattered

The market access discussions are moving in the wrong direction, if the goal of the trade negotiations is to promote economic development and to expand the opportunities for the world's farmers. If development matters, the most important objectives for the market access negotiations should be a large reduction in tariffs, a small number of Special and Sensitive Products, duty- and quota-free coverage for all products from the least-developed countries, a simplified Special Safeguard Measure for developed and developing countries, improved TRQ administration and Aid for Trade.

Despite the July suspension, an agreement is close on domestic support and export competition, and in truth, an agreement is reachable on market access. During the hiatus, wealthy countries need to reframe their domestic debates around the need to foster economic growth and create growing markets in the developing world, rather than on quid-pro-quo trade-offs between domestic support and market access. Poor countries need to reframe *their* domestic debates around the need to reform their own economic and trade policies to create the condi-

tions for broad-based rural and agricultural development, rather than on a wish list of redundant and counter-productive measures. And, perhaps it is time for negotiators to step back and assess whether the long list of measures populating the Black Box are really necessary to achieving these goals.

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EU Subsidies and the Fishing Industry

Michael Earle

As the third greatest fishing power and largest market for fish in the world, as well as a generous provider of subsidies, the EU's fisheries policies are significant factors in WTO negotiations on fisheries subsidies.

EU Subsidies 2007-2013

In July 2006, the European Union finally adopted the provisions of its new subsidy programme for fisheries, some two years after the Commission had published its initial legislative proposal. Although the discussions over what should and should not be subsidised were very animated, as is usual in the EU, the primary reason for the delay was the bitter wrangling among the Member States and the Commission over the whole budget for the EU for the period 2007-2013, known euphemistically as the 'financial perspectives'. In the midst of that wider debate, the fishery subsidy discussions received rather less attention.

The European Fisheries Fund (EFF) has now been published¹ and its contents are bound to have an impact on the position of the EU in negotiations over fisheries subsidies in the WTO. It provides a total of • 3,849,000,000 for the seven-year period 2007-2013, which may be used by the various Member States to fund a wide range of measures. In light of the WTO discussions, the most interesting subsidies that the EU will provide are for:

- vessel owners facing temporary halts to fishing, due to such things as recovery plans imposed by the EU, national plans for vessel decommissioning and non-renewal of fisheries agreements, among others;
- the permanent cessation of fishing, by means of vessel scrapping or converting the vessel to non-fishing activities;
- vessel modernisation involving improvements in safety, working conditions, hygiene, product quality, energy efficiency and selectivity "provided it does not increase the ability of the vessels to catch fish";²
- engine replacement, though for larger vessels the new engine must be 20 percent less powerful than the old one; and
- investments to improve gear selectivity, including gear replacement.

Many other measures may be subsidised as well, including socio-economic compensation for fishers (retraining, early retirement, etc.), aid for the aquaculture sector, inland fishing and the processing and marketing sector. Improvements in fishing ports and promotional campaigns for fish products may be supported. An important aspect to the programme is that Member States are free to allocate the money they are given among these different possible measures in any way they choose. Many of these measures had also been subsidised under the Financial Instrument for Fisheries Guidance (FIFG, from 2000-2006).

Probably the most bitterly-contested subsidies concerned the fleets. In 2005, the EU had stopped providing public aid for vessel construction, vessel transfers to third countries and certain types of vessel modernisation. This was considered to be a major improvement in the EU subsidy regime as previous subsidy programmes had an enormous

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influence on the EU's fleet, resulting in larger, more powerful vessels.³ This was not surprising, given that subsidies could reach several million euros for the construction of larger vessels. The size of EU fleets was supposedly controlled during that period by a series of Multi-annual Guidance Programmes, but even the Commission complained that they were weak and ineffective.

Thus, much of the discussion for the EFF was about whether to reinstate these subsidies, with the Southern Member States (so-called Friends of Fishing) pushing hard for such support and the Northern countries and the Commission opposed to it.⁴ The compromise that was reached involved money for engine replacement, which the fishing industry and certain Member States defended as being necessary to reach the EU's obligations under the Kyoto Protocol. However, since the Commission has frequently noted that the data available on engine size are not as accurate as they could be, the requirement for a 20 percent reduction in rated power may end up being more illusory than real.

Fisheries Agreements

Another controversial topic is bilateral fisheries agreements under which European fleets fish in the national waters of other countries. The EU has many, ranging geographically across the Pacific, Indian and Atlantic Oceans, and in terms of value from a few hundred thousand euros to € 86 million for the new agreement with Mauritania.

These agreements have frequently been criticised as being an overt and generous subsidy to the fishing industry and also as contributing to over-exploitation in the waters of the developing country in certain cases, leading to problems of food security, employment and livelihood. As part answer to those criticisms, the EU began in 2005 to replace 'fisheries agreements' by 'fisheries partnership agreements', intended to "establish sustainable fisheries outside Community waters."

It is too early to tell whether these agreements will prove to be more sustainable than earlier ones. But the WTO discussions pertain to who pays and who benefits, which is another matter. Since fisheries are an 'exclusive competence' of the EU, it is up to the Commission to negotiate these

agreements; Member States may not do so on their own. Similarly, it is the Commission who pays, through the EU budget. A ship-owner wishing to fish under a certain agreement must apply via the Commission to the third country for a licence, for which he/she must pay.

To give a concrete example, under tuna agreements, the Commission will negotiate to catch, say, 6,000 tonnes of tuna. For that, it gives the host country • 390,000 per year (• 65 per tonne) as financial compensation, at least part of which is supposed to be used to develop sustainable fisheries (scientific research, control and surveillance, etc.). If a fishing vessel gets a licence, its owner pays the host country an additional • 35 per tonne of tuna that it declares caught. If all fishing opportunities under the agreement are taken up by EU vessels, the ship-owners' payments can amount to significant supplementary sums.

It could be argued that since the Commission makes no attempt to recover the cost of the agreements from the industry, the financial compensation constitutes a subsidy to the EU fishing industry. However, these agreements are often important sources of revenue for the host countries, without which they would be even more hard-pressed to institute programmes to curb illegal and irresponsible fishing. The fact that most nations of the world have declared, in an FAO Action Plan, that they wish to stop these destructive practices should allow the Members of the WTO to take a less rigid point of view of these financial transfers.

State Aid and 'de minimis'

The EU Treaties limit the amount of support that individual Member States may provide to their industry in order to avoid distortion of competition. The provision of state aid to small and medium-sized enterprises engaged in the production, processing and marketing of fisheries products is regulated through Commission Regulation (EC) No. 1595/2004, which only allows state aid for the same types of activities or measures as the EU programmes listed above. If a Member State wants to subsidise other measures, it must notify the Commission and receive permission.

Until recently, this applied for any size of grant, but in 2004, the Commission allowed Member States to give a minimal amount – • 3,000 over a three-year period – to companies for other purposes. The Commission is in the process of increasing that amount to • 30,000. However, to prevent excessive generosity, there is a cap on total aid allowed per Member State of approximately one percent of the national value of fish production (to be increased to 2.5 percent).

This is the only way in which Member States may provide relief for fuel prices, by giving grants of • 3,000 (soon • 30,000) to companies over a three-year period. The Commission argues that such levels of aid are unlikely to threaten conservation. Since some of these euros will doubtless be used to support the fleets and their activities, the Commission's claim is arguable.

Conclusions

Since the EU has no wish to review these hard-fought domestic policies, it will try to persuade its negotiating partners in the WTO that it has found an appropriate and sustainable middle ground between a total prohibition of subsidies and *carte blanche* for any kind of aid. However, after many years of generous aid for the sector, the EU finds itself with overly large fleets, depleted fish stocks and an industry seemingly in a constant state of crisis. Time will tell if these further restrictions of funds to the fleets, combined with new recovery and management plans and other reforms, will bring the fish back.

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² Council Regulation (EC) No. 1198/2006, Art 25.2

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Assessing the Impacts of Liberalisation

Measuring the impacts of trade liberalisation on sustainable development is challenging, as the different results obtained by various recent modelling exercises have amply demonstrated.

At a meeting convened by ICTSD during the WTO's September Public Symposium, experts agreed that it was less the model used than the underlying assumptions and data that influenced the result. To make such projections useful to policy-makers, modellers should clearly lay out the premises on which they are built. It is also important to assess whether the assumptions used are valid and the way they may have affected the projected outcome. Furthermore, politicians, trade negotiators and the media sometimes mislead the public about modelling results, for instance through highlighting certain figures – such as gains expected from total agricultural liberalisation – while ignoring the study's caveats about uncertainties or other figures that reveal uneven benefits between or within countries.

The experts presenting their modelling results stressed the heterogeneity of developing countries and the differentiated potential impacts of an eventual deal in agriculture. Such impacts would depend not only on the details of the agreement, but also on supply side constraints and on natural factors such as smallness and agro-ecological conditions.

For instance, an assessment assuming a middle-of-the-ground 'friendly agreement' saw diminished gains for strong developing (and developed) country exporters compared to more ambitious liberalisation, but also showed that preference-dependent and net food-importing developing countries would lose less. Under this scenario, Mauritius, the Philippines and Thailand would make sizeable real income gains compared to those of Argentina, Brazil, the EU or the US, although the latter four would also benefit.

Another study focused on how developing countries would be affected by changes in three key elements in the agriculture negotiations. It found that: (i) 'sensitive products' would have a dramatic impact on the level of ambition attached to the Doha Round; (ii) even one percent of agricultural tariff lines designed as sensitive would substantially reduce benefits, and (iii) least-developed countries' (LDCs) gains would be multiplied by seven if their duty-and quota-free access to OECD markets were increased from the currently envisaged 97 percent to 100 percent. Fifty percent of the additional income gain – US\$7.25 billion – would be captured by LDCs and the other half would go developing Asia. Malawi's export volume could grow by 15 percent and that of Bangladesh by 13.5 percent.

There was also a general recognition that some key elements necessary for measuring sustainable development impacts were difficult to factor into the computable general equilibrium (CGE) model that is widely used to predict the outcomes of different liberalisation scenarios. For instance, assessing impacts on labour and employment cannot be effectively modelled at the global level (partial GE models could be more appropriate here). However, it would be most useful to focus such simulations at a single country level provided the availability of sufficient and reliable data.

Sustainability impact assessments (SIAs) are another way of measuring the likely effects of trade liberalisation. Undertaken on the global scale, such assessments are a particularly delicate exercise due to the multiple factors – economic, social and environmental – involved, and the difficulty in obtaining the right data. However, global SIAs can flag issues that must be addressed, while taking the process to a single country level – using more precise and detailed data – may yield valuable practical guidance to national decision-makers.

It was also suggested that a truly global assessment of the sustainable development impacts of trade liberalisation would benefit from the involvement of a multi-stakeholder steering committee comprising a wide range of international institutions, including the WTO and UNCTAD, as well as the WHO, UNEP, the ILO and others.

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Oct. 25-26	Council for Trade-related Aspects of Intellectual Property Rights (TRIPS)
Oct. 26	Dispute Settlement Body
Oct. 26	Informal Meeting of the Working Party on Vietnam's WTO Accession
Oct. 31	Committee on Agriculture
Nov. 3	Committee on Trade and Development
Nov. 8-10	Committee on Technical Barriers to Trade
Nov. 7	Council for Trade in Goods
Nov. 21	Dispute Settlement Body
Nov. 28-29	Committee on Trade and Development
Nov. 30	Committee on Trade and Environment

Other Meetings

Oct. 17-20 Rome	FAO Technical Consultation – Development of International Guidelines on Ecolabelling of Fish and Fishery Products http://www.fao.org/
Nov. 6-7 Doha	OECD Policy Dialogue with Non-Members on Aid for Trade: From Policy to Practice http://www.oecd.org/
Nov. 6-17 Nairobi	Meetings of the Parties to the UN Climate Change Convention and the Kyoto Protocol http://www.unfccc.int/meetings/
Nov. 16-17 Terrassa Spain	First International Conference on Sustainability Measurement and Modelling http://congress.cimne.upc.es/
Nov. 17-10 Hanoi	APEC Summit Meeting http://www.apecsec.org.sg/
Nov. 20-21 Paris	OECD Global Forum on Agriculture http://www.oecd.org/
Nov. 27 to Dec. 1 Chiba	Ad Hoc Intergovernmental Task Force on Food Derived from Biotechnology http://www.codexalimentarius.net/
Nov. 27 to 1 Dec. Nairobi	Conference of the Parties to the Basel Convention on Hazardous Wastes http://www.basel.int/

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