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## Facts and Figures

- In 2005, trade in manufactured goods increased by 7 percent, while exports of agricultural products expanded by 5.5 percent in real terms. Agriculture also recorded the largest excess margin of trade over output growth.
- Merchandise trade expanded faster than commercial services trade for the third year in a row. The dollar value of world merchandise exports rose by 13 percent to US\$10.16 trillion and commercial services exports rose by 10 percent to US\$2.41 trillion in 2005. China's merchandise exports increased by 28 percent.
- The phase-out of the WTO Agreement on Textiles and Clothing had a major impact on trade flows in 2005. China, India and Pakistan enhanced their role in global exports of textiles and clothing while suppliers from South and Central America and Africa lost market shares.

Source: *International Trade Statistics 2006*. World Trade Organisation, November 2006.

## US Elections, Trade and the WTO

While speculation is rife on the trade policy implications of the Democratic victory in the US mid-term elections, trade diplomats in Geneva are gearing up to restarting the suspended the Doha Round negotiations early next year.

The US Congress faces two major, and interlinked, decisions with multilateral trade implications in the coming months: redrafting or prolonging the 2001 Farm Bill, and whether or not to extend the president's trade promotion authority (TPA) beyond July 2007.

The TPA allows the administration to negotiate trade agreements that Congress can only approve or reject, but not change. Most WTO Members believe that its expiry in July would eliminate the slim chance that currently exists to conclude the struggling Doha Round by end-2007. Many Democrats, however, are reluctant to extend the TPA, largely due to concerns over what they see as insufficient environmental and labour protections in bilateral trade agreements (see below). One option available to the government would thus be to seek TPA extension for the Doha Round only, although some analysts predict that Congress would only grant one if a 'real deal' for US exporters appears to be in the offing.

Democratic leaders have stressed their desire to take a more bipartisan approach than that pursued by the Republicans over the last 12 years, and US Trade Representative Schwab was quick to assert that the change of guard in Congress would not affect the US position on the Doha Round. She argued in a 9 November article in the Wall Street Journal that commitments beyond current positions would be needed in four key areas to end the stalemate: 'substantial improvements' by the EU, Japan and other G-10 countries in agricultural tariff cuts, especially for 'sensitive products' that would be exempted from full formula reductions; deeper cuts in agricultural tariffs by 'major developing countries', including those for 'special products'; deeper EU and US reductions in trade-distorting support; and cuts in industrial tariffs in developed and major developing countries.

This affirmation of a long-held position contrasts with the statement issued at the recent APEC Summit, where leaders of the 21 member states, including the US, agreed to "explore every avenue to achieve the necessary breakthroughs at the earliest opportunity and to put the Doha work on a path towards an ambitious and balanced outcome in 2007." The statement also said that APEC leaders were "ready to break the current deadlock: each of us is committed to move beyond our current positions."

### Bilateral Activity May Slow Down

While multilateral trade liberalisation and rule-making have historically attracted support from both sides of the aisle, bilateral trade agreements – particularly with small low-wage economies that have poor labour standards – are another matter. On the campaign trail, many Democrats severely criticised the bilateral free trade agreements (FTAs) the Bush administration is negotiating or has already concluded. Half of those voted in on 7 November made the US-Central America FTA an election issue, citing US job losses, unfair trade and weak labour and environmental provisions as major concerns. Senior Democrats have already indicated that they will vote against the ratification of the US-Peru FTA unless its labour provisions are renegotiated. There is, however, bipartisan support for extending current trade preferences for Andean countries, see page 20.

*Continued on page 2*

# Bridges

## Between Trade and Sustainable Development

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See inside back cover for information on other ICTSD periodicals.

Simon Evenett and Michael Meier, both researchers at the University of St Gallen in Switzerland, have predicted that any future TPA extension is likely to come with labour and environmental strings attached, and that "uncertainties over Congressional ratification may well cause US trade negotiators to be even tougher on potential FTA partners, and those partners may well be discouraged by the extra concessions sought and the growing likelihood that any deal will never come into force."<sup>1</sup>

### Rewriting the Farm Bill?

The Democrats' trade policy will also be shaped by the need to hold onto their new supporters from rural districts in view of the presidential elections in 2008. Like Republicans, they are unlikely to call for a significant reduction in agricultural spending, and may well support Agriculture Secretary Mike Johanns' suggestion to rewrite – rather than extend – the current Farm Bill, which will expire in July 2007.

Since Brazil's successful WTO challenge of US cotton subsidies, Secretary Johanns has stressed the importance of restructuring agricultural subsidies in order to avoid a repeat performance targeting other heavily subsidised crops such as rice. Among the options he has put forward are increasing direct payments decoupled from production and greater use of conservation programmes, both of which would qualify as Green Box support on which there is no spending limit. Some trade-distorting subsidies might perhaps be increased as well, since current US Amber Box payments amount to roughly two-thirds of its bound ceiling.

US trade analysts have long linked any potential extension of the trade promotion authority with a parallel prolongation of the Farm Bill as it currently stands. Many see a potential bipartisan agreement to rewrite agricultural spending legislation as an implicit acknowledgment that legislators no longer believe that enough progress can be made in the Doha Round negotiations to warrant the maintenance of the administration's power to conclude take-it-or-leave-it trade deals.

### Informal WTO Talks to Resume Across the Board

Brazil's Foreign Minister Celso Amorim predicted in September that while the elections would not change the US position in multilateral trade talks, the fact that they would be over would be helpful. Indeed, just nine days after election Tuesday, WTO ambassadors agreed to restart informal discussions in the Doha Round negotiating committees in order to explore the way forward. Trade sources said the move responded to Members' desire to move ahead in hopes that formal negotiations could resume early next year and make enough progress to convince the US Congress to extend the TPA for long enough to clinch a deal.

At a 16 November informal meeting of the Trade Negotiations Committee, WTO Director-General Pascal Lamy described the situation as one "somewhere between the quiet diplomacy of the last months and the fully-fledged negotiations, which will only come when Members are prepared to put numbers to the flexibilities they have expressed in general terms on key issues in particular on agriculture market access and domestic support. While I believe we are ready to start technical work at the level of experts, it would be, in my view, premature to move on to ministerial negotiations. What I am suggesting to you we do is prepare the ground for fully-fledged negotiations to take place when the conditions are right."

Mr Lamy said his consultations had revealed widespread support for 'multilateralising' the contacts that had taken place since the suspension of the negotiations in July. The informal talks in Geneva will take place in all negotiating groups, with the ambassadors chairing them determining "the way ahead in each area and the speed with which the work should take place in consultation with delegations." Agriculture, as ever, is expected to be a main focus of the talks. Informal contacts involving all Members have already resumed (see page 4).

### ENDNOTE

<sup>1</sup> Evenett, Simon and Meier, Michael. 9 November 2006. *The US Congressional Elections in 2006: What Implications for US Trade Policy?* University of St Gallen

# The Impact of Sensitive Products on Trade and Development

The exclusion of a certain number of 'sensitive' agricultural products from full tariff cuts is more likely to limit effective market opening than the additional flexibilities available to developing countries alone.

When the Doha Round was suspended in July, inadequate progress in domestic agricultural support and market access was cited as the main reason for the breakdown, and some delegations singled out liberalisation exceptions in the market access pillar for particular blame. While a lot of attention has focused on the 'special' products and the new special safeguard mechanism for developing countries, a closer look at WTO Members' tariff structures suggests that the flexibilities provided by 'sensitive' products are more likely to restrict market access.

Paragraphs 31 to 34 of the July 2004 Framework Agreement provide details on the selection and treatment of sensitive products (available to all WTO Members). Although the outcome of the negotiations should reflect 'the sensitivity of the product concerned', countries designating products as 'sensitive' would have to improve market access substantially "through combinations of tariff quota commitments and tariff reductions applying to each product."

Members' proposals regarding the number/percentage of sensitive tariff lines have varied significantly, with the US seeking to limit such products to one percent of tariff lines, and the EU seeking an eight percent limit. The G-10 group of countries with highly-protected agricultural sectors, such as Japan, Norway and Switzerland, have proposed that 15 percent of tariff lines be covered by the mechanism. The G-20 group of developing countries has argued for a limited number of tariff lines, the precise number of which is to be negotiated, but which should not exceed one percent.

The graph below provides an overview of the 200 highest bound tariff lines, in *ad valorem* equivalents, in selected G-33 and G-10 countries. The highest tariffs applied by the larger developing countries such as India for the most part do not exceed 300 percent, with Chinese tariffs at a substantially lower level. In many cases, however, applied rates are much lower than bound rates as a result of autonomous liberalisation in most developing countries. By contrast, several developed countries such as Japan or Switzerland still maintain prohibitive tariff peaks concentrated in a small number of lines at between 1500 and 2000 percent.

These are probably the areas where the Doha Round could contribute most effectively to generating real new market opening. However, in the absence of any selection criteria, it is likely that several WTO Members will designate as 'sensitive' many of those products that currently enjoy the highest levels of protection. Given that three percent of tariff lines would already allow several countries to shelter all lines with tariffs at over 400 percent, some have argued that neither designating fifteen percent of tariff lines as sensitive (as proposed by the G-10) nor eight percent (as proposed by the EU) would make a great deal of difference to market opening for the most highly-protected products.

Indeed, even if these tariff peaks were reduced according to the general tariff cut formula, i.e. by about 50 or 60 percent, the resulting tariffs would remain prohibitively high. From this perspective, a tariff cap might be the most effective way of reducing the discrepancies between WTO Members on the most protected products. Both the G-20 and the EU have proposed a tariff cap of 100 percent for developed countries, and 150 percent for developing countries. The US has suggested a 75 percent cap for developed countries with a developing country cap to be negotiated. However, the G-10 continues to firmly reject any tariff cap at all.

It remains unclear whether a tariff cap would apply to products designated as sensitive under the EU and US market access proposals (under the G-20

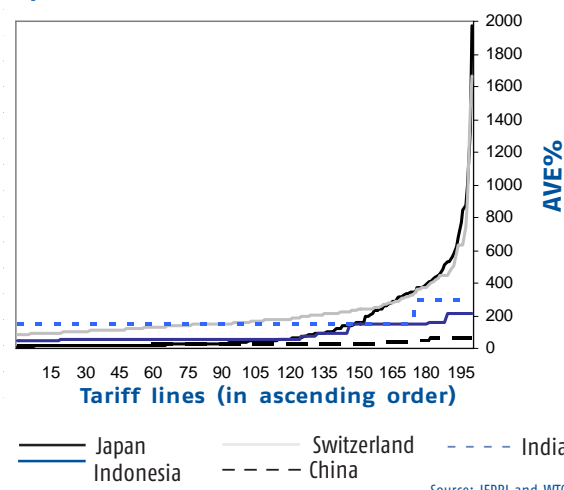
proposal, the cap – 100 percent for developed countries and 150 percent for developing countries – would apply to sensitive products as well). If sensitive products are not included, the usefulness of a maximum tariff would probably be significantly compromised. Products with the highest tariffs – those targeted by the tariff cap in the first place – are also those that are most likely to be protected as sensitive products.

An analysis of the EU's tariff structure reveals the extent of the discrepancies between protection levels on different products, as well as the characteristics of those products which are subject to the highest levels of protection (see graph overleaf).

Products protected by tariffs of over 200 percent include bovine and pork meat, garlic, bananas, processed cereal grains, mushrooms, wine and starch. Dairy products and sugar are just below the 200 percent mark. A number of developing countries are competitive exporters of these products. However, prohibitive tariffs – particularly when combined with quota restrictions – significantly distort markets for these products and diminish potential development gains through limiting developing countries' ability to make full use of their comparative advantage.

*Continued on page 4*

**Top 200 Tariff Lines in Selected Countries**



Furthermore, there is often a correlation between products protected by high tariffs and those that are heavily subsidised in OECD countries through domestic support and export subsidies. Insofar as these tariffs and subsidies maintain agricultural over-production in developed countries, such protection is likely to undermine poor farmers in developing countries.

Arguably, some similar market access issues might arise due to the flexibilities for the 'special products' that developing countries may designate to safeguard their food and livelihood security and rural development needs – even though, as mentioned earlier, tariff peaks in most developing countries are significantly lower than those maintained by developed countries.

However, if WTO Members take seriously the concept of special products, the selection will be based on genuine public policy objectives, while sensitive products have no such criteria, at least as they have been considered to date in the WTO negotiations. Given this arbitrary basis for designation, sensitive products are more likely to reflect protectionist interests or rent-seeking behaviour, both of which will perpetuate inefficiencies.

For the Doha Round negotiations to resume soon, Members may have to reconsider their positions on domestic support, as well as market access. However, the role played by sensitive products in improving market access is such that the number and treatment of eligible tariff lines will be vital components of any outcome that delivers substantial benefits for both trade and development.

## Ag Talks Resume, Scope Uncertain

Informal negotiating sessions have resumed in the WTO Committee on Agriculture, but any breakthroughs will depend on movement at the political level.

Crawford Falconer, who chairs the agriculture negotiations, convened the first informal meeting on 10 November at his own initiative as the ambassador of New Zealand. He described the occasion as a 'transparency forum' intended to provide information about recent smaller group meetings to the WTO membership at large. Representatives of several groupings reported on their activities since the suspension of formal negotiations in July, but no significant shifts in their positions were apparent.

Following the green light given to the Chairs of all negotiating groups to resume technical work on 16 November (see page 2), the Committee on Agriculture was to hold another informal session on 20 November. Such meetings are not expected to lead to any breakthroughs, but are meant to prepare the terrain for when – and if – political signals of renewed flexibility appear. There is no formal agenda, but some sources talking to Bridges have speculated that the committee could work on the market access flexibilities ('sensitive' and 'special' products, and the special safeguard mechanism) available to Members under the July 2004 Framework Agreement.

### Possible US Flexibility Reported

It has been widely reported in the media that the US, in the 'quiet diplomacy' talks outside the WTO, has indicated a conditional willingness to consider a further US\$5 billion reduction in its overall trade-distorting domestic agricultural support. According to some sources, this could be achieved through the US giving up the existing, but largely unused, right to grant product-specific *de minimis* support up to US\$4.6 billion a year. The Office of the US Trade Representative has, however, categorically denied having signalled a readiness to reduce its current official offer of US\$22.4 billion to US\$17 billion "or any other number."

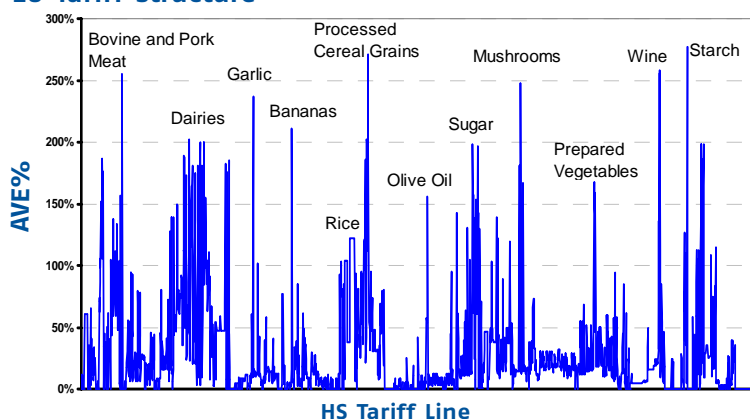
### Updated Notifications Requested

Meeting earlier in a regular (non-negotiating) session, several countries expressed concern over the fact that many of the major players in the Doha Round negotiations – including Argentina, Canada, the EU, Norway, Switzerland and South Korea – had not notified their agricultural subsidies to the WTO since 2001. Japan's latest notification dates from 2002. Chair Christian Häberli stressed the importance of timely notifications, and urged Members to catch up with their obligations. In particular, he said that the failure to notify created an imbalance between Members since negotiators were obliged to base their calculations on information outside the WTO. Such information was likely to be less reliable and not equally available to all countries, he said. Without up-to-date information on domestic support, negotiators cannot accurately assess the effect of proposed subsidy cuts on actual spending.

Brazil recognised that compiling the required information was difficult, but noted that if it – a developing country – had been able to do so, developed countries should as well. The EU and Canada said they would provide updated notifications shortly.

In the context of the annual review of the special situation affecting net food-importing developing countries, the World Bank – citing recent research – said that agricultural trade liberalisation could help keep the price of food staples of the poor at affordable levels, but warned that the objective could be undermined "through the potential for the sensitive and special products to create significant exemptions." Cuba and the Philippines objected, and said they would raise the issue at a future meeting after examining the statement.

### EU Tariff Structure



Source: Mario Jales, ICONE, Brazil



## TRIPS Council: Divided We Stand

A proposal to give the WTO a monitoring role in the enforcement of intellectual property rights has been strongly rejected by a number of developing countries, while developed countries continue to oppose new provisions to prevent biopiracy.

In a paper submitted jointly to the October meeting of the WTO Council for Trade-related Aspects of Intellectual Property (TRIPS), the EU, Japan, Switzerland and the US highlighted the rapid expansion of global counterfeiting and piracy. They invited Members to engage in a discussion on how to implement enforcement provisions, and proposed that they request the Secretariat to compile information received from governments on the subject. The initiative followed a controversial proposal submitted by the EU in June, which suggested that the Council examine Members' compliance with the enforcement provisions of the TRIPS Agreement and make "recommendations on ways to improve the situation."

Noting that the TRIPS Agreement explicitly gives Members the right to determine the appropriate method of implementing its provisions, Argentina, Brazil, Chile, China, India and Venezuela argued that discussing enforcement in the Council would restrain countries' flexibility in drafting and enforcing domestic IPR legislation. There were other means of dealing with weak implementation, they contended, including the WTO's trade policy reviews and the dispute settlement system. They also rejected a suggestion to focus the Council's work and technical assistance on enforcement provisions.

### Preventing the Misappropriation of Genetic Resources

Delegations again picked up discussions on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). Under the CBD, access to genetic resources must be based on the prior informed consent of the country of origin. Parties to the convention must also take "legislative, administrative or policy measures [...] with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources" provided by another Party. In order to incorporate the CBD's notions of prior informed consent and benefit-sharing into countries' patent legislation, developing countries have proposed an amendment to the TRIPS Agreement that would make it obligatory for WTO Members to require patent applicants to disclose the provider and country of origin of any biological resources or associated traditional knowledge used in their invention (Bridges Year 10, No.4, page 10).

Responding to comments by the US regarding its November 2005 submission that had highlighted several potential 'biopiracy' cases, Peru argued that an effective assessment of actual cases would require incorporating a universal obligation to disclose the origin/source/legal provenance of biological resources in patent applications (IP/C/W/484). Such a requirement would facilitate the verification of the fulfilment of the patentability criteria of an invention based on genetic resources and/or TK, as well as the existence of prior informed consent and benefit-sharing arrangements. Brazil, Ecuador, China, India, Malaysia, Sri Lanka and Venezuela welcomed the paper, and called for text-based negotiations on incorporating disclosure requirements in the TRIPS Agreement.

Reiterating their belief that there is no conflict between the TRIPS Agreement and the CBD, Australia, Canada, the EU, Japan, Korea, New Zealand, Switzerland and the US said it would be premature to start amendment negotiations. Most of these countries supported the creation of traditional knowledge databases to assist patent examiners in assessing the novelty of an invention. Some indigenous groups have raised concerns over such databases, arguing that making the knowledge accessible to the public at large could impair the rights of knowledge holders.

### Three Ratifications of the Public Health Waiver

Switzerland and El Salvador announced that they had ratified the December 2005 public health amendment to the TRIPS Agreement (the US is the only other WTO Members to have done so). The amendment makes permanent the decision adopted in 2003, which waived certain TRIPS obligations to allow Members to export drugs produced under compulsory

licence (Bridges Year 10, No.1, page 22). It will be formally built into the TRIPS Agreement once two-thirds of the WTO membership have ratified the change.

For the waiver to become operational (i.e. to allow a country to export or import), WTO Members must incorporate its provisions into their national legislations. So far, Norway, India, the EU, Netherlands, Norway, Korea and Canada – all pharmaceutical exporters – have done so. Canada announced at the meeting that it was reviewing its 'access to medicines' legislation to examine how it could be improved. Among the importing countries, Kenya sought technical assistance to help incorporate the waiver into its national legislation.

The Council also reviewed China's implementation of its TRIPS obligations (see page 8).

### SPS Committee Update

At the October meeting of the WTO Committee on Sanitary and Phytosanitary Measures (SPS), eight South American and African countries called for a more systematic discussion of private sector SPS standards, such as supermarket requirements that are more demanding than those required by national legislation.

To support their case, some Members pointed to Article 13 of the SPS Agreement, which requires governments to 'take such reasonable measures as are available to them' to ensure that non-governmental entities within their territories comply with the Agreement's provisions.

The issue of private standards has also come up in the Committee on Technical Barriers to Trade (TBT), where developing countries have raised concerns over the proliferation of voluntary eco-labels in developed countries. The latter argue that they cannot intervene on private sector labelling schemes or standards based on consumer demand.

## Vietnam's Accession

After 11 years of negotiations, WTO Members accepted Vietnam's accession to the world trade body on 7 November.

According to local media, Vietnamese exports are expected to grow from US\$32.2 billion in 2005 to US\$100 billion over the next five to seven years. Anticipating the WTO accession, foreign direct investment in Vietnam increased by 41 percent during the past year.

Textiles and clothing exports are likely to benefit the most from WTO membership, since quotas restraining access to some major markets will be lifted. There are, however, serious concerns over how the fishing, forestry and farming sectors – which employ the majority of the country's work force – will stand up to foreign competition.

Speaking to the press after the accession approval, Vietnam's Deputy Prime Minister Nguyen Sinh Hung admitted that fierce new competition would make some enterprises and commodities fail. "If enterprises do not reform quickly, particularly state-owned enterprises, which generate more than 40 percent of the GDP, they will be confronted with huge difficulties," he said. Vietnam also faces a considerable challenge in implementing and enforcing intellectual property rights.

In late November, the Vietnamese government is due to hold three large meetings in Hanoi and Ho Chi Minh City to familiarise company and business association representatives with the country's WTO commitments. The government has also posted the English versions of the WTO accession working party's report and Vietnam's schedules of commitments in goods and services on its website ([www.mot.gov.vn](http://www.mot.gov.vn)). Vietnamese translations will follow.

The National Assembly is expected to ratify the accession package on 28 November, thus clearing Vietnam's formal entry to the WTO before the end of the year.

## Russia, US Agree on WTO Accession Pact

Russia's drawn-out quest for WTO membership cleared a major hurdle with the conclusion of its bilateral negotiations with the US on 10 November.

The major element in the breakthrough was Russia's promise to open its market to US beef and pork. Russia has restricted imports of both on sanitary grounds, beef due to concern about BSE or 'mad cow disease' and pork because swine meat may be infected by a parasitic roundworm (trichinae) that can cause serious damage to human health when ingested. Russia agreed to lift import restrictions on US beef from animals younger than 30 months upon the signature of the bilateral agreement, and to accept imports of meat from older animals when the World Organisation for Animal Health certifies that the US is a 'controlled risk' country for BSE. The certification is expected in May 2007. With regard to pork, Russia accepted freezing as an efficient means to mitigate trichinae contamination, but will not lift its import ban on fresh meat.

While the details of the agreement have not been made public, sources say Russia also made concessions in foreign companies' access to its banking and financial sectors, and agreed to take stronger action to fight the piracy and counterfeiting of foreign goods.

According to Russian news agencies, President Putin asserted that his government had "managed to bargain and negotiate levels of support for agriculture that never have been employed and are not being employed now." While President Putin gave no details, the RIA-Novosti agency cited officials suggesting that Russia would have the right to an annual subsidy envelope of US\$9.2 billion, or about four times the level applied today.

The US was the only major WTO Member not to have concluded a bilateral accession agreement with Russia, which is by far the largest economy outside the world trade body.

### Multilateral Talks Likely to Be Tough

The next phase of the process will be multilateral negotiations to finalise Russia's terms of accession. This, however, is complicated by Georgia's 12 October request that no further meetings of the Working Party on Russia's WTO Accession be held until Russia lifts the economic sanctions it imposed when Georgia briefly detained four Russian soldiers charged with spying. Russia has cut transport and postal links with Georgia, expelled hundreds of Georgians from its territory, and is threatening to more than double the price of its gas exports to Georgia. On 8 November, Georgian Prime Minister Zurab Nogaideli rejected state-owned Gazprom's offer to reduce the price hike if Tbilisi handed over control of its domestic gas distribution network to Russia. Gazprom now says that unless Georgia agrees to pay US\$230 per 1,000 cubic metres of gas in 2007 (the current price is US\$110), supplies will be cut.

With the conflict still unresolved, WTO Members are likely to meet informally to work on the final accession package. Many hurdles remain, including a continued push from the US, the EU and others for stronger measures to prevent and punish intellectual property rights violations. If that fails, several analysts have predicted that US copyright and trademark groups will do everything in their power to prevent Congress from approving permanent normal trade relations with Russia. The EU is likely to maintain pressure on Russia to phase out the fees it charges European airlines that fly over Siberia sooner than the 2013 deadline Russia has already agreed to. Some countries will also try to renegotiate previously-concluded – but not yet signed – bilateral deals, including Georgia, which requested the re-opening of negotiations in July after Russia banned imports of Georgian wine, mineral water and many agricultural products citing sanitary and phytosanitary concerns.

WTO spokesman Keith Rockwell has suggested that the final phase of Russia's accession could be even longer than the 20 months it took China to wrap up multilateral negotiations after the conclusion of bilateral deals.

# A New Chapter Opens in the Banana Dispute

Ecuador has requested 'prompt consultations' over whether the European Union's banana import tariff complies with its WTO commitments.

Ecuador's compliance consultation request bears on three points in particular: (i) whether the different import duties applied by the EU to bananas from most-favoured-nation (MFN) suppliers and those from the African, Caribbean and Pacific (ACP) Group of States are consistent with the GATT's general MFN treatment obligation; (ii) whether the new duty-free tariff rate quota reserved exclusively to ACP countries is consistent with GATT Article XIII on quantitative restrictions, and; (iii) whether the new MFN tariff complies with WTO rules on changes to a Member's schedule of concessions.

## Background

Following the loss of a protracted WTO dispute, the EU decided in 2001 to replace its complex banana import arrangements with a 'tariff-only' regime by January 2006. Quotas were to be abolished and a new MFN tariff negotiated with trading partners. It also agreed that the new tariff should "at least maintain total market access for MFN banana suppliers." When the two sides failed to reach a negotiated solution, the EU unilaterally set the tariff at • 176/tonne and reinstated a 775,000 tonne duty-free quota for ACP countries.

MFN exporters have repeatedly charged that the tariff is too high to ensure pre-2006 market access, discriminates against non-ACP suppliers, and is designed to protect EU producers in the Canary Islands and the French overseas departments of Guadeloupe and Martinique. WTO Members have also questioned the legitimacy of the ACP quota since their acceptance of the EU's proposed implementation of WTO rulings was based on the understanding that the future banana import regime would be quota-free (Bridges Year 10 No.1, page 14).

When the • 176/tonne tariff was announced, the EU said it would monitor trade flows from MFN suppliers and adjust the tariff if data showed that their imports had decreased. The issue flared up again at the 2005 Hong Kong Ministerial Conference, where the EU and MFN banana producers ultimately agreed to continue the mediation started there under the 'good offices' of Norway's Foreign Minister Jonas Gahr Store. That process is still going on outside the WTO, but according to Ecuador it has not yielded significant progress.

## Uneven MFN Gains

The EU's banana import data for January-July 2006 shows an average seven percent gain for MFN exporters. The growth is unevenly distributed, however, with exports from Costa Rica up by 16.4 percent, followed by a 3.7 percent increase for Ecuador and 1.4 percent for Colombia. Exports from Panama declined by 4 percent. EU Agriculture Commissioner Mariann Fischer Boel said that the figures proved that the new system was "fair and working well."

A source familiar with the case told Bridges that Ecuador's own export data showed a 2.5 percent decrease in bananas shipped to the EU between January and September 2006. After crude oil, bananas are Ecuador's second biggest export product – worth US\$1.085 billion in 2005.

## ACP Exports Grow Strongly

According to EU data, imports from ACP countries increased by 18 percent between January and July 2006. While the largest exporters registered significant gains (31.3 percent for Cameroon, 27 percent for the Dominican Republic and 3.1 percent for the Ivory Coast), some of the smaller producers showed even greater growth, including a 155 percent increase for Jamaica and more than 20 percent for St Lucia, and St Vincent and the Grenadines. Only the Caribbean island of Dominica saw its exports drop.

Ecuador's foreign trade minister Trade Tomás Peribonio, quoted in local press, said on 25 October that the country had lost 6.4 percent of the European market, even when the overall volume of its exports had grown.

Some of the countries that successfully challenged the EU's old import regime could join the dispute as third parties this time around. While Colombia, Honduras and are possible candidates, Costa Rica has already declined, saying that it prefers the Norwegian-led mediation process to litigation.

## EU Banana Subsidy Reform

In related news, the European Commission has proposed to eliminate price support payments to EU banana producers. In Cyprus, Greece and continental Portugal they will be replaced by single payments decoupled from production. Banana growers in the Canary Islands, Guadeloupe, Martinique, the Azores and Madeira will be included in a special agricultural support programme for the 'outermost regions', which provide about 14 percent of the EU's total supply of bananas. Funds distributed through this scheme – amounting to nearly • 280 million – will be allocated to the governments of Spain, France and Portugal, which can decide what specific measures to fund in order to support banana producers. If adopted by member states, the new subsidy regime will enter into force as of January 2007.

## Gambling Ruling Update

The compliance panel's verdict on US implementation of the April 2005 Appellate Body ruling in the Internet gambling dispute may be delayed until January or February 2007, Antigua and Barbuda's legal advisor Mark Mendel has said.

Antigua and Barbuda maintains that the US has taken no action to comply with the ruling (Bridges Year 10 No.6, page 9).

The matter may be further complicated by the Unlawful Internet Gambling Act passed by the US Congress on 30 September. The legislation prohibits US banks/companies from processing credit card payments to Internet gambling sites, but allows certain exceptions for intra-US transactions.

## China's Trade Policies Under Scrutiny

China was subjected to intense questioning about its industrial subsidies and intellectual property rights enforcement during reviews of its implementation of WTO commitments held in October.

China forwarded its first ever subsidy notification to the WTO in April. The 88-page document lists 78 subsidy programmes, but provides details on only 29 of them, most of which deal with agricultural and rural development support. According to the WTO Agreement on Subsidies and Countervailing Measures, Members must notify all industrial subsidies annually, including the form of the subsidy, the budgeted annual amount, the policy objective and duration of the subsidy, as well as statistical data permitting an assessment of the subsidy's trade effects.

The US and the EU alleged that China's notification was incomplete, not just because details were missing on 49 programmes, but more importantly because it contained no information on support provided by local and regional authorities to numerous sectors. Both countries provided many specific examples of different forms of tax breaks (including export-contingent VAT refunds or reductions), funds for market exploration, export credit insurance and reimbursement of legal fees to exporters facing antidumping lawsuits abroad. The sectors most targeted by such measures are textiles, automobiles, semiconductors and chemicals.

In addition to these and other programmes supported by city or provincial governments, the US noted that the Ministry of Finance, the National Development and Reform Commission and the Ministry of Commerce had recently issued a *Notice of Relevant Policies to Promote Chinese Textile Enterprises to Shift to New Ways of Growth and Support Them to Go Global*, which included central government-level support to technology innovation and development of core technologies and equipment in the textiles sector, as well as funding for textiles companies that set up distribution channels in overseas markets. The US also challenged advantageous export-related loans granted by state-owned banks.

A Chinese official speaking to Bridges noted that the issue of completeness was a sys-

temic problem for all Members, due to the technically complex nature a subsidy and the "many different interpretations of its definition and coverage." For instance, he said that China firmly believed that non-performing loans settlement was a "prudential procedure of the banking sector", and not a subsidy as defined by the SCM Agreement.

The official acknowledged that the April notification only covered measures taken by the central government, but added China was now considering "how to do the work in an efficient and effective way" with regard to support provided by local governments. He also pointed out that "the situation regarding measures by local governments was not as serious as sensed by certain Members, because the resources which could be allocated for subsidies at local levels are extremely limited." According to the official, China's Ministry of Commerce did check with various local governments on some of the allegedly WTO-inconsistent measures, but "found that these had either been phased out after WTO accession or had never been applied."

He also said that the preferential tax policies singled out by some Members as encouraging the purchase of Chinese products were "introduced for domestic products only because there was an earlier policy which had already granted tax and tariff exemptions to the same kind of imported products." Furthermore, the official argued that Chinese domestic products were not competing on a level playing field with imported products because China's VAT regime is production-based, rather than consumption-based as those in most other countries. The challenged tax policies aim at equalising the tax burden between the domestic and import products, rather than at import substitution, the official said.

### IP Protection Remains a Cause of Serious Concern

The EU, Japan, and the US expressed great concern over intellectual property rights infringements and weak enforcement of legislation. They also indicated that sanctions often lacked deterrence, and procedures against counterfeiting and piracy remained expensive and time consuming. Other issues raised included, *inter alia*, a lack of clarity on products covered by Chinese legislation on the protection of test data for pharmaceutical products and lengthy dispute settlement procedures for trademark infringement cases. The US requested China to provide detailed data for the first six months of 2006 on IPR criminal cases initiated involving foreign right holders, including whether the case resulted in acquittal or conviction, and – if it resulted in conviction – what the sentence was. Japan also requested statistics on criminal penalties for IPR infringements, and suggested that "public security authorities [should] be able to take measures directly against every infringement activity by lowering or abolishing criminal thresholds, as well as by strengthening the collaboration between relevant authorities."

In response, China said it was strengthening law enforcement with more effective penalties and had set up service centres to receive complaints regarding IP infringements. China also said that many of the questions raised were answered in three documents that had been circulated to Members: a report on intellectual property protection in 2005, information on China's action plan for this year and a book entitled *Protect Your Intellectual Property Rights in China*. For instance, the Chinese representative said that China had published penalties for major infringements to improve transparency and that measures to streamline trademark applications review were under consideration.

The annual implementation reviews, which will cease in 2010, are mandated by China's WTO accession agreement.

In related news, China's Ministry of Commerce announced in November that the country's GDP had nearly doubled – from US\$1.3 trillion in 2001 to US\$2.2 trillion in 2005 – since it joined the WTO five years ago.



# WTO Rules and Sustainable Energy Policies

Yulia Selivanova

Interest in multilateral regulation of energy and natural resources policies is increasing as economic growth and the deepening geographical mismatch between demand and production boost international oil and gas trade and prices

Energy is distributed highly unevenly throughout the globe. Sixty-nine percent of known oil reserves are held by members of the Organisation of the Petroleum Exporting Countries (OPEC),<sup>1</sup> while Russia, Norway, Mexico and Kazakhstan are the world's largest non-OPEC net oil exporters. In most major non-OPEC countries governments generally have little control over production levels as oil sectors are owned by private companies,<sup>2</sup> which react to demand signals, exploring and extracting more when prices are high.

High prices encourage non-OPEC production of conventional and non-conventional oil.<sup>3</sup> They are also likely to have favourable impact on the implementation of policies to reduce air pollution and greenhouse gas (GHG) emissions, and improving energy security. In addition, high prices and technological developments increase opportunities for alternative energy sources.

On the other hand, the sharp drop in oil prices in 1998-1999 led many oil-exporting countries to start economic reforms aimed at diversifying their economies and reducing reliance on oil. Moreover, WTO accession has given an additional push for domestic reforms in energy-endowed countries.

Gas resources are more widely spread than oil. Most of these reserves are located in the Middle East (34 percent of the world total), Europe and the former Soviet Union (42 percent of total world reserves). Demand for natural gas is likely to grow significantly as it is projected that, for economic and environmental reasons, gas will become the power industry's preferred fuel.

Energy-exporting countries often express concern that the high consumption and excise taxes imposed by importing countries on energy products reduce their revenues from finite resources. However, as long as these taxes are applied in a non-discriminatory manner, they are in line with WTO rules.

## Energy and the WTO

Specific disciplines on trade in energy did not form part of the original GATT. One of the possible reasons for this is the initial non-participation of energy exporters in the agreement. The issue was also much politicised due to the strategic nature of energy products, and state practices affecting natural resources and energy have been (and remain) sensitive and controversial. Security considerations have largely shaped trade policy in the energy sector.<sup>4</sup>

During the Uruguay Round, some countries endeavoured to introduce specific disciplines on certain practices of energy-exporting countries, such as dual-pricing and the resulting subsidies, export restrictions/taxes and discriminatory procurement. These attempts, however, were not successful because resource-endowed countries were apprehensive of binding rules on trade in natural resources.

Nevertheless, it is commonly accepted that existing WTO rules apply to energy products, although it can be argued that these rules are not optimal for solving some trade-related problems in the energy sector. Traditionally, WTO disciplines have been devised in a manner that addresses import barriers to a larger extent than export barriers. In energy sector, however, export restrictions are the main trade barriers.

Export duties on energy materials and products constitute an important revenue source for energy-exporting countries. Issues related to these countries' restrictive practices, as well as those of monopoly energy enterprises that often enjoy exclusive rights and privileges, are not substantially addressed in existing multilateral trade rules, nor are transit problems. Moreover, a comprehensive investment framework is lacking.

Could policies to combat climate change fall foul of multilateral trade disciplines?<sup>5</sup> Possibly; for instance financial support to producers of renewable energy might be challenged under WTO subsidy rules. The national treatment principle applies to internal taxes and charges, laws and regulations. Internal taxes on imported energy material and products may not be higher than those on 'like' goods produced domestically. Technical regulations and standards to promote efficient use of energy must not constitute unnecessary obstacles to trade.

## Energy Taxation

Carbon dioxide and energy taxes can be applied directly to fuels, electricity and downstream industries that use energy as input – on the basis of the amount of carbon dioxide emitted or energy consumed in their production.

The question arises whether countries pursuing environmental objectives could discriminate among energy goods on the basis of the eco-friendliness of the technologies used in their production. The answer is not straightforward, and is further complicated if the final products possess identical physical characteristics and have the same end-use, such as electricity generated by nuclear power or renewable sources. In this case, it would be difficult to argue that differently generated types of electricity are not 'like' products.

The WTO dispute settlement system has dealt with environmental taxes. The first case concerned an EU challenge of a US tax on automobiles. The measure was introduced to create an incentive to purchase more fuel-efficient cars. Because most cars affected by the measure were European, the EU claimed that the tax was inconsistent with GATT Article III:2 (equal treatment for domestic and imported like products). The panel found, however, that fuel-inefficient imported cars were not 'like' fuel-efficient domestic cars. Thus, they could be treated less favourably.

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In the *Superfund* case, brought against the United States by Mexico, Canada and the EU, the panel examined a US tax on petroleum imposed with the objective of financing the clean-up of hazardous waste sites. Although the panel found that some aspects of the US measure were inconsistent with GATT Article III, it recognised the possibility of imposing domestic environmental taxes.

### Border Tax Adjustments

When a state with high environmental standards imposes substantial energy taxes, energy-intensive goods produced in the country become less competitive compared to foreign products that are not subject to such regulations. Therefore, the country might choose to refund the taxes to companies upon exportation. The government might also wish to impose additional taxes on imports of products from countries that do not adhere to such a high level of environmental protection.

WTO rules do not clearly define the eligibility of some border tax adjustments. According to the Agreement on Subsidies and Countervailing Measures, prior-stage<sup>6</sup> cumulative indirect taxes can be exempted at the border when levied on inputs that are consumed in the production of the exported product, i.e. inputs that are physically incorporated, such as energy, fuels and oil used in the production process.<sup>7</sup>

The adjustment does not pose a problem when an energy tax on the product itself is levied or reimbursed at the border. Opinions are divided, however, on whether border tax adjustments are permitted under WTO law for taxable inputs that are not physically incorporated in the final product. For instance, it is not clear if a tax on carbon dioxide emissions during the good's production can be adjusted.

### Subsidies

The fact that certain renewable energy sources are not currently commercially viable makes the question of the WTO-compatibility of different support schemes particularly acute.

Such programmes cannot be contingent upon export performance (they would fall under the category of prohibited subsi-

dies). Subsidies found to be specific to certain enterprises, industries or groups thereof are considered actionable and products benefiting from such subsidies can be countervailed. Alternatively, a WTO Member can request the withdrawal of such subsidies if they cause adverse affects.

Limiting the subsidy to producers of renewable energy could meet the criteria of 'specificity'. For instance, if a government decided to grant financial support to energy production plants using renewable energies, this programme would be deemed specific, i.e. actionable subsidy.

The question is how to design programmes aimed at attaining environmental objectives without the financial support being considered an actionable subsidy. A possible solution might be to devise objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, make eligibility automatic and carefully monitor compliance. The criteria and conditions should be transparent and clear. For instance, a possible criterium could be a certain level of carbon dioxide emissions during the production. Although it is possible to devise programmes encouraging efficient energy use in general, attempts to directly support renewables industries are more likely than not to fall into the category of actionable subsidies.

### Technical Regulations and Standards

Technical regulations and standards are important tools to increase efficient use of energy and reduce GHG emissions.

The Agreement on Technical Barriers to Trade prohibits discrimination through technical regulations. Moreover, technical regulations, standards and conformity assessment procedures should not create unnecessary obstacles to trade or be used as protectionist tools.

The requirement of non-discrimination applies 'like products', but given the ongoing debate on how to determine 'likeness', it is not clear whether the methods of energy production could be considered as the basis for legitimate differentiation between goods produced using more or less energy-efficient processes.

### Conclusion

WTO rules apply fully to trade in energy products and materials, although they were not specifically designed to tackle energy-related issues. For instance, it is not clear how provisions on the freedom of transit would be interpreted by a WTO panel in case of a dispute. Some trade-restrictive practices of energy companies are not covered by WTO rules on state trading enterprises. The implementation of domestic policies related to environmental protection and the reduction of GHG emissions pose some questions in terms of compatibility with WTO rules.

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### ENDNOTES

<sup>1</sup> As of January 2005. This includes Canadian non-conventional reserves. Not including Canada, this estimate of OPEC share rises to 84 percent.

<sup>2</sup> Mexico is a notable exception; the country's constitution grants PEMEX, the state oil company, a monopoly over its oil production.

<sup>3</sup> Production from Canadian oil sands has increased significantly, as well as production of deep water off-shore fields.

<sup>4</sup> Murray Gibbs. 2003. 'Energy Services, Energy Policies and the Doha Agenda' in *Energy and Environmental Services: Negotiating Objectives and Development Priorities*. UNCTAD

<sup>5</sup> Art. 3, para. 5 of the UNFCCC provides: "Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade." Parties to the Kyoto Protocol "shall strive to implement policies and measures ... in such a way as to minimize adverse effects, including... effects on international trade" (Art. 2 of the Protocol).

<sup>6</sup> Taxes levied on goods or services used directly or indirectly in making the product.

<sup>7</sup> Footnote 61 to the Agreement on Subsidies and Countervailing Measures

# A Sustainable Development Roadmap for the WTO?

Aaron Cosbey

The current impasse in the Doha negotiations offers those who seek to improve the functioning of the multilateral trading system both grounds for concern about the present model, and the breathing space in which to thoughtfully consider how it might better serve today's needs.

In considering the directions in which the WTO might evolve, we should first consider its origins. It is widely accepted that the GATT was created as an instrument of *embedded liberalism*. The drafters shared an understanding of the legitimacy, the *necessity* of domestic government intervention to achieve social protection and stability, but they also understood the lessons of the pre-war bout of mutually destructive protectionism. So they embedded the goals of liberalism – non-discrimination and progressive liberalisation – within a broader framework designed to allow for domestic interventionism, achieving a careful balance between the two. John Ruggie argues that the deal was based on a shared understanding of the social purposes for which government power may be legitimately exercised at the domestic level.<sup>1</sup>

As the WTO agenda has progressively moved beyond tariff reduction toward a behind-the-border focus, we have moved away from the balance envisioned at Bretton Woods, toward a regime that focuses primarily on liberalisation. This is in line with a new shared understanding in most OECD countries that the role of government should be less interventionist.

This history is instructive in several ways. For one thing, it highlights the importance of an internationally agreed social purpose to underlie the trade regime (or *any* successful international regime). The underlying social agreement, struck in the shadow of two world wars, arguably also included a desire for peace and stability of international relations through trade and investment. The specifics of the agreement are not as important as the fact of its very existence; the desire to achieve broader social objectives encompassed a regime pursuing liberalism *as a means*. This is an important lesson for those who believe that the trade regime is, and must be, founded only on the objective of orthodox liberalism. Other types of open trading regimes are possible.

The obvious question to which this analysis leads is: what sort of international agreement on social purpose do we have today, half a century hence? Do we need to reinvent embedded liberalism to reflect modern imperatives?

I argue that we already have an international agreement, a shared understanding on which to build a trade regime for the 21st century. The broader social objective to which the multilateral trading system should work, and should allow domestic governments to work, is sustainable development. That objective is premised on the shared understanding that is the essential truth of the global age: we are all connected.

We can see affirmation of this agreed social purpose in a number of places. The first preambular paragraph of the Marrakesh Agreement Establishing the WTO aims for: “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.”

The Doha Ministerial Declaration strongly reaffirms the commitment to ‘the objective of sustainable development’, and pledges to “continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development.”

The means of trade liberalisation and non-discrimination are thus set up, as at the founding of the GATT, in the service of broader social purpose: the goal of international development, qualified by the need to respect environmental realities.

It was argued above that the shared understanding that underlies this agreement is the fact that we are all connected. Indeed, we have always been so, but globalisation is making the world ever smaller. From an economic perspective, dense and complex connections of trade and investment mean that, for rich countries, the vitality of developing countries is no longer an altruistic concern, but is in their own self interest. Witness the massive surge in global demand for goods and services created by the rising middle classes of the emerging developing giants. Witness the powerful anti-inflationary impact in the developed world of imports from those same countries.

Environmentally, we have always been connected, but we are only now finding out to what extent, with advances in science, and the pressures of growing global GDP. Coal-fired electricity generation in China is stymieing efforts to reduce mercury loading in North America. Desertification in Africa is killing coral reefs in the Caribbean. And problems such as climate change, ozone depletion and loss of biodiversity affect us all, no matter what their provenance. We need to be concerned about the capacity of all countries to address environmental challenges.

On a broader social level, the same interconnectedness plays out. Failed states are bad news for the whole global village, spawning problems that other states must deal with: contagious political instability, refugees, infectious diseases, war-mongering and international crime. Healthy states, on the other hand, are able to tackle issues of shared concern, and to contribute positively to international efforts toward the greater global good.

This reality – that we are all connected – is why we have the Doha Development Agenda, and not the Doha Round. It is

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why special and differential treatment is a fundamental principle of the regime, and why the Doha talks have included discussions on implementation, capacity-building and aid for trade. The importance for all countries of domestic and international policy space to pursue sustainable development provides the social purpose within which to embed the goals of trade openness and non-discrimination.

What kinds of institutional forms are appropriate to a regime founded on this agreement? Is there a need to conceive of new principles and norms, new rules and procedures, that are more suitable to the task? Only a dedicated and inclusive process can produce authoritative answers, but three initial possibilities are proposed below, argued as necessary changes to the *status quo*.

### Beware of Mercantilist Ends

We may have an agreed social purpose, and we may even have many of the modalities for achieving it built into aspects of the Doha talks. But we are still negotiating as if mercantilism were valid, as if international trade and investment policy were a zero-sum game. There is a fundamental disconnect between the niceties of political declarations and the dirty hardball of actual negotiations. We need new modes of negotiation that are in tune with the reality of interconnectedness and the goal of sustainable development.

For example, many of the contentious negotiating issues are empirical questions. Are performance requirements good or bad for the implementing state? Do stronger IPRs foster innovation, and where is the balance point between public good and private incentives? How should liberalisation be sequenced to derive the best development outcomes? If the negotiations were really aimed at sustainable development, they would be demanding independent authoritative advice on these questions.

As Konrad von Moltke argued repeatedly, the trade regime has much to learn from its environmental counterparts. The climate change negotiations are underpinned by a non-partisan assembly of hundreds of the world's best climate scientists and economists: the Intergovernmental Panel on Climate Change. This body, under the

guidance and direction of the Parties, serves the climate change negotiations by producing a solid basis for international public policy. Perhaps we need an intergovernmental panel on trade and investment. In a similar vein, Sylvia Ostry has called for a coalition of middle powers to launch an analysis and discussion, in an exercise completely separated from the negotiations, to get answers to these sorts of basic questions (Bridges Year 10 No.5, page 3).

### There Are Winners and Losers from Liberalisation

Trade liberalisation has produced enormous economic benefits, but they have tended to be poorly distributed. The current regime, however, takes little or no notice of the domestic level impacts, where profits often rise while real wages stagnate (particularly but not exclusively in low-skill jobs). Ignoring this reality courts disaster, as it risks alienating the electors of the regime's constituent members. Sandra Polaski argues that this is the major force behind the current negotiating stalemate. We need to find ways to allow liberalising states to effectively help liberalisation's losers.<sup>2</sup>

That said, and while it would be nice to multilaterally bring some civility to the savagery that is creative destruction, we need to be frank about our own shortcomings. We don't really know how to retrain workers and prepare for adjustment to different modes of employment. It is not done well even in the world's richest countries. Until we are better equipped, the rush to liberalisation needs to be tempered by concerns for adjustment costs.

### Opportunity Does Not Equal Benefit

It is increasingly recognised that the opportunities provided by trade liberalisation do not translate into benefits for many countries. Countries hamstrung by inadequate infrastructure, inefficient bureaucracy, immature legal regimes and macroeconomic instability will not increase their exports as their market access increases. This understanding is the basis for the Aid for Trade discussions, and for the widespread application of the principle of special and differential treatment.

But special and differential treatment as currently applied does not do the trick. Half a century of development efforts have shown us clearly that individual circumstances matter. A one-size-fits-all policy of longer lead time for implementation, for example, is a pitifully blunt instrument.

What is needed is an assessment along the lines of the best of the Integrated Framework's diagnostic studies, seeking to identify the obstacles each country faces in benefiting from the opportunities afforded by trade liberalisation. And then we need implementation, something on which the IF is *not* so helpful a model. Finally, there needs to be a clear linkage between the ability of a country to benefit from liberalisation, and actual implementation of liberalisation commitments – a principle that is helpfully established in the Annex on trade facilitation in the July 2004 Framework Agreement.

Aid for Trade, though, should *not* become a bargaining chip – something offered in return for developing country commitments in the Doha context. It has a purpose that remains valid outside of the context of the Doha talks and thus should, as per the recommendations of the WTO Task Force on the matter, continue to unfold despite the stalled negotiations.

The over-riding message is that, if we look to the origins of the multilateral trading system, we can see a regime that embeds liberalism within the broader pursuit of social objectives. Such a system is possible. The current break in the Doha talks gives us the opportunity to pause and reflect on what such a system might look like, given the evolving imperatives of the 21st century. It is an opportunity that we would be foolish to squander.

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### ENDNOTES

<sup>1</sup> John Gerard Ruggie. *International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order*. International Organisation, 36(2): 379-415, 1982.

<sup>2</sup> Sandra Polaski. *The Future of the WTO*. Carnegie Endowment for International Peace, 2006.



# A Preliminary Analysis of the WTO Biotech Ruling

Heike Baumüller and Yvonne Apea

The long-awaited report of the WTO panel examining the US–Argentina–Canada challenge of the EU’s application of its biotech regulations was finally released on 29 September. The most immediate question for other WTO Members will be how the more than 2000 page ruling will affect their policy and regulatory decisions on biotechnology.

## The Findings in a Nutshell

The complainants challenged the EU on three accounts, namely (i) the EU’s alleged general moratorium on biotech approvals, (ii) its 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 that had already been approved at the EU-wide level.

Broadly speaking, the panel sided with the US, Argentina and Canada on all three counts. It 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 Brussels’ obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The panel also rejected the EU’s defence of the national-level bans as precautionary measures and called on the EU to bring the measures in conformity with WTO rules.

## Only the Application of EU Approval Procedures Assessed

The panel explicitly stated that it did not examine whether the EU’s approval procedures for biotech products were in line with its WTO commitments. Instead, the panel focused on European regulatory authorities’ *application* of those procedures. As a result, the ruling’s most immediate implications are for situations where approval procedures are in place, but might be applied inconsistently with WTO rules. As usual, however, the devil lies in the detail. Understanding some of the systemic implications of the dispute requires a closer look at the specific findings.

## Are the Moratoria SPS Measures?

The panel concluded that the alleged general and product-specific moratoria did not constitute SPS measures. Specifically, it argued that while requirements and procedures may constitute SPS measures (such as the EU’s approval procedures), the *application* of such requirements and procedures would not meet the definition.

As a result of this general finding, the panel rejected virtually all claims by the complainants, including allegations that the moratoria were not based on scientific evidence or a risk assessment since such requirements only apply to SPS measures. Instead, the panel focused its case exclusively on the conclusion that the moratoria had led to ‘undue delay’ in the application of the approval procedures in violation of Article 8 and Annex C(1)(a) of the SPS Agreement.

## SPS, TBT or Both?

The panel assessed whether the approval procedures were SPS measures or – as claimed by the EU – whether they also partly fell under the remit of the Agreement on Technical Barriers to Trade (TBT). This distinction is important since it will determine under which set of rules a measure will be assessed.

As a general finding, the panel concluded that a single measure (with multiple objectives) could fall under one agreement to the extent that it is applied to one of that agreement’s purposes, and under another when applied for other purposes. After examining the EU’s approval procedures in great detail, the panel concluded that the approval procedures set out in Directives 90/220 and 2001/18 constituted an SPS measure. The EU’s novel foods Regulation 258/97, on the other hand, was seen as falling under several agreements since it aimed to achieve multiple objectives, only one of which was thought to fall within the scope of the SPS Agreement.<sup>1</sup>

The practical and systemic implications of the general finding remain somewhat unclear since the panel only referred to the two directives, but not the novel foods regulation, when assessing consistency with the TBT Agreement. Given that it had already found that the procedures in the two Directives constituted an SPS measure, the panel – citing judicial economy – saw no need to examine Canada’s complaints under the TBT Agreement.

The panel took a rather broad approach to interpreting the scope of the SPS Agreement. In one notable conclusion, it rejected the EU’s argument that any risks to the environment other than those related to the life and health of animals or plants (such as adverse effects on soil or water organisms or on biogeochemical processes of an ecosystem) should fall outside the scope of the SPS Agreement. By taking such a broad approach, the panel has considerably raised the bar for any country wishing to justify its approval procedures (at least partly) as TBT measures.

## When is a Delay ‘Undue’?

According to the panel, the obligation to ‘undertake and complete’ approval procedures without undue delay meant that “once an application ha[d] been received, approval procedures must be started and then carried out from beginning to end.” The panel referred to the dictionary meaning of ‘undue’ to say that approval procedures should be undertaken and completed with no ‘unjustifiable loss of time’. However, rather than attempting to define reasons which would render a given delay ‘undue’, the panel stressed that any determination of whether a particular approval procedure had been delayed unduly would need to be done on a case-by-case basis ‘taking into account relevant facts and circumstances’, thus making it difficult to draw more general, systemic conclusions for possible future cases.

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### Risk and Precaution

The panel found that the national-level bans were not based on an adequate risk assessment in violation of Article 5.1 of the SPS Agreement. It also ruled that the bans could not be justified as precautionary measures under Article 5.7 since sufficient evidence had been available to carry out a risk assessment at the EU-level. The panel also pointed to the fact that the EU's regulatory bodies did not revise the conclusions of their original EU-level assessment of the safety of approved GMO products in light of the 'new scientific information' provided by those member states that had imposed national-level restrictions.

Importantly, the panel reasoned that Members' right to adopt provisional SPS measures in situations where relevant scientific evidence was insufficient (under Article 5.7) was a 'qualified right rather than an exception'. In the panel's view, this implied that when a complainant alleges that a country's SPS measure is not based on a risk assessment (in violation of Article 5.1 of the SPS Agreement) and the defendant has invoked Article 5.7, the burden is on the complainant to establish inconsistency with both provisions.

Rather than requesting the national bans to be lifted, the panel called for the measures to be brought in line with the SPS Agreement. It thereby left the door open for EU member states to maintain national-level bans if they are able to provide an assessment showing a level of risk that warrants stricter measures than those adopted at the EU-level.

### The Question of Likeness

While the US had argued its case entirely under the SPS Agreement, Canada and Argentina had also invoked the TBT Agreement and the General Agreement on Tariffs and Trade (GATT) in their challenge of the product-specific measures. They alleged, *inter alia*, that the measures had led to discrimination against *imported biotech products* ('less favourable treatment') vis-à-vis *domestic non-biotech counterparts* (based on the assumption that the process of genetic modification does not render a product different as such). The panel effectively skirted this question, explicitly stating that it did not think it necessary to address it.

Some of the panel's specific arguments are nevertheless interesting. In response to Argentina's claim of a GATT violation, the panel felt that Argentina had failed to show that the alleged 'less favourable treatment' of imported biotech products had been a result of the *foreign origin* of the products, which would have violated the national treatment principle. Indeed, the panel noted that Argentina did not allege that *imported* biotech products had been treated differently from *domestic* biotech products.

The question of 'likeness' could become important if biotech approval procedures themselves were to be challenged, given that some argue that genetically engineered products are not different from other products 'as such' and should therefore not be subject to different regulations. By emphasising the need to show that the foreign origin of a product was the motivation for the alleged discrimination – rather than, for instance, the "perceived difference between biotech products and non-biotech products in terms of their safety" (para. 7.2514) – the panel appears to have raised the hurdle for complaining parties in a future dispute to show that different rules for biotech and non-biotech products amount to discrimination between 'like' products.

### Relationship with Other Bodies of International Law

At the request of the EU, the panel assessed the applicability and relevance of the Cartagena Protocol on Biosafety and the Convention on Biological Diversity (CBD). In its analysis, the panel examined the Vienna Convention's provision that when interpreting any treaty, other relevant rules of international law "applicable in the relations between the parties" should be taken into account (Article 31c). Given that not all parties in the WTO dispute are also parties to the Cartagena Protocol and the CBD, the panel felt that it did not have an *obligation* to take into account their provisions. Nevertheless, the panel noted that it had the *option* of doing so, but concluded that the provisions cited by the EU in its defence were not relevant in this case.

Since the measures at issue were not taken to implement the Cartagena Protocol as such, the ruling does not provide guidance on the question whether measures to implement provisions of a multilateral environmental agreement might be presumed to be WTO compatible.

### Concluding Remarks

It is important to stress that the panel's findings and their implications are very specific to the EU context. Nevertheless, a number of arguments and implications are noteworthy. The panel has taken a rather broad approach to the scope of the SPS Agreement, making it virtually impossible to avoid scrutiny of challenged biotech regulations under the SPS Agreement. Furthermore, the ruling has provided little guidance on when a delay should be seen as 'undue', leaving this question to be decided on a case-by-case basis.

At the same time, the ruling might have facilitated the defence of an SPS measure as precautionary (under Article 5.7) by placing the burden on complainants, who must prove not only that a measure is inconsistent with the SPS Agreement's risk assessment requirements, but also that it does not qualify as a justified precautionary measure. In addition, its conclusions regarding the discrimination between 'like' products appear to have made it more difficult to challenge measures specifically targeted at biotech products (such as approval procedures) as discriminatory vis-à-vis measures for non-biotech products.

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### ENDNOTES

<sup>1</sup> Directive 2001/18, which replaces Directive 90/220, sets out the rules for environmental release of genetically modified organisms and the marketing of biotech products. Regulation 258/97 deals with the marketing and labelling of novel foods (subsequently replaced in the case of biotech products with specific labelling regulations).

# Towards an Aid for Trade Regime in Services

Pierre Sauvé

Managing service sector reforms requires that market opening be accompanied by a careful combination of competition and regulation, but such a process can present important challenges to resource-constrained governments in many developing countries.

In the services area, an approach that combines Aid for Trade with additional trade and investment liberalisation commitments could help promote progress in the negotiations while also addressing the legitimate concerns voiced by many developing country governments and civil society organisations over the extent of asymmetries at the negotiating table.

Because of the sheer diversity of the sectoral realities encompassed by services trade, a coherence-promoting Aid for Trade package in services requires close co-operation and co-ordination among numerous multilateral institutions, bilateral donors and civil society actors (both private sector and NGO representatives).

The Doha Development Agenda and WTO Ministerial Declarations are replete with references to trade-related technical assistance and capacity-building, none of which however are legally binding. To guard against the very real risk that the absence of technical assistance may stymie needed reforms and unduly hold back liberalisation commitments, consideration needs to be given to establishing a more formal link between enhanced market access commitments by developing countries and additional assistance on the part of developed countries and relevant multilateral agencies.

Such a link could lend greater credibility to both liberalisation and technical assistance programmes. Indeed, the development promise of the Doha Round, and the ubiquitous calls for coherence in policy-making, would be well served if one of the tangible dividends of a completed DDA would be up-front commitments by the leading multilateral and regional lending agencies in support of strengthening regulatory institutions and supply responses in developing countries.

## Aid for Trade in Services: A Tailored Response

The particular character of services trade and of services liberalisation imparts a number of special features to the Aid for Trade debate in the sector. The non-tariff nature of impediments implies that governments do not forego fiscal receipts when engaging in services trade liberalisation. Absent tariff protection, there is no significant preference erosion agenda to speak of, and hence little need to foresee compensatory payments for countries or regions affected by MFN-based negotiating advances.

Moreover, the *practice* of market opening in services, where negotiated outcomes are far likelier to result in *status quo* commitments (i.e. policy consolidation, or even less) than to generate *de novo* market opening, suggests that the scope for significant post-liberalisation adjustment pressures is generally absent (or minimal) in most negotiating settings. This implies that discussions of an Aid for Trade response in services can generally be divorced from concerns over the design and adequacy of compensatory financing for the potential 'losers' from market opening.

This is not to say that market opening in services cannot produce distributional downsides. It most certainly can, as with liberalisation in any given sector. The main point, however, is that – apart from countries seeking accession to the WTO, whose average level commitments is often higher than that scheduled by developed countries during the Uruguay Round – significant new market opening is rarely the norm at the negotiating table. Any such opening should, moreover, be properly sequenced, including through pre-commitments to future liberalisation via commitments under Article 18 of the General Agreement on Trade in Services (GATS) so as to mitigate significant adjustment pressures and to ensure that market opening and regulatory strengthening are carried out in a concomitant manner. Adjustment pressures resulting from the opening of services markets could further be addressed through

recourse to an operational emergency safeguard mechanism, an area of unfinished rule-making in services trade where progress would be most desirable.

## Aid for Trade Challenges in Services Trade

The question naturally arises of where additional assistance can best be directed in the services field. Developing countries face two central challenges in undertaking service sector reforms. First, that of identifying the elements of good (i.e. economically sound) services policy. And second, that of assessing how the choice of good policy at the domestic level can be supported by multilateral (or bilateral/regional) negotiations.

Addressing the clear deficit in negotiating, enforcement and supply-side capacities that the majority of developing countries face under the GATS requires that a fresh look be given in the DDA to the idea of a more formal linkage between scheduled commitments, now or in future, and the supply of needed technical assistance. The latter should aim to strengthen:

- the ability to negotiate from a more informed position;
- the capacity to better manage the process of market opening; and
- the ability to supply newly-opened foreign markets.

## Negotiating and Analytical Capacities

Despite its innate promise, the complexity of liberalising services trade under the GATS cannot be underestimated, particularly in light of the limited administrative and negotiating capacities of many developing countries. A country needs to gather significant knowledge before it can submit sensible market opening requests and make informed offers. This includes identifying opportunities and challenges for its exporters, determining the capacity-building needs of its negotiators, ministries and regulatory agencies, and assessing the likely economic and social impacts of various liberalisation scenarios.

*Continued on page 16*

Preparing for negotiations thus requires that countries establish a multi-stakeholder approach involving all relevant governmental agencies (and negotiators), legislators, sectoral regulators, as well as civil society representatives (business and non-governmental organisations). Improved mechanisms for co-ordination and consultation are critical to putting forward a coherent view that identifies and pursues the national interest. This is particularly true for services, given the wide variety of sectors, modes of supply and regulatory spheres involved and the economy-wide influences that service sector reforms can impart.

A large number of developing countries have encountered recurring difficulties in identifying their specific sectoral interests in services negotiations, the barriers to their exports or the impact of detailed requests by trading partners (particularly those from developed countries) on their services sectors. The task is even more complicated when developing country administrations are stretched by several concurrent negotiations at the bilateral, regional and multilateral levels.

Of particular concern to developing countries is the question of how to evaluate the requests received from trading partners and the formulation of their own requests and offers. The latter is a particularly complex undertaking as countries need to determine their national policy objectives and the competitiveness of each sector or sub-sector.

Such challenges are compounded by the need to determine, among other things, the optimal sequencing of the steps involved in liberalisation, the capacity of domestic firms to provide the services in question and whether this capacity would be positively or negatively affected by further competition in the market, as well as the adequacy of domestic regulatory regimes

Developing countries have a pressing need, and one that is arguably more conducive to harnessing the pro-development potential of services liberalisation, to acquire the analytical tools to determine a country's readiness to liberalise and develop government-wide negotiating strategies.

and enforcement capacities. Other elements of such an evaluation relate to the impact of market opening on investment, employment, access to higher quality imports or more efficient foreign suppliers, gender, access to essential services and poverty alleviation.

While the recent adoption of plurilateral negotiating platforms (i.e. collective requests and offers) could lessen some of the above burdens, it would clearly not obviate the need for WTO Members to be clear on the economic and regulatory implications of making new or improved commitments.

WTO Members cannot participate meaningfully in services negotiations without first understanding how domestic reform is best pursued. This requires careful analysis informed by two-way dialogue between national stakeholders, country negotiators and independent researchers. A stocktaking exercise to consider national and cross-country experience with services reform could help identify areas where reforms can be fast-tracked and those where uncertainties suggest greater doses of regulatory precaution.

Many capacity-building efforts in services have so far focused on helping negotiators and policy officials master the legal provisions of services agreements such as the GATS. A more pressing need, and one that is arguably more conducive to harnessing the pro-development potential of services liberalisation, is that of acquiring the analytical tools to determine a country's readiness to liberalise; develop government-wide negotiating strategies; and help domestic service providers take full advantage of the market access opportunities arising from regional and multilateral liberalisation efforts.

Technical assistance directed to the above needs deserves greater attention on the part of multilateral agencies and the donor community. For the most part, this entails the dissemination of knowledge on best practice initiatives in countries – developed and developing – that have been successful reformers. Invariably, these countries will tend be those that have developed efficient communication channels with the multiplicity of stakeholders that services negotiations entail.

An assessment of the effects of services liberalisation is foreseen under the GATS. The donor community could lend credibility to such a process by setting up a group of internationally recognised experts to lead and direct such work. An initiative of this type could help ensure that WTO commitments reflect sound economic policy and economy-wide considerations rather than the narrower interests of domestic or foreign service suppliers.

### *Implementation and Enforcement Capacities*

The complexity of service sector reform, and the critical need for liberalisation efforts to be rooted in, accompanied and, in some instances, preceded by sound regulation (including in respect of regulatory enforcement capacity) can present formidable challenges to developing countries. The latter are likelier on average to have weaker regulatory regimes and enforcement capacities. There is, accordingly, a need for progressivity in liberalisation and for beefed-up investments in trade-related capacity-building aimed at remedying such institutional and regulatory weaknesses.

If there is one area where competent technical assistance can make a difference, it is in strengthening regulatory agencies and their staff in developing countries. Regulatory institutions are costly and require staff with sophisticated legal and economic skills. Yet sound domestic regulation is critical to realising the full benefits of open service markets and responding to its potential downsides.

The multiplicity of modes of supplying services and the ensuing regulatory intensity of services trade and of related factor movements raises a host of technical assistance challenges. The predominance of commercial presence as a mode of supplying services suggests that assistance directed at enhancing a host country's investment climate may be particularly important in strengthening the competitiveness of the service sector.



At the same time, the rising salience of cross-border trade and of possibilities for remotely supplying service markets highlights the need for greater regulatory convergence, for the development and adoption of international standards and the negotiation of mutual recognition agreements as means of facilitating cross-border trade in services. Low standards and related inadequacies in domestic regulation can frustrate access of developing country services and service providers to foreign markets. Helping developing countries improve domestic standards and qualifications for services, notably by strengthening their participation in regional or global standard-setting initiatives, is another area where more focused capacity-building efforts can yield strong development dividends.

A further candidate for enhanced assistance in the post-negotiating/implementation phase relates to help in designing reforms that properly factor in the impacts of liberalisation on the poor and improve their access to essential services. Such services run the gamut from sanitation to transport, health, telecommunications, small-scale finance, education and health. While most of these complementary policy challenges lie outside the realm of trade negotiations, getting them right can help build needed support for market opening efforts. However, implementing such policies in an economically sound manner can present numerous challenges to weak bureaucracies, and many developing countries, particularly the least-developed countries, will require outside support and a fair amount of time in meeting them.

Service exporting firms in industrial countries also have a stake in ensuring that markets are opened, that such opening is sustainable and that it occurs in a stable regulatory environment. These objectives can be served by enhanced private sector support for improved regulatory institutions and universal access policies. Means thus need to be devised for the private sector to contribute financial resources, people and expertise towards enhanced regulatory reform efforts in developing countries.

### Supply Capacity

The third pillar of a coherent Aid for Trade package in services needs to target the very real constraints that many developing country exporters face in attempting to supply newly opened markets. Despite the growing number of success stories in sectors such as energy, business process outsourcing, construction or environmental services, there remain too few examples of companies from developing countries involved in export trade to a significant degree.

Several reasons may be adduced to explain this fact, starting with the large fixed costs of entering what are often capital-intensive sectors, as well as the global presence of very large companies in the market already. Even in sectors where developing countries are exporting, studies reveal a number of key common problems facing their exporters, including: (i) lack of access to financing for export or business development; (ii) difficulties encountered in establishing credibility with international suppliers; (iii) lack of access to reliable and inexpensive infrastructure; and (iv) lack of access to a range of formal and informal networks and institutional facilities necessary for trade.

Because of its central focus on the private sector, capacity-building in respect of supply-side constraints involves a different set of institutional actors than those concerned with the strengthening of trade negotiating or regulatory capacity. Such differences matter for assistance design and inter-agency coordination efforts. It is, here again, an area where greater private sector involvement from service exporting firms in industrial countries could usefully complement the efforts of bilateral donors and multilateral agencies such as the International Trade Centre or the World Bank.

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## A4T and the WTO

The WTO's role in Aid for Trade (A4T) will essentially be one of monitoring, but the institutional arrangements to do so are yet to be established. WTO Director-General Lamy told Members on 10 October that there was 'broad agreement' that existing mechanisms should not be replaced or duplicated, and that the WTO Secretariat was still assessing how 'internal mechanisms' could best be used to fulfil the mandate. He will update the General Council on progress in December.

While monitoring will be crucial to ensure that committed funds have been delivered and spent on the recipient countries' trade promotion priorities, much of the initial work must be done by the recipient countries themselves. Some countries have already started to assess their needs and priorities. Mauritius, for instance, has already identified the measures that must be taken to adjust its economy to changes brought by globalisation and even calculated how much those measures are likely to cost. Among other sources financing, it hopes that Aid for Trade will cover part of the reforms it plans to undertake. Importantly, WTO Members have agreed that A4T can support a broad range of activities, and "is not conditional on the Doha Round's success."

Some developing country trade delegates have indicated a certain sense of frustration over the lack of progress within the WTO in implementing the Aid for Trade Task Force's recommendations. They note that the Director-General still has not reported to the membership on the results of his consultations with donors and financial institutions on securing additional funding for A4T.<sup>1</sup> Nor has the *ad hoc* consultative group been established, although the Task Force suggested that one be set up "to take forward the practical follow-up of these recommendations."

### ENDNOTE

<sup>1</sup> At the Hong Kong Ministerial Conference Japan pledged US\$10 billion over three years, the US promised US\$2.7 billion by 2010 and the EU • 2 billion by 2010.

## EU-China Trade

The European Commission released a new EU-China trade and investment strategy on 24 October. The paper emphasised the benefits of China's WTO accession to European investors, exporters and consumers, but also acknowledged that Chinese competition had real consequences for 'companies and individual workers in Europe'. It highlighted a number of obstacles to market access, such as high tariffs on textiles, shoes, steel and vehicles, as well as 'unjustifiable non-tariff barriers', including product certification, labelling standards, import approval requirements, customs delays and 'unreasonable sanitary and health requirements' for agricultural products.

Furthermore, the policy paper maintained that new WTO-incompatible 'China first' trade practices were emerging in sectors such as automobiles, steel, semiconductors and shipbuilding (the EU and the US have already launched a WTO dispute on alleged local content requirements affecting China's tariff structure for foreign auto parts, see Bridges Year 10 No.6, page 6).

The EU will continue to press China to end what it alleges are WTO-illegal subsidies (see page 8), as well as to more effectively police and punish those who infringe copyright and trademark protections. In addition, it will address, as a priority "requirements for technology transfer that are not based on voluntary business decisions, and the non-payment of royalties to EU rightholders."

A new EU-China Partnership and Co-operation Agreement (PCA) will be drawn up, with a 'specific focus on trade and investment issues' such those highlighted above. In addition, the Commission will "seek to address with greater intensity sustainability and environmental aspects and impacts of its economic and trade relations with China," as well as step up pressure on China "to assume a responsibility commensurate with the benefits it derives from the multilateral trading system and to make a substantial contribution to reviving and completing the WTO Doha Round."

## The New China-Africa Partnership

Chinese and African leaders have sealed a deal that is to vastly expand China's aid, trade and investment in the resource-rich but cash-poor continent.

At a China-Africa summit held in November, China's President Hu Jintao promised to double Beijing's current level of development assistance to African countries by 2009. He also pledged US\$5 billion in concessional loans and credits over the same period along with a further US\$5 billion to set up a fund that will encourage Chinese businesses to invest in Africa. By some accounts China is already a bigger lender to the continent than either the US or the World Bank.

In addition, President Hu announced new debt cancellation initiatives and the extension of duty-free market access to more products from Africa's least-developed countries, and unveiled plans to train 15,000 African professionals, as well as pledged increased support to regional efforts to combat malaria and promote economic integration.

### Trade Flows to Double

Summit participants adopted a declaration, proclaiming the establishment of a 'new type of strategic partnership' between China and Africa and calling for enhanced "South-South co-operation and North-South dialogue to promote balanced, co-ordinated and sustainable development of the global economy." The document urged rich countries to boost foreign aid spending, honour commitments to open markets and expand debt relief in order to help African countries reduce poverty, control desertification, and achieve the UN Millennium Development Goals. Chinese and African governments committed to doubling the volume of two-way trade to US\$100 billion by 2010. The US\$50 billion in trade projected for this year already represents a near-fivefold increase from five years ago.

Much of the growth in the China-Africa trade and investment relationship is driven by China's drive to secure access to commodities, and oil in particular. One third of China's oil imports come from Africa, primarily from Sudan and Nigeria. In recent years, Chinese companies – many of them state-owned or -affiliated – have vastly increased their operations in the continent.

### Investment, Aid and Human Rights

The Beijing Declaration states explicitly that "the politicisation of human rights and the imposition of human rights conditionalities on economic assistance should be vigorously opposed to as they constitute a violation of human rights." In this spirit, China's African loan and investment contracts contain no human rights, good governance or environmental clauses. Civil society organisations have charged that such 'no-strings-attached' loans help bolster governments guilty of serious human rights violations. Even World Bank President Paul Wolfowitz recently warned that Chinese lenders risked repeating Western banks' history of granting loans to support damaging behaviour by corrupt regimes. Citing the principle of non-interference in other countries' domestic affairs, China vigorously rejects these claims.

African leaders warmly welcomed the prospect of more Chinese aid, trade and investment, which they said would help reduce the continent's dependence on Western donors and markets. André Habimana, a senior official at Rwanda's Ministry of Finance and Economic Planning, called China's non-conditional approach to development aid a 'breath of fresh air' that would relieve some of the pressure exerted by 'conditional-based donors'.

Nevertheless, local resistance is on the rise in some countries. Earlier this fall, riots broke out in Zambia, where miners protested against poor working conditions in Chinese-owned copper mines, and textiles traders complained that Chinese retailers had harmed their businesses by selling cheap imported garments in traditionally Zambian-dominated open markets. There is also concern over Chinese companies' practice of bringing the bulk of their labour force from China to the detriment of employment opportunities for nationals of the host country.

## EU, India Move Toward Trade Talks

The EU and India have agreed to step up efforts towards a 'broad-based' bilateral trade and investment pact, aiming to conclude a deal by 2009.

The carefully-worded joint statement issued at the conclusion of the 13 October EU-India leaders' summit did not refer to a formal launch of bilateral negotiations, saying only that both sides had decided to "move towards negotiations for such an agreement." Nevertheless, discussions on the scope of the future talks were quite specific.

Indian Prime Minister Manmohan Singh said that the prospective accord would ultimately cover "over 90 percent of tariff lines and trade volume." He refused to call it a 'free trade' agreement, although he did not rule out the possibility. Officials suggest that some agricultural products might remain exempt.

### India Seeks Protection for Its Own Foreign Investors

In addition to trade in goods and services, negotiations would set out rules on bilateral investment flows. Notably, India's Trade Minister Kamal Nath identified 'national treatment' for Indian businesses operating within the EU as one of Delhi's key objectives.

Developed countries in general have long sought greater protections for foreign investors. In recent years, however, firms based in developing countries have been the source, rather than the target, of international takeover bids, including Tata Steel's potential bid for UK-Dutch steelmaker Corus Group. This new development has spurred political controversy, and opposition, in both the EU and the US, and India wants to obtain firmer legal footing for its firms seeking to acquire EU companies.

### Wide-ranging Negotiations Recommended

Bilateral trade negotiations will broadly follow the suggestions of a 'high-level trade group' (HLTG) set up last year to explore ways of intensifying bilateral trade and investment relations. The panel recommended goals for goods trade liberalisation, opening a higher number of services sectors to bilateral competition, and rules governing the access and treatment of foreign investors. Its report also urged the development of provisions on trade facilitation, and co-operation on technical regulations (such as sanitary and phytosanitary measures) and competition policy. The panel called for a 'pragmatic approach' to government procurement, pointing to the advantages of an 'open and competitive tendering framework'. The HLTG also agreed that WTO-plus rules on intellectual property rights could be part of an eventual deal, and that "geographical indications [...] should be covered in any possible bilateral agreement."

The bilateral group's suggestions matched many of the key objectives for EU trade agreements identified by the European Commission in a report on competition released in October – with the notable exception of labour and environmental standards.

India-EU trade is bedeviled by a variety of barriers other than tariffs – from EU health and safety standards that Indian exporters find too high, to India's often-complicated licensing and regulatory requirements. In spite of this, goods exchanges between the EU and India amounted to €40 billion in 2005 – a 20 percent increase over the year before. India is especially looking to expand its exports of textiles and clothing, farm products, leather, machinery and gems to the EU, already its largest export destination.

### Another Blow to the Doha Round?

The joint summit communiqué insisted that the stalled Doha Round multilateral trade negotiations remained the EU and India's "foremost trade policy priority." Defending the potential bilateral trade pact against those who see such agreements as signs of giving up on the WTO, EU Trade Commissioner Peter Mandelson argued that it would actually reinforce the world-wide trading system, since it would "set new standards for openness and global trade rule."

## EPA Update

Representatives of the African, Caribbean and Pacific (ACP) Group of States are increasingly calling for an extension of the end-December 2007 deadline for concluding Economic Partnership Agreements (EPAs) with the European Union. They have also urged the EU to strengthen the development dimension of EPAs through more financing for their implementation, as well as lower EU demands for tariff cuts and access to ACP services and public procurement markets.

EU Trade Commissioner Peter Mandelson strongly rejects any allegations that development is taking a backseat in the negotiations. Speaking to the European Parliament in October, he said that despite 30 years of unilateral trade preferences, most ACP countries still exported just a few basic commodities and risked becoming permanently "stranded on a shrinking island of commodity trade. [...] The EU cannot make the challenges of globalisation disappear for the ACPs."

As for prolonging the January 2008 deadline, Mr Mandelson said that it was "politically unrealistic to think that WTO Members would agree to extend the current waiver, and certainly not without a hefty price." The waiver, which allows the EU to treat ACP countries more favourably than other WTO Members until January 2008, was granted at the eleventh hour of the Doha Ministerial Conference after ACP countries threatened to withhold their consent to launching a new round of trade negotiations.

Commissioner Mandelson also noted that ACP countries should focus on necessary policy reforms rather than "the size of the financial envelope that is intended to pay for them."

In related news, European development ministers on 16 October agreed to prepare a strategy for the delivery of the €2 billion that the EU has pledged to donate for Aid for Trade. A 'substantial part' of these funds will be 'specifically targeted' to assisting ACP countries in diversifying and expanding their exports.



## US–Andes Update

Already-signed US free trade agreements with Peru and Colombia face opposition from leading Democrats, who are demanding that the Office of the US Trade Representative renegotiate their labour provisions.

As written, the labour provisions require Peru and Colombia to enforce their own labour laws, but do not oblige them to comply with all the ‘core’ rights set by the International Labour Organisation. If either country were found to violate its domestic laws, it would have to pay a fine that would be used to address enforcement problems. Should the country fail to pay up, the US would be entitled to impose trade sanctions under the FTA. The Democrats requesting changes in the FTAs are calling for provisions that would bring both countries’ laws in line with ILO standards.

At the time of writing it was not clear when Congress would start its examination of the agreements.

### ATPDEA Extension Possible

Andean countries started FTA negotiations with the US when the latter made it clear that the Andean Trade Promotion and Drug Eradication Act (ATPDEA) would not be renewed after its expiry at the end of this year. Now, however, the Bush administration has warmly recommended the extension of current preferences for all four members of the Andean Community (Bolivia, Colombia, Ecuador and Peru) for an as-yet-undetermined period. Ecuador’s FTA negotiations with the US are suspended, while Bolivia’s have yet to start.

The current Republican chair of the Ways and Means Committee may submit new legislation on preferences to be considered by the House of Representatives in early December. According to some sources, however, the bill might extend ATPDEA for just Peru and Colombia, and that possibly for no longer than six months. The incoming Ways and Means chair Charles Rangel supports a two-year extension of the preferences for all four Andean countries.

## US Korea, Malaysia FTAs Inch Forward

Free trade negotiations between the US and Korea will not conclude this year as originally hoped.

During the fourth negotiating round in late October, the two sides addressed less contentious issues such as customs administration, re-manufactured goods, administration of agriculture tariff rate quotas and anticorruption provisions. Progress in these areas was a welcome change from the third round of negotiations, which saw no progress at all.

The US revised its market access offer on textiles to cover more tariff lines, but Korean negotiators rejected it due to the 10-year phase-out period proposed by the US. US chief negotiator Wendy Cutler said she was surprised by the move, as the new offer would have affected US\$1.35 billion in trade, or almost half of the total in this sector. In parallel with broadening its offer, however, the US is trying to negotiate a textiles safeguard that would allow it to raise tariffs to most-favoured-nation levels in case of import surges. For its part, Korea is pushing for changes in the rules of origin the US generally includes in its FTAs. Specifically, Seoul would like the US to bend the yarn-forward rule under which fabric and clothing are eligible for duty-free access only if the yarn used is either Korean or American.

Korea welcomed the US offer to immediately remove tariffs on 1,000 industrial goods (out of more than 10,000 tariff lines in total), and improved its own agricultural tariff reduction offer by moving up phase-out schedules for 138 tariff lines valued at US\$88 million. The US, however, is holding out for greater concessions, including at least some market access for rice and beef. The two sides have agreed in principle to establish an agricultural emergency safeguard, but differ on whether it should be permanent. Korea thinks so, while the US wants it to be temporary.

Korea’s attempt to include US anti-dumping practices in the pact made no headway at all.

Pharmaceuticals and automobiles, which are considered the most sensitive sectors, will be discussed in early December. Democrats have vowed to push the US administration to address Korea’s non-trade barriers – particularly in the vehicles sector – in the negotiations.

Despite the difficulties ahead, both sides appear cautiously optimistic about the chances of wrapping up the negotiations early next year.

### Slow Progress in US–Malaysia Negotiations

A third round of US–Malaysia FTA talks held in October–November provided more clarity on the sensitivities on both sides, but made little concrete progress. Two more rounds are scheduled for early next year, but the negotiations are unlikely to conclude in time to be considered by the US Congress before the expiry of the president’s trade promotion authority.

On services, the two sides continue to differ on whether to use a negative or positive list approach. A ‘positive list’, preferred by Malaysia, would explicitly spell out the sectors that will be opened up. The WTO’s General Agreement on Trade in Services uses this approach. The US would like all services sectors to be considered open unless a specific reservation is made in a ‘negative list’. This approach would automatically open to competition any new services sectors that may develop in the future, since they would not figure on the list of exceptions.

The US is still trying to convince Malaysia to include government procurement in the treaty. Malaysia is also resisting US efforts to make provisions on the enforcement of domestic environmental laws subject to dispute settlement, and would prefer to keep labour issues out of the agreement altogether.

According to a summary of the government’s goals and positions released on 13 November, Malaysia is seeking early tariff elimination on textiles and clothing, rubber and wood products, ceramics, electrical and electronic products, and agricultural goods.



## WIPO General Assembly Charts Way Forward

Member governments of the World Intellectual Property Organisation reached agreement on how to proceed with negotiations on a new broadcasting treaty, as well as proposals for a WIPO Development Agenda during the fall meeting of the institution's highest decision-making body.

Unauthorised re-transmission/recording of broadcasts – facilitated by new means of communication, such as broadband and the internet – is becoming increasingly common. For instance, iCraveTV.com made 17 US and Canadian television stations available on the internet in 2000 without the permission of broadcasters. (The service closed down after 62 days after a coalition of broadcasters successfully sued the company.)

Fixing (recording) and re-transmitting broadcasts without authorisation is called 'signal theft' as the original broadcaster gets no compensation for the reuse of its programme (news, sporting event, game show, etc.) and may even lose some of its own audience.

This has led 'traditional' television, radio, satellite and cable broadcasters to seek a new treaty to improve protection of their products worldwide. The proposal has been discussed in the WIPO Standing Committee on Copyrights and Related Rights since 1998.

### Rights- or Signal-based Approach?

One option debated in the committee would provide a legal basis to sue infringement cases through granting broadcasters substantive intellectual property rights over their transmissions and the 'fixations' – recordings or other forms of storing – of those transmissions, as well as a series of post-fixation rights for possibly twenty or even fifty years. Following the example set by the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, this 'rights-based' approach would award broadcasters rights over both the transmission and the artistic works being transmitted, putting them on equal footing with recording companies. However, the fact that the *content* of transmissions rather than just the *signal* (i.e. the broadcaster's product) would be protected, has given rise to questions over whether protection would also be extended to works already in the public domain.

An alternative option would create penalties for international signal theft (i.e. unauthorised re-transmission). The 'signal-based' approach – already adopted by another WIPO treaty, the Brussels Convention relating to Distribution of Programme-Carrying Signals Transmitted by Satellite – would allow broadcasters to stop the re-transmission of their signal without adding another layer of copyright protection over existing works.

The draft broadcasting treaty submitted to the consideration of the 2006 WIPO General Assembly took the rights-based approach, but the proposal faced considerable opposition from various countries, including the US, Canada, India, Chile and other developing countries. They considered that there were many issues that still needed discussion, and called for further work on the treaty's general principles, subject matter, scope, exceptions, limitations and technological protection measures.

In a highly unusual joint statement, major technology manufacturers (including AT&T, Intel, Dell, HP and others) and civil society groups active in the international intellectual property rights debate (such as CP Tech, Electronic Frontier Foundation and Creative Commons) expressed concern that the proponents "had not clearly identified particular problems the treaty would ostensibly solve" and said they "remained unconvinced that the treaty was necessary at all." Others argued that the rights-based approach would liberally award intellectual property rights without any requirement for originality, creativity or investment; create overlapping rights, which would require approval from both copyright holders and broadcasters to use materials (and potentially translate into higher costs for consumers); compromise access to materials that are freely available in the public domain, and; grant extraordinary powers to broadcasters for 50 years, which is longer than the effective life of a patent.

### Road Map for Signal-based Broadcasting Treaty

At the General Assembly, WIPO member states agreed to abandon the rights-based approach and focus narrowly on remedies for signal theft, a breakthrough largely due to a change in the positions of the EU and the US. Two meetings – one in January and the other in June – will be held to define the objectives, scope and object of protection. A Diplomatic Conference (final negotiating session) will be convened in early November 2007 if members succeed in reaching consensus on these issues during the two preparatory meetings. If there is no agreement, discussions will proceed based on the rights-based draft treaty presented to the 2006 General Assembly. Setting that draft aside (at least for the next few months) suits many WIPO members, including the US, which dislikes its public interest clauses on the protection of cultural diversity and encouragement of competition. On the other hand, it responds to developing countries' wish to move away from the rights-based approach altogether.

### Development Agenda Talks Extended

WIPO members launched a discussion on a Development Agenda in October 2004 (Bridges Year 8 No.8, page 17). The proposal aimed to put development at the heart of the institution's objectives and activities in order to promote developing countries' access to knowledge and technology transfer, and to safeguard public interest flexibilities in treaties under negotiation.

Since then, members have brought more than 100 specific proposals to the table and created a Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) to review them. In June, the chair of the committee attempted to streamline the proposals by combining them into a single text for discussion, but the talks broke down with no clarity on what should happen next (Bridges Year 10 No.4, page 18). The General Assembly extended the

*Continued on page 22*

PCDA's mandate for another year and decided to hold two five-day meetings to address all the proposals. The first meeting will examine the 40 proposals identified in the controversial June text, while the second will focus on the remaining 71 proposals. The latter essentially address issues raised by the 'Friends of Development' (FoD)<sup>1</sup>, which initiated the Development Agenda debate. The PCDA is mandated to make recommendations to the 2007 General Assembly for further action.

### Patent Harmonisation Deferred to Next General Assembly

The stalemate in the Standing Committee on Patents (SCP) on a potential treaty on patent harmonisation persisted through the General Assembly. Discussions in the committee have been adrift since April 2006, when a meeting collapsed in acrimony due to differences between developed and developing countries on the terms of the treaty, which would require states to harmonise their national patent systems. Ultimately, members simply agreed to defer discussions on the Substantive Patent Law Treaty for a year.

Broadly speaking, developing countries fear that a harmonisation of patent laws would target the basic criteria of patentability (novelty, inventive step and industrial application) and therefore widen what is patentable today. A revision of patentability criteria could imply an extension of patent protection to 'inventions' currently deemed unworthy because of their relatively low level of 'inventiveness' or lack of clear 'industrial applicability', such as mere discoveries, business methods, trivial innovations and second uses. They argue that this would be detrimental to innovation and the public interest, and have pushed for any treaty to address development concerns including exemptions to patentability, as well as compulsory disclosure and benefit-sharing for any genetic material or traditional knowledge used in an invention.

These divisions re-emerged at the General Assembly. Developed countries wanted the Standing Committee to start work on a limited list of priority issues, such as 'first to file vs first to invent', the definition of prior art and grace period (novelty-related issues), and 'inventive step'. The FoD opposed this, arguing that the committee should also ad-

dress a broader range of issues, including development and policy space flexibilities; exclusions from patentability; exceptions to patent rights; anti-competitive practices; disclosure of origin; prior informed consent; disclosure, access and benefit-sharing related to genetic resources and traditional knowledge; and effective mechanisms to challenge the validity of patents. Chile, India, Indonesia and Pakistan also objected to the proposed work plan.

Brazil emphasised that patent law harmonisation should not come at the expense of developing countries. Pointing to growing concerns about the patent system even in rich countries, Brazil proposed carrying out impact assessment studies before proceeding with talks on harmonisation or norm-setting.

In the absence of consensus, members decided to reconsider the issue at the next General Assembly. Governments should submit proposals for future work of the Standing Committee on Patents before December 2006, and informal consultations will be held in the first half of next year with the aim of recommending a work plan for the committee to the 2007 General Assembly. Several observers said that the period for the submission of proposals was too short to allow a substantive debate to take place early next year.

### Work on Genetic Resources and Traditional Knowledge to Proceed

Two issues have acquired significant importance in different fora during the last few years: the illegal use or incorporation (misappropriation) of genetic resources in biotechnological inventions and the protection of the knowledge, innovations and practices of indigenous and local communities. While many still consider genetic resources as 'natural raw materials' and traditional knowledge (TK) as 'old innovations', there is an increasing recognition and reaffirmation of national sovereign rights over genetic resources, as well as the value of indigenous and local conservation efforts and knowledge to the development of new crops, medicines, dyes, perfumes, cosmetics and other products extensively used by humankind.

The Intergovernmental Committee on Traditional Knowledge, Folklore and Genetic Resources (IGC) was established in 2000 to address problems arising from the lack of moral recognition, economic compensation and reaffirmation of 'ownership/control' over genetic resources and traditional knowledge when granting intellectual property rights.

At the 2006 General Assembly, WIPO members agreed to continue work on how best to protect indigenous communities' knowledge. Many developing countries called for the establishment of a legally-binding instrument to prevent the misappropriation of genetic resources and to protect traditional knowledge. Some developed countries, including the US and the EU, acknowledged the significance of the issue but called for further discussion.

The IGC has discussed both 'positive protection' and 'defensive protection' as possible approaches to protecting traditional knowledge. Positive protection refers to the acquisition by the TK holders themselves of an IPR-type of protection or an alternative right provided in a *sui generis* system (liability rules, unfair use and unjust enrichment). Defensive protection refers to legal or regulatory provisions aimed at preventing the granting of IP protection to genetic resources/TK, cultural expressions or products illegally acquired/used by unauthorised persons or organisations.

This year one of the main achievements of the IGC was the creation of a fund for the participation of indigenous and local communities in its discussions and negotiations. At the IGC's December 2006 session, Members will focus on a set of principles and guidelines to protect TK and folklore, and on exploring options for giving an international dimension to the committee's work.

### ENDNOTES

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

## A Trade Strategy for Sustainable Bioenergy

Biofuels hold promise for curbing carbon dioxide emissions, reducing dependence on imported fuels and generating employment in the agricultural sector, but also pose challenges with regard to their potential impact on food security, environmental sustainability and social justice.

An ICTSD side event held during the UN Conference on Climate Change in Nairobi brought together experts and stakeholders from the fields of trade, energy and environment to debate the opportunities and challenges presented by biofuels.

While only one tenth of global biofuel production is currently internationally traded, such trade is expected to grow considerably given the divide between countries with comparatively lower production costs and those with the greatest demand for biofuels. Maximising trade opportunities would require a better understanding of international trade rules that influence the production and trade of biofuels. Such rules revolve around market access – including issues of tariff and non-tariff barriers, subsidies, and the question of whether standards and certification mechanisms would be needed in order to ensure environmental and social sustainability of production and trade.

Several WTO negotiation areas are relevant to biofuels trade, including in particular agriculture, industrial products and the liberalisation of environmental goods and services.

Ethanol and biodiesel fall under different product classifications in the WTO – ethanol is considered an agricultural product, while biodiesel is classified as a chemical (industrial good). Participants examined the implications of this distinction in terms of WTO rules and disciplines, particularly with respect to tariffs and subsidies. In the Doha Round negotiations, the tariff reduction formula envisaged for industrial goods is much more ambitious than that for agricultural products.

Subsidies received much attention, not least because domestic agricultural support accounts for a large share of both production and trade-distorting subsidies, and many heavily-subsidised crops can also be used in the production of biofuels. Many participants recognised the need for some form of initial support to make biofuels economically viable, but they also widely shared the view that subsidy disciplines might be needed to prevent a distorted global market.

Several concerns were raised regarding the potential impact of the production of biofuels from food crops such as corn, wheat, soybeans and sugar. Since cereal grains make up 80 to 90 percent of food for people worldwide and more than 800 million people are still affected by malnutrition, potential impacts on food security and global food prices – which may be positive for some and negative for others – need further study.

Large scale expansion of biofuel production could also present serious risks of further encroachment into the world's forests, damage to local and global biodiversity, as well as provide an incentive to extend monoculture in agriculture. In addition, greater understanding is needed of the effective energy and greenhouse gas balance of biofuels, including whether they produce more energy than is used in their production, and whether they offset more greenhouse gases than they generate during their life-cycle.

Participants recognised that biofuels were a promising source of energy with major implications for global competitiveness, energy security, climate change and socio-economic development, but also that there were uncertain social and environmental consequences. As many of biofuels' opportunities and challenges are likely to be influenced by current and future trade rules and disciplines, there is a need to involve all relevant stakeholders in crafting these rules to maximise the contribution of biofuel trade to a sustainable global bioenergy strategy.

For further information, contact Moustapha Kamal Gueye, Senior Programme Manager - Environment Cluster, [gkamal@ictsd.ch](mailto:gkamal@ictsd.ch) or visit [www.trade-environment.org/](http://www.trade-environment.org/).

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

### BRIDGES Regional Editions

#### PUENTES

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

Co-publisher: Centro Internacional de Política Económica para el Desarrollo Sostenible (CINPE), San José, Costa Rica

Web: <http://cinpe.una.ac.cr>

#### PONTES

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

Co-publisher: Fundação Getúlio Vargas, São Paulo

Web: <http://www.edesp.edu.br>

#### PASSERELLES

##### entre le commerce et le développement durable

Co-publisher: ENDA – Tiers Monde, Dakar, Senegal

Web: <http://www.enda.sn>

### Other ICTSD Periodicals

#### BRIDGES Weekly Trade News Digest

A weekly electronic news service on trade, sustainable development and the WTO.

Editor: Trineesh Biswas

#### BRIDGES Trade BioRes

Co-publisher: IUCN – The World Conservation Union

A bi-weekly electronic news service on trade, sustainable development and biological resources.

Editor: Malena Sell

#### TRADE NEGOTIATION INSIGHTS

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#### ECLAIRAGE SUR LES NEGOCIATIONS

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### WTO Meetings

|         |   |
|---------|---|
| Nov. 28 | Committee on Trade and Development      |
| Nov. 30 | Council for Trade in Services           |
| Dec. 13 | Integrated Framework Steering Committee |
| Dec. 19 | Dispute Settlement Body                 |

*The Doha Round negotiating groups are expected to start meeting informally in the coming weeks, but no schedule was available at the time of publication.*

### Other Meetings

|                                 |  |
|---------------------------------|--|
| Nov. 27<br>to Dec. 1<br>Chiba   | Ad Hoc Intergovernmental Task Force on Food Derived from Biotechnology<br><a href="http://www.codexalimentarius.net/">http://www.codexalimentarius.net/</a>  |
| Nov. 27<br>to 1 Dec.<br>Nairobi | Conference of the Parties to the Basel Convention on Hazardous Wastes<br><a href="http://www.basel.int/">http://www.basel.int/</a>   |
| Nov. 28<br>Geneva               | UNCTAD Intergovernmental Expert Meeting on the Participation of Developing Countries in New Dynamic Sectors of World Trade: Review of the Energy Sector<br><a href="http://www.unctad.org/">http://www.unctad.org/</a> |
| Dec. 12-16                      | East Asian Seas Congress 2006<br>Haikou City <a href="http://www.pemsea.org/eascongress/">http://www.pemsea.org/eascongress/</a>   |

### New Publications from ICTSD

[www.ictsd.org](http://www.ictsd.org)

Garrison, Christopher. October 2006. Exceptions to Patent Rights in Developing Countries. UNCTAD–ICTSD Project on IPRs and Sustainable Development

ICTSD. October 2006. Fisheries, International Trade and Sustainable Development. Policy Discussion Paper. ICTSD Project on Fisheries, International Trade and Sustainable Development

ICTSD (ed.). October 2006. Linking Trade, Climate Change and Energy. ICTSD Project on Trade and Sustainable Energy

Kirkpatrick, Colin. October 2006. Trade in Environmental Services: Assessing the Implications for Developing Countries in the GATS. ICTSD Project on Environmental Goods and Services

### Selected Documents Circulated at the WTO

Committee on Subsidies and Countervailing Measures. November 2006. China's Transitional Review Mechanism. Questions from the United States (SCM/Q2/CHN/23) & the European Communities (G/SCM/Q2/CHN/24), and China's response (G/SCM/N/149)

Djiofack-Zebaze, Calvin and Keck, Alexander. Telecommunications Services in Africa: The Impact of Multilateral Commitments and Unilateral Reforms on Sector Performance and Economic Growth

Trade, Debt and Finance. 22 November 2006. Report of the Working Group to the General Council. (WT/WGTDF/5)

WTO. November 2006. International Trade Statistics 2006

### Other Selected Resources

European Commission. October 2006. Global Europe: Competing in the World. European Commission. Brussels

Grynberg, Roman and Clarke, Alice (eds.). 2006. The European Development Fund and Economic Partnership Agreements. Commonwealth Secretariat. London

Grynberg, Roman, Dugal Manleen and Razzaque Mohammad. 2006. An Evaluation of the Terms of Accession to the World Trade Organisation. Commonwealth Secretariat. London

Howse, Robert; von Bork, Petrus and Hebebrand, Charlotte. October 2006. WTO Disciplines and Biofuels: Opportunities and Constraints in the Creation of a Global Marketplace. International Food and Agricultural Trade Policy Council. Washington D.C.

Katz, Sherman and Ocheltree, Matthew. October 2006. Intellectual Property Rights as a Key Obstacle to Russia's WTO Accession. Carnegie Endowment for International Peace. Washington D.C.

Menon, Jayant. Bilateral Trade Agreements and the World Trading System. Asian Development Bank. Manila

Organisation for Economic Co-operation and Development. September 2006. Financial Support for Fisheries: Implications for Sustainable Development. OECD. Paris

Palmer, Alice. November 2006. The WTO GMO Dispute: Implications for Developing Countries and the Need for an Appeal. GeneWatch UK et al. Buxton, UK

Stern, Nicholas. October 2006. Stern Review: The Economics of Climate Change. Her Majesty's Treasury. London

UN Conference on Trade and Development. October 2006. World Investment Report: FDI from Developing and Transition Economies: Implications for Development. United Nations. Geneva and New York

