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LEAD STORIES

WTO PANEL PROVISIONALLY RULES AGAINST EU MORATORIUM ON BIOTECH APPROVALS

A WTO dispute panel on 7 February issued a preliminary ruling suggesting that several aspects of the way that the EU's approval process for genetically modified organisms (GMOs) was operating were in contravention of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). It is thus largely favourable to the complaint brought in 2003 by the US, Argentina and Canada against what they alleged was an EU moratorium on the approval of new biotech products.

In the interim ruling, which was confidential and released only to the parties to the dispute, the panel was keen to stress that the challenge did not address the WTO-consistency of the EU biotech regulations, but rather the failure of the EU to properly apply its own procedures.

Interim ruling sides with complainants

The panel is assessing three issues for their compliance with WTO rules: (1) the alleged general EU moratorium on biotech approvals, (2) the EU's failure to approve a number of specific biotech products (referred to as 'product-specific measures'), and (3) national-level bans in several EU member states on the marketing and import of specific biotech products after the products had been approved at the EU level.

According to the interim ruling, the EU had indeed applied a general 'de facto' moratorium on approvals of biotech products between June 1999 and August 2003, thus contradicting Brussels' claim that no such moratorium existed (see BRIDGES Weekly, 18 January 2006, <http://www.ictsd.org/weekly/06-01-18/story2.htm>). The panel noted that this general 'de facto' moratorium did not constitute an SPS measure in and of itself, but had "resulted in a failure to complete individual procedures without undue delay," thereby violating

Article 8 and Annex C of the SPS Agreement, which set out rules for such approval procedures.

Notably, the panel did not side with the complainants on other allegations, including those contending that the de facto moratorium was not based on a risk assessment or on scientific principles.

With regard to the product-specific measures, the panel reached conclusions similar to those on the general de facto moratorium, arguing that the completion of the approval process had been unduly delayed for 24 out of the 27 biotech products.

The 1,050-page report also found that 'safeguard measures' in the form of national bans on the marketing and import of EU-approved biotech products in France, Germany, Austria, Italy, Luxembourg and Greece were WTO-incompliant. The panel stressed that the challenge was not directed at EU laws for approval procedures, which allow individual EU member states to impose SPS measures that differ from EU-wide measures. In fact, the panel actually assessed the prohibitions imposed on the basis of the EU's own legislation. The EU had argued that the national bans were taken as precautionary measures under Article 5.7 of the SPS Agreement, which allows WTO Members to provisionally adopt SPS measures in the absence of sufficient evidence. The interim ruling, however, concludes that available scientific evidence was actually sufficient to permit a risk assessment -- because the EU's scientific committee had already assessed the risks of the biotech products and judged them to be safe. This was its basis for finding that the challenged EU member states had not undertaken risk assessments in line with the requirements of the SPS Agreement that would "reasonably support the prohibition."

Interim recommendations of the panel

The panel did not make recommendations on what the EU should do about the general de facto moratorium since they found that it had already ended with the approval of "a relevant biotech product" in 2004, some months after the establishment of the panel.

On the product-specific measures, the panel requested the EU to bring the measures "into conformity with its obligations under the SPS Agreement," effectively asking the EU to complete the approval process for the outstanding applications.

Similarly, the interim ruling requests the national-level bans to be brought into conformity with WTO law, which would imply revoking them or providing an SPS Agreement-compliant risk assessment to justify the measures. The European Commission had already

stepped up pressure on member states in this regard, most recently ordering Greece to end its ban (see BRIDGES Trade BioRes, 20 January 2006, <http://www.ictsd.org/biores/06-01-20/story3.htm>).

Moratorium or no moratorium?

In a press release issued the same day as the interim report, the EU stressed the need for strong regulatory oversight of GMOs, and noted that the approvals process it has in place had led to the authorisation of more than 30 biotech products. It argued that it does not have a ban in place, suggesting that the implications of the biotech case for current EU processes are likely to be minimal because the ruling does not apply to the regulatory framework that came into effect in 2004.

The US had argued in a 6 February statement that the moratorium was still in place because only a few, "token" GMOs had been approved since 2004. However, in a footnote to the interim ruling, the panel members explicitly refrained from expressing an opinion on whether an amended de facto moratorium continued to exist or a new general moratorium had been imposed, on the grounds that doing so would be beyond their terms of reference.

Under EU laws, applications for the approval of GMOs go through a lengthy process which includes examination by the European Food Safety Authority (EFSA), as well as by ministers and environment, health, and safety experts from EU states. If the state representatives fail to agree on whether to approve or reject the application for environmental release or commercialisation, the decision reverts back to the European Commission. Nearly two dozen GMO applications are currently in this pipeline.

Parties, civil society weigh in

In a conference call with journalists the night of 7 February, a US official said the US is "pleased with the outcome." In a reference to widespread public scepticism about GM products in the EU, US Trade Representative Rob Portman noted that "public opinion isn't the standard. The standard is a rules-based system in the WTO. That's why we're in the WTO, and as the world's largest trading partner I'm sure the EU would act responsibly."

A number of industry and farmer groups in the US, which is the world leader in the adoption of GM crops, expressed support for the preliminary report. "The WTO's decision makes it clear that biotech regulations must be based on sound science and that the EU's approach to biotech crop approvals is unwarranted,"

said Sarah Thorn, senior director of international trade at the Grocery Manufacturers Association.

However, many civil society groups sharply criticised the ruling, saying that public opinion in the EU against the release and commercialisation of GMOs should be respected. "US agro-chemical giants will not sell a bushel more of their GM grain as a result of the WTO ruling," Greenpeace International trade adviser Daniel Mittler declared. "European consumers, farmers, and a growing number of governments remain opposed to GMOs, and this will not change -- in Europe or globally." Friends of the Earth International described the overturning of the national bans as 'undemocratic' and an "inappropriate intrusion into decisions about what food people eat," adding that "the WTO is unfit to decide what we eat or what farmers grow. It has no particular competence in environmental or health and safety matters."

Until recently, interim reports in all WTO disputes had largely matched the eventual final rulings. However, the role of these preliminary reports as a barometer of the panel's final decision has been diminished by Korea and Indonesia's dispute over anti-dumping duties on certain Indonesian paper imports, for which the October 2005 final ruling reversed some of the substantive findings in the interim report.

Informed sources expect that the final ruling in the biotech case, which will take into account parties' views on the preliminary report, will be released in April.

The interim conclusions and recommendations of the panel are available at <http://www.tradeobservatory.org/library.cfm?refid=78475>.

For additional information, including analysis and relevant submissions, visit <http://www.trade-environment.org/page/theme/tewto/biotechcase.htm>.

ICTSD reporting; "Europe's rules on GMOs and the WTO," EU PRESS RELEASE, 7 February 2006; "WTO condemns EU over GMO moratorium," REUTERS, 8 February 2006; "WTO Backs Key U.S. Claims in Case Against EU GMO Ban; EU Downplays Ruling," WTO REPORTER, 7 February 2006; "GMO Ruling Delights US Farmers but Hurdles Remain," REUTERS, 8 February 2006; "WTO Found EU GMO Moratorium Violated Trade Rule - US," REUTERS, 8 February 2006; "WTO may reject EU biotech policy in 'Bellwether' case," BLOOMBERG, 6 February 2006; "WTO rules against Europe in GM food case," FINANCIAL TIMES, 7 February 2006; "Europe's Biotech-Seed Rules Ruled Illegal by WTO, U.S. Says," BLOOMBERG, 8 February 2006.

LAMY UNVEILS AID FOR TRADE TASK FORCE, CALLS FOR TEXT-BASED NEGOTIATIONS

WTO Director-General Pascal Lamy called on Members on 8 February to proceed "in concert" and come forward with new negotiating positions on all issues in the ongoing Doha Round talks, in order to break the current deadlock and achieve the objectives they set for themselves at the December Ministerial Conference in Hong Kong. In his speech to the General Council, he said that delegations would have to focus on text and numbers if they are to have a chance of narrowing their differences. Lamy also revealed -- and then quickly revised -- the composition of the 'Task Force' that will be charged with operationalising the provisions on aid for trade set out in the Hong Kong Ministerial Declaration.

At the meeting, Members formally agreed to a slate of new chairs for both the regular WTO committees and the various Doha Round negotiating bodies (see related story, this issue).

Members discuss Davos timeline, process

Both in the 8 February General Council and the Trade Negotiations Committee (TNC) meeting that took place the day before, delegations discussed the timetable for the negotiations in 2006 that emerged from a late-January gathering of ministers from 25-odd WTO Member countries in Davos, Switzerland (see BRIDGES Weekly, 1 February 2006, <http://www.ictsd.org/weekly/06-02-01/story1.htm>).

Lamy emphasised that the timeline was not an official document, but simply a "useful working tool" -- an indication of the work that needs to be done in order to conclude the negotiations by the end of the year. Some Members said the timeline was helpful, but questioned whether it would actually encourage Members to go further -- the history of WTO negotiations is littered with missed deadlines.

Cuba and Venezuela expressed discomfort with the Davos timetable, and circulated a paper about 'irregularities' during the Hong Kong Ministerial Conference, calling for greater transparency and inclusiveness in the negotiating process. No other Member expressed similar concerns, and Lamy insisted that there was "widespread satisfaction" with the "bottom-up" process that had been followed both before and at the Ministerial Conference. To the TNC, he stressed "the essential outreach role played by the different groupings" -- representatives of the various Member groupings have been playing a central role in

communicating the proceedings of 'Green Room' and other small-group meetings to the Membership at large.

Agriculture negotiations Chair Ambassador Crawford Falconer (New Zealand) urged Members to talk to each other, saying that progress was needed on all three pillars of the farm trade talks: export competition, domestic support, and market access. He reminded them that only three meetings of the committee remain before the end of April, which is the deadline set by the Hong Kong Declaration for Members to reach a comprehensive agreement on 'full modalities' -- structures and numbers for subsidy and tariff cuts, as well as exceptions -- for the agriculture and non-agriculture market access (NAMA) negotiations.

On behalf of the group of least-developed countries (LDCs), Zambia said that this work prior to 30 April should include a review of the criteria for the permitted farm subsidies that fall into the 'green box,' as well as the development of disciplines for the 'blue box' and rules to prevent Members from re-classifying grants from one box to another to avoid having to make real reductions. It also called for exporting state trading enterprises from LDCs to be exempt from any eventual disciplines. The LDC group asked for greater clarity on the composition of the 3 percent of tariff lines that Members have the right to exclude from duty- and tariff-free market access as per the Hong Kong Declaration, as well as negotiations for a gradual phaseout of this exception.

Lamy announces aid for trade Task Force

The Task Force on aid for trade will comprise Barbados, Brazil, Canada, China, Colombia, the European Union, Japan, India, Thailand, the United States and the coordinators of the ACP (African, Caribbean, and Pacific) Group, the African Group and the LDC Group. It will be chaired by Swedish Ambassador Mia Horn af Rantzien in her personal capacity. The Hong Kong Declaration mandates the group to "provide recommendations to the General Council by July 2006 on how aid for trade might contribute most effectively to the development dimension of the Doha Development Agenda."

Colombia and Thailand were not on the list when Lamy first unveiled it in the General Council. He announced their inclusion towards the end of the meeting, after several Members complained that mid-sized developing countries had not been adequately represented in the Task Force. Sources suggest that the composition of the group appears to still be the subject of debate, and it is not certain that no other Members will be added to it.

Each country on the Task Force will be represented by its ambassador and one additional official -- Lamy encouraged them to send senior capital-based officials with expertise on development and finance issues. International organisations, possibly including regional groups, will be invited to regularly advise the Task Force.

Lamy informed Members that consultations on implementation issues would resume next week, and that he would report on them at the next TNC meeting, for which no date has been set.

The weeks before the December Ministerial Conference saw a series of 'green room' meetings, with the TNC and the General Council placed continuously 'on hold' so that they could be convened any time. It is not yet clear if and how the intensity of negotiations will be accelerated between now and the 30 April deadline, which both delegates and Lamy insist is not beyond reach.

ICTSD reporting.

OTHER NEWS

ANTI-DUMPING NEGOTIATIONS RESUME, ADDRESS PUBLIC INTEREST

WTO Members went straight into technical discussions on potential changes to anti-dumping rules, as negotiations on the issue resumed for the first time after the December Ministerial Conference at a 1-2 February meeting of the Negotiating Group on Rules. A Canadian proposal to include a public interest clause in the Anti-dumping Agreement received the most attention. Meanwhile, Chair Ambassador Guillermo Valles Galmes of Uruguay announced that he would come up with a consolidated draft text for a Doha Round agreement on rules by July, in accordance with a timeline set out by ministers from 25-odd WTO Member countries in Davos late last month (see BRIDGES Weekly, 1 February 2006, <http://www.ictsd.org/weekly/06-02-01/story1.htm>).

Canada: Members should establish 'public interest' of anti-dumping duties

Canada's proposal (TN/RL/GEN/85) would modify the Antidumping Agreement (ADA) to require Members to establish domestic mechanisms for "its authorities to inquire into whether the imposition of an anti-dumping duty... would not be in the public interest." In other words, to entitle sections of society negatively affected by the duties, such as consumers or industrial users of

the imported product in question, to have their views taken into consideration when the government is deciding to impose additional duties on an allegedly dumped import. "As a result of any such inquiry," the proposed amendment continues, "the authorities may decide to eliminate or reduce the level of duties that would otherwise be applied." The proposal also puts forward text for a possible annex to the ADA outlining factors that the concerned authorities should consider when making their decision, including the likely effect of imposing an anti-dumping duty on consumers as well as domestic producers or services providers that use the targeted product.

The 'friends of anti-dumping' (FAN), a group of developed and developing country Members that want the Doha Round to result in tighter disciplines on the use of such measures, had previously submitted proposals advocating the inclusion of a clause allowing concerned stakeholders such as consumer groups, producers and importers to be involved before a decision to impose anti-dumping measures is taken (see BRIDGES Weekly, 20 April 2005, <http://www.ictsd.org/weekly/05-04-20/story4.htm>).

Many Members welcomed the Canadian proposal, although they raised many questions about it. New Zealand, for example, asked what would determine whether a particular party was eligible to comment, and at what point in time of an anti-dumping investigation such interests would be considered. The US expressed "philosophical concerns" with the proposal, wondering how judgements on legitimate domestic concerns would be made, and whether national decisions would be challengeable under the WTO's dispute settlement mechanism, an issue that had already cropped up in previous discussions of the issue (see BRIDGES Weekly, 5 October 2005, <http://www.ictsd.org/weekly/05-10-05/story3.htm>).

However, the Canadian proposal is explicit in specifying that any new public interest provisions "must not try to prescribe what is or is not in the importing Member's economic interest," and that it is not necessary "to prescribe the precise modalities for the implementation of these provisions." It further specified that a country's eventual public interest decisions, as the sovereign prerogative of each Member, would fall beyond the reach of WTO dispute settlement proceedings. China welcomed this flexibility. Hong Kong and other FAN Members were generally supportive of the proposal, and said it allowed for the possibility of cooperation.

Mexican proposal on 'price undertakings' discussed

Members generally welcomed a proposal by Mexico (TN/RL/GEN/76) that puts forward draft legal text on

'price undertakings' -- an alternative to anti-dumping measures where exporters offer to raise the export price of their product in order to avoid the imposition of an anti-dumping duty.

Mexico contends that the simple initiation of an anti-dumping investigation affects trade in the good being examined, since it motivates importers to modify their purchasing practices. The proposal points to price undertakings as a way of avoiding definitive anti-dumping duties while simultaneously addressing the threat of injury to domestic industry in the export market. Arguing that Article 8 of the ADA does not clearly set out the rules and requirements for anti-dumping authorities to accept an offer of a price undertaking, it proposes modifying the treaty to establish clear rules on exporters' right to offer such price undertakings as well as "a transparent procedure for [their] acceptance or rejection..."

The proposed amendments provide for the suspension or termination of anti-dumping proceedings "upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices... so that the [investigating] authorities are satisfied that the injurious effect of the dumping is eliminated." They also specify that exporters would be notified of their right to offer price undertakings, but would not be asked to make any unless the concerned authorities in the importing country had already made a preliminary determination of the existence and extent of dumping.

Several Members voiced concerns that the proposal sought to make the acceptance of price undertakings mandatory for investigating authorities, and that it drew a link to the so-called "lesser duty" rule which would require antidumping duties to never exceed the dumping margin. The proposal specifies that price increases offered through such undertakings "shall not be higher than necessary to eliminate the margin of dumping determined for the said exporter," and that the increases "shall be less than the margin of dumping if such increases would be adequate to remove the injury." New Zealand asked why such a link was being established, considering that no consensus on the lesser duty rule had been reached, let alone on how to incorporate it into price undertakings. The US and Hong Kong raised similar questions.

China, the EU and Thailand also pointed out that Mexico's proposal to grant exporters the right to address "minor errors and omissions" in information failed to explain such errors and omissions would be defined.

According to one source, the Chair will use consultations and detailed discussions within a small

group of Members as the basis for drawing up consolidated text for submission by July.

The next rules week is scheduled for 13-17 March.

ICTSD reporting.

NAMA: NO PROGRESS, BUT MEMBERS ACTING FRIENDLIER

WTO Members made no breakthroughs as they resumed negotiations on non-agricultural market access (NAMA) for the first time since the December Ministerial Conference in Hong Kong. Nevertheless, one negotiator, suggesting that the main objective of the 2-3 February meetings was for delegations to 're-engage' rather than focus on substantive differences, reported an impression that Members seemed more willing to seek compromise than before.

Summing up what was his last session as chair of the NAMA talks, Ambassador Stefan Johannesson of Iceland described the tenor of the discussions as more "business-like" than in the past, but said that Members would need to be more willing to compromise in order to agree on how to address the effects of the erosion of trade preferences by multilateral tariff liberalisation.

Johannesson held very brief informal consultations with 20-odd Member delegations on issues including the tariff reduction formula, the nature and extent of the flexible treatment to be accorded to developing countries when cutting their industrial tariffs (such as exempting a small number of tariff lines from reductions), unbound tariffs, small and vulnerable economies, and preference erosion.

Some Members suggested that discussing the tariff-cutting effects that would result from specific values for formula coefficients and flexibilities would be useful. Several also said that developing a list of issues that need to be resolved -- as is being done in the agriculture negotiations -- might help push the talks forward. Some Members believe that negotiations on the treatment of small and vulnerable economies would require the elaboration of identification criteria based on indicators of the degree of vulnerability in addition to market size.

Sources indicate that Kenya and a group of countries that benefit from trade preference schemes reportedly clashed with Costa Rica and several mostly Latin American countries that do not. The latter insist that the effects of preference erosion should largely be dealt with bilaterally. The Hong Kong Declaration "recognises challenges that may be faced by non-reciprocal preference beneficiary Members," and instructs

countries "to intensify work on the assessment of the scope of the problem with a view to finding possible solutions."

With regard to non-tariff barriers, Japan, a major importer of natural resources, said that it would table a legal text on export restrictions in time for the 30 April deadline for 'full modalities' set out in the Hong Kong Declaration.

A group of developing countries comprised of Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa, Tunisia and Venezuela reiterated the position in the NAMA talks that most of them had laid out during the Hong Kong Ministerial Conference, stressing that the negotiations must respect development concerns, particularly with regard to the flexibilities for developing countries (see BRIDGES Daily Update, 14 December 2005, http://www.ictsd.org/ministerial/hongkong/wto_daily/14_December/en051214.htm). On behalf of the so-called 'NAMA group,' India emphasised that the outcome of the negotiations must not be disproportionately onerous for developing countries.

Johannesson will be replaced as NAMA chair by Ambassador Donald Stephenson of Canada. One trade diplomat suggested that Members had not expected much from the recent session of NAMA talks since the chair was leaving, and might be "saving ammunition" for the next one, scheduled to kick off on 27 February.

ICTSD reporting.

SPS CTTE DISCUSSES WTO ROLE IN REGIONAL RECOGNITION; S&D ALSO IN FOCUS

WTO Members grappled with the role of the global trade body in addressing the need to recognise regions within countries or trade blocs as pest and disease-free for the purposes of international trade, during a 30 January - 2 February session of the Committee on Sanitary and Phytosanitary (SPS) Measures. While several developing countries argued that WTO guidelines are necessary, many developed countries suggested that ongoing processes within the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC) are adequate to ensure that entire countries' exports are not blocked as a result of a pest or disease problem in a single isolated region.

Members also discussed how to proceed with the Committee's Doha mandated negotiations on special and differential treatment (S&D), and how to ensure

that developing countries have the capacity to take advantage of such flexibilities.

Several countries also raised concerns that the global mobilisation against avian flu, and specifically insufficiently-justified trade restrictions, could discourage governments from providing detailed information about the disease, in turn impeding attempts to stem its spread. The OIE confirmed that unscientific responses -- for example, slapping a trade ban on countries that announce the presence of an entirely different strain of the virus -- "discourages transparency and therefore impedes global attempts to keep track of the disease."

Is regionalisation a feasible alternative?

Article 6 of the SPS Agreement requires governments to recognise regions within or straddling other countries as being safe sources for imports of food and animal and plant products, instead of basing trade entirely on national boundaries. Specifically, these regions could be declared to be "free" from disease or pests.

In two days of informal meetings preceding the formal session, some 15 Members shared their experiences with 'regionalisation,' explaining how they had kept diseases or pests confined within particular regions, and had subsequently suffered unfairly when trade measures were applied to exports from all parts of their respective countries.

A rift continues to separate developed and developing countries on whether the SPS committee needs to draft guidelines to enable Members to enforce Article 6 of the Agreement. While most developed countries responded to presentations from the OIE and IPPC by saying the processes pursued by the two organisations are sufficient to ensure that regions are recognised as pest-free, a group of developing countries suggested that these measures were not enough. A developing country delegate argued that regionalisation must be made a fixture on the SPS Committee agenda in order to ensure that the momentum towards it continues.

If properly implemented, national measures enabling the recognition (and effective derecognition) of an exporting region as having a particular pest or disease problem would enable importing countries, through multilateral recognition of the region as the geographic and trade area affected, to suspend imports from the affected region alone, rather than from the country as a whole. Countries including Canada and Brazil shared examples of how trading partners had imposed extended period bans on all of their exports of certain products, despite the fact that the disease outbreaks had been confined to a small region within each country. The developing-country supporters of

developing WTO guidelines on the issue said that country-wide bans have devastating -- and unnecessary -- impacts on their export sectors.

However, some developing countries expressed concerns in the corridors outside the meeting room about the feasibility of moving towards implementing SPS measures on a regional basis, because of the expensive investments required to segregate different regions within one's country for trade purposes. They also expressed fears that such investments could end up being for naught, should importing countries fail to recognise the region or to develop effective procedures for removing SPS measures from the exports of unaffected regions. Members were unable to agree on how to address these issues, in the formal session, however, and several negotiators suggested that consensus on regionalisation guidelines was unlikely. Instead, some said that the SPS Committee should facilitate the monitoring of the OIE and IPPC talks, and support the timelines and deadlines that they adopt.

Interpretation of S&D mandate proves difficult

The question of the relationship between SPS rules and technical assistance resurfaced during discussions on S&D. Although Members agreed to postpone by two years the 2006 deadline for the review of a transparency procedure created by the group in 2003 to encourage Members to provide developing countries with the assistance they may need to meet notified SPS measures. The mechanism encourages developing countries to seek bilateral consultations with Members implementing SPS measures they find difficult to comply with, and requires the latter to publicise the proceedings of these consultations. It was highlighted that no developing countries have taken advantage of the procedure in the two years it has been in operation, despite the fanfare with which it was adopted (see BRIDGES Weekly, 3 November 2004, <http://www.ictsd.org/weekly/04-11-03/story3.htm>).

Sources suggested that it sheds light on a systemic problem in the SPS Committee, namely that developed countries blame developing countries for not using the flexibilities present in the agreement and elsewhere, while many developing countries do not have the capacity to attend the SPS Committee, understand the flexibilities, or implement them. Several developing countries suggested at the meeting that the reasons for why the transparency mechanism had not been used must be examined.

Similar issues were raised in discussions on how to move forward with the Doha mandated S&D negotiations. Developed countries said that the issues discussed in paragraph 43 of the report on SPS-related S&D (G/SPS/35) that Members adopted in June 2005 should be the reference point for ongoing negotiations

(see BRIDGES Weekly, 6 July 2005, <http://www.ictsd.org/weekly/05-07-06/story3.htm>).

These focus largely on issues related to SPS-related technical assistance. However, developing countries wanted to focus on revisions to the five proposals for SPS-related S&D that were referenced throughout the same report, but said that they had not received the specific comments on those proposals that would enable them to make revisions that address the underlying issues. This discussion closely mirrors that in the Committee for Trade and Development Special Session, and will likely be continued in the future. Also in question is whether the Committee should forward recommendations on the paragraph 43 issues to the General Council.

Members also considered specific trade concerns, including measures to combat 'mad cow' disease (bovine spongiform encephalopathy, or BSE), and foot and mouth disease. They also discussed a complaint from New Zealand about the length of time Australia is taking to accept its apples and the EU's offer to provide Sri Lanka technical assistance to meet EU regulations on sulphur dioxide residues in cinnamon exports.

The next formal meeting of the SPS Committee is scheduled for 29-30 March.

ICTSD reporting.

CBD: POTENTIAL TEXT TABLED ON ACCESS AND BENEFIT SHARING REGIME

Disagreement over whether a potential new regime on access to genetic resources and the sharing of benefits drawn from them should be legally binding did not prevent delegates from coming up with a draft version of a treaty, at a 30 January - 3 February meeting of the Convention on Biological Diversity (CBD) working group on the matter. However, they were forced to 'bracket' substantial parts of the draft treaty -- reflecting the persistent differences -- and forward it to the next Conference of the Parties to the CBD (COP-8), scheduled for 20-31 March in Curitiba, Brazil.

Negotiations on developing a new regime were mandated in 2004, and have already gone through one round in Bangkok, Thailand in March 2005 (see BRIDGES Trade BioRes, 4 March 2005, <http://www.ictsd.org/biores/05-03-04/story3.htm>).

The African Group, the group of 'like-minded mega-diverse countries' and that of Latin American and Caribbean countries expressed support for the draft text tabled by Chair Margarita Clemente (Spain on 1

February) based on earlier negotiations and proposals. Australia, New Zealand, Korea and the EU suggested that the Chair's text -- which includes text on objectives, scope, ownership, accessing genetic resources, accessing traditional knowledge, benefit-sharing, certificates of origin and other measures -- moves too quickly in the direction of a legally-binding instrument. Along with Switzerland, Canada, the US, and Japan, they called for more research and studies. They stressed that the document could be used for discussions about an international regime, but not forwarded on to the COP as a proposed protocol.

On February 2, delegates inserted brackets throughout a revised version of the draft document to reflect lack of agreement on a number of provisions. For example, the title of the section reading "access to genetic resources" was bracketed because several developing countries argued such access did not merit a separate section -- they suggested that references to access needed to be embedded within measures to govern and regulate the means by which permission to use genetic resources is granted. Several developed countries, however, stressed that the regime was as much about ensuring access to biological resources as benefits. Australia, the EU and Canada, for their part, complained that the drafts did not reflect the views they had expressed verbally and submitted in writing.

Nature, sufficiency and methodology of certificates discussed

Many delegates suggested that the international regime could create a system for the international standardization of certificates of origin and/or legality. A number of developing countries rich in genetic resources argued that national intellectual property laws would have to require such certificates disclosing the source of the resource, the existence of prior informed consent to access, and benefit-sharing arrangements as prerequisites for the granting of patents. Several developed countries, in contrast, resisted demands to include a provision on disclosure requirements in patent applications in the text. Countries including the US argued that intellectual property rights (IPR) regulations should not be reformed at the international level.

In spite of differences over whether the CBD was the appropriate forum to develop rules on disclosure requirements, delegates agreed that a CBD pact that includes internationally-approved certificates of origin could help achieve the mandate they had been given. They decided to recommend that the COP-8 consider establishing a group of technical experts for the consideration of possible options on the form and content of an international certificate of origin/source/legal provenance.

Scope touched on, but not delved into

Countries were also split on whether derivatives of biological resources should be covered by the prospective treaty. Developing countries argued that derivatives must be part of any pact, arguing that it is often derivatives that get commercialised, generally with no benefits to the communities that provided the resources. Developing countries were split on whether benefit-sharing conditions should be determined nationally, or described in detail in the agreement.

Indigenous voices ask in

Participants from indigenous communities stressed the need for prior informed consent and mutually agreed terms in setting up specific access and benefit sharing deals on traditional knowledge.

The EU brought a last-minute proposal to the table calling for continued support for the participation of mandated indigenous and local community representatives, including the International Indigenous Forum on Biodiversity, by incorporating them as participants in informal groups and debates during the negotiations on the international access and benefit sharing regime. However, owing to the last-minute nature of the proposal and resistance from Argentina, Mexico and others, it was not included in the official recommendations. Instead, it will be included in the meeting report, allowing it to be discussed at the COP. Canada also secured the inclusion in the report of its own, slightly toned-down version of the EU statement.

For more information on this story, please see BRIDGES Trade BioRes, 3 February 2006, <http://www.ictsd.org/biores/06-02-03/story2.htm>.

ICTSD reporting; "Draft of Global Regime On Genetic Resources Emerges At CBD," INTELLECTUAL PROPERTY WATCH, 2 February 2006; "Revised Biodiversity Draft Meets Strong Developed Country Opposition," INTELLECTUAL PROPERTY WATCH, 2 February 2006; ENVIRONMENTAL NEGOTIATIONS BULLETIN, Vol. 9 No. 340-48, 31 January - 3 February 2006.

WTO IN BRIEF

GENERAL COUNCIL APPOINTS COMMITTEE CHAIRS FOR 2006

At its 8 February meeting, the WTO General Council formally assented to the list of chair appointments for 2006 to the thirteen regular WTO committees and eight

Doha Round negotiating bodies. Ambassador Eirik Glenne (Norway) replaces Ambassador Amina Chawahir Mohamed (Kenya) at the head of the General Council. His foremost task will be to work with Director-General Pascal Lamy to help guide the troubled Doha Round negotiations through the end of the year, when Members are hoping to finalise an agreement. Malaysian Ambassador Yacob Muhammed Noor replaces Glenne as chair of the Dispute Settlement Body, and Ambassador Claudia Uribe (Colombia) becomes the new head of the Trade Policy Review Body. The Council for Trade-related Aspects of Intellectual Property Rights (TRIPS) will be chaired by Ambassador Trevor Clarke of Barbados.

Several of the negotiating body chairs will remain unchanged. Ambassador Crawford Falconer (New Zealand) will stay at the helm of the farm trade talks, where he has been since September 2005. Another relatively recent appointment, Ambassador Fernando de Mateo (Mexico), will continue to chair the Special Session of the Council for Trade in Services. Ambassador Toufiq Ali (Bangladesh) and Ambassador Guillermo Valles Galmes (Uruguay) will stay on as chairs of the environment and rules negotiations, respectively. New appointments include Canadian Ambassador Don Stephenson, who becomes the chair of the Negotiating Group on Non-Agricultural Market Access (NAMA), and Tony Miller (Hong Kong), who will take over the trade facilitation talks. Singaporean Ambassador Burhan Gafoor is the new chair of the Special Session of the Committee on Trade and Development (CTD-SS), replacing Faizel Ismail (South Africa), who will instead chair the regular session of the CTD.

The slate of candidates was put together by outgoing General Council Chair Amina Mohamed, on the basis of consultations with the Membership.

The complete list of chairs for 2006 is available online at http://www.wto.org/english/news_e/pres06_e/pr433_e.htm.

ICTSD reporting.

COTTON FOUR ASK FOR MONITORING MECHANISMS TO ENSURE COMPLIANCE

In the first meeting of the WTO Sub-Committee on Cotton since the Hong Kong Ministerial Conference, the four proponents of the WTO cotton sectoral initiative called on Members to spell out in greater detail how they plan to implement and monitor the stipulations set out in the Hong Kong Ministerial Declaration. At the 31 January gathering, they also indicated that they would

soon put forward a proposal for reducing domestic farm subsidies.

Benin, on behalf of Burkina Faso, Chad, and Mali, asked for the creation of a mechanism to monitor the implementation of the requirement set out in Paragraph 11 of the Hong Kong Declaration for developed countries to eliminate all forms of export subsidies for cotton in 2006. Since no other developed countries subsidise cotton exports, this essentially refers to certain US export subsidy and export credit programmes -- both ruled illegal by the WTO in April 2005. The US Congress voted on 1 February to end payments under the condemned 'step 2' cotton subsidy programme as of 1 August.

The countries also requested Members to develop more precise modalities for fulfilling the obligation to reduce trade-distorting domestic cotton "more ambitiously than under whatever general formula is agreed" and "over a shorter period of time than generally applicable."

Sources report that the so-called 'Cotton Four' asked the WTO Secretariat to work with partner institutions, donor countries, and cotton producers to find way to deal with fluctuation in cotton prices, especially in cases where external circumstances are responsible for the price volatility.

ICTSD reporting; "Congress ends cotton subsidy," UNITED PRESS INTERNATIONAL, 2 February 2006.

EVENTS & RESOURCES

EVENTS

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar at: <http://www.ictsd.org/cal/index.htm>. If you would like to submit an event, please email events@ictsd.ch.

Upcoming Events: 9 February - 15 February

9 February, Washington, DC: ECONOMIC POLICY REFORMS: GOING FOR GROWTH. This Organisation for Economic Co-operation and Development (OECD) breakfast meeting will discuss the release of two new OECD reports that focus on labour, product, and financial markets, reducing barriers to trade, and the role of innovation in generating economic growth. Free online registration is required for this event. For further information contact the OECD, tel: (+1) 202-785-6323; fax: (+1) 202-785-0350; e-mail: washington.contact@oecd.org; internet:

<http://www.oecdwash.org/NEWS/EVENTS/EVENTS2006/feb09-2006.htm>.

10 February, Washington, DC: THE OECD ASSESSMENT OF THE HONG KONG TALKS. This Organisation for Economic Co-operation and Development (OECD) breakfast meeting will feature a presentation by Jean-Marie Metzger, Director of the OECD Trade Directorate, on the consequences of the WTO's December Ministerial Conference. Free online registration is required for this event. For further information contact the OECD, tel: (+1) 202-785-6323; fax: (+1) 202-785-0350; e-mail: washington.contact@oecd.org; internet: <http://www.oecdwash.org/NEWS/EVENTS/EVENTS2006/feb10-2006.htm>.

13-14 February, Dead Sea, Jordan: MENA INVESTMENT MINISTERIAL MEETING: MAKING REFORMS WORK. This Organisation for Economic Co-operation and Development (OECD) meeting will bring together ministers from the Middle East and North Africa (MENA) and their OECD counterparts to discuss how to create a more attractive environment for private enterprise. This event is open to the media. For further information contact Haifa Al-Khraisha, tel: (+962) 6-560-84-00 ext. 402; fax: (+962) 6-5608427; e-mail: haifa@jib.com.jo or Patrice Dubus, tel: (+33) 1-45-24-97-30; fax: (+33) 1-44-30-61-35; e-mail: patrice.dubus@oecd.org; internet: http://www.oecd.org/document/52/0,2340,en_2649_201185_35925172_1_1_1_1,00.html.

14 February, Washington DC, USA: PANIC ATTACK: THE NEW PRECAUTIONARY CULTURE, THE POLITICS OF FEAR, AND THE RISKS TO INNOVATION. Organised by the American Enterprise Institute. Jon Entine, editor of 'Let Them Eat Precaution: How Politics Is Undermining the Genetic Revolution in Agriculture' will be hosting an event looking at the WTO biotech verdict and the precautionary principle. This conference, organised in cooperation with the UK Institute of Ideas, will discuss risk-aversion and contemporary life. This symposium suggests that only by challenging the wider risk-averse culture can contemporary society hope to rediscover a sense of purpose about progress and a desire to experiment with new ways of doing things. For further information contact Lauren Campbell, tel: (+202) 862-4878; fax: 862-4875; email: LCampbell@aei.org; Internet: http://www.aei.org/events/type.upcoming,eventID.1246,filter.all/event_detail.asp.

WTO Events

9 February: COUNCIL FOR TRADE IN SERVICES

10 February: WORKING PARTY ON GATS RULES

13-14 February: WORKSHOP ON RULES OF ORIGIN

13 February: COUNCIL FOR TRADE IN SERVICES - SPECIAL SESSION

14 February: TRADE POLICY REVIEW BODY - ANGOLA

14 February: COMMITTEE ON TRADE AND DEVELOPMENT - DEDICATED SESSION

15 February: COMMITTEE ON RULES OF ORIGIN

15-16 February: NEGOTIATING GROUP ON TRADE FACILITATION

Other Upcoming Events

21-24 February, Geneva, Switzerland: COMMISSION ON ENTERPRISE, BUSINESS FACILITATION AND DEVELOPMENT, 10TH SESSION. This commission, organised by the UN Conference on Trade and Development (UNCTAD), will focus on improving the competitiveness of small and medium-sized enterprises (SMEs) through enhancing productive capacity, efficient transport and trade facilitation, in order to improve the participation of developing countries in international trade, e-business for development. For further information contact UNCTAD secretariat, fax: (+ 41) 0-22-917-0056; e-mail: correspondence@unctad.org; internet: <http://www.unctad.org/Templates/Meeting.asp?intItemID=1942&lang=1&m=11148&year=2006&month=2>.

27 February - 1 March, Ha Noi, Vietnam: APEC WORKSHOP ON BEST PRACTICES IN TRADE POLICY FOR RTAs/FTAs. This workshop, organised by Asia-Pacific Economic Cooperation (APEC), will provide a forum for APEC participants to examine policy issues related to regional trade agreements and other free trade agreements, and how they can contribute to the goal of trade expansion in APEC and the multilateral negotiations on rules in the WTO. For further information contact Hong Duong Bui or Hoang Thuy Nguyen, tel: (+84-4) 8262522 (1144); fax: (+84-4) 8264696; e-mail: bduong@mot.gov.vn or nhthuy@mot.gov.vn; internet: http://www.apec.org/etc/medialib/apec_media_library/downloads/otherfora_initiatives/fta_rta/pubs/2006.Par.0001.File.tmp/06_ftarta_BestPractTradePolicyWkshp.pdf.

1-5 April, Algiers, Algeria: 10TH AFRICAN OIL AND GAS, TRADE AND FINANCE CONFERENCE AND EXHIBITION. This conference, organised by the United Nations Conference on Trade and Development (UNCTAD), the Algerian Ministry of Energy and Mines, and Sonatrach Group, will focus on the interface of finance with hydrocarbons. It will also provide a forum

for debating topical issues in the industry, such as volatile oil prices, foreign investment and the environmental and social effects of development. For further information contact Lamon Rutten or Claudine Sigam, tel: (+41) 22-917-5770/5766; fax: (+41) 22-917-0509; e-mail: lamon.rutten@unctad.org or claudine.sigam@unctad.org; internet: <http://www.unctad.org/Templates/Meeting.asp?intItemID=2068&lang=1&m=11260&year=2006&month=2>.

RESOURCES

HOW CAN TRADE PROMOTE SUSTAINABLE FOREST MANAGEMENT? By the International Institute for Environment and Development (IIED), February 2006. Trade in forest products is currently worth about USD 200 billion annually and continues to grow. Forest ecosystems themselves are also valuable resources, with some 1.6 billion people relying heavily on them for their livelihoods. While understanding the impact of trade in forest products on forests themselves is fundamental to understanding the world's prospects for sustainable development, such an understanding remains elusive. This study, which is based on a range of statistical, thematic and country case study analyses, examines the impacts of trade in forest products on sustainable forest management. It identifies the conditions under which trade can have a positive impact, and highlights a range of measures in policy and practice as priorities for improving the trade's on forest management. It is hoped that this will assist policy-makers in formulating trade-related policies that encourage sustainable forest management. Further information can be found at <http://www.iied.org/pubs/display.php?o=15501IIED&n=1&l=62&c=trade&x=Y>.

AID FOR TRADE - WHY AND HOW? By International Lawyers and Economists Against Poverty (ILEAP), December 2005. There is now widespread agreement that for low-income countries, particularly the least developed among them, the WTO's Doha Round will promote development only if two conditions are met. The first is an ambitious and balanced market access package in key areas such as agriculture or services. This, however, needs to be complemented by actions to address these countries' insufficient infrastructural, institutional and human capacity. This article discusses the need for an expanded aid for trade package to complement the balanced market access package in order for the Doha Round to successfully promote development in low-income countries. Such an agenda is needed to help ease the cost of implementing new standards and domestic policy changes, to alleviate the burden that may result from non-discriminatory trade liberalisation, and to provide assistance with trade policy development and trade facilitation. The paper

proceeds to outline how to design and implement an effective aid for trade program. Available online at http://www.ileap-jeicp.org/index.php?option=com_remository&Itemid=&func=fileinfo&filecatid=235&parent=category&lang=en.

INVESTMENT PROVISIONS IN FREE TRADE AGREEMENTS AND INVESTMENT TREATIES: OPPORTUNITIES AND THREATS FOR DEVELOPING COUNTRIES. By Mark Halle and Luke Eric Peterson. Asia-Pacific Trade and Investment Initiative, UN Development Programme (UNDP) Regional Centre in Colombo, December 2005. This paper discusses the trend towards broad trade and economic agreements currently being signed by Asian governments. These agreements provide significant international legal protection for foreign direct investment, often including separate commitments for liberalisation and opening toward foreign investment. These investment agreements apply to the full range of economic sectors and make it difficult for governments to regulate liberalised sectors or revert to public ownership should they deem private provision to have failed. These agreements are producing significant consequences for policy-makers, specifically in areas relating to the promotion of human development. Available online at http://www.undprcc.lk/web_trade/publications/BIT-completed.pdf.

THE IMPACT OF REGIONAL TRADE AGREEMENTS AND TRADE FACILITATION IN THE MIDDLE EAST AND NORTH AFRICA REGION. By Allen Dennis. The World Bank Group, February 2006. The Middle East and North Africa (MENA) region's trade performance over the past two decades has been disappointing. Efforts to boost trade through a plethora of regional trade agreements (RTAs) are underway. This study examines the potential contribution of regional trade agreements, as well as trade facilitation improvements, in enhancing the development prospects of the region. Using the Global Trade Analysis Project (GTAP) model and database, both intra-regional integration and integration with the European Union are observed to have a favourable impact on welfare in the MENA region. The welfare gains from integrating with the European Union are observed to be at least twice as much as intra-regional integration. Furthermore, these welfare gains are observed to be at least triple when the implementation of the RTAs is complemented with trade facilitation improvements. Available online at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/B/2006/01/26/000016406_20060126163501/Rendered/PDF/wps3837.pdf.

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