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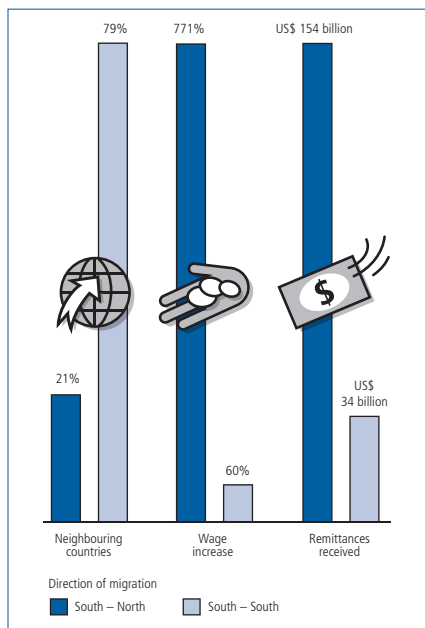
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## Facts and Figures

Contrary to common belief, migration between developing countries is much greater than South-North movement. Wage increases resulting from South-South migration, however, are dwarfed by those obtained through South-North movement, and migrants to the North send nearly five times more remittances back home than migrants in other developing countries.



Source: *South-South Migration and Remittances*. The World Bank. 19 January 2007. © 2007 ICTSD/GersterConsulting

## Biofuels: The New Trade Frontier?

Fuelled by concerns over climate change and energy security, as well as rapidly increasing commercial interest, emerging patterns in biofuel production and trade are generating both international co-operation and growing unease over trade terms.

On 9 March, an agreement to advance co-operation on research and development of biofuels between the US and Brazil – the world's two top ethanol producers – made headlines the world over. The agreement, signed on the sidelines of President Bush's five-nation Latin American tour, described biofuels as a potential "transformative force in the region to diversify energy supplies, bolster economic growth, advance social agendas, and improve the environment."

At the bilateral level, the two countries intend to advance research and development of next generation biofuel technologies based on materials such as wood chips and switch grass. Presently, biofuels produced in both countries are made using food crops: sugarcane in Brazil and corn in the US. In addition, the agreement seeks to stimulate private sector investment in biofuels, as well as to promote technology transfer to other nations wishing to enter the biofuels market, starting with countries in Central America and the Caribbean.

At the global level, the signatories promised to seek to expand the development of a global market in biofuels by developing uniform standards and codes that will standardise the definition of ethanol, so that it can be traded on global markets the same way as other commodities like oil. A week earlier, the US and Brazil announced the creation of an International Biofuels Forum to help develop a global biofuels market together with China, India, South Africa and the EU, which all are large potential consumers and producers.

The US-Brazil agreement leaves aside the controversial issue of US tariffs on ethanol imports. Brazilian sugarcane-based ethanol is cheaper to produce than corn-based ethanol made in the US, as well as more efficient in terms of both energy and greenhouse gas emissions. However, Brazilian exporters face a 54 cent per gallon tariff barrier to the US market, in addition to a 2.5 percent *ad valorem* duty (at current price levels, this fluctuates from 3-4 cents per gallon). The deal signed in São Paulo did not address either the tariffs or US corn subsidies (see page 2).

While Brazilian media quickly dubbed the initiative as an 'OPEC for ethanol', officials from both sides refuted allegations that their intention was to set up a price-fixing cartel. Instead, it seems that the main thrust of the deal is the spread of commercially valuable biofuel production technologies. For instance, just a week later Brazil and Indonesia signed an agreement under which Brazil is to provide Indonesia with technical help to produce ethanol from sugarcane. Indonesia is trying to reduce its reliance on petroleum while revitalising its agricultural sector.

### US Seeks Energy Security

In his 2007 State of the Union address, President Bush focused strongly on energy security and the need to diversify US energy supply. He proposed to reduce gasoline use by 20 percent in the next decade by promoting alternative fuel sources and increased fuel efficiency standards for automobiles. The strategy seeks to increase the supply of renewable and alternative fuels by setting a mandatory standard of 35 billion gallons in 2017. This represents a substantial increase over the current target of 7.5 billion gallons by 2012.

*Continued on page 2*

# Bridges

## Between Trade and Sustainable Development

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See inside back cover for information on other ICTSD periodicals.

In a February interview published in the newspaper *O Estado de São Paulo*, US Under Secretary for Political Affairs Nicholas Burns said the connection with Brazil was an area in which “we can grow together and we can lead the development of a world market with very positive consequences for the environment and for the economy.” Experts, however, have cautioned against potential environmental problems associated with biofuel production, such as increases in monoculture, and water and chemicals use. Concerns have also been raised over the food security and price impacts of increased biofuel production. According to the UN Food and Agriculture Organisation, poor harvests in key producing countries and a fast-growing demand for biofuel production have driven up grain prices, particularly for corn and wheat. Developing countries' food import bills increased by five percent in 2006.

Several analysts have noted that the US-Brazil agreement serves both countries' interests: Brazilian firms will have an opportunity to export their cutting-edge production technologies financed by private sector US investors, while the US will be able to meet its increased need for ethanol under President Bush's ‘twenty by ten’ plan through imports from Central America and the Caribbean – which have duty-free or reduced-duty market access – rather than from its greatest competitor in ethanol trade.

### Concern over Trade Impacts

Strong internal demand for ethanol and biodiesel in the US keeps prices of key crops such as corn and soybeans high. With a virtually guaranteed domestic market for the foreseeable future, farmers are less inclined to make concessions in the Doha Round negotiations, particularly as non-tariff barriers – such as regulations on genetically engineered crops – are likely to continue to restrict access to potential agricultural export markets.

US biofuel crops are not only heavily subsidised as such. Distillers collect 51 cents for each gallon of ethanol they produce, and the 54 cent per gallon import tax provides further protection against competition from Brazil. Every gallon of biodiesel blended with mineral diesel is eligible for a one dollar per gallon subsidy, and producers also benefit from a federal excise tax credit, as well as an income tax credit.

The European Biodiesel Board (EBB) complained in a 19 March letter to EU Trade Commissioner Peter Mandelson that the system clearly presented an “unfair trade measure that urgently needs to be reviewed and eliminated.” The EBB added that triangular trade was starting with countries such as Malaysia and Brazil, whose producers were shipping biodiesel to the US, where it was blended with one percent or less of regular diesel – thus allowing the US blender to collect the dollar per gallon subsidy. EU imports of this ‘B99’ blend have risen sharply, partly due to member states' measures aimed at encouraging cleaner energy.

According to the EBB, the subsidised competition is putting local biodiesel producers out of business, which makes it urgent for the European Commission to “take any action necessary to counter and then eliminate unfair B99 subsidised exports from the US,” including the imposition of a countervailing duty to balance the injury to European biodiesel firms. “The US trade practice is in fact clearly breaching WTO rules and represents a serious threat to the fair trade of biofuels,” the EBB claimed. A week later, the US National Biodiesel Board said it fully supported the European biodiesel industry's call to end subsidised US exports sourced from third-party countries.

Plant-based biodiesel is considered an industrial product under WTO rules and thus subject to the disciplines of the Agreement on Subsidies and Countervailing Measures (SCM). Ethanol, on the other hand, is an agricultural good and therefore benefits from the less stringent subsidy restrictions under the Agreement on Agriculture. However, in its WTO challenge against US corn subsidies, Canada has claimed that favourable export credit rates and some other support programmes for corn, as well as other agricultural products, provide export-contingent subsidies in violation of the SCM Agreement (Bridges Year 11 No.1 page 11). In related news, Mexico has decided to join Argentina, Australia, Brazil, the EU, Guatemala, Nicaragua, Thailand and Uruguay as a third party in the corn dispute if a panel is established.

# Can the Development Agenda Save the Doha Round?

*Susan Sechler and Joe Guinan*

While it is frequently bemoaned that designating the Doha Round as a 'development round' has made the negotiations more difficult, the designation may offer the only solution to the larger questions of legitimacy and credibility facing the WTO and the global trade regime.

This is the main reason why 'development' should not be seen as an add-on grafted onto the trade talks, but as part of the WTO's core mission to regulate trade, up there with – but not eclipsing – the technical focus on mechanisms of freer trade. At this point governments face the stark choice of negotiating a genuine development round or accepting failure.

For some, the Doha Round's failure to gain traction is due to there not being enough on the table for key stakeholders; others have complained that a 'lack of political leadership' is at the heart of the impasse. However, this so-called lack of old-style political leadership can be also viewed from another angle, as stemming from a global increase in democracy, or at least in the power of the veto back home. Focusing on development will help negotiators construct an agreement that will attract support not only from the usual suspects who have driven support for trade agreements in the past, but also from those concerned about poverty and the poorest countries.

Thus really making this a development round would also help in getting a final deal approved, ratified, and successfully implemented on the ground where people live and work.

This is not to say that mainstream trade interests should be cast aside. But by focusing our attention only on businesses with traditional export-driven interests, we are missing a great opportunity to expand support for the round by fashioning a Doha agreement in which the interests of business and the interests of development are brought into greater alignment.

Many companies are working extensively in developing countries, including the least-developed. Recent reports show that the investments of multinational corporations – many of these in support of their own supply chains – are helping to drive globalisation. What these businesses want is predictable conditions, political stability, better business climates and public investment in infrastructure that works. Business would be more supportive of a Doha agreement that encouraged donors to invest in increasing developing country capacity and competitiveness and enhanced the purchasing power of the poor.

Putting development into Doha is also a requirement for public – and thus political – support in many countries, including the United States. We believe the American public would favour a development round. A substantial number of Democrats are open to supporting trade-expanding laws and agreements – including a WTO agreement – if these provisions advance their objectives, which include poverty reduction and economic growth and development.

Turning around the 'problem' of the development agenda to make what has appeared to be a weakness into a strength will require some outside-the-box thinking, new behavior, help from capitals, strange bedfellows and cross-sectoral approaches and deals.

Many observers understand that unless ways can be found to reliably harness significant development resources to build supply-side capacity in the developing world, Doha will fail both as a development round and as a trade round.

To succeed will require wide-spectrum government help beyond aid agency input to create 'coherence' between trade-related development and the variety of mandates and approaches of development institutions. A Doha agreement with a strong coherence mandate linking economic aid – addressed under the rubrics of trade facilitation, Aid for Trade, and trade capacity-building – more directly to other aid would help to credibly address the needs of the

poorest countries in building the supply-side capacity and trade-related infrastructure they require to truly benefit from global markets.

A real development round will also require more country-led efforts to channel trade opportunities to the poorest countries and gradually build trust and confidence in the system among the weaker countries. Recent projections show that if we continue on our current course, the poorest countries will be even poorer in 20 years, relatively speaking, than they are now.

A more ambitious approach to duty-free and quota-free (DFQF) access for all least-developed countries' products to OECD markets could increase the poorest countries' economic gains from the agreement by a factor of seven if the wealthier developing countries also agreed to open their markets to the poorest. Research shows that while such provisions will cause small problems for some specific sectors, overall both developed and the larger developing countries would themselves reap substantial rewards from instituting such a programme.

A final benefit of making a Doha agreement promote a global economy that integrates vulnerable countries on a more equal footing is that it could build support for a new trade paradigm linking trade agreements to national policies that benefit the vulnerable – concerned about the implications of globalisation – in richer countries as well.

Without government policies that protect the individuals who must find new livelihoods, not only will the global trading system continue to be unfair for developing countries, but it will continue to frustrate rather than promote the longer-term commercial, social and diplomatic objectives of all countries in a rapidly integrating world.

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## Domestic Agricultural Policy Reform

Mike Gifford

The great challenge facing policy-makers is finding the right balance between the need to improve multilateral subsidy disciplines, while making domestic support to farm sectors less trade-distorting.

Until the WTO came into force, domestic agricultural policy-makers paid little or no attention to international trade rules. Country-specific exceptions, few tariff bindings, ineffectual disciplines on export subsidies and a myriad of legal and illegal non-tariff import barriers meant the GATT had little credibility or relevance for most ministers of agriculture. Farm policy was almost exclusively shaped by domestic political imperatives and the international market was regarded as a residual dumping ground for structural surpluses resulting from policies aimed at protecting domestic prices from lower international prices.

From the beginning of the GATT, agriculture was treated as a special sector which had to be handled with kid gloves, given its political sensitivity. The result was a multi-lateral agricultural trading system, which became progressively more distorted as successive GATT negotiations failed to recognise the linkages between the anarchy prevailing in agricultural trade and domestic agricultural policies.

By the 1980s the situation had become so bad that domestic policy-makers finally began to explore how to support their farm sectors in less trade-distorting ways. The recognition that commodity-specific price supports invariably required additional import protection and/or stimulated surplus production, which could only be disposed on international markets with the aid of various forms of export assistance, finally led to a consensus that the Uruguay Round should not only deal with export subsidies and market access, but should also attempt to influence domestic agricultural policies by reducing the most trade-distorting forms of domestic support.

The results of the Uruguay Round negotiations on agriculture therefore represented a watershed as the rule of law replaced the law of the jungle. All market access was bound, non-tariff barriers were converted into tariffs, and a significant start was made

in reducing export subsidies. However, only modest progress was made in improving market access and reducing the most trade-distorting forms of domestic support.

While there was undoubtedly some overselling of the results, most of the participants recognised that agricultural trade reform was going to be an incremental process and for that reason had agreed to resume negotiations at the turn of the century. This so-called 'built-in agenda' is a major reason why agriculture is regarded as a core area of the Doha Round.

The current difficulties in bringing the Doha Round agricultural negotiations to a conclusion should not be allowed to obscure how much is already on the table. It has already been agreed that export subsidies will be phased out and equivalent disciplines placed on other forms of export assistance. There is an emerging consensus to reduce agricultural tariffs by an average of at least 50 percent and to reduce total trade-distorting support in the main developed countries by 60-75 percent, with deeper cuts applying to the most heavily supported. These are substantial results by any measure. While differences remain over how to handle 'sensitive' and 'special' products and how to avoid commodity concentration of domestic support, these differences appear bridgeable.

The reason for this relative optimism is based on the recognition that domestic policy-makers have made, or are increasingly willing to make, their farm policies less trade-distorting, provided they can continue to support their rural sectors. In general this has meant a shift away from commodity price support to direct income support decoupled from production. For example, the substantial progress made in reforming the EU's Common Agricultural Policy over the past decade has enabled it to contemplate the elimination of export subsidies, as well as very significant reductions in trade-distorting support.

Market access remains politically sensitive for the EU, as it does for most developed and developing countries, but it is already clear that the emerging Doha Round result on market access will represent a quantum improvement over the Uruguay Round. If this occurs, much of the credit will go to the US for insisting that there must be across the board improvements in market access opportunities. However, it is equally clear that much of the blame will be attached to the US if the negotiations fail because of unwillingness to substantially reduce its trade-distorting domestic support, which is heavily concentrated in only a few commodities.

While the Doha Round negotiations must result in very substantial reductions in total trade distorting support, it is evident that domestic policy-makers and legislators must retain sufficient flexibility to tailor their farm support programmes to meet local conditions. There is no one-size-fits-all when it comes to trade-friendly farm support. The challenge will be to find the right balance between the need to improve multilateral disciplines, while encouraging domestic policy-makers to support their agricultural sectors in less trade-distorting ways.

The politics of agriculture will always make reductions in agricultural protection a difficult file for governments to manage. Trade adjustment programmes will be needed to cushion the impact of trade reform where such reform results in reduced land or other asset values. There will be losers as well as winners in most countries and compensation is appropriate when governments change the ways they intervene in their agricultural sectors. The relevance for the agricultural trade reform continuum is how governments intervene; the level of support remains an internal political decision.

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# WTO Agriculture Negotiators Still Waiting in the Wings

There's no disguising of the fact that hopes are wearing thin for a breakthrough in the Doha Round negotiations by the latest semi-official deadline of June 2007. Most importantly, no significant advances have been made in the crucial agriculture talks.

After the latest round of informal WTO consultations, Ambassador Crawford Falconer, who chairs the agriculture negotiations, said he feared that the continued lack of visible progress in high-level negotiations between the US, the EU, Brazil and India would make Members lose interest in the Geneva-based talks. Calls for 're-multilateralising' the process are growing louder, although many doubt that 150 countries would be able to forge consensus when agreement among a mere four seems out of reach. The next informal agriculture meeting involving all WTO Members is tentatively scheduled for 13 April, and Chair Falconer is expected to circulate his first revised 'reference paper' soon after.

Recent consultations in Geneva have largely focused on defining the exceptions to general tariff reduction disciplines available to different categories of products or Members.

## Sensitive Products

All countries may designate a certain number of products as 'sensitive'. Tariffs on these products will not be subject to formula cuts, but Members must provide 'substantial improvement' in market access "through combinations of tariff quota commitments and tariff reductions applying to each product." Disagreement prevails on how many tariff lines could be designated as sensitive and how the quota expansion and tariff reductions would be applied. Unlike the Special Products available to developing countries only (see page 6), a 'sensitive' product designation does not need to be justified by any particular criteria.

In March, WTO Members discussed a new proposal by the Cairns Group of agriculture-exporting nations, which focused on the 'architecture' for the designation and treatment of sensitive products. Under the broad rules set out in the paper, Members would be allowed only two options for deviating from the overall tariff reduction formula. According to the logic previously used by the Cairns Group, a larger tariff cut would entail a smaller future quota and a smaller tariff cut would be compensated for by a larger quota expansion. Each of the two expansions would be equivalent to a percentage of domestic consumption, for which the precise figures would be negotiated. Tariff quota expansion in developing countries would be calculated based on domestic 'marketable consumption', which would exclude commodities grown and consumed by subsistence producers, and not sold. The Cairns Group claimed that this approach would provide both importers and exporters greater certainty than alternative systems, such as a sliding scale of deviations and expansions.

Although the proposal would impose a tariff cap on sensitive products, it would allow Members to apply a higher ceiling to a limited sub-set of sensitive tariff lines, if compensated for with a correspondingly larger import quota.

The paper proposes to restrict the 'sensitive' designation to products already covered by tariff rate quotas. A clause would prevent Members from creating new quotas, a process which many exporters see as cumbersome and unpredictable. Developing countries, not all of which currently use tariff quotas, would be allowed to backload tariff reduction commitments on sensitive products to the second half of a Doha Round implementation period, or take two extra years to implement them.

The group also stipulates that "tariff quota expansion shall be provided on a most-favoured nation basis." Recent reports have suggested that some Members fear that the bilateral consultations among major trading nations might culminate in an attempt to assign country-specific quota entitlements. In March, the US urged Members to consider more seriously how tariff quotas could offer predictable market access. Brazil and Uruguay said that tariff quotas should only be used as a last resort and any quota expansion should be open to all WTO Members.

The US welcomed the Cairns Group's approach because of its objective of ambitious market access improvements, but the G-10 group of countries – whose members include, *inter alia*, Japan, Switzerland, Norway and South Korea – said that tariff caps on sensitive products would be problematic.

## Tropical Products

The Cairns Group's submission on the treatment and definition of tropical products sparked a lively debate. According to the July 2004 Framework Agreement, the market access negotiations must effectively address the "full implementation of the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products and for products of particular importance to the diversification of production from the growing of illicit narcotic crops."

The Cairns Group lists more than 130 processed and unprocessed tropical/diversification products, including bananas, cocoa, coffee, cane sugar, as well as crops also grown also in temperate zones, such as potatoes, sugar, onions, tobacco and rice. Developed countries should eliminate all tariffs below 25 percent on the listed products. Other tariffs would be reduced by 85 percent. The implementation period should be shorter than that agreed for other developed country tariff cuts.

The proposal would also prohibit developed countries from designating any of the tropical or alternative products on the list as sensitive.

In April 2006, Bolivia, Colombia, Costa Rica, Ecuador, Guatemala, Nicaragua, Panama and Peru called for the elimination of all quotas and tariffs on tropical and alternative products. Colombia, Costa Rica, Guatemala and Panama later suggested tariff cuts ranging from 75 to 85 percent depending on whether the product was subject to tariff escalation. At least Bolivia, Colombia, Costa Rica, Guatemala and Peru support the Cairns Group's new proposal.

*Continued on page 6*

Countries belonging to the African, Caribbean, and Pacific (ACP) Group of States are concerned that liberalisation of tropical/alternative products will lead to an erosion of their long-standing preferences for key products, such as bananas and sugar. They are seeking both trade and non-trade solutions to this problem, including longer implementation periods for developed country tariff cuts, as well as technical and financial assistance to help ACP producers and governments adjust to the loss of preferences.

During the March discussions, the EU said the Cairns Group list of products was too long, as well as questioned its inclusion of products also grown in temperate zones. Costa Rica, Paraguay, Ecuador, Colombia and Bolivia said the proposal was justified under the development focus of the Doha Round. They expressed willingness to discuss the concerns of ACP countries, but accused the EU of ‘hiding behind preferences’ in order to keep its own market protected.

### Recently-acceded Members

March also saw discussions on a new proposal from 15 recently-acceded Members (RAMs). The paper’s sponsors, which include China, argue that they deserve additional flexibility because of the deep liberalisation commitments they made during the accession process (TN/AG/GEN/24).

Specifically, the RAMs call for the right to make tariff cuts half the size of the percentage reductions that other developing countries would have to make under the formula. They would also like tariffs at 10 percent or lower to be spared from cuts altogether. The paper proposed a complete exemption from farm tariff reduction for small, low-income RAMs with economies in transition.

With regard to farm support, RAMs with a bound commitment for trade-distorting Amber Box subsidies would not be obliged to reduce their current *de minimis* level, and small, low-income transition economies would not have to reduce either their Amber Box or *de minimis* support.

RAMs should also be allowed to start implementing Doha Round commitments on agriculture five years later than other WTO Members, and be granted an implementation period at least five years longer than other developing countries.

### Special Products

According to the July 2004 Framework Agreement, developing countries may designate “an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment.” The criteria and treatment of these products must be further specified during the agriculture negotiations.

Chair Falconer told delegates that his 16 March ‘fireside chat’ with negotiators representing all key players and coalitions had produced little movement on Special Products (SPs).

The G-33 coalition, which promotes broader discretion for developing countries in the designation and treatment of SPs, won a significant victory at the Hong Kong Ministerial Conference, where trade ministers agreed that developing countries could self-select their SPs. Agricultural exporters, however, argue that too much freedom in the designation and protection of SPs would significantly undermine any market access gains from the Doha Round. As things stand, there is no consensus on either the maximum number (or percentage) of SP tariff lines, the definition of ‘more flexible treatment’, or the indicators for SP selection.

### G-33 Streamlines SP Indicators

At their 20-21 March meeting in Jakarta, trade ministers of the G-33 approved a streamlined list of 12 indicators for the selection of SPs, down from 17 proposed earlier. The ministers said that any product designated as SP – in its natural or processed forms – “shall be presumed to meet at least one of the indicators [...], either at the national or regional level, in the developing country Member concerned.”

Among the indicators are the product’s contribution to the nutritional or caloric intake of the population; the share of domestic production of the product in national or regional consumption; the proportion of the product’s production in farms smaller than ten hectares; the total agricultural population or rural labour force employed in the production of the product; the proportion of its producers that are low-income, resource-poor or subsistence farmers; the product’s contribution to agricultural incomes; the extent to which it is processed in the developing country concerned; the share of the product in households’ total food expenditure; and the productivity per worker or per hectare of the product.<sup>1</sup> The list proposes no percentages for these indicators, referring instead to broad terms such as ‘significant’ or ‘low’.

Another indicator provides that a product could be designated as an SP if “product-specific AMS or Blue Box support has been notified [for it] by any WTO member and [it] has been exported by that notifying Member during any year from 1995 to the starting date of the implementation of the Doha Round.” The revised indicators have not yet been discussed by WTO Members.

Ministers did not define the maximum percentage of tariff lines that a country could designate as ‘special’, but stated that “the right of all developing country Members to self-designate any product as a Special Product shall be respected at any stage of the negotiating process.”

The ministerial statement adopted at the end of the two-day meeting stressed that the mandate on Special Products did “not require developing countries to provide any compensation, including through tariff quota commitments.” It also reaffirmed that the Special Safeguard Mechanism (SSM), which Members have agreed to establish for the use of developing countries, should be available to all agricultural products, and that the import price and import volume triggers applied separately should alone determine which product needs the invocation of the SSM. In addition, the terms and conditions of the mechanism should be more favourable than the current safeguard provisions of Article 5 of the Agreement on Agriculture.

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### ENDNOTE

For background information on the construction of indicators see: ICTSD. 2005. *Special Products and the Special Safeguard Mechanism: Strategic Options for Developing Countries*.

## Cotton Meeting Yields Few Results

No new commitments on either development aid or subsidy reductions were made at the high-level meeting on cotton held at the WTO in mid-March.

In 2003, low prices linked to the extensive subsidies provided to US cotton producers prompted four least-developed African countries – Benin, Burkina Faso, Chad and Mali, or the Cotton Four – to introduce a ‘sectoral initiative on cotton’ in the Doha Round negotiations (Bridges Year 7 No.4 page 1). They sought the ultimate elimination of cotton subsidies along with compensation to be paid in the interim. In the July 2004 Framework, Members agreed to address cotton ‘ambitiously, expeditiously and specifically’ in the agriculture talks. The 2005 Hong Kong Ministerial Declaration further specifies that “the objective is that, as an outcome for the negotiations, trade-distorting domestic subsidies for cotton production be reduced more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period of time than generally applicable.” Since then, however, the Cotton Four’s proposals for deeper-than-standard subsidy cuts have languished alongside the overall negotiations (Bridges Year 10 No.2 page 6).

The high-level meeting aimed “to take stock of initiatives and action in the implementation of the mandates on the development assistance and trade policy aspects of the cotton issue.” This included the July Framework’s instruction to the WTO Director-General to consult with relevant international organisations “to direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance.”

Participants included ministers from several cotton-producing developing countries, as well as representatives from bilateral and multilateral donors, in addition to international organisations such as the IMF, the World Bank and UNCTAD.

### No Doha Outcome without Cotton

For cotton-producing African countries, the recognition of the centrality of cotton in the Doha Round negotiations was perhaps the main achievement of the conference. WTO Director-General Pascal Lamy told the meeting that cotton remained one of the ‘litmus tests’ of the round’s development content, and that there would be “no round without cotton being on board.” He reiterated the mandate for an ambitious, expeditious and specific outcome on cotton across the export competition, domestic support and market access pillars of the agriculture negotiations. Ambassador Crawford Falconer, who chairs those negotiations, said earlier that without an outcome on cotton, there would be no outcome for the round.

### No Agreement on Compensation or Subsidies

Summing up the two-day event, Mr Lamy acknowledged that there was no consensus on either on the idea of a ‘compensation fund’, or on who should fund it.

However, participants did express interest in various approaches for dealing with income decline and price volatility, such as the ‘smoothing mechanisms’ presented by the French development agency AFD. These funds typically include market-based mechanisms (such as insurance taken by producers), as well as a safety net to address cases of market failure. Cotton-producing developing countries welcomed the fact that Mr Lamy had urged the donor community to follow up on this interest.

US intransigence on not addressing cotton subsidy reductions before the conclusion of the overall Doha agriculture negotiations was another disappointment, although no surprise.

One delegate told Bridges that the lack of serious engagement at the meeting was probably at least partly due to timing: when the date was chosen, it was thought that the Doha negotiations would be further along by mid-March, and Members would therefore be willing to start looking at how the Hong Kong cotton mandate could be addressed in practice.

## Textiles Update

At a 19 March meeting of the WTO Council for Trade in Goods, Turkey again called for the establishment of a formal WTO work programme to review the ramifications of the removal of quotas in textiles and clothing at the end of 2004. While the proposal raised the ire of other major textiles exporters, including India and China, Turkey claimed that it had the support of a ‘vast majority’ of Members.

The effects of the quota phase-out have been hotly debated. For instance, Turkey asserts that least-developed countries have faced increased job losses, while China has experienced a dramatic expansion of its textile exports to major markets.

The Turkish delegation justified the timing of its move for a work programme by arguing that sufficient time had now elapsed to provide enough data for a reliable analysis of the effects of the eradicated quotas. Increased support from other Members, such as Jordan, El Salvador and the US, also played a role in Turkey’s decision.

Turkey’s outline for the work programme suggested an analysis of production, trade and investment in the sector before and after the quota phase-out; an examination of future developments that could affect the industry (including the Doha negotiations), and; the provision of increased access to information on policy options and technical advice for countries struggling with the transition.

China, India, Indonesia and Thailand opposed the proposal. India cited ‘systemic issues’ as the reason for its objections and said that it would continue to veto the proposal in the future. China made a lengthy statement contending that Turkey had no policy-based reasons for disagreeing with the quota elimination, but was simply targeting the Chinese market directly. It promised to resist any move to limit its textile exports.

The debate is likely to continue at the next meeting of the Council for Trade in Goods, scheduled for 21 May.

## Trade & Environment

The first negotiating session of the WTO Committee on Trade and Environment (CTE) since the 'full resumption' of the Doha Round talks focused on procedures for information exchange between multi-lateral environmental agreement (MEA) secretariats and relevant WTO committees.

Discussions revolved around a new US submission (TN/TE/W/70), which suggested that the CTE develop a non-exhaustive list of 'indicative questions' to assist WTO bodies in deciding whether to grant MEA secretariats observer status on a case-by-case basis. Possible criteria included whether the MEA in question contained specific trade obligations or other trade-related obligations, and if so, whether these were relevant to the particular WTO body's scope of work.

The US emphasised, however, that enhanced international collaboration could not replace the much more direct and efficient means of national-level co-ordination between trade and environment officials. The submission proposed that the WTO and MEA secretariats focus more assistance on building developing country Members' capacity to improve their internal trade and environment co-ordination processes.

Commenting on the proposal, Switzerland called for a specific reference to the UN Environment Programme (UNEP) to be included in any decision on information exchange, and the EU said permanent observership should be granted to all MEA secretariats.

Informal discussions also took place on the liberalisation of environmental goods and services. Generally, developed countries have proposed that Members should agree to a 'list' of specific environmental goods slated for liberalisation. Many developing countries fear that such a list would mainly feature goods of export interest to developed countries, and have thus come up with alternative approaches. A developing country delegate said the talks had been 'constructive,' noting that he sensed a certain 'softening' of attitudes among delegations.

The next CTE negotiating session is scheduled for 2-3 May.

## Services Package Slow to Emerge

Informal meetings are underway in the WTO negotiating group on trade in services in an attempt to identify grounds for compromise on further liberalisation.

These gatherings, dubbed 'enchilada talks' by Chair Fernando de Mateo, involve ambassadors from 20-25 delegations. They are intended to raise the political level of engagement in discussions on services, as well as determine the key elements of a services package that would be necessary to enable Members to conclude the overall negotiations.

The 'enchilada talks' are also seen by some delegations, such as the US and the EU, as setting the tone for their proposed 'green room' discussions on services to be led by WTO Director-General Pascal Lamy.

Recent 'enchilada' sessions appear to have achieved the goal of getting the ambassadors sufficiently engaged in the discussions. However, as expected, they have not yet yielded concrete indications of possible compromise between the *demandeurs* seeking further liberalisation and the Members facing requests to commit to opening their markets to overseas services providers.

The US has sought to imbue the talks with a degree of specificity by flagging its continuing interest in the lowering or elimination of equity caps on foreign investment, along with the binding of existing levels of cross-border services supply into other markets and expanded commitments in financial, telecommunications, energy, computer-related, distribution, express delivery and audio-visual services. The EU has focused on many of the same sectors, with the exception of audio-visual services, where France insists on protecting cultural diversity. In addition, the EU has identified environmental services as a priority sector for market access commitments.

Developing countries such as Argentina have insisted that the increased emphasis on market access in services trade is unnecessary, since the Hong Kong Ministerial Declaration's Paragraph 24 mandate for 'comparably high levels of ambition' is limited to agriculture and non-agricultural market access (NAMA). Brazil, China and the Philippines also continue to have serious concerns about undertaking deeper services liberalisation commitments in this round, particularly without seeing how the agriculture and NAMA negotiations will be resolved.

One delegate disclosed that, in response to US demands for greater market access in the sectors and areas it has identified, some developing countries have pointed to Washington's lack of an offer to bind a commitment for the liberalised entry of more temporary workers, otherwise known as 'mode 4'. This is a vulnerable point, given that the US Trade Representative has been precluded by Congress from negotiating commitments on mode 4. The US legislature considers the entry of workers and businessmen, even on a temporary basis, as an immigration rather than a trade issue, and hence places it solely within its own legislative prerogatives. Some trade observers say that this has weakened US leverage in asking for liberalisation commitments from others, particularly from trading partners which have a strong interest in mode 4. Other observers, however, say that the most active exponent of mode 4 liberalisation – India – has moderated its own advocacy for improved market access for temporary workers due to a reluctance to undertake deep market access increases in other critical areas of the Doha negotiations, such as agriculture and NAMA.

The Association of Southeast Asian Nations (ASEAN) recently tabled a revised proposal outlining how a safeguard mechanism for services could work in practice. However, a number of delegates said that the submission was highly unlikely to obtain sufficient support among Members to allow agreement on a safeguard mechanism within the year. Nevertheless, they noted that it at least re-invigorated discussions on an issue that can be used as justification for not making deeper market access commitments in services trade.



## Double Jeopardy for EU Banana Import Rules

While a panel has been established on Ecuador's claim that the EU has not complied with earlier WTO rulings on bananas, Colombia has initiated a new dispute on the WTO-consistency of the Union's current banana import regime.

At issue in both complaints is the level of the EU's new most-favoured-nation (MFN) banana tariff of • 176 per tonne, as well as the duty-free 775,000-tonne quota reserved for suppliers from the African, Caribbean and Pacific (ACP) Group of States.

### Background

Following the loss of a protracted WTO dispute, the EU committed in 2001 to replacing its complex quota and licensing system for banana imports with a 'tariff-only' regime by January 2006. Quotas were to be abolished and a new MFN tariff negotiated with trading partners. The EU 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. The quota is still applied, although the special waiver that covered it expired on 1 January 2006 – the date when the EU was supposed to adopt a tariff-only regime for all suppliers.

Under the system currently in force, EU banana imports from ACP countries have grown more strongly than those from MFN suppliers (Bridges Year 10, No.7, page 7). Cameroon, a major ACP banana producer, has already warned that it will demand to be officially made a full party in the dispute if "by some unlikely chance, a decision were taken to establish a panel, whose task would be to discuss only the ACP preferential regime."

### The Main Points of the Complainants

On 20 March 2007, the Dispute Settlement Body established a panel to examine whether the EU had complied with earlier rulings in the drawn-out dispute. Ecuador's panel request (WT/DS27/80) alleges that the EU is in breach of WTO rules governing quantitative restrictions (GATT Articles XIII:1 and 2) since it "continues to provide a tariff rate quota system reserved exclusively for bananas of ACP origin" despite the expiry of the waiver. Colombia's 21 March request for consultations on the EU's current banana regime (WT/DS361/1) also notes that the ACP quota cannot be justified under the Article XIII waiver "because that waiver expired on 31 December 2005 and has not been extended."

More controversially, both countries claim that a broader waiver, which allows the EU to maintain market access preferences for ACP countries until 1 January 2007, has also lapsed with regard to bananas. They base this conclusion on the waiver's annex, which provides an arbitration procedure in case the parties fail to agree on a new bound MFN banana tariff:

*"If the arbitrator determines that the rebinding would not result in at least maintaining total market access for MFN suppliers, the EU shall rectify the matter. [...] In the absence of a mutually satisfactory solution, the same arbitrator will be asked to determine [...] whether the EU has rectified the matter. [...] If the EU has failed to rectify the matter, this waiver shall cease to apply to bananas upon entry into force of the new EU tariff regime."*

The arbitrator ruled in 2005 that neither a • 230/tonne import duty nor a 'rectified' • 187/tonne tariff proposed by the EU would guarantee pre-2006 total market access for MFN suppliers. Both complainants' claims thus hinge on whether the • 167/tonne tariff has in fact allowed MFN suppliers to maintain their market access to the EU market.

Ecuador's third point concerns the tariff itself. Under the old system, MFN banana suppliers shared an import quota with a tariff of • 75/tonne (the out-of-quota MFN duty was • 680/tonne). In theory at least, the new 'almost-tariff-only' regime has made the old in-quota tariff irrelevant. Ecuador, however, alleges that the EU violates its scheduled commitments in that it applies a tariff on import of bananas originating in Ecuador (and other WTO member countries) that is above its bound • 75/tonne duty rate under GATT Article II.

Colombia's consultation request is more specific. It argues that the • 176/tonne tariff exceeds "the duties set forth under heading 08030019 of the EU's Schedule of Concessions. That schedule provides for an in-quota duty of • 75/tonne within a tariff-rate quota of 2.2 million tonnes. The levying of import tariffs in excess of • 75/tonne for *all* imports of MFN bananas is inconsistent with this concession. For this reason, before applying to MFN bananas a tariff higher than • 75/tonne, the EU should have renegotiated its tariff concession on bananas in accordance."

### Colombia Seeks Rapid Decision

Colombia requested the consultations under Article 4.8 of the Dispute Settlement Understanding (DSU), which provides that in cases of urgency, including those concerning perishable goods, Members have 20 days to settle the dispute through consultations. If no negotiated solution is found, the complaining party may request the establishment of a panel.

Should that happen, Colombia said it would consider "referring the matter to the Director-General pursuant to Article 3.12 of the DSU and the Decision of 5 April 1966 (BISD 14S/18) in the hope that his good offices will facilitate a rapid solution to this dispute and, if necessary, request the establishment of a panel in accordance with applicable accelerated procedures."

The decision evoked by Colombia pertains to disputes between a developing country complainant and a developed country defendant, and provides that a panel requested by the complainant must be appointed within two months from the date of the consultation request. Under the DSU, long delays sometimes occur between the Dispute Settlement Body's decision to establish a panel and the actual appointment of panel members. The standard period for a DSU panel to issue its report is six to nine months after its composition, while under the accelerated procedures the panel must submit its ruling within two months.

## China Subsidies

Responding to a challenge from the US and Mexico, China asserted in March that the complainants had misunderstood its foreign investment and taxation regimes.

On 7 February 2007, the US requested dispute settlement consultations with China over a large number of tax schemes and financial regulations that, according to the complainant, appeared to “provide refunds, reductions or exemption to enterprises in China on the condition that those enterprises purchase domestic over imported goods, or on the condition that those enterprises meet certain export performance criteria” (WT/DS358/1). Mexico filed an identical complaint on 28 February.

Many sectors of Chinese manufacturing benefit from WTO-inconsistent support, the Office of the US Trade Representative maintains. USTR has singled out steel, information technology, clothing, wood and paper as major sectors benefiting from such schemes (Bridges Year 11 No.1 page 10).

At the first consultation meeting held on 20 March, China confirmed that one of the subsidies targeted by the complainants no longer existed as the country’s central bank had terminated a regulation that gave advantageous loans to large exporters.

In addition, China said that certain subsidy programmes had “long been on the agenda of reform of China’s enterprises income taxation regime, as a result of which the new Enterprise Income Law of China has been passed by China’s National People’s Congress on 16 March 2007. All these decisions and relevant measures are made and taken by Chinese legislative authorities and government on their own initiative based on the comments collected from civil society, including enterprises, and long-term debate and deliberation.”

The complainants have not said whether they consider these measures sufficient to drop the case. If not, they can request a dispute settlement panel in April. The European Union, Japan and Australia have joined the dispute as third parties.

## Brazil Faulted in Retreaded Tyres Case

A WTO dispute panel appears to have made a preliminary ruling in favour of the EU’s complaint against Brazil’s import restrictions on ‘retreaded tyres’.

According to Brazilian newspapers, a confidential interim report circulated to the two parties on 12 March ruled that Brasilia’s policy of allowing imports from its Mercosur trade bloc while banning them from the rest of the world was not consistent with WTO rules. Nevertheless, Brazilian officials have expressed a degree of satisfaction with the 300-odd page decision, suggesting that the findings would, if maintained, allow them to retain the measures with only modest adjustments.

Brazil has justified its import restrictions on environmental, fire hazard and health grounds, contending that the shorter lifespan of retreaded tyres linked them more heavily than imported new ones to pollution and other adverse effects caused by all waste tyres. Claiming that an earlier ruling by a Mercosur arbitration panel compelled it to exclude Argentina, Paraguay, Uruguay and Venezuela from the ban, Brasilia has argued that it was simply not equipped to deal with the far greater amount of additional waste that would be generated by EU imports (Bridges Year 10 No.4 page 14).

Environmental groups, including the Centre for International Environmental Law (CIEL), as well as Brazilian human rights and anti-pollution organisations, submitted *amicus curiae* (‘friends of the court’) briefs to the panel explaining why the import restrictions were necessary. The case is also notable for being the first in which a developed country challenged an ostensibly environmental measure taken by a developing one.

The panel agreed with the EU that Brazil’s policies violated GATT prohibitions on most types of quantitative import restrictions and failed to meet the country’s national treatment and non-discrimination obligations. According to Brazilian newspaper *O Globo*, the panel also rejected Brazil’s argument that it lacked sufficient capacity to safely dispose of used tyres. It is extremely rare that WTO dispute panels reverse the findings of their interim rulings.

Brazil maintains that its actions were justified under the GATT Article XX exceptions, which allow Members to deviate from their WTO obligations – for instance, in order to safeguard exhaustible natural resources and public health. However, the Article XX ‘chapeau’, or introductory paragraph, specifies that such measures are permitted so long as they “are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination... or a disguised restriction on international trade.”

Brussels counters that the ban is not justifiable, not only because Brazil imports retreaded tyres from elsewhere in Mercosur: it also continues to import used tyres to convert them into retreaded tyres domestically. The EU argues that Brazil needs to improve its system for disposing of waste tyres. In response to the report, Brazilian Environment Minister Marina Silva noted that there was a substantial difference in environmental terms between disposing of 100,000 tyres from Uruguay and doing the same for 80 million tyres from the EU.

Roberto Azevedo, a senior official in the Brazilian foreign ministry, insisted that nothing in the report would obligate Brazil to reopen its market to imports of retreaded tyres, as the EU appeared to be claiming. Despite the adverse nature of the interim ruling, the panel had affirmed that Brazil had the right to implement such import restrictions for health and environmental reasons, he said.

In addition to the health and environmental hazards, substantial commercial interests are at stake in the dispute. *O Globo* reports that while used tyres can be imported for as little as US\$0.20, they fetch as much as US\$70 once retreaded.

The final ruling is expected to be circulated to the parties in late April and to the public in June.

# Improving the WTO Enforcement Mechanism: Toward a More Balanced Regime for All Members

Virachai Plasai

While the establishment of the WTO has brought improvements in the enforcement of dispute settlement rulings, the effectiveness of compliance and remedy disciplines needs to be strengthened.

Out of the more than 300 trade disputes brought to the WTO, only 16 have been subject to the compliance and remedy regime under the Dispute Settlement Understanding (DSU). Remarkably, in all these cases the defending party has been found in non-compliance and seems to remain so permanently.<sup>1</sup> In 15 of these instances, WTO Dispute Settlement Body (DSB) has even authorised the complainant to retaliate.<sup>2</sup> The current enforcement system thus appears to be lacking in effectiveness and one may wonder if it can ensure compliance and provide much-needed security and predictability to the multilateral trading system.

Another problem that has emerged during the first decade of the WTO relates to remedies. Under the WTO, retaliation seems to be the only available remedy since the DSU does not provide an adequate opportunity or incentives for the parties to a dispute to agree on meaningful compensation. As things stand, only the larger economies have the luxury of effective retaliation because 'effectiveness' is likely to depend on each Member's market leverage. This is particularly problematic for smaller economies, which often find themselves without adequate means to effectively enforce favourable WTO rulings. Although the DSU has been generally accepted as a reliable and workable instrument, it is clear that improvements could and should be made to its enforcement mechanism.

## Ensuring Better Compliance

First, it should be possible for the panel and the Appellate Body to issue binding implementation orders. Under the current system, they can only *recommend* that the Member concerned bring its WTO-inconsistent measure into conformity with WTO rules. This leaves room for interpretation, and Members have more or less considered themselves free to adopt any measure they deem appropriate within the broad universe of such recommendations. In some cases, the implementing measure only touches upon one or some of the aspects of the measure at issue. In others, implementation may simply be of 'cosmetic' nature or is late, protracted and only partial. Specificity in panel and Appellate Body recommendations or rulings would be conducive to a more effective compliance.

Second, the current DSU contains no provisions on compliance and remedies for the period starting from a Member's adoption of a WTO-inconsistent measure and ending with the expiry of the 'reasonable period of time' granted to the Member to implement the ruling. Compliance should also cover this period. To this end, the DSU should allow some kind of *modus vivendi* between the parties to the dispute to address this necessity through, *inter alia*, reimbursement of wrongly imposed duties, repayment of subsidies, or compensation.

It is also crucial that the DSU surveillance mechanism be strengthened. There should be a requirement for a detailed status report on the implementation process. Where there is no compliance – and compensation has been provided or concessions have been suspended – the Member concerned should give a detailed explanation as to why it has not complied.

Lastly, dispute settlement rules should be clarified with regard to the 'sequencing' issue to reflect Members' existing bilateral practice that there should be a multilateral determination of compliance under Article 21.5 prior to a request for retaliation under Article 22.

## Making Remedies Fair and Effective

To enhance the remedy aspect of the DSU, trade compensation must be made a viable option. The parties to the dispute must be provided with sufficient time to conduct meaningful negotiations. Monetary compensation should also be possible since, arguably, it is not subject

to most-favoured-nation requirements as such obligations under WTO agreements relate only to treatment of products or services of other Members. Several developing countries, it should be noted, support the possibility of monetary compensation.

Once a case is brought to the DSB, there should be a possibility for the panel, pending decision on merits, to issue a preliminary decision to prevent the Member concerned from taking steps or doing something that would change factual situations and thus affect a future decision of the panel on merits. The purpose is to protect the rights of the parties as of the time of the commencement of proceedings, without allowing the panel to pass an interim judgment on the substance. This kind of interim relief exists in some form or another under many international dispute settlement mechanisms, but is still missing under the WTO.

More importantly, there should be a mechanism to ensure that compensation and retaliation are genuinely temporary. In the ongoing DSU Review, WTO Members have constructively proposed a possibility for the DSB to withdraw the authorisation to suspend concessions or other obligations on the grounds that the Member concerned has eliminated the inconsistencies or the nullification or impairment. This is certainly a good starting point for further discussion.

Lastly, the DSU should expressly address the issue of possible 'retroactive remedies'. The idea is to preserve the rights of a complaining party *as from the date of imposition* of the measure at issue (by the defending party) that is subsequently found to be WTO-inconsistent. The panel and Appellate Body should be empowered to use discretion so as to restore the level of mutual benefits between the parties that exist before the violation by the responding party. Again, this is quite common in other adjudication systems.

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### Toward a More Balanced 'Retaliation' Regime

As the only remedy available in practice under the DSU, retaliation – or 'suspension of concessions or other obligations' under Article 22 – deserves a closer look in light of WTO jurisprudence and practice of Members since 1995.

The existing retaliation regime seems to be geared more toward re-balancing benefits between the parties than to inducing compliance. The level of the nullification or impairment as determined under the DSU – a decisive factor in determining the amount of the retaliation – also appears in many cases to be lower than the damage actually occurred as a result of the WTO-inconsistent measure. This could lead to a situation in which the Member concerned prefers to find itself at the receiving end of a DSB-authorized retaliation rather than comply with the DSB recommendations and rulings. Practice of Members in the first decade of the WTO has confirmed such a trend.

Instead, the rationale for retaliation should be to effectively induce compliance. The Article 22.6 arbitrator should be allowed to grant a level of suspension that exceeds the level of nullification or impairment, so that suspension may constitute a legitimate and proportionate measure in response to a violation of WTO obligations, which is an internationally wrongful act. In cases involving prohibited subsidies, a higher level of suspension has already been adopted in light of the need to induce compliance. This approach should apply generally to all retaliations under the DSU.

Other aspects of the present retaliation regime should also be improved. For instance, cross-retaliation should be made easier to use, given that it may help smaller economy Members to overcome their lack of enforcement power in implementing sanctions authorized by the DSB. Some Members could face difficulties in the context of suspension of concessions as it may not be realistic or possible for them to suspend concessions for the full amount within the same sector or under the same covered agreement. In such situations, it would be useful to allow suspension in the same sector to cover only part of the nullification and impairment,

while the residual amount would be subject to suspension in another sector or under another WTO agreement.

In addition, there must be a specific multilateral procedure to monitor retaliation and maintain 'equivalence' between the level of retaliation, as allowed, and the level of nullification or impairment. Furthermore, the issue of third party rights still needs to be clarified, given the absence of provisions on third party status under Article 22.

### Leveling the Playing Field

The DSU does not currently provide for special and differential treatment with regard to compliance and suspension of concessions or other obligations, although this is perhaps the most crucial area to developing country Members. Whether a developing country is on the complying end or the suspending end of the equation, the DSU puts the parties to the dispute on an equal footing. Paradoxically, this is probably the area where the need to address imbalances in economic position is the greatest.

For compliance and retaliation matters, the size of the economy concerned and its ability to withstand sanctions and adapt itself will always make a difference. Most developing countries lack the ability to make use of many DSU provisions regarding suspension of concessions or other obligations. The smaller the size of the economy and the volume of trade, the slimmer the chance of finding a goods or services sector where retaliation would not produce some kind of adverse effects for the suspending Member.

Given the above, improvements to the DSU should include:

- With regard to Article 22.6 arbitration, an enhanced opportunity for developing countries to acquire information and first-hand experience by participating as third parties.
- A special regime to provide flexibility for developing countries, taking into account circumstances related to their level of development, by allowing an extra period of time for implementing DSB recommendations or rulings, in addition to the reasonable period of time determined under Article 21.3.
- Some flexibility to developing countries – upon reasonable justification taking into account their development objectives and policy – in case of a *bona fide* delay in their implementation of DSB recommendations and rulings.
- Reimbursement of legal fees and expenses as a remedy for 'winning' developing countries.
- Less stringent conditions under Article 22.3 for developing countries to resort to cross-retaliation, provided that cross-retaliation is re-engineered in such a way as to become a tool to increase their enforcement power.

In short, the compliance and remedy regime of the current DSU should be improved to achieve the dual purpose of re-balancing benefits and effectively inducing compliance. Imbalances in the retaliation system, which presently favours Members with better market leverage, should also be addressed so as to strengthen developing countries' enforcement power.

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### ENDNOTES

<sup>1</sup> These cases are *EC – Bananas III (US)* (DS 27), *EC – Hormones (Canada)* (DS 48), *EC – Hormones (US)* (DS 26), *EC – Bananas II (Ecuador)* (DS 27), *Brazil – Aircraft* (DS 46), *US – FSC* (DS 108), *Canada – Aircraft Credits and Guarantees* (DS 222), *US – 1916 Act* (DS 136), *US – Byrd Amendment (Brazil)* (DS 217), *US – Byrd Amendment (Canada)* (DS 234), *US – Byrd Amendment (Chile)* (DS 217), *US – Byrd Amendment (EC)* (DS 217), *US – Byrd Amendment (India)* (DS 217), *US – Byrd Amendment (Japan)* (DS 217), *US – Byrd Amendment (Korea)* (DS 217) and *US – Byrd Amendment (Mexico)* (DS 234).

<sup>2</sup> The only case in which authorisation for retaliation has not been sought is the *US – 1916 Act*.



# Africa's Burgeoning Trade Relationship with China

Francis M. Mwega

Africa's exports to China have grown even faster than its imports from the Asian giant, and stepped-up Chinese investment and aid have benefited many governments. There are, however, concerns about local businesses' ability to withstand the competition and the pressure exerted by trade-related Chinese migration on African job markets.

## African Imports from China

African imports from China have increased about seven-fold – from US\$895 million in 1996 to US\$7.3 billion in 2005 – over the last decade. China's share of the continent's imports grew from 2.5 percent in 1996 to 7.4 percent in 2005. Manufactured imports accounted for 92.1 percent in 1996, slightly increasing to 94.6 percent in 2005.

South Africa (45.7 percent), Nigeria (21.3 percent) and Sudan (10.8 percent) dominated the thirty or so African countries that imported from China in 2005. Machinery and transport equipment accounted for 48 percent of the three countries' imports, manufactured goods for 24 percent, miscellaneous manufactured articles for 19.4 percent, and chemicals and related products for 6.4 percent. These imports undermine domestic firms that cannot undercut Chinese production costs and prices (a direct competitive effect). However, some domestic producers benefit from the low-priced intermediate and capital imports, when China's exports to Africa do not crowd out imports from elsewhere.

## African Exports to China

African exports to China have expanded even faster so that the region now has a trade surplus with China. Between 1996 and 2005, exports to China grew by 1678 percent from about US\$1.1 billion to US\$18.8 billion. By 2005, China had overtaken the UK as Africa's third most important trading partner (after the US and France). However, Africa accounts for only two percent of China's external trade (Tull 2006, WEF 2006).

African exports to China are predominantly primary goods, mainly oil and metal products, largely driven by China's need to secure natural resources to sustain its economic boom. Mineral fuels and lubricants, for example, accounted for 24.9 percent of total exports in 1996, rising to 70.9 percent in 2005. China's share in the demand for some mineral resources – such as aluminum, nickel and copper – varies between 76 and 100 percent (Kaplinsky et al. 2006).

China's increased demand for primary exports provides an opportunity for Africa's resource-rich countries to provide an increased share of China's requirements, a direct positive complementarity effect. At least eight out of ten of its most important African trading partners are resource-rich countries.

## Top 10 African exporters to China in 2005

Country	Share
Angola	35.1%
South Africa	15.9%
Sudan	13.9%
Congo	12.1%
Equatorial Guinea	7.7%
Nigeria	2.8%
Gabon	1.9%
Zambia	1.3%
Chad	1.0%
DR Congo	0.9%

China imports nearly 30 percent of its oil and gas from Sub-Saharan Africa. The bulk of oil is supplied by Angola and Sudan. Angola–China oil trade has grown by 400 percent since 2001 (117 million barrels were shipped to China in 2004, a 60 percent increase from 2003). With a share of about 13 percent of China's total oil imports, Angola came close to the level of China's leading oil supplier, Saudi Arabia (125 million barrels). Recently, the state-owned China Eximbank released a US\$2 billion loan package to Angola in exchange for the supply of 10,000 barrels of oil per day. China's oil consumption is estimated at 6.59 million barrels a day.

Sudan is also a non-negligible provider of China's oil imports (6.9 percent). Chinese firms acquired a 40 percent stake in Greater Nile Petroleum Operating Company (GNPOC) in

1996. US sanctions against Sudan and the incremental withdrawal of Western oil companies have enabled the company to become the largest foreign investor in Sudan's nascent oil production. On the other hand, driven by oil interests, and characteristic of China's relationship with African countries, attempts to bring Sudan to book over Darfur at the UN Security Council have been frustrated by China, which has either abstained from casting a vote or threatened to use a veto.

## Foreign Direct Investment

While still globally small (about US\$900 million out of the continent's total of US\$15 billion in 2004), FDI from China to Africa has increased substantially in the last decade with Chinese enterprises investing about US\$1 billion a year (WEF 2006). A concern is the competition that Chinese FDI might pose to domestic investors, undermining employment. It seems, however, unlikely that Chinese FDI will crowd out domestic investment and employment since only a few domestic firms engage themselves in the extractive industry, which is the main focus of Chinese companies (Jenkins and Edwards 2006).

China's growing influence is also a product of the strategies that Chinese companies pursue in their conquest of African markets (Tull 2006). Chinese firms appear to be significantly less risk-averse than their Western counterparts, especially in war-torn states such as Angola, DR Congo and Sierra Leone, where a 'first mover advantage' plays out in favour of risk-taking entrepreneurs. It is a policy of the Chinese government to encourage and support investment in Africa, including through the provision of preferential loans and buyer credits (China 2006). The FDI is therefore mainly from parastatals that have access to low-cost capital, so that the Chinese investors have long planning horizons. These firms view the challenging political and economic environ-

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ment in many African countries as an economic opportunity.

Chinese firms also focus on specific sectors. The country “vigorously encourages Chinese enterprises to participate in the building of infrastructure in African countries, scale up their contracts and gradually establish multilateral and bilateral mechanisms on contractual projects” (China 2006). China has therefore become a major player in the field of infrastructure activities (transportation, telecommunications, water conservation, electricity generation and so on). Many of the projects are not commercial and are financed by ‘tied’ aid. Since most infrastructure projects are public-sector works, China considers its investment as goodwill projects to woo the sympathies of African leaders. This enables China to gain political influence, which often opens the doors to commercially or strategically more attractive business in other sectors, such as winning tenders for oil or mining concessions.

Finally, Chinese firms target countries suffering from Western-imposed sanctions. These sanctions tend to turn those countries into niche markets, making China an attractive alternative partner for ‘pariah states’ such as Sudan and Zimbabwe, for example.

An indirect influence is the extent to which FDI flows to China crowd out FDI flows to African countries. The massive flow of FDI to China has raised concern of a possible diversion of FDI from other countries towards the Asian giant. Empirical evidence, however, does not seem to support the FDI crowding-out hypothesis (Geda 2006). This is because much of the FDI is in search of natural resources and therefore location-specific. On the other hand, the lack of production linkages between Chinese and African firms implies that FDI flows to the two regions do not crowd in one another.

### Foreign Aid and Migration

In support of its trade and investment policies, China has moved to increase its assistance to developing countries ‘to the best of its ability’ – most of it to African countries. In 2002, for example, some 44 percent of China’s US\$1.8 billion overall assistance to developing countries went to Africa.

China has also cancelled bilateral debts for 21 African countries totaling US\$1.27 billion. Until the mid-1990s, a significant proportion of Chinese aid went to liberation movements. Much of it was also motivated by China’s desire to isolate Taiwan (McCormick 2006). Since then, the situation appears to have changed, and Chinese aid is increasingly used to achieve broader strategic objectives.

As a share of the overall development support to African countries (about US\$25 billion), the amount given by China is small. The impact of the assistance is, however, enhanced by political considerations as it comes with practically no strings attached. The only conditionality relates to the ‘one China’ policy, under which the government considers itself the only legitimate representative of the country. China also sticks to the dogma of national sovereignty. African governments, for whom distribution of patronage resources remains an exigency of political survival, gratefully appreciate this.

Furthermore, Chinese aid tends to benefit governments of receiving countries more directly than policies of Western donors who are preoccupied with poverty reduction. China finances relatively grandiose and prestigious buildings (presidential palaces, police headquarters, political party offices and football stadiums) that African leaders highly appreciate for their own political reasons. In return, China can count on valuable diplomatic support from African governments to defend its interests at the international level, particularly in multilateral organisations that operate under the ‘one nation, one vote’ principle.

China’s recent activities in Africa have come with a relatively large migration of its people to the continent, although the migration of people of Chinese origins began thousands of years ago (McCormick 2006). According to some estimates (Obwona and Chirwa 2006), some 80,000 migrant workers from China have recently moved to Africa, creating a new Chinese diaspora. In Angola, for example, some 2,500 Chinese workers have recently arrived to work for Chinese companies whose production will be financed by the oil-backed loan that China granted to government of Angola. Some 30,000 Chinese workers are eventually expected. This massive transfer of personnel is unlikely to have a positive impact on the African job markets, the building of local capacity, or the transfer of technologies (Tull 2006).

Local retailers, too, face rapidly increasing business competition from expatriate Chinese traders. A cursory perusal of African press reports indicates that the diaspora, alongside the competition from cheap imports from China, has stirred significant resentment in some countries. Some 3,000 Chinese live in Cameroon, 5,000 in Lesotho, 50,000 in Nigeria and 300,000 in South Africa, mainly from past migrations.

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### REFERENCES

- China (2006). China’s African Policy. [www.gov.cn](http://www.gov.cn)
- Jenkins R. and Chris Edwards. ‘The Economic Impact of China and India on Sub-Saharan Africa: Trends and Prospects’. *Journal of Asian Economies*, Vol. 17 2006, pp 207-225.
- Kaplinsky, Raphael, Dorothy McCormick and Mike Morris (2006). The Impact of China on Sub-Saharan Africa, April. Mimeo.
- McCormick, Dorothy (2006). China, India and African Manufacturing: Framework for Understanding the Impact of Aid and Migration. Paper prepared for the African Economic Research Consortium (AERC).
- Obwona, Marios and Ephraim Chirwa (2006). Impact of China and India on SSA Agriculture: Issues and Challenges. Paper prepared for AERC.
- Tull, Denis M. (2006). China’s Engagement in Africa: Scope, Significance and Consequences. *Journal of Modern African Affairs*, Vol. 44, No. 3.
- World Economic Forum (2006). Going for Growth. Cape Town, 31 May-2 June 2006. [www.weforum.org](http://www.weforum.org).

# First Investor–State Dispute Brought Under CAFTA

A US-based railroad management company has notified the Guatemalan government of its intention to seek international arbitration in the first investor-state dispute ever filed under the Central American Free Trade Agreement.

Pittsburgh-based Railroad Development Corporation (RDC) alleges that the government has not honoured its commitments under contracts related to the privatisation of Guatemala's national rail system in 1997. According to the company, the government awarded RDC 50-year contracts to use the right of way and the rolling stock of Ferrocarriles de Guatemala (FEGUA, the state-owned railway operator). These 'usufructuary' contracts were to result in a phased restoration of the Guatemalan rail system, which FEGUA would take over in 2047. The deal also comprised the creation of a trust fund for the rehabilitation and modernisation of Guatemala's rail system, to which RDC claims FEGUA agreed to make annual payments. An entity called the Compañía Desarrolladora Ferroviaria (FVG), with 82-percent RDC ownership and the rest of the shares divided between 65 Guatemalan investors, was established to manage the usufruct.<sup>1</sup>

According to RDC, Guatemala and FEGUA have failed "to comply with their obligations to remove 'squatters' from the right of way and to make the contractually obligated payments to the trust fund." The company claims that by February 2007, Guatemala owed the fund more than US\$3 million. In 2005, FVG initiated two arbitration cases in Guatemalan courts over these complaints.

FEGUA requested the government to investigate the circumstances surrounding the privatisation deal, and on 1 August 2005 Guatemala's Attorney General declared both the right-of-way and the rolling stock contracts injurious to the country's interests due to breaches of domestic rules and procedures when they were granted. The Attorney General also found the agreement that FVG pay the government only 1.25 percent of its total transport services billing in exchange for the usufruct contrary to the national interest. In August 2006, President Oscar Berger issued a resolution stating that the rolling stock contract was injurious ('lesivo') to Guatemala and directed the Attorney General to take the necessary legal measures to terminate it and determine the legal responsibilities of the parties.

## RDC Claims

This 'lesivo resolution' is the main focus of RDC's notification to submit an international arbitration claim under the investment chapter of the Central American Free Trade Agreement (CAFTA).

The company claims that the resolution was intended to further two principal government objectives: to force FVG to withdraw from the domestic breach-of-contract arbitration processes it had launched against FEGUA, and to make it impossible for FVG to make use of its right-of-way contract so that it "could be redistributed to certain Guatemalan private sector companies without compensating FVG for the loss of its contractual rights, monetary investments, and reasonably expected profits during the term of the usufruct."

In addition to violations of CAFTA obligations with regard to national and minimum standards of treatment of foreign investors, RDC alleges that the resolution constitutes a 'wrongful indirect expropriation' under Article 10.7, which provides that "no party may expropriate or nationalise a covered investment *either directly or indirectly through measures equivalent to expropriation or nationalisation* (editor's italics), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate and effective compensation [...]; and (d) in accordance with due process of law." This language mirrors that of Article 10 of Chapter 11 of the North American Free Trade Agreement (NAFTA), under which companies have sued governments on the grounds that health or environmental regulations adopted since NAFTA's entry into force constitute measures 'tantamount to nationalisation or expropriation' since they diminish or nullify the value of the companies' investment or legitimate expectations of profits.

The RDC complaint alleges that the 'lesivo resolution' has made "FVG's customers and suppliers to be justifiably reticent to continue to do business with a private entity in a legal battle with the Republic of Guatemala," as well as "undermined and critically compromised the eight-year investment by RDC and truncated the committed efforts of RDC to rehabilitate the railway system that previously was completely abandoned by Guatemala." In addition, the company says that the resolution has led local banks to determine that FVG is longer credit-worthy, based on "the likelihood of its demise as a result of the government's actions." This expectation, RDC maintains, was the reason why a 'squatter' claiming to own property on a river bank within the usufruct's right of way was emboldened to sue FVG, leading to a judicial decision to freeze FVG's bank accounts and a prohibition for the company's manager to leave the country.

RDC also claims that since the issuance of the resolution, FVG has faced more instances of squatters' setting up living quarters along the tracks, vandalism and theft "in some cases in collaboration with local authorities." In addition, FVG's workforce is becoming 'demoralised and distracted' and "looking for employment elsewhere as they see the inevitable result of this forced indirect expropriation."

RDC will seek US\$15 million in damages for its investment to date, as well as US\$50 million to compensate for "the estimated discounted cash flow of its future revenue stream."

Bridges' attempts to reach Guatemalan officials in charge of the case were unsuccessful at press time. Local press sources, however, have quoted unnamed officials asserting that the presidential resolution was based on FVG's failure to maintain the tracks and invest in FEGUA.

## ENDNOTE

<sup>1</sup> The right to use or gain the benefits of another's property, provided that one does not damage, waste, or otherwise alter it.

## Democrats Unveil New Trade Policy for America

The policy would require changes in already signed free trade agreements, set new standards for future treaties and reinforce the role of Congress in the Doha Round negotiations.

Signed agreements with Peru and Colombia, as well as a concluded but not yet signed treaty with Panama, were put on hold when Democrats warned that they would not be approved by Congress unless their labour and environmental provisions were substantially strengthened.

The trade policy offered to the administration on 27 March presents a new template for FTAs, calling for the United States Trade Representative (USTR) to:

- require countries to adopt, maintain and enforce basic international labor standards in their domestic laws and practices – not merely ‘enforce their own laws’;
- promote sustainable development and combat global warming by requiring countries to implement and enforce common multilateral environmental agreements, and address illegal logging of mahogany in Peru;
- re-establish a fair balance between promoting access to medicines in developing countries and protecting pharmaceutical innovation;
- promote US national security by protecting operations at US ports; and
- ensure that trade agreements accord ‘no greater rights’ to foreign investors in the US than to US investors.

If the administration accepts these proposals, the labour and environmental provisions in all pending FTAs would need to be renegotiated, either by amending the text itself or by adding binding side letters to the deals. The current US FTA template requires partners to enforce their own environmental and labour laws, but makes no reference to international standards in either area. Importantly, the proposed new policy would also put violations of trade and labour obligations on an equal footing with regard to dispute settlement.

The call for the re-establishment of a fair balance between promoting access to medicines in developing countries and protecting pharmaceutical innovation arises from a 12 March letter sent to USTR Susan Schwab by 12 congressional Democrats,

who said that recent US free trade agreements appeared to undermine the flexibilities confirmed in the Doha Declaration on TRIPS Public Health. The end-result is that the FTAs “threaten to restrict access to life-saving medicines and create conditions where poor countries could wait even longer than the United States for affordable generic medicines,” the letter asserted. The signatories singled out four specific concerns about the US FTA negotiation template: the five-year protection period for pharmaceutical clinical test data; limitations on compulsory licensing; the lack of consumer safeguards, and; ‘potentially unlimited’ patent extensions, as well as a linkage between drug approval and patent authorities. The linkage refers to a standard US requirement that marketing approval for a generic drug cannot be granted until the local patent office has certified that no patent would be violated (see page 18).

The proposal that no greater rights be granted to foreign investors in the US than to domestic investors refers to another standard clause in US FTAs; i.e. the investor-state dispute provision under which foreign companies can sue the host government on the grounds that its laws or regulations diminish the investment’s value or expected future profits (see page 15).

The new trade policy also calls for an immediate extension of the Andean Trade Promotion and Drug Eradication Act, which offers preferential market access to Bolivia, Colombia, Ecuador and Peru, as well as an expanded aid and trade programme “to foster development in the poorest countries in the world.”

### US Trade Policy and the TPA

Democrats in both houses of Congress have taken a proactive approach to reshaping US trade policy in the context of a possible renewal of the administration’s trade promotion authority (TPA), set to expire on 30 June. Under the TPA, the government can negotiate trade agreements that Congress can either approve or reject, but not change. Senate Finance Committee chair Max Baucus said in March that TPA reauthorisation would require a prior bipartisan consensus on trade more broadly.

The new policy proposal emphasises the need to ensure that trade is a ‘two-way street’ through more vigorous enforcement of US trade remedy laws, opening markets abroad, and the establishment of a US ‘trade enforcer’, who would prepare and file disputes at the WTO.

In addition, Congress should have a ‘reinvigorated’ role in trade policy, starting with “full partnership in the Doha negotiations on agriculture (including eliminating barriers to US exports, addressing tariffs and unjustifiable SPS barriers), manufacturing (including elimination of non-tariff barriers), services and dispute settlement, and strengthening rules on unfair trade.”

At the domestic level, the current trade adjustment assistance programme should be significantly upgraded to provide “meaningful support, training and revitalisation programmes for communities hurt by the effects of trade and technology.”

### Initial Reactions

House Ways and Means Committee chair Charles Rangel seemed confident that the proposal would win the support of key congressional Republicans. “We are on the brink of restoring bipartisanship to American trade policy,” he said. Recent polls show that both Democrats and Republicans are increasingly concerned about globalisation and a perceived lack of government action to protect US workers.

At press time, Republican politicians had not yet publicly commented on the proposal, but according to Mr Rangel, Jim McCrery, ranking Republican in the Ways and Means Committee, had indicated that there did not appear to be anything in it that could not be worked out.



# Thailand Responds to Compulsory License Critics

The government of Thailand has issued a report to answer questions raised by the public and the pharmaceutical industry about its recent decisions to suspend patent protection for three drugs used to treat AIDS and heart disease.

The white paper follows months of intense debate that has pitted health care activists against major pharmaceutical companies over the government's decisions to issue compulsory licenses for the production and import of generic versions of Merck's Stocrin (efavirenz), Abbott Laboratories' Kaletra (lopinavir/ritonavir) and the heart drug Plavix (clopidogrel) jointly marketed by Bristol Myers Squibb and Sanofi-Aventis (Bridges Year 11 No.1 page 17).

The compulsory licenses allow Thailand to import, distribute and sell generic versions manufactured in India, where the three drugs are not patented. The generics will be produced locally when the state-owned Government Pharmaceutical Organisation has the capacity to do so.

Pharmaceutical industry sources have complained that the government suspended the patents without adequate prior negotiations with the patent holders, and have warned that the compulsory licensing decisions may induce companies to decline making new innovative medicines available in Thailand. Indeed, Abbott announced in March that it would not introduce new medicines there and withdrew all pending marketing approval applications.

## Why Were the Patents Suspended?

The white paper explains that the compulsory licences are necessary to achieve universal access to essential medicines, as mandated under the National Health Security Act of 2002. Thai citizens are covered by public health insurance schemes, which entitle them to full access to some 900 medicines on the country's essential drugs list. Many of these are patented. In addition, the government has committed to providing universal access to anti-retroviral drugs (ARVs) for HIV/AIDS victims since October 2003. Although public health spending now exceeds ten percent of the national budget, the country is still unable to fully achieve the goal of universal access to essential drugs due to the high prices of some patented medicines.

## TRIPS Compliance

The 2001 Doha Declaration on the TRIPS Agreement and Public Health explicitly confirmed that the TRIPS Agreement "does not and should not prevent Members from taking measures to protect public health" and that it should promote access to medicines for all. There is no obligation in the TRIPS Agreement for a government to negotiate with the patent holder prior to issuing a compulsory licence for national emergencies, other circumstances of extreme urgency or public non-commercial use, although it must provide them 'adequate remuneration'. As remuneration, the Thai government will pay the patent holders a royalty fee of 0.5 percent of the total sale value of the generics.

No foreign government, including that of the United States, has claimed that the compulsory licenses infringe either Thai or international intellectual property laws.

## New Price Reduction Strategy

After largely unsuccessful previous attempts to negotiate lower prices, the Thai government chose in the efavirenz, lopinavir/ritonavir and clopidogrel cases to suspend patent protection and then continue consultations with the affected companies since "it is only after the threat or the decision to use and implement compulsory licensing or government use of patents that the negotiation will be more successful and effective." The strategy appears to be working – at least in part – since Merck proposed in February a 'very favourable' new price, which the government is considering seriously. A 30-tablet bottle of brandname Stocrin would cost about US\$4 more than 30 generic efavirenz tablets imported from India.

The government also expresses disappointment that the strengthening of national patent laws to comply with the TRIPS Agreement has not led to more investment in drug research in Thailand or technology transfer from industry.

## Selection Criteria

The National Health Security Board has established a special committee involving government departments and consumer groups to determine which drugs should be granted compulsory licenses and to set the royalty fees. The criteria upon which decisions will be made include, *inter alia*, whether the drug appears in the national essential medicines list; whether it is necessary to solve important public health problems, or; whether it is needed to deal with a national emergency or extreme urgency. In addition, the price of the original medicine must be too high for the government to be able to supply it to patients under national health insurance schemes.

## Negligible Market Impact

According to the report, the compulsory licences are unlikely to affect the country's small market for patented drugs, as the majority of Thais cannot afford them and rely on medicines supplied by the government. The generic drugs will not be distributed to those who can afford private insurance, and such patients will continue to pay the higher price for patented products. The government argues that the generics in fact open a new market as those who receive them never had access to the patented drugs and would not be able to afford them now.

## Benefits Already Clear

The Thai government justifies its intervention by stressing the threat to life perpetuated by lack of access to the most recent versions of ARVs, which are more effective and less more toxic than the older versions. The first batch of generic efavirenz imports from India has more than halved the price of the latest first-line ARV treatment, allowing 20,000 more people to be treated. Second-line ARV generics, such as lopinavir/ritonavir, are expected to cost about 80 percent less than the patented drugs now available. This would enable the government to support 8,000 more patients, who would not survive without second-line treatment. Just 2,000 AIDS victims are currently treated with second-line ARVs.

## Chile and the US Priority Watch List: Some Considerations

Pedro Roffe

In January 2007, the United States Trade Representative decided to add Chile to the Priority Watch List of countries considered to have serious shortcomings in the protection or enforcement of intellectual property rights.

The announcement came as a surprise to many observers of Latin American economic and political developments. Since the restoration of democracy in 1990, Chile has often been acclaimed as an example of modernisation and economic liberalisation in the Western hemisphere. The move did not, however, surprise those familiar with developments in the field of intellectual property (IP) and the strategies the US government uses to advance its policies in favour of strengthened IP protection around the world.

### US IP Protection Policies

Section 182 of the United States Trade Act of 1974 introduced a link between respect for intellectual property rights (IPRs) and preferential market access. This seminal concept of ‘trade-relatedness’ was subsequently integrated into the multilateral trading system during the Uruguay Round negotiations on the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). The 1974 US Trade Act was later amended and under the current Special 301 provisions, USTR annually reviews the ‘adequacy and effectiveness’ of IPR protection in nearly 90 countries, which are placed in three different categories.

Countries on the Priority Watch List (PWL) are characterised as those that “do not provide an adequate level of IPR protection or enforcement, or market access for persons relying on IP protection.” They are the focus of increased bilateral attention concerning the problem areas. A number of nations – for example, Argentina, Brazil, China, India, Israel, Kuwait, the Republic of Korea, Taiwan and EU member countries – have been placed on the list over the years.

In parallel to its strong battery of domestic instruments, such as Special 301, the US has been a strong advocate for strengthening multilateral IP disciplines. The adoption of the TRIPS Agreement with its minimum standards of protection was at the

time perceived by many as a step towards the ‘multilateralisation’ of trade disputes over IPR issues. A new generation of free trade agreements (FTAs) championed by the US – including one with Chile – have made IP obligations even stricter and more robust than those required by TRIPS.

### How Has Chile Allegedly Misbehaved?

The major bone of contention between the US and Chile relates to the protection of undisclosed information related to the safety and efficacy of pharmaceutical products and the so-called ‘linkage issue’, according to which no marketing approval may be given to third parties prior to the expiration of the patent, unless by consent or acquiescence of the patent owner. According to the US, “Chile remains unwilling to address the concerns of patent holders, who report that Chile has authorised the marketing of patent-infringing pharmaceutical products.” In addition, the US contends that “Chile relied inappropriately on undisclosed test and other data submitted in connection with the approval of innovative drug products in order to approve generic versions of these drugs.”

The US also complains that Chile’s “commitment to the vigorous enforcement and prosecution on intellectual property theft of copyrighted goods appears to be diminishing significantly [...] the political will and a comprehensive government strategy for reversing recent trends towards higher levels of infringements appears to be lacking.”

In brief, according to the US, Chile has not done enough to protect and enforce IPRs held by foreigners. Other trading partners that have entered into FTAs with Chile (notably the EU and Switzerland through EFTA) have also informed the Chilean government of their dissatisfaction with its IP enforcement policies. The EU, for instance, has complained that Chile, as of January 2007, has not acceded nor ensured an adequate and effective implementation of obligations arising from the WIPO Patent Co-operation Treaty. Switzerland has made complaints in the area of pharmaceutical products similar to those of the US.

### Chile and the International IP Architecture

In order to understand Chile’s actions, it is useful to review briefly the evolution and status of IP protection in the country.

First, Chile is not a major player in terms of patent registration. An average of 2,500 applications are made yearly, mostly by foreign firms. These figures are not of the same order of magnitude as those of Argentina, Brazil or Mexico. Brazil, for example, receives an average of 6,000 patent applications per year and Argentina 8,000. Conversely, in the area of trademarks, Chile appears to have more relevance. Thirty thousand applications are made yearly. This is a globally significant figure.

Second, Chile started to modernise its IP regimes long before the entry into force of the TRIPS Agreement. In 1970 it promulgated a new copyright law (amended in 2004) and in 1991 was the first Latin American country to recognise patenting for pharmaceutical products. It should be recalled that the TRIPS Agreement granted developing countries such as Chile until the year 2000 to meet the minimum standard of non-discrimination in the fields of technology under patent protection (and – with some conditions – until 2005 for countries that, unlike Chile, had not already offered patent protection for pharmaceutical and chemical products). Countries such as Switzerland, with a technologically advanced pharmaceutical sector, had introduced full patent protection only 14 years earlier.

Chile continued enhancing its IP system through a number of reforms, first in 2004 and later in 2005. More recently in January 2007, Chile further fine-tuned its system to meet commitments undertaken in the context of FTAs, particularly with respect to the protection of undisclosed information and invigorated enforcement policies.

Third, Chile is a member of most major international conventions on IP. For instance, the country has subscribed to ten out of the 25 treaties administered by WIPO (the US is party to 14 of those treaties). While it is true that Chile subscribed to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works – the two pillars of the international IP system administered by WIPO – relatively recently, it is worth noting that the US itself only became party to the Berne Convention in 1989 (the delay was due to the view that it was not consistent with US interests). Through its FTAs, Chile has also assumed further commitments to subscribe to, or comply with, other international treaties, including the Patent Co-operation Treaty of 1970.

Finally, over the last decade, Chile has entered into FTAs with robust IP chapters with the EU, EFTA, the US, Canada, New Zealand, Singapore and the Republic of Korea. It has also concluded an FTA with China and negotiations with Japan are almost finalised.

### What Lessons to Draw?

The US classification of Chile – one of the best-performing countries in terms of economic policies and democratisation – as a seriously ‘non-performing’ country in the world of IP calls for a critical reflection on the evolution and gaps of the international system.

A first issue concerns the possible distortions that bilateral approaches introduce into the multilateral system of IP protection. When the Uruguay Round was concluded, the inclusion of TRIPS as part of the Final Act of the Marrakesh Agreement was accompanied by considerable concern from developing countries about the projected costs of its implementation. Importantly, however, governments were hopeful that the new agreement would promote a multilateral response to alleged lack of compliance with IP rules rather than unilateral acts or trade sanctions. Moreover, under the TRIPS Agreement, parties retain the freedom to determine the appropriate method of implementing its provisions within their own legal systems and practices.

Chile provides a striking example of a country that has gone further than the TRIPS Agreement by willingly accepting further IP obligations, including the protection of undisclosed information concerning the safety and efficacy of a pharmaceutical product, and enforcement measures more generally. Under FTAs, countries such as Chile appear to have lost their freedom to determine how best to implement IP provisions. However, the United States makes clear that it preserves the discretion to determine how the FTAs are implemented under its standard FTA implementation legislation which states, *inter alia*, that:

- (1) No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.
- (2) Nothing in this Act shall be construed
  - (A) to amend or modify any law of the United States, or
  - (B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.<sup>1</sup>

A second challenge in the international IP system is the lack of clear procedures and criteria for assessing the degree of IP protection in countries and the extent to which they meet international obligations – whether bilateral or multilateral. This gap is particularly worrisome because it leaves countries vulnerable to a wide range of allegations of misbehaviour – which in turn can cause considerable damage to their international reputation – whether or not deserved. The TRIPS Agreement and the FTAs that Chile has entered into underline the importance of transparency and due process of law. Unfortunately, these fundamental principles of the trading system do not prevail in the decision-making process of classifying a country as a major transgressor of international rules.

The allegations made by Chile’s major trading partners that it does not enforce IP rules according to their expectations are not based on hard evidence or data, nor on transgressions that have been authoritatively established by judicial or administrative bodies. The EU’s conclusions on Chile are based on surveys or guesses of selected firms operating in the country, while the conclusions reached by USTR are based on reports prepared by interested firms that use diplomatic and media channels to pursue their claims. In fact, for several years powerful industry coalitions of major companies, such as the International Intellectual Property Alliance and the Pharmaceutical Research and Manufacturers of America, have repeatedly called on USTR to add Chile to the Priority Watch List.

Where the US and the EU do have genuine concerns and complaints about the interpretation given by Chile to the implementation of some of its IP commitments, these should be resolved through dialogue and finally by Chile in conformity with its international obligations and under its legal system and practice. This could be the case, for example, with respect to the ‘linkage issue’ that might require more efforts by Chile to ensure transparency and legal security to those holding valid patents, as well as to third parties wishing to market a new product.

Meanwhile, the potential harm caused to Chile by these unilateral actions is not compatible with its efforts to liberalise the economy, to reinforce fair competition and to modernise domestic institutions, including those related to the protection and enforcement of IPRs. Unilateral actions targeting Chile as a ‘non-performing’ country contradict the spirit of the FTAs signed by the parties and undermine the purported commitment in those agreements to the fundamental principles of the multilateral trading system and to their own dispute settlement mechanisms.

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### ENDNOTE

<sup>1</sup> Section 102 of the US-Chile FTA Implementation Bill.

## South–South Trade in Special Products: Is There Scope for Consensus?

*Christopher Stevens, Jane Kennan and Mareike Meyn*

Much has been made of the potential harm that ‘special’ agricultural products – on which tariffs will be cut less or not at all – may cause to developing country exporters, but empirical evidence of the products and countries involved has thus far been scant.

According to WTO figures, the share of South–South trade in developing countries’ total agricultural exports increased from 32 to 46 percent in the period 1990–2003. However, agriculture is relevant not only for developing countries’ exports, but also for their food security and livelihoods. To address the socio-economic dimensions of agriculture, the 2005 WTO Hong Kong Ministerial Conference agreed that developing countries “will have the flexibility to self-designate an appropriate number of tariff lines as Special Products (SPs) guided by indicators based on the criteria of food security, livelihood security and rural development.” What an appropriate number is, and whether suitable indicators valid for all countries exist, remains disputed among WTO Members.

It is important to note that there is a broad consensus among WTO Members that bound tariffs for SPs will not be raised. However, an SP designation might be problematic for some countries and some products, for instance when there is a big difference between bound and applied tariff rates and the importing country increases the applied rate.

### The Key Issues

The study on which this paper is based<sup>1</sup> brings empirical evidence on the subject of South–South trade by providing detailed information on the main developing country exporters and importers, the principal products that are traded and the main trends.<sup>2</sup> It uses this information to identify the importance for South–South trade in the products that appear most likely to be designated as SPs and presents possible options for how both exporters’ and importers’ concerns could be addressed.

The analysis threw up a number of *potential* lines for developing a Southern consensus with respect to SPs, but did not identify any ‘magic bullets’ in the sense of specific measures that would have fairly general applicability. The overwhelming impression given is one of diversity.

Only six products potentially identified as SPs are subject to substantial South–South trade, which is heavily concentrated in a few large middle-income developing countries. Because of this limited number of products and countries, there may be scope for bilateral negotiations to address the concerns of developing country exporters. A consensus on Special Products among major developing country traders might then pave the way to a broader South–South agreement.

At the same time, however, negotiations on SPs are constrained by the diversity of developing countries’ interests, which makes it impossible to conclude that only X number of countries need to be involved in discussions on Y number of products. In most cases there are countries with a ‘minor interest’ that cannot be excluded from discussions. Moreover, there is no clear regional pattern in trade for many of the items that have been flagged as potentially important. Most problematic are products where both developing countries and developed countries are major import sources. Reaching agreement on these SPs may be difficult since some developing countries will seek protection from trade-distorting subsidies often associated with developed countries’ agricultural exports.

Still, should the will exist to forge a consensus on SPs, it would be reasonable to focus negotiations on the 15 developing countries that are the main importers from other developing countries, as well as the small number of countries that may potentially designate as SPs products exported primarily by other developing countries. Since a significant number of the largest developing country importers are middle-income countries, it might be possible to reach agreement that they would not impose SPs on products of particular interest to other developing countries.

### Developing Country Exports and Exporters

Some 40 agricultural products<sup>3</sup> accounted for 0.5 percent or more of total developing country exports of goods covered by the WTO Agreement on Agriculture in 2005. These 40 products cover almost 56 percent of total developing country exports of agricultural goods and fall into eight broad groups: meat, fresh vegetables, fresh/processed fruits, beverages, cereals and preparations, vegetable oils, sugar, tobacco and cotton.

However, South–South trade is important for only some of them. In just 27 cases is there at least one major developing country exporter that sends at the minimum one-third of its exports to other developing countries.<sup>4</sup> The incidence of high developing country import market share is heavily focused on a relatively small number of country/product combinations. This leads to some optimism that bilateral negotiations could solve a significant proportion of potential problems concerning SPs and South–South trade.

### Developing Country Importers

There is a high degree of concentration of the major developing country importers of the key products.<sup>5</sup> In half of the cases studied, three or fewer developing countries absorbed a significant share of a country’s exports to other developing countries. Moreover, a considerable overlap exists in the main developing country importers of different products. Of the 43 countries identified as a major importer of one or more of the key developing country exports, twenty-five were involved in three or fewer country/product combinations. The developing countries that were found most frequently to be importing key products are China, Indonesia, Malaysia, Hong Kong, Singapore, Thailand, Pakistan, South Korea, the Philippines, Saudi Arabia, Iran, South Africa, Turkey, Chile and India.



There is, however, no clear pattern of whether these principal importers source their imports mainly from developed or developing countries. In some cases, developing countries are overwhelmingly the most important source for all the major importers, and there are no cases where developing countries are minor sources for all importers. However, there are many instances of wide dispersion between some importers (where developing countries form a very small share of the total) and others (where they are the major source). These may be the most difficult cases to deal with since some importers may wish to protect themselves against imports from developed countries whilst others have no such need.

### Overlap with Special Products

Because of the diversity of importers' situations it is important to see which of the goods that are important in South-South trade are likely to be designated as SPs. Since no list of nominated SPs yet exists, any comparison must be speculative. Our study used a list of products identified by ICTSD research as most likely to be designated as SPs. Of the ten product groups listed as potential SPs in the table below, only six featured in the analysis because they are both important developing country exports and a significant proportion of those exports is destined for other developing countries.

#### Overlap between potential SPs and major South-South traded goods

Possible SP	Major developing country export	Major South-South export
Rice	Yes	Yes
Maize	Yes	Yes
Sugar	Yes	Yes
Chicken	Yes	Yes
Beef	Yes	Yes
Vegetable oils	Yes (palm/soya oils)	Yes
Milk and dairy	No <sup>a</sup>	–
Onions	No <sup>a</sup>	–
Potatoes	No <sup>a</sup>	–
Tomatoes	Yes	No <sup>b</sup>

<sup>a</sup> No item in this product group met the initial criterion used to define 'major exports' in this study, i.e. items that accounted for at least 0.5 percent of the value of world imports of agricultural goods from developing countries in 2005.

<sup>b</sup> Only 4 percent of developing country exports in 2005 were destined for other developing countries.

concerns about dumping should be negated by the absence of developed country imports.

- The second group (other vegetable oils and rice) is similar to the first although the preponderance of developing countries as a source of imports is not so marked.
- The third group contains just one product – cuts of frozen chicken. Here, the trade issues are highly country-specific and appear to raise no major problems.
- It is the fourth group that would appear to be the most problematic in terms of reaching consensus between developing country importers and exporters. It covers maize and sugar/sugar products. Developed countries have introduced substantial distortions to world markets through decades of heavy subsidies for both products, and there is a wide dispersion between major importers in terms of the sourcing of their imports. This may mean that clear differences of interest exist between states, which could complicate the task of reaching an intra-South agreement.

### Other WTO Remedies

The need for an SP designation is influenced by the absolute level of the applied rate and its relationship with the bound rate. For almost half the products, the applied tariff for the bilateral trade in question is below 10 percent, which would tend to indicate that these tariff lines are probably not particularly sensitive and therefore unlikely to need SP protection.

In those cases (more than half) where there is a large difference between bound and applied tariff rates, importers do not necessarily need to use SPs to protect their domestic production

since they could simply raise their tariffs closer to the bound level. Even after any Doha MFN tariff reductions, they may retain sufficient flexibility to raise their applied rates up to their bound rate to provide protection against import surges.

An initial focus for bilateral negotiations between Southern exporters and importers should be the one half of cases where there is an applied tariff of 10 percent.

The products that might be most difficult to deal with are those with very high applied tariffs *and* a wide margin between applied and bound tariffs. The most prominent examples are Malaysia's and Indonesia's palm oil exports to India, which currently face an applied tariff of 100 percent that can be increased to a bound rate of 300 percent. However, since this category applies to only a few countries and products, it is recommended that those concerned engage in bilateral discussions over whether or not the importers see a need to protect the products in question through an SP designation.

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### ENDNOTES

<sup>1</sup> Stevens, Christopher and Kennan, Jane. 2007. *South-South Trade in Special Products*. ICTSD. Geneva

<sup>2</sup> Using 'mirror data' of the UN's COMTRADE database. While much of the analysis has been done in relation to just one year (2005), time series analysis has been made for the period 2001–2005. The picture is a complex one, with substantial annual variations in many cases, but there are no clear-cut cases in which the 2005 figure provides a misleading impression because it is either uniquely high or low compared to the other four years.

<sup>3</sup> At the Harmonised System (HS) 6-digit level.

<sup>4</sup> Major exporters are defined as those supplying 5 percent or more of total reported world imports of the product in question from developing countries.

<sup>5</sup> Major importers are defined as developing countries that account for 5 percent or more of the total exports from the principal developing country exporters to developing country destinations.

## Breakthrough on WIPO Development Agenda

Member governments of the World Intellectual Property Organisation have agreed on an initial set of recommendations aimed at ensuring that development is the guiding principle of the institution.

In 2004, thirteen developing countries proposed to the WIPO General Assembly to start considering measures that would integrate a development dimension into all areas of the organisation's activities (Bridges Year 8 No.8 page 1). Over the next two years, member states tabled 111 reform proposals, but could not agree on how they should be addressed (Bridges Year 10 No.4 page 18). A breakthrough finally occurred at the February 2007 meeting of the provisional committee on the development agenda proposals (PCDA), where delegates managed to whittle down 40 proposals to 24 specific recommendations for action. These will be submitted to the September session of the WIPO General Assembly. The PCDA will address the remaining 71 proposals at its next meeting in June.

For the committee's February meeting, former WIPO General Assembly Chair Enrique Manalo had prepared a document that grouped the 111 proposals into six issue-based clusters: (a) technical assistance and capacity-building; (b) norm-setting, flexibilities (exceptions), public policy and the public domain; (c) technology transfer, information and communication technology, and access to knowledge; (d) assessment, evaluation and impact studies; (e) institutional matters, including WIPO's mandate and governance, and; (f) enforcement.

### Wide Range of Issues

Among the nine recommendations agreed on technical assistance and capacity-building was that "WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion." Other recommendations dealt with the need for more funding and human resources to promote measures that would help countries better understand the interface between intellectual property rights and competition policies. Requests were also

made for facilitating developing countries' access to specialised databases in order to make patent searches easier, and the creation of a new database to match specific IP-related development needs with available resources.

The first of two recommendations on norm-setting stressed that negotiations on IP standards must be inclusive and member-driven, and take into account different levels of development, as well as a balance between costs and benefits. It also called for the involvement of a wide range of stakeholders and respect for the principle of neutrality of the WIPO Secretariat. In addition, WIPO members should "deepen the analysis of the implications and benefits of a rich and accessible public domain."

Five recommendations on the technology transfer and access to knowledge cluster included, *inter alia*, a request for WIPO to expand the scope of its activities aimed at bridging the digital divide, and to explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology to developing countries.

Members recommended that WIPO assess its development-oriented activities annually. The institution should also conduct a study on "constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment," as well as undertake new studies to assess the economic, social and cultural impacts of the use of intellectual property systems.

Members also called on WIPO to assist developing countries, particularly in Africa, to conduct studies on 'brain drain' and make recommendations accordingly. They requested the institution to intensify collaboration with other UN agencies and the WTO "in order to strengthen the co-ordination for maximum efficiency in undertaking development programmes." WIPO should also ensure wide participation of civil society in its activities.

A final recommendation directed WIPO to approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns in line with Article 7 of the TRIPS Agreement, which provides that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

### Members Diverge on the Protection of the Public Domain

Discussions on the protection of the public domain were perhaps the most controversial. According to the chair's summary of the talks, Colombia expressed formal reservations about the issue's inclusion in the agreed text. It reportedly contended that intellectual property did not affect the public domain, since IPRs only create incentives for new inventions and creations. Therefore, Colombia argued that the public domain did not need 'protection' in the traditional sense of the term. Chile countered that a strong public domain would provide a basis for generating innovation and creativity that could in turn produce new intellectual property assets. Uruguay pointed to the importance of the public domain in fulfilling the rights to education and freedom of expression, as well as its role in balancing intellectual property with the rights to participate in culture and benefit from scientific progress.

The June PCDA session will address the more divisive proposals, including the negotiation of a treaty on access to knowledge. Documents related to the February meeting can be found at [http://www.wipo.int/edocs/prdocs/en/2007/wipo\\_pr\\_2007\\_478.html](http://www.wipo.int/edocs/prdocs/en/2007/wipo_pr_2007_478.html).

## Agriculture and Trade in East and South Asia

ICTSD, the Vietnamese Ministry of Agriculture and Rural Development and the International Trade Centre (ITC) held a South and East Asian Strategic Dialogue on Rural Development, Agriculture and Trade, from 7 to 9 March in Hanoi, Vietnam.

The meeting aimed to expose Geneva-based negotiators to the concerns of stakeholders in the region, and build capacity in the region by creating greater awareness of the WTO negotiations. At the same time, it sought to address problems specific to the region in a non-negotiating setting. Participants at the meeting included civil society organisations, businesses, policy-makers and trade negotiators from the countries of the region, as well as experts from international organisations.

### Special Products and South-South Trade

Participants noted that one way to minimise the negative impacts of trade liberalisation in the short term may be through 'special products', which developing countries will be able to designate for shallower tariff cuts on the basis of food security, livelihood security and rural development concerns. In East and South Asia, governments and other stakeholders are grappling with the challenge of ensuring that the special products mechanism does not have unwanted negative effects on South-South trade. By going beyond the broad discussion of possible 'modalities' to look at specific products, producers and markets, it may be possible to make some progress on this complex issue by identifying avenues for resolving these concerns outside the WTO, e.g. through regional integration or through the GSTP.

### Import Surges and the Special Safeguard Mechanism

Import surges - such as those experienced by rice in Indonesia - have demonstrated the need for countries to be able to make use of temporary protection through a Special Safeguard Mechanism. By examining the empirical evidence on surges from the last ten years, it was possible for participants to identify the extent to which such surges occur, as well as establish what kind of safeguard would provide countries with an effective defence.

Participants also noted the need for a tariff policy to protect farmers from further declines in prices. They suggested that in-depth analysis is still needed on why import surges occur, and on the main issues around injury and attribution. Furthermore, countries in the region and beyond will need to become more systematic in collecting basic economic data if they are to be able to make effective use of this mechanism.

### Subsidies and Non-tariff Barriers

Developing countries in East and South Asia face real challenges from subsidised exports from developed countries, participants suggested. The billions of dollars of domestic support provided by developed countries can be shown to have an even greater impact than export subsidies themselves, by lowering the world market price for products and undercutting local producers in the region. In order to move the Doha Round negotiations in this area forward, governments must ensure that disciplines on the domestic support pillar avoid creating new loopholes.

Effective controls on Blue Box spending, product-specific caps and reduction commitments, and the review of Green Box criteria are all important if countries in the region are to achieve poverty reduction and economic growth, said participants. Even subsidies currently deemed to have no (or at most minimal) trade-distorting effects often do interfere with asset values, as they are capitalised into land values, raising costs and impeding adjustment.

Participants mentioned the possibility of a last-minute 'peace clause' proposal, and emphasised the need for developing countries to assess the implications and be prepared to respond.

For more information, please visit:

<http://www.ictsd.org/dlogue/2007-03-08/2007-03-08-desc.htm>

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#### Other ICTSD Periodicals

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### WTO Meetings

Apr. 12	Working Group on Trade and Transfer of Technology
Apr. 24	Dispute Settlement Body
Apr. 26	Committee on Trade and Development
May 9-10	General Council
May 11	Committee on Trade and Development
May 21	Council for Trade in Goods
May 22	Dispute Settlement Body
May 22	Committee on Trade and Development

*Doha Round negotiating groups are also expected to meet, but no schedule was available at the time of publication.*

### Other Meetings

Apr. 14-15	Spring Meetings of the World Bank and the Washington International Monetary Fund <a href="http://www.worldbank.org">http://www.worldbank.org</a>
Apr. 16	Special High-level Meeting of ECOSOC with the Bretton Woods Institution and the WTO <a href="http://www.un.org/esa/ffd">http://www.un.org/esa/ffd</a>
Apr. 25-28	FAO Committee on Agriculture Rome <a href="http://www.fao.org">http://www.fao.org</a>
Apr. 30 to May 4	Third Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants Dakar <a href="http://www.pops.int">http://www.pops.int</a>
Apr. 30 to May 11	UN Commission on Sustainable Development Focus on sustainable energy & climate change New York <a href="http://www.un.org/esa">http://www.un.org/esa</a>
May 14-23	WHO World Health Assembly Geneva <a href="http://www.who.org">http://www.who.org</a>

### New Publication from ICTSD [www.ictsd.org](http://www.ictsd.org)

Alavi, Rokiah. March 2007. An Overview of Key Markets, Tariffs and Non-tariff Measures on Asian Exports of Select Environmental Goods. Issue Paper No.4 in the Environmental Goods and Services Series.

### Selected Documents Circulated at the WTO

Committee on Agriculture. 13 March 2007. Negotiating Proposal by Recently Acceded Members. (TN/AG/GEN/24)

Council for Trade in Goods. 9 March 2007. Issues Related to the Textiles and Clothing Sector. Communication from Turkey. (G/C/W/573)

Negotiating Group on Trade Facilitation. 20 March 2007. List of Submissions by Members. Note by the Secretariat. (TN/TF/W/106.Rev.4)

### Other Selected Resources

Cairns Group. 9 March 2007. Proposals for the Doha Round Negotiations on Sensitive Products, and Tropical and Alternative Products. [www.cairnsgroup.org/proposals/](http://www.cairnsgroup.org/proposals/)

Cortes Gamba, Miguel. October 2006. Intellectual Property in the FTA: Impacts on Pharmaceutical Spending and Access to Medicines in Colombia. Mision Salud and Fundación IFARMA. Bogota

Kox, Henk and Kyvik Nordås, Hildegunn. February 2007. Services Trade and Domestic Regulation. OECD. Paris

Organisation for Economic Co-operation and Development. January 2007. CSR and Trade: Informing Consumers about Social and Environmental Conditions of Globalised Production. OECD. Paris

Oxfam International. March 2007. Pricing Farmers out of Cotton: The Costs of World Bank Reforms in Mali. Oxfam International. Oxford

Research and Information System for Developing Countries (RIS). 23 February 2007. World Trade and Development Report 2007: Building a Development-friendly World Trading System. Oxford University Press. New Delhi

Shepherd, Ben and Delpeuch, Claire. March 2007. Subsidies and Regulatory Reform in West African Cotton: What Are the Development Stakes?. Groupe d'Economie Mondiale at Sciences-Po. Paris

South Centre. March 2007. Development and Intellectual Property Rights under the EPA Negotiations. South Centre. Geneva

Thai Ministry of Public Health and National Health Security Office. February 2007. Facts and Evidences on the Ten Burning Issues on Three Patented Essential Drugs in Thailand: Document to Support Strengthening of Social Wisdom on the Issue of Drug Patents. Government of Thailand. Bangkok

Winters, Alan and Yusuf, Shahid. January 2007. Dancing with Giants: China, India and the Global Economy. World Bank Research Group. Washington D.C.

Zibechi, Raúl. 7 March 2007. United States and Brazil: The New Ethanol Alliance. International Relations Center. Albuquerque

