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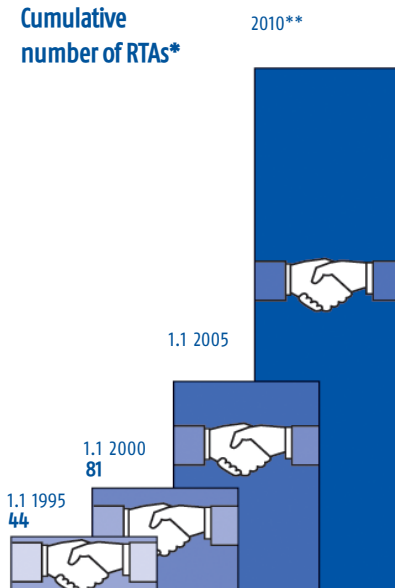
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## Facts and Figures

In 1995, just 44 regional trade agreements (RTAs) had been notified to the WTO. By 2010, UNCTAD projects that 400 will be in force.

Cumulative number of RTAs\*



\* Active and notified to the WTO \*\* UNCTAD estimate

Source: WTO and UNCTAD  
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## More Die than Do for Doha Round?

Prospects for concluding the Doha Round dimmed further when top-level negotiators from Brazil, India, the EU and the US abandoned efforts to forge consensus on how to liberalise trade in agricultural and industrial goods on 21 June.

Trade and agriculture ministers of the so-called G-4 threw in the towel after it became clear that no agreement was possible on the bottom-line numbers tabled by the participants. Their meeting, held in Potsdam, Germany, had been touted as a last-ditch, do-or-die effort to save the Doha Round by narrowing differences among the four countries, which represent a broad spectrum of interests across the WTO membership.

During the finger-pointing that inevitably follows public failures, Brazil and India focused on the US' refusal to reduce its overall trade-distorting domestic agricultural support below (or close to) currently applied levels. They also faulted the EU for not giving enough on tariff protection for sensitive farm products. The EU and the US in turn blamed their developing country counterparts' intransigence on non-agricultural market access (NAMA) for the collapse. Both countries had previously warned that an impasse on NAMA presented a more serious obstacle for concluding the round than the agriculture chapter, which has been at the centre of the negotiations since their inception in 2001.

### The Deal on the Table

On agriculture, the contours of a potential deal had started to emerge when the talks collapsed. The US had indicated that it could, with some difficulty, accept a US\$17 billion spending limit for domestic support instead of the US\$22.5 billion currently on offer. The EU and the US had reached an informal agreement that sensitive farm products would be limited to 4-5 percent of all agricultural tariff lines. The EU had also accepted the principle that tariffs in the highest tier would be reduced by 70 percent, i.e. by 10 percent more than its standing offer. However, duties on sensitive products falling in the highest tier would only be reduced by one-third of the formula cut instead of the 30-percent maximum deviation sought by Brazil and India. The EU approach would result in a 23-percent reduction for duties on sensitive products, while India and Brazil's proposal would produce a 49-percent cut.

Brazil's Foreign Trade Minister Celso Amorim called the transatlantic farm compromise "a sort of Cancun Act II in which the two developed countries or entities found common levels of comfort for them ... but keeping, of course, a very high ambition [in NAMA] for us." In 2003, the fifth WTO ministerial conference in Cancun collapsed partly due to developing countries' refusal to base further agricultural negotiations on an approach jointly proposed by the EU and the US (Bridges Year 7 No. 6-7 page 11).

The concessions offered on agriculture in Potsdam were far from sufficient to offset EU and US demands on industrial market access, the two developing countries said. At issue were the coefficients in the reduction formula that would determine the maximum post-Doha tariff level for manufactured goods. Developed countries had proposed a coefficient of 10 for themselves and 15 for developing countries, which would have capped their respective tariffs at 10 percent and 15 percent. At a recent NAMA negotiating session in Geneva, a group of developing countries (India and Brazil are both members) had said there should be at least a 20-point difference between the two coefficients. Such a variation was warranted by the

*Continued on page 2*

# Bridges

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See inside back cover for information on other ICTSD periodicals.

NAMA negotiating mandate, which requires 'less than full reciprocity' in commitments from developing countries, as well as the Hong Kong Ministerial Declaration, which instructs negotiators to ensure that there is 'a comparably high level of ambition in market access for agriculture and NAMA', the group argued (see page 6).

In Potsdam, India and Brazil indicated that they might go as low as 25 for developing countries, but the EU found the conditions attached unacceptable. These reportedly included a one-percent ceiling for agricultural tariff lines designated as sensitive, a 75-percent formula cut in the highest tariff tier and a 52.5-percent reduction on sensitive products tariffs. Brazil and India also said the US subsidy offer did not come anywhere close to the US\$12 billion ceiling they were seeking. In addition, Minister Amorim argued that – given the high level of many developing countries' bound tariffs – even a NAMA coefficient of 30 would generate more trade than developed countries' lowering their maximum tariff to 10 percent.

### New Negotiating Texts Expected

While the failure of the G-4 to reach consensus was clearly a setback for those hoping to conclude the Doha Round by early 2008, it was never a foregone conclusion that the broader WTO membership would endorse a deal between the four countries. The scene has now shifted back to Geneva, where WTO Director-General Pascal Lamy has urged Members to "engage fully in the multilateral process led by the chairs, and put your cards on the table over the coming weeks in Geneva so that we can reach full modalities."

The chairs of the Doha Round agricultural and NAMA talks are expected to circulate new negotiating drafts to WTO Members in the week of 30 June. In the absence of any input from the Potsdam meeting, they were set to hold a series of consultations with Members in late June to finalise the papers.

The texts are expected to be more precise than the modalities drafts released shortly before the Doha Round was suspended in July 2006. Those papers so faithfully reflected the yawning gaps between Members' positions that they gave negotiators little guidance on potential 'landing zones'. The revised texts are likely to narrow the range of numbers on the depth of tariff and subsidy cuts, as well as provide a starting point for defining the flexibilities available to developing countries and other issues on which official positions are still poles apart.

The chair of the agriculture negotiations, Ambassador Crawford Falconer, will base his revised draft on Members' reactions to the two challenges papers he circulated in April and May. The first of these met with criticism from nearly all WTO Members, with developing countries in particular charging that it paid less attention to their political sensitivities than those of developed countries (*Bridges* Year 11 No.3 page 1). Reactions to the second instalment were more muted, although a number of developing countries again said that the 'centres of gravity' identified by the chair appeared to favour the interests of developed country Members (see page 5).

Ambassador Don Stephenson, who chairs the negotiations on non-agricultural market access, faces an even harder task as differences between major developed and developing countries have not narrowed an iota in Geneva-based discussions (see page 6), and the G-4 meeting further underscored the depth of the divide.

Following the release of the draft modalities, Members are expected to start a period of intense negotiations with a view to reaching broad agreement on the key parameters for concluding the round. The negotiations might extend to August, with possible ministerial involvement in late July. Some trade delegates, however, suggested that Members' reactions to the chairs' papers would determine whether further negotiations on modalities would be undertaken. Without a deal in July-August, the round would probably be frozen a year or two, these sources predicted.

As at other times of crises, support for a 'Lamy draft' on all elements of the Doha Round is on the rise. The Director-General has previously said he would only consider writing such a document as a last resort at the request of the membership.

# Green Box Subsidies: Promoting Sustainable Development?

Jonathan Hepburn

Green Box subsidies are exempt from cuts, as they ostensibly have not more than minimal trade-distorting effects, but several Members charge that they do affect production and trade, exacerbating poverty and environmental degradation.

In 2004, negotiators agreed to a 'review and clarification' of Green Box criteria (annex 2 of the Agreement on Agriculture) to ensure that payments do indeed have no more than minimal effects on trade or production. They also agreed that improved monitoring and surveillance would be particularly important for the Green Box. In 2005, Members further specified that the review should ensure that developing country programmes that cause not more than minimal trade distortion are effectively covered.

The EU, the US and highly protected G-10 countries argue that – by creating a safe haven for the least-damaging subsidies – the Green Box enables WTO Members to undertake reforms. In contrast, G-20 and Cairns Group Members fear that overly permissive Green Box criteria could shelter significant amounts of trade-distorting support. Other developing countries, including the African Group, want the Green Box revised to reflect their own needs. The G-20, African Group, the US and Canada have recently submitted proposals; several developing countries have also drafted earlier papers.

Arguably, the perspectives of both proponents and opponents of reform represent valid concerns and aspirations. While the Green Box could enable countries to safeguard spending on legitimate public policy objectives, there is evidence to suggest that some support being notified in this area may undermine these objectives in both rich and poor countries.

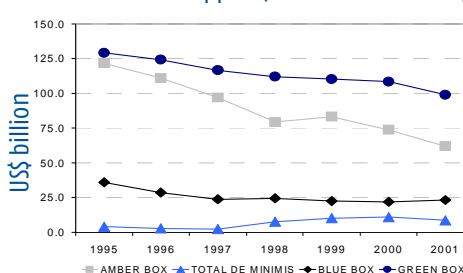
## How Much Is Being Spent?

Without accurate current information, the extent of subsidy spending is hard to determine. The three biggest subsidisers are several years behind with their WTO notifications: the latest EU data is from marketing year 2003/04; for the US, 2001; and for Japan, fiscal year 2003. Changes due to 2002 US legislation and the 2003 EU CAP reform are thus mostly not reflected. Proposals on improved monitoring, notification and surveillance are therefore now central to the reform debate.

Available data does reveal that, from 1995–2001, the EU provided the greatest total domestic support (US\$96.1bn), followed by the US (US\$66.2bn) and Japan (US\$41.8bn). No other country spent more than US\$8bn. However, the latest notifications also show that the US had the highest level of Green Box spending (US\$50.6bn), followed by the EU (US\$29.4bn) and Japan (US\$17.7bn).

These Members' current Green Box support is much higher than it was in the 1986–88 base period. In the EU and the US, Green Box subsidies approximately doubled between then and 1995 (reaching • 18.8bn and US\$46.0bn respectively), while Japan's Green Box payments increased by 43 percent (to ¥3,169bn).

## Notified domestic support (all WTO notifications)



Source: ICTSD, based on Anton-Lopez/WTO notifications

Available notifications suggest Green Box spending remained broadly constant in the EU and the US from 1995 onwards, and in Japan returned gradually to pre-Uruguay Round levels. Meanwhile, Amber Box support in Japan was reduced dramatically (an 82-percent cut) by 2003, and also came down in the EU (by 38 percent). In contrast, US Amber Box spending more than doubled between 1995 and 2001.

Because the final Doha Round agreement is due to discipline countries' overall trade-distorting support, Green Box subsidies should represent a large and growing share of countries' total spending. For opponents of Green Box reform, these increases are welcome. Proponents may be more ambivalent, fearing that subsidies may simply be shifted between boxes without meaningful reform. However, because the Green Box covers a wide range of programmes, the net impact may depend on the type that governments choose to support.

## Where Does the Money Go?

Green Box programmes include seven sorts of general government services (such as research, inspection services and infrastructural services), other spending such as domestic food aid and public stockholding for food security, and a number of direct payments to producers. The latter cover decoupled income support, income insurance and income safety-nets, natural disaster relief, environmental programmes and regional assistance. Also in the category of direct payments are three types of 'structural adjustment assistance': producer and resource retirement programmes, and investment aids.

The latest EU notification, for marketing year 2003/04, indicates that the most important categories were investment aids (31 percent of a total • 22.07bn), general services (23 percent), environmental programmes (24 percent) and regional assistance (13.5 percent). Spending on 'decoupled income support' is likely to increase substantially following the 2003 CAP reforms.

In contrast, the 2000/2001 US notification shows that 67 percent of Green Box subsidies were spent on domestic food aid (from a total US\$50.67bn). General services are again significant (18 percent); less important are decoupled income support (8 percent), resource retirement (3 percent), and natural disaster relief (2.8 percent).

Continued on page 4

The latest Japanese notification (for 2003) also indicates that general services are important, representing as much as three-quarters of the ¥2,086.3 billion total Green Box spending. A large proportion, 59 percent, is spent on infrastructural services, such as land consolidation and construction of irrigation drainage facilities and rural roads.

### Impacts of Green Box Subsidies

OECD research on the ‘decoupling’ of support from production suggests that, while different policies affect production to different degrees, all agriculture-specific support measures have some effect on production, as long as they require that a subsidy recipient is involved in farming.

Negotiating proposals have nonetheless mainly focused on direct payments to producers, and not on general services, which are perceived as important in providing public goods. For instance, the US\$34bn US food stamp programme is widely seen as important in addressing domestic poverty.

The G-20, Canada and the African Group have proposed that current language requiring Members to establish ‘defined and fixed’ base periods for various direct payments be changed to specify instead that these be ‘fixed and unchanging’. Historically, the US has interpreted this language as permitting periodic updates of base periods, thus giving rise to changed expectations amongst farmers that affect subsequent production decisions.

The G-20 has also argued that negative production requirements distort trade and production. 1996 US legislation allowed subsidy recipients to plant any crop except fruit or vegetables, or not to plant crops but maintain the land ‘in agricultural use’. The Brazil-US cotton panel found that, by excluding crops from the eligibility criteria, these payments were incompatible with Green Box rules.

The G-20 has claimed that Green Box direct payments act as an incentive for production when implemented in combination with coupled support payments. The group has proposed that decoupled income support payments should not be made along with Amber or Blue Box payments if their total value exceeds a certain share of a given product’s annual value of production.

Public support for agricultural subsidies is often based on the assumption that they serve a social purpose in supporting small farmers and rural communities. Ironically however, because many kinds of direct payments are based on historical entitlements or area, the distribution of payments in the US and EU is heavily weighted towards the largest farms. The G-20 has proposed amending current rules on decoupled income support to require that ‘low levels of income, landholding and production’ replace the more general existing criteria.

Similarly, while EU and US direct payments are increasingly justified on environmental grounds, programmes are often poorly targeted towards environmental goals, only partially decoupled from production, or directly or indirectly reward harmful intensive farming practices. Not just environmental programmes, but subsidies elsewhere in the Green Box (such as decoupled income support payments), have environmental implications.

Developing countries have proposed a new general services paragraph on land reform and associated services, and modifications to requirements on public stockholding for food security purposes and domestic food aid. They have also proposed amending paragraphs on direct payments, including those covering decoupled income support, income insurance and income safety nets, natural disasters, investment aids, environmental programmes and regional assistance payments.

### What Future for the Green Box?

The 25 May ‘challenges’ paper from the agriculture negotiations chair, which aims to identify plausible zones in which consensus might be found, focuses primarily on issues that are broadly unopposed (see page 6). It thus includes several proposals to ensure that the Green Box covers developing country programmes, but fewer of the more controversial ideas for disciplining developed country payments.

The chair noted little objection to letting developing countries include land reform programmes and associated services under general services (although he remarked that including rural development and infrastructure provision was more controversial). He also indicated support for eliminating the requirement that developing countries must count spending on public stockholding for food security towards their total AMS. Proposals to allow the Green Box to cover foodstuff purchases from low-income and resource-poor producers in order to fight hunger and rural poverty were also broadly acceptable, he said. Negotiators nonetheless contested some of these proposals in subsequent informal consultations.

Green Box disciplines could be amended to cover new programmes in developing countries, the chair suggested, and to permit governments to compensate farmers for losses of less than 30 percent of average production in the event of livestock or crop destruction for disease control purposes. He also noted that Members were close to consensus on setting fixed and unchanging base periods. Given their aversion to more extensive Green Box revisions, effective provisions on transparency, monitoring and surveillance would be particularly important, he said.

As Members approach agreement on the controversial ‘headline figures’ for subsidy and tariff cuts, the challenge will be to guarantee that more marginal issues are given due attention. If governments are to ensure that the global subsidy regime truly supports sustainable development objectives, Green Box criteria must be taken into account. While a clause for a ‘built-in agenda’ may enable Members to ensure that no issue is left aside, this should not serve as an excuse for failing to agree now on meaningful reform.

If no breakthrough occurs in the agriculture negotiations, dispute settlement is likely to become the avenue through which WTO Members will pursue reform of the trade-distorting aspects of Green Box support. For instance, the 2004 WTO ruling, which condemned some US cotton subsidies as having been wrongly counted in the Green Box, has led the administration to push for changes in domestic support programmes (see sidebar on page 7).

*Jonathan Hepburn is Programme Officer, Agriculture at ICTSD. For further information on ICTSD’s work on the Green Box, see: [www.ictsd.org/dlogue/2007-04-16/2007-04-16-desc.htm](http://www.ictsd.org/dlogue/2007-04-16/2007-04-16-desc.htm)*



## Second Challenges Paper Released on Agriculture

On 25 May, Ambassador Falconer, who chairs the WTO agriculture negotiations, issued a second 'challenges' paper aimed at prodding Members to depart from long-held bargaining positions and start moving towards convergence.

While the first challenges paper released in April dealt with chair's perception of the parameters for a potential deal on tariff and subsidy cuts (Bridges Year 11 No.4 page 1), the second instalment covered a range of 'non-headline' issues. Although the Members' positions remain far apart on many of these, their reactions to the paper were more subdued than they had been a month earlier. Some delegates did, however, suggest that the second instalment – like the first – was 'unbalanced' in that it tended to favour developed country positions.

### Special Safeguard Mechanism

The negotiating mandate for the SSM states simply that a "Special Safeguard Mechanism will be established for use by developing country Members." The G-33 coalition of developing countries, in particular, took exception to the chair's stating that the object of the SSM was to "provide a special safeguard that responds to the needs of farmers in developing countries, that is, rural development, food security and livelihood security needs." Ambassador Falconer argued that he had not heard "any compelling argument why the SSM should be an entitlement simply to raise tariffs based on price and volume movements *per se*," and suggested that Members look seriously "at the concept that [the SSM] should be in principle applicable anywhere there is domestic or substitutable production."

The G-33 saw this as an attempt to limit the application of the SSM to the Special Products that developing countries will be able to shield from formula tariff cuts "based on criteria of food security, livelihood security and rural development needs." On 11 June, G-33 trade ministers firmly reconfirmed the bloc's position that the SSM should be available to all agricultural products, and that "import and price triggers, applied separately, should determine which product needs the invocation of the SSM at any given time."

### Tropical and Diversification Products

Members are still divided on how to fulfil the mandate for 'the fullest liberalisation' of trade in tropical products and those grown in the place of narcotic crops. Ambassador Falconer noted multilateral agreement on a definitive list of tropical products was unlikely, and suggested that negotiators could resort to a 'rejection process' that would allow them to exclude a product from the Uruguay Round indicative list if they could justify why it would not qualify as a 'tropical or diversification' product. Any rejections would have to be compensated through adding other products from a longer list tabled in March 2007 by the Cairns Group of farm exporters. One developing country proponent of liberalising trade in tropical products warned that such an approach could enable Members simply to exclude whatever they wished.

Members may not agree to eliminate tariffs currently below 25 percent, the paper said. That threshold might have to be lowered, while the level of tariff reduction for tropical products would have to at least match that applying to the highest tariffs under the overall reduction formula.

### Preference Erosion

Bananas and sugar remain the 'major areas of concern' in preference erosion. Bananas, the chair said, would need a 'specific settlement', of which the Doha Round would not be a 'principal determinant'. Sugar would be affected by a number of still unresolved issues in the negotiations, but also by factors such as EU internal reform (see page 15).

The chair proposed that Members assess the significance of specific products in particular markets, and the extent of anticipated liberalisation. Tariff cuts exceeding 10 percent might require maintaining preference margins, longer implementation periods, or possibly other non-trade based solutions, he said.

### Recently Acceded Members

Chair Falconer suggested that very recently acceded Members (RAMs), i.e. Saudi Arabia, Vietnam and Macedonia, should not be subject to further Doha Round undertakings, while small low-income RAMs with economies in transition (such as Moldova and the Kyrgyz Republic) would be exempt from subsidy cuts.

RAMs could be allowed to make smaller cuts to their 'de minimis' subsidy limits than developing countries generally. They could also be permitted to reduce tariffs in each band by 5 percent less what is required by the overall formula. While the 50-percent flexibility the group had sought would not be acceptable, an exemption from cuts for tariffs below 10 percent might be, the chair predicted. In return for accepting less flexibility on tariff cuts, Ambassador Falconer said RAMs could be given additional flexibility on the SSM and Special Products.

The chair proposed that the definition of a 'small, vulnerable economy' (SVE) could be the one proposed by the group itself: countries that account for less than 0.16 percent of world merchandise trade, 0.1 percent of industrial goods trade, and 0.4 percent of farm trade. He suggested that SVEs could address their import concerns through additional flexibility on Special Products, but added that the lack of consensus on the number and treatment of such products meant he could provide further details.

### Tariff Escalation

While Ambassador Falconer berated Members for not having seriously addressed tariff escalation, he did suggest that they could agree on a list of affected products and then determine a way for the duty on the processed product tariff to be cut substantially more than that on the raw material.

For the chair's assessment of Green Box disciplines, see page 4.

Mr Falconer is expected to issue a new negotiating draft during the week of 30 June.

## No Landing Zone in Sight for Industrial Tariff Cuts

The chair of the Doha Round negotiating group on non-agricultural market access faces a daunting task in drafting his modalities paper as major WTO Members continue to strongly disagree on the extent of tariff cuts that would be required from developing countries.

At the conclusion of an early June NAMA week, chair Don Stephenson admitted that there was no consensus on a number of critical issues. His comment reflected the continued impasse between leading developed countries, such as the US, the EU, Switzerland and Canada, on the one hand and a developing country coalition known as the NAMA-11<sup>1</sup> on the other.

### Background

The principal point of contention is the coefficient that will determine the post-Doha maximum industrial tariff rate for developing countries. Developed countries have proposed a 10-percent cap for themselves and a 15-percent ceiling for developing countries.

The NAMA-11 in particular continues to vigorously oppose this approach. The group argues that a 15-percent cap for bound tariffs would require disproportionate efforts from developing countries, whose average bound tariffs are close to 30 percent, while the developed country average is about 6 percent. According to calculations carried out last year by the WTO Secretariat, a coefficient of 10 would entail a reduction of roughly 23 percent to the EU's average bound tariff level, while a coefficient of 15 would require India to reduce its bound tariffs by 63 to 70 percent. The cuts to their applied tariff rates would be more comparable, in the neighbourhood of 25 percent, though possibly somewhat higher for India.

Such an outcome, the NAMA-11 maintains, would fly in the face of the Doha Ministerial Declaration commitment that 'less than full reciprocity in reduction commitments' for developed and developing countries would be an 'integral part' of the modalities. In addition, developing countries opposed to steep industrial tariff reductions argue that import tariffs represent a high proportion of many poorer governments' revenues, and that radically slashing customs duties would worsen their trade balance since developing countries' markets access gains would be far smaller than those obtained by developed countries.

In addition, the NAMA-11 and other developing countries point to the Hong Kong Ministerial Declaration, which instructs negotiators to "ensure that there is a comparably high level of ambition in market access for agriculture and NAMA. This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment." So far, there are few signs that the Doha Round will result in an ambitious outcome in agriculture and therefore none should be expected in NAMA, they argue.

### New NAMA-11 Proposal Draws Fire

Both sides stuck to their guns at the negotiating group's June meeting. The NAMA-11 proposed a coefficient of 35 for developing countries, a figure that EU Ambassador Eckart Guth called 'astronomically high'. While Mr Guth warned that the proposal risked 'derailing' the negotiations, Brazil's Ambassador Clodoaldo Huguency countered that a coefficient of 15 was 'not attainable, is not possible – it's out', adding that there was 'no landing zone in sight' for a tariff deal. The US said the NAMA-11 proposal fell beyond the parameters set for the Doha Round, and Canada maintained that a 15-percent tariff cap would 'barely scratch the surface' of developing countries' applied tariffs. The latter, however, have repeatedly stressed that the NAMA negotiating mandate does not call for cuts in applied levels. China supported the NAMA-11 position on the developing country coefficient, but suggested that developed countries should accept to cap their tariffs at 5 percent.

The NAMA-11 also said developing countries should have the right to use the additional flexibilities available under Annex B of the July 2004 Framework Agreement (WT/L/59). According to Annex B Article 8, developing countries will have longer implementation periods for tariff cuts, as well as be given the possibility to either (i) apply less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or (ii) keep some tariff lines unbound, or not apply formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.

Many developed countries, and the US in particular, consider that Article 8 should be applicable only if developing countries accept a low formula coefficient, while the latter argue that the Framework Agreement does not in any way link the flexibilities to the level of tariff cuts.

Another disagreement prevails on the treatment of recently acceded Members (RAMS), which according to the Framework Agreement "shall have recourse to special provisions for tariff reductions in order to take into account their extensive market access commitments undertaken as part of their accession [...]". Sources say that in a (barely) veiled allusion to China, the US stated it was not willing to agree to longer implementation periods than those available to all developing nations for 'one major country'.

A number of developing countries took a more reconciliatory approach to tariff cuts. Colombia, Costa Rica, Chile, Ecuador, Hong Kong, Israel, Malaysia, Mexico, Morocco, Paraguay, Peru, Singapore and Thailand said they could accept a developing country coefficient in the high teens or the low 20s if developed countries agreed to a coefficient below 10.

Further NAMA meetings and consultations will be held before the chair issues his modalities paper in the week of 30 June.

### ENDNOTE

<sup>1</sup> Argentina, Brazil, Egypt, India, Indonesia, Namibia, the Philippines, South Africa, Tunisia and Venezuela.

## Panel Faults Brazil in Tyres Dispute

Brazil has lost the first ever WTO challenge of trade restrictions imposed by a developing country on health and environmental grounds.

The dispute was brought by the EU, which contended that Brazil's import ban on retreaded tyres was more about protecting local industry than pursuing genuine public health objectives.

In a report released on 12 June, a dispute settlement panel nevertheless found that Brazil's restrictions on the import and stockpiling of used and retreaded tyres could be justified under GATT Article XX(b), which allows Members to take measures to protect human, animal or plant life and health. It agreed with Brazil's argument that such tyres had a shorter life span than new ones and therefore contributed to a faster accumulation of waste tyres. Growing piles of the waste tyres in turn provide fertile breeding grounds for disease-carrying mosquitoes and their sheer volume is already beyond Brazil's capacity of environmentally responsible disposal, the panel acknowledged. The panel also concurred with Brazil's claim that prohibiting imports of both used and retreaded tyres was justified by the need to reduce health risks associated with the accumulation of waste tyres and their disposal.

While the panel admitted that avoiding adverse health impacts might have been the *intention* behind the prohibition of imports (and the establishment of other restrictions), it nevertheless concluded that the *effect* of these measures amounted to an unjustified and discriminatory restriction of trade. The main reason for this conclusion was that Brazil's retreading industry had been granted numerous court injunctions that had allowed local companies to import large quantities of used tyres between 2000 and 2005. When the bans were established in 2000, Brazil imported 1.4 million used tyres a year. In 2005, the figure had grown to nearly 10.5 million, more than eight million of which were sourced in the EU. Meanwhile, the EU's exports of retreaded tyres had ground to a halt.

The result of the court injunctions, the panel argued, was that "used tyres of foreign origin from which retreaded tyres are made are in fact allowed to enter Brazil, with at best the same adverse impact or, at worse, a more negative impact on the objective Brazil asserts than the importation of retreaded tyres themselves would have, directly defeating the objective of the import ban itself."

In addition to undermining the health objectives Brazil claimed to pursue through the import ban on used tyres, the panel noted that, as a result of the granting of court injunctions, domestic retreaders had been "able to continue to benefit from the importation of used tyres as material for their own activity in significant amounts," while their competitors from non-Mercosur countries had been kept out of the Brazilian market. "The restriction on international trade inherent in the banning of imports of retreaded tyres has thus operated to the benefit of domestic retreaders, while the fulfilment of the purpose for which it has been justified is being significantly undermined," the panel concluded.

The Brazilian government has opposed – sometimes with success – court injunctions on used tyre imports, and the panel recognised that there were "practical difficulties that may be associated with the prevention of such imports within Brazil's domestic legal system." Nevertheless, it noted that "the fact that the imports arise from court rulings does not exonerate Brazil from its obligation to comply with the requirements of Article XX. Rather, [...] a Member of the WTO bears responsibility for acts of all its department of government, including its judiciary."

The Brazilian government issued a statement on 12 June expressing satisfaction with the panel's acceptance of its public health arguments. Brasilia also said it would not appeal the ruling.

The 260-page WTO report (WT/DS332/R) is available on <http://docsonline.wto.org/>

## Disputes in Brief

Canada has asked for the establishment of a dispute settlement panel on US agricultural subsidies. The action follows from Canada's January request for consultations, which challenged US domestic support programmes for corn and export credit programmes available to several agricultural commodities. It also alleged that the US had exceeded its trade-distorting domestic support ceiling in 1999, 2000, 2001, 2002, 2004 and 2005 (Bridges Year 11 No.1, page 11).

The 12 June panel request (WT/DS357/11) retains the allegation that US domestic subsidies exceeded the country's US\$19.1 billion limit for the Total Aggregate Measurement of Support (AMS) in the six years cited above. It also maintains the claim that the GSM-102 export credit guarantee programme provides subsidies prohibited under the Agreement on Subsidies and Countervailing Measures, as well as the Agreement on Agriculture. However, Canada dropped its initial claim that US corn subsidies were causing, or threatened to cause, serious injury to Canadian corn growers. This allegation would have been difficult to defend after the Canadian Federal Court of Appeals confirmed in early June that domestic farmers had not been injured by US subsidies.

According to Canada's international trade minister David Emerson, requesting a dispute settlement panel reinforced Canada's efforts to make the US reduce its trade-distorting subsidies in the Doha Round negotiations, and came at an "opportune time to press the US to comply with its WTO obligations given that it is in the process of rewriting its farm bill." Although the Office of the US Trade Representative called Canada's claims 'without foundation', US agriculture secretary Mike Johanns has repeatedly insisted that changes to domestic support policies will be necessary to ensure that they are safe from WTO challenges, such as the cotton subsidy dispute the US lost in 2004. The farm lobby, however, remains reluctant to accept any major modifications.

## Assessing the Implications of the Gambling Dispute

Johannes Bernabe

The US–Antigua dispute on internet gambling has brought to light several new considerations with regard to Members' rights, obligations and options in the realm of trade in services.

Services trade, particularly in the context of the WTO's Dispute Settlement Understanding (DSU), has not often spawned legal controversies, much less ground-breaking jurisprudence. However, the implications of rulings and other developments arising from Antigua and Barbuda's challenge of US restrictions affecting foreign providers of remote gambling services have stirred much debate among the legal community and made trade observers sit up and take more careful notice of the services trade sector and the General Agreement on Trade in Services (GATS).

### Background

The original rulings in the *US–Gambling* dispute found that the US had breached its commitment to provide full market access for gambling services by maintaining regulations that prohibit the cross-border supply of online gambling services. However, both the panel and the Appellate Body also ruled that the US could justify this prohibition based on the need to protect public morals, but condemned the discriminatory fashion in which it was applied since the US did (and still does) allow intra-state betting on the outcome of horse races on US soil.

Simply put, this flies in the face of the US obligation under the GATS to treat foreign gambling service suppliers no less favourably than it does its own. Hence, if the US wishes to comply with the rulings in a straightforward manner, it must either withdraw its measures prohibiting internet gambling, or – as a matter of consistency in treatment of like services and service suppliers – prohibit remote betting on horse racing as well. Either of these options would allow the US to legitimately claim that gambling services, particularly of the kind supplied cross-border, must be prohibited as a means to protect public morals.

The US took neither of these options, claiming instead that it was already in compliance since existing criminal statutes in fact applied to remote betting on the outcome of

horse races. A review panel requested by Antigua and Barbuda consequently found that a mere affirmation that the US had been in compliance with WTO rules all along did not suffice to implement the panel and Appellate Body findings.

The US then announced that it would comply with the original rulings through the modification of its Schedule of Specific Commitments under the GATS, such that the latter would explicitly indicate that the US does not allow market access for gambling services, thereby removing any commitments it may have on this sector and any WTO obligation it was held to have breached.

If the panel and Appellate Body rulings were criticised by some as encroaching upon WTO Members' right to regulate in the interest of the public good, the approach the US has chosen to bring its measures into compliance is proving even more controversial.

### Application of GATS Article XXI

Ordinarily, a country found to be in violation of its obligations under any of the WTO agreements or its schedules of commitments must either withdraw its WTO-inconsistent measure(s), or offer compensation to the Member whose trade rights are found to have been nullified or impaired. Otherwise, the affected trading partner has the right to retaliate through the suspension of trade concessions equal to the level of injury caused by the modification.

The curious – and unprecedented – route of modifying commitments to remove a violation of WTO obligations is not explicitly referred to in the DSU as a means to implement a panel or Appellate Body ruling or recommendation. However, in the sense that the dispute settlement system itself is aimed more broadly at “the prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member,” the DSU arguably implies that there could be other ways of reaching a prompt settlement of a legal controversy, including the modification of a Member's scheduled commitment.

Indeed, Article XXVIII of the General Agreement on Tariffs and Trade and GATS Article XXI already provide for such a recourse. Members have even agreed on more detailed procedures for undertaking a process of such modification or withdrawal of commitments (contained in WTO document S/L/80), which came in handy when the WTO Members that had recently acceded to the EU had to modify their schedules of commitments.

### Analysis of the US Approach

Nonetheless, the US decision to pursue this track is probably more a reflection of the dynamics of domestic politics and business – as well as the result of a cost-benefit analysis of continuing litigation – than an overriding belief that the approach it has chosen, with all its systemic implications, is the appropriate solution to the situation.

It is no secret that horse racing and the betting associated with it are a huge business in the US. Some go so far as to allege that the entities that run the business have such strong ties to politicians that there is simply no way that the US would legislate a ban on remote gambling on horse racing. On the other hand, the US could ill afford to amend the measures prohibiting internet gambling as this would amount to an admission that the US is wrong to regulate for purposes of public morals. That some of the individuals operating the online gambling services may have previously run afoul of the law in the US certainly does not make it easier for the US to condone the activity.



Caught between a rock and a hard place, the US has tried to slip through the cracks. By pursuing Article XXI proceedings under the GATS, it pre-empts the possibility of other WTO Members with strong gaming and gambling industries challenging the US prohibition. Indeed, as long as it remains in place, the measure will always be susceptible to legal challenges and the possibility of retaliatory action. Countries with more economic clout, such as the EU and China, could easily build on Antigua's successful challenge and actually be in a position to retaliate in a commercially meaningful way by suspending concessions in sectors and activities that really matter to the US without inflicting significant damage on their own consumers. With the explosive growth in online gambling expected to continue unabated, it is not a severe stretch to imagine that more countries will lodge complaints against the US measure and obtain the right to retaliate.

Obviating this possibility and reining in the potential escalating costs of confronting retaliatory action from other WTO Members, recourse to GATS Article XXI proceedings is certainly a shrewd move on the part of the US. From a cost-benefit perspective – despite the Article XXI requirement that Members must compensate trading partners that are able to prove they have been 'affected' by the modification or withdrawal of the commitments – the price that the US may have to pay for modifying its GATS schedule on gambling is likely to be far smaller than the cost of potential retaliatory actions. Although the industry has grown, it has by no means reached its zenith. In a sense, the recourse to Article XXI can be seen as a form of 'damage control'.

While some trade law analysts opine that any WTO Member that allows gambling within its own territory and has an emerging telecommunications and IT industry (the key ingredients to being able to provide online gambling) could claim to be 'affected' by the US modification, the experience of many countries in proving 'affected' status with a major trading partner such as the EU in Article XXI proceedings has shown that this is a difficult challenge. Realistically, not many countries may be able to prove that they are 'affected parties' entitled to compensation under Article XXI.

### Systemic Implications

Further muddying the prism through which a response to the US tactical approach might be made is the US Trade Representative Office's constant reference to its resort to Article XXI proceedings as a means to 'clarify', rather than 'modify', US commitments in services trade. The text of Article XXI consistently refers to the act of 'modification' or 'withdrawal.' By referring to a 'clarification' – whereby the US intends to explicitly indicate that gambling is excluded from its schedule of commitments in services – the US may be setting the stage for a situation where it would not be obligated to compensate affected trading partners, since it would simply be clarifying something that was already implicit in its schedule.

While it may be fashionable to bash the US for the manoeuvres it is trying to perpetrate presently, the gambling dispute raises several questions about the broader systemic implications for scheduling commitments in services. If the US – with all its resources and relatively advanced understanding of the GATS and the nuanced technicalities of inscribing commitments in its schedule – could make such a mistake during the Uruguay Round, scheduling services sectors or activities that it did not in fact intend to commit to market access liberalisation, then what of other Members, particularly smaller and poorer developing countries that are only now beginning to comprehend the full extent of the GATS? What kind of 'mistakes' might they have made in scheduling commitments in the Uruguay Round when GATS commitments were even more of a novelty for them? Or, put another way, as these countries seek to adapt to and take advantage of the growing relevance of service trade in their economies, do they have the space to evolve and put in place regulations without necessarily breaching commitments that they had not foreseen? From this perspective, it would seem that the looser the strings around a Member seeking to use Article XXI, the more beneficial it may be for countries seeking to break ground in pursuit of their sustainable development objectives.

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## Trade Facilitation

At an early June meeting of the negotiating group on trade facilitation, Members focused on special and differential treatment (SDT) for developing countries with regard to the implementation of trade facilitation obligations. The trade facilitation mandate is unique in that developing countries will not be required to implement commitments unless they receive the technical assistance necessary to do so.

The extent to which trade facilitation-related commitments should be binding is becoming a point of contention. Egypt said that it would be desirable to have some commitments as 'best endeavour', so that countries could implement commitments as appropriate for their developmental context. It added that donor countries' delivery of aid should also be carefully monitored. Jamaica argued that least-developed countries should not be required to implement any obligations. The African Group, stressed that development had to be an integral part of the talks.

In contrast, developed countries generally emphasised the need for comprehensive and binding implementation. Switzerland stressed that it was a basic premise of the negotiations that all Members must implement all obligations. The EU said that 'best-endeavour' provisions usually result in non-implementation, although it signalled openness to an Indian proposal for 'progressive implementation' by developing countries.

The EU reported that at a recent retreat involving representatives from the EU, the US, Japan, Switzerland, the Philippines, China, Bangladesh and India, participants were in 'general agreement' on some issues such as the non-applicability of dispute settlement if implementation capacity is lacking, but admitted that they still differed on others, including the notion of a deadline for developing countries to implement commitments. The EU said it would convene further informal retreats on these issues.

The next meeting of the negotiating group is scheduled for 16-20 July.

# No Agreement on How to Discipline Fisheries Subsidies

Members clashed over the shape of future WTO rules on fisheries subsidy spending during a June meeting of the Negotiating Group on Rules.

In particular, a new proposal from Japan, Korea and Taiwan was criticised by countries that argued that far broader restrictions on subsidy payments would be necessary in order to counteract the rapid depletion of marine fish stocks.

Delegates had a similarly mixed reaction to a new paper from the African, Caribbean and Pacific Group focusing on access fees and the industry's economic impact in the developing world.

## Japan's Proposal 'Insufficient'

The Japan-led proposal appealed to Members to prohibit specific types of subsidy payments as opposed to the blanket ban with some exceptions supported by countries such as Brazil, New Zealand and the US (Bridges Year 11 No.3 page 8).

Japan, Korea and Taiwan argued that their 'bottom-up' or 'positive list' framework would be enough to sufficiently curb overfishing, and would be more workable than sweeping prohibitions. Korea contended that delegates' priority was to reach consensus on fisheries disciplines, and that this proposal represented the strongest compromise. Taiwan said the paper struck the 'right balance'.

Australia, Chile, New Zealand and the US contested the supposed 'balance' and again called for more extensive disciplines. New Zealand asserted that the Asian nations' approach, which would permit some subsidies for building and purchasing fishing vessels, failed to 'follow the momentum of the negotiations'. It further argued that Japan's exemption for payments to small-scale fisheries amounted to a 'get out of jail free' card given that 90 percent of the country's fishing fleet was accounted for by ships of less than five gross tonnes and thus likely to fall under this categorisation. The US also said the proposal contained too many loopholes.

Both New Zealand and the US are members of the 'Friends of Fish' group, a loose coalition of countries that have long supported a blanket ban with a list of specific negotiated exceptions.

Some delegates fell between the two groups. Norway, which has co-sponsored papers with the Friends of Fish before, and the EU, which is not a member of the group, supported the positive list approach. However, Norway expressed concern that the proposal contained too many exemptions, and the EU said it was not sufficiently developed.

## Defining Subsidies Divides Members

Access fees are another pressing concern for many delegations. These are payments that a government offers another nation – typically a small coastal state – in exchange for the right to fish in that nation's waters. The access-granting state receiving the payment generally lacks the capacity or resources to capitalise on its fish stocks.

While Members generally agree that the fees paid to the recipient government are not subsidies, they differ on whether government-to-industry payments should be disciplined. The US, Brazil and Argentina, for instance, argue that government-to-industry fees are de facto subsidies, since remote governments often sell access rights to private fishing fleets below cost - i.e., for less than the amount paid to the coastal nation.

At the June meeting, the African, Caribbean and Pacific (ACP) Group of States reiterated its call for an exemption from new WTO subsidy disciplines for government-to-industry payments, as well as government-to-government transactions. The ACP Group noted that access fees account for 25 percent of total government revenues in several Pacific island countries. Several members of the bloc spoke in favour of the proposal, including coastal countries Mauritius, Barbados, Fiji, Cuba, Egypt and Côte d'Ivoire. The EU expressed full support for the ACP position.

Raising the issue of balance once again, India said the most important objective would be to optimise revenue protection and marine conservation. The US and New Zealand opposed the paper, calling attention to sustainability concerns. New Zealand cited an independent study that demonstrated how the transfer of rights from governments to private industry at subsidised rates had led to overfishing, and argued that such transfers should therefore be banned. If these fees were permitted, it continued, the coastal nations would have to cope with the subsequent ecological – and economic – effects. Thailand, Chile, Australia and Costa Rica backed this point of view, and noted their support for disciplines on the transfer of access rights.

## Looking Ahead

Much of the focus of the next rules meeting, scheduled for the week of 9 July, will be on establishing disciplines for developing countries that will balance conservation and economic concerns. The chair will not release a draft agreement text before the upcoming meeting, and it is unclear whether such a text might appear before the WTO's August holiday. In any case, a negotiating text on rules – which will also address anti-dumping rules and industrial subsidies – will not be out before the chairs of the agriculture and industrial market access negotiations have circulated their drafts.

Some sources say that the timing of a comprehensive rules text could depend upon the US administration and the prospects for the renewal of its trade promotion authority (TPA). Anti-dumping rules are controversial in the US Congress, and some lawmakers may be reluctant to renew the administration's negotiating mandate if they fear major changes to US trade remedy laws and practices. At least in terms of anti-dumping, some delegates do not want a rules text before the Bush administration's TPA is renewed, which is thought possible if Members manage to strike a framework deal on tariff and subsidy cuts on agriculture and industrial goods (see page 1).

## G-8 Calls for Action on Climate Change, IPRs and Africa

Leaders of the Group of Eight industrialised nations have agreed to co-operate on climate change and called for major developing countries to provide a 'solid platform' for an agreement on Doha Round modalities.

The heads of state of Canada, Germany, Great Britain, France, Italy, Japan, Russia and the United States held their annual summit in Heiligendamm, Germany, on 6-8 June. The compromise they reached on climate change does not commit G-8 members to cut greenhouse gas emissions to half of 1990 levels by 2050, as proposed by Germany. In return for this concession, the US agreed to take part in the negotiation, under UN auspices, of a new climate treaty to replace the Kyoto Protocol after its binding reduction commitments expire in 2012.

This substantial shift in US international climate policy followed President Bush's 31 May announcement that he would convene the 'major emitters and energy consumers' of the world, including developing countries, to jointly develop a new 'long-term global goal' to reduce greenhouse gases, after which each country would work to achieve the goal by establishing "its own ambitious mid-term national targets and programs, based on national circumstances." The announcement sparked fears that the US was seeking to bypass the UN as the forum for addressing greenhouse gas emissions through binding reduction commitments.

The G-8 compromise states that member countries will "consider seriously the decisions made by the European Union, Canada and Japan which include at least a halving of global emissions by 2050." The summit declaration calls for concluding a post-Kyoto pact by 2009, with negotiations to kick off in earnest at the next conference of the parties to the UN Framework Convention on Climate Change in Bali this December. However, US participation in a new global greenhouse gas reduction plan remains firmly conditioned on major developing country emitters taking on commitments of their own.

G-8 leaders urged emerging economies "to address the increase in their emissions by reducing the carbon intensity of their economic development," but also reiterated their commitment to the Climate Convention's principle of 'common but differentiated responsibility' in line with countries' capability to act.

So far, developing countries have resisted binding targets, arguing that rich nations have a responsibility to take meaningful action first since man-made global warming is largely the result of their past, as well as current, emissions. However, developing nations such as China and India are now major and growing polluters, although their historical and per capita emissions remain far lower than those of the industrialised world. Both countries have recently announced new initiatives to address climate change.

In early June, China released its first comprehensive report on climate change, in which it declared that conserving energy and managing emissions would now figure prominently in the country's economic and energy policies. It did not, however, include specific targets, and emphasised that Chinese plans for emissions reductions could not take precedence over economic development.

Two days before the G-8 summit, India established a high-level advisory panel to develop a national climate change strategy. The panel – comprised of government ministers, climate experts and industry representatives – is to co-ordinate national action plans for the assessment, adaptation and mitigation of climate change, as well as advise the government on possible 'proactive measures'. India's stance on international commitments remains that the developed world ought to make more efforts to cut back on greenhouse gas emissions instead of making demands of developing countries, whose chief imperative is cutting poverty levels.

UN Secretary-General Ban Ki-moon will convene a special high-level meeting on climate change on 24 September, just ahead of the 2007 General Assembly opening.

### Trade and IPRs

A short statement on trade stressed "the need for achieving an ambitious, balanced and comprehensive agreement on the Doha Development Agenda, which will enhance worldwide trade especially among and between developed and developing countries and reinforce multilateral trade rules." The leaders called on all WTO Members to demonstrate flexibility to bring the round to a 'prompt successful conclusion' and urged trade ministers "in particular from leading developed countries and major emerging economies, to provide in the coming weeks a solid platform for a multilateral negotiation leading to an agreement on modalities."

Intellectual property protection loomed large in statements issued at Heiligendamm. "A fully functioning intellectual property system is an essential factor for the sustainable development of the global economy through promoting innovation. We recognise the importance of streamlining and harmonising the international patent system in order to improve the acquisition and protection of patent rights worldwide," the main summit declaration stated. The need to prevent counterfeiting and piracy was repeatedly emphasised, including in the field of medicines. G-8 leaders also endorsed new guidelines for technical assistance to developing countries "with a view of building the capacity necessary to [...] strengthen intellectual property enforcement." Promoting and protecting innovation was also the first of four topics chosen for a new process of dialogue between the G-8 and Brazil, China, India, Mexico and South Africa.

### Africa

The G-8 issued a separate Declaration on Growth and Responsibility in Africa, in which the group confirmed that it would provide a US\$25 billion increase – from 2004 levels – in development assistance to Africa by 2010. In addition, the leaders said they expected Aid for Trade spending to increase to US\$4 billion, including through enhancing the Integrated Framework for

*Continued on page 12*

Trade-related Assistance to Least-developed Countries (LDCs). They also committed to providing duty- and quota-free market access for LDCs, although at the WTO the US has made it clear that this will happen only as a part of a comprehensive Doha Round deal. In addition, the leaders said they would promote ‘simplified, more transparent, easier-to-use and development-friendly’ rules of origin, particularly for LDCs.

A lengthy section of the declaration focuses on access to medicines and health care, in particular with regard to HIV/AIDS, tuberculosis and malaria. The leaders promised to “continue efforts to provide at least a projected US\$60 billion over the coming years” to address these issues, but did not specify a timeframe.

The declaration invites international organisations and donors to “respond constructively to requests by African countries without manufacturing capacities with regard to the use of flexibilities referenced in the Doha Declaration on TRIPS and Public Health, while respecting WTO obligations.” It also calls on the pharmaceutical industry to “consider supporting local production of HIV/AIDS pharmaceuticals by voluntary licences and laboratory capacities that meet international standards and strengthen regulatory, certification and training institutes.” G-8 members said they would “support responding to those African countries that indicate that they require technical assistance and capacity-building programmes for advancing their access to affordable, safe, effective and high quality generic and innovative medicines in a manner consistent with the WTO.” A specific reference in an earlier draft to flexibilities – such as compulsory licensing – under the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) was struck out, reportedly due to US opposition.

Other sections of the declaration deal with strengthening good governance and institutional capacities, fostering investment, and promoting peace and security. The leaders welcomed the emergence of new donors, and called on all donors to ‘improve the transparency of their aid and follow internationally shared principles’, such as those set out in the Paris Declaration on Aid Effectiveness.

For further details, see [www.g-8.de/](http://www.g-8.de/)

## US Rejects WTO Dispute on Low Yuan

**The US Trade Representative has rebuffed a concerted effort by Congress to prod the administration into launching a WTO dispute against China's maintenance of a low yuan-dollar exchange rate.**

On 17 May, forty-two members of the US House of Representatives petitioned the United States Trade Representative (USTR) to initiate an investigation into the undervaluation of the yuan and to start dispute settlement proceedings at the WTO if China refused to address the matter.

The Bipartisan China Currency Action Coalition claimed that by pegging the yuan's exchange rate to the US dollar at a low level, China had fuelled ‘serious trade imbalances’, which had allowed its exports to soar while making US exports to China uncompetitive.

In a 20-page document detailing China's alleged infringements of WTO rules, the coalition claimed China had violated the most-favoured-nation principle since the regime “confers an advantage upon third countries whose currencies are not pegged to the US dollar. [...] China wrongly discriminates against US exports to China by depriving the United States of the advantage of the fluctuations in a flexible exchange rate that adjusts to market conditions and US products would otherwise enjoy.” The coalition also argued that the maintenance of an undervalued exchange-rate regime, combined with *ad valorem* import tariffs payable in yuans had ‘directly and dramatically’ increased the cost in yuan of US products entering China in violation of GATT Article II (schedules of commitments) and Article 9.1 of the WTO Agreement on Customs Valuation, which requires Members to use an exchange rate that “reflects as effectively as possible [...] the current value of currency on commercial transactions.”

China's exchange-rate policy was also alleged to infringe GATT Article III (the national treatment principle) since “the conversion into yuan of the value of US imports into China effectively imposes a tax on the US goods in the amount by which the yuan is undervalued.” As a consequence, US goods were treated less favourably than like domestic products. The coalition further claimed that the maintenance of an undervalued exchange-rate regime was “a measure that wrongly acts as a restriction of imports into China” and thus violates GATT Article XI (general elimination of quantitative restrictions).

On 12 June, the coalition was dealt a double blow: USTR turned down its petition for a WTO dispute and the Treasury did not designate China as a ‘currency manipulator’. That designation would have required the administration to take action, but Treasury said it could not determine that China's exchange rate policy was carried out with the ‘intent’ to gain an unfair advantage in international trade. Senators Baucus (D-MT), Graham (R-SC), Grassley (R-IA) and Schumer (D-NY) then introduced new legislation which, if passed by Congress, would require the administration to initiate a WTO dispute if a country that was found to have a ‘fundamentally misaligned currency’ did not rectify the situation within a year of the finding.

### China to Reform Exchange Rate ‘Independently and Gradually’

Vice Premier Wu Yi had earlier refuted claims that the yuan's low value was the fundamental cause of China's trade surplus, and reminded US critics that roughly 85 percent of the trade imbalance was due to foreign companies, such as Wal-Mart, exporting from China products they no longer manufactured in the US.

While the Chinese central bank widened the yuan's trading band against the dollar from 0.3 percent to 0.5 percent on 18 May, Ms Wu said that broader exchange rate reforms would be carried out in an ‘independent, controllable and gradual way’ in order to maintain the currency's strength. According to central bank projections, a 10-percent rise in the yuan would lead to the loss of 5.5 million jobs, with companies manufacturing textiles, furniture, shoes and toys for export suffering most. The China National Textile and Apparel Council estimates that the textiles industry loses US\$1.1 billion for every percentage point of currency appreciation.



## A New Template for US Trade Free Agreements

The Bush administration and the Democratic leadership have agreed on labour, intellectual property and environmental provisions to be inserted in pending and future free trade agreements, but the deal is yet to be approved by Congress.

The bipartisan compromise announced on 10 May took on board many of the labour- and environment-related demands made by Democrats in March (Bridges Year 11 No.2 page 16). For instance, it requires parties to free trade agreements (FTAs) to enforce worker protections set out in the ILO's 1998 Declaration of Fundamental Principles and Rights at Work. These include freedom of association, the right to organise, and prohibitions on forced and most kinds of child labour. FTA parties would also have to implement seven multilateral environmental agreements. Importantly, both labour and environmental obligations would become subject to the same dispute settlement procedures as the core commercial rules, although any violations could only be challenged if the complainant were able to show that trade and investment had been affected.

Under the new policy, parties would affirm their commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health, as well as recognise that nothing in the FTA chapters on intellectual property would affect their ability to take necessary measures to protect public health by promoting access to medicines for all. Protection for clinical test data could not be prolonged beyond the period that such protection is available for the same product in the US. This is a significant departure from the current standard, which requires five years of data exclusivity from the day a company applies for marketing authorisation. In addition, developing country patent offices would no longer be obliged to establish that no patents have been violated before a generic drug can be released to the market. Delays in processing patent applications would not be compensated through extending the protection period, although trading partners would be required to "make best efforts to process patent and marketing approval applications expeditiously."

The bipartisan template also specifically directs the US Trade Representative (USTR) to negotiate a new annex on forest sector governance with Peru, aimed principally at strengthening rules to prevent trade in endangered forest products.

New agreements, as well as those still awaiting congressional approval in the US, would also need to specify that foreign investors in the US will not benefit from stronger protections than domestic investors. To complement the new FTA provisions, the compromise also provides for expanded assistance and training for US workers displaced by trade.

USTR and Congress are working on the legal language that would integrate these changes into pending and future trade agreements. Progress has been slow due to several factors, including the extent and financing of trade adjustment assistance to US workers, as well as the pharmaceutical industry's – and its powerful political allies' – strong opposition to the changes envisaged for intellectual property protection.

### Four Pending Agreements Affected

The new template would apply to all future FTAs, as well as those already concluded between the US and Colombia, South Korea, Panama and Peru. Partly due to the delay in finalising the language, these agreements have not yet been submitted Congress.

The Colombia and Peru FTAs have been signed, and Peru has even ratified the treaty. A signing ceremony between the US and Panama is scheduled for 28 June. Since the legal language is not yet available, the FTA partners have on the whole refrained from officially commenting on their positions regarding the renegotiation of agreements they considered final when signing them. Colombia and South Korea face a particularly delicate situation, as even their acceptance of the forthcoming amendments – reflecting whatever agreement finally emerges on US trade policy – is unlikely to guarantee congressional approval in the US.

Organised labour and a large number of members of Congress object to even starting consideration of the Colombian FTA until the country has taken significant steps to curb violence against trade unionists. The car industry, with strong support from Congress, wants the US-Korea accord's provisions on automobiles to be renegotiated, and there is strong opposition to allowing imports from the Kaesong Industrial Complex in North Korea. The less controversial Peru and Panama FTAs might garner enough votes for passage, but probably not before next fall.

### TPA & ATPDEA Extension

There appears to be no direct link between an eventual agreement on a new FTA standard and the re-authorisation of the president's Trade Promotion Authority (TPA), which will expire on 31 June. Under the TPA, Congress can either accept or reject trade agreements negotiated by the administration, but not change them.

Given the controversies surrounding the Colombia and Korea FTAs, most observers expect that without a breakthrough that puts a Doha Round agreement within grasp, only time-limited and agreement-specific extensions would be authorised. WTO Director-General Pascal Lamy warned on 12 June that many US trading partners would take a lack of movement on TPA renewal as a sign that "the US might have lost faith in the round, and this would certainly have an impact on the dynamics of the negotiations."

The fate of the Andean Trade Promotion and Drug Eradication Act (ATPDEA), also set to expire at the end of June, still hangs in the balance. The Democratic leadership advocates a two-year extension of the trade preferences granted to Bolivia, Colombia, Ecuador and Peru under ATPDEA for at least two years. The administration is also in favour of an extension, but some Republicans want to extend only Colombia and Peru's preferences for six to nine months, while terminating them for Bolivia and Ecuador (Bridges Year 11 No.1 page 18).

## In Brief

- **EU-Asia:** On 23 April, member states of the European Union approved negotiating mandates for comprehensive free trade agreements with the Association of Southeast Asian Nations (ASEAN), India and South Korea. The EU describes the future agreements as aimed at “the highest possible degree of liberalisation, including far-reaching liberalisation of services and investment” (Bridges Year 10 No.8 page 11). At the end of a first round of negotiations with South Korea in early May, participants vowed to eliminate tariffs on at least 95 percent of industrial goods within ten years of the FTA’s entry into force. No deadline has been set for the negotiations, but both sides expect the talks to conclude relatively quickly. In contrast, ASEAN officials believe the FTA with the EU will take many years to conclude due to the lack of intra-ASEAN integration. India and the EU are set to start FTA negotiations by July.
- **EU-Latin America:** Negotiating directives have also been approved for Association Agreements with Central America and the Andean Community. The EU and the Andean Community (Bolivia, Colombia, Ecuador and Peru) were expected to start negotiations in late May, but the move was postponed when Bolivia objected to the inclusion of a free trade agreement in the broader pact that will also cover development aid and political co-operation. Colombia and Peru have expressed interest in concluding bilateral agreements with the EU, but so far the European Commission has insisted that a regional treaty with all four Andean partners is the only option on the table. Efforts are underway to persuade Bolivia (which intends to join Mercosur while remaining a member of the Andean Community) to reconsider its position. As for Central America, talks are tentatively scheduled to start in July between the EU and Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama.

## EPAs to Conclude on Schedule

The European Commission and the African, Pacific and Caribbean (ACP) Group of States have confirmed their intention to conclude Economic Partnership Agreements by end-2007.

In a 25 May joint review of the state of the negotiations, both sides clarified that meeting the deadline would depend on ‘mutually acceptable progress’ in all six EPA regions in three areas in particular: (i) market access, (ii) the text of the agreement, and (iii) the accompanying measures, including development finance and EPA adjustment costs (to be defined through regional preparatory task forces or their equivalent structures).’

### Market Access

On the ACP side, the agreement to conclude the negotiations on schedule was greatly facilitated by the EU member states’ 14 May approval of the Commission’s proposal to grant duty- and quota-free access to ACP goods as soon as the EPAs enter into force. For rice and sugar, however, unrestricted access will be phased in over time, running until 2015 for sugar (see page 16) and an unspecified ‘brief’ transition period for rice.

In response to objections from several member states to fully opening the EU’s banana market to ACP exports (Bridges Year 11 No.3 page 18), the European Commission “will make, before the end of the negotiations, an evaluation of developments and, if necessary, submit relevant proposals in order to ensure that adequate treatment is provided.”

The joint text is vaguer on the EU’s future access to ACP markets, stressing instead that EPA regions would make “full use of the built-in flexibility of WTO rules concerning both the duration of transition periods for tariff dismantlement, scheduling and coverage,”

There is no consensus yet over trade defense measures. ACP countries have suggested that the EU, due to the limited potential impact of the EPAs on the EU’s commercial interests, should consider waiving its right to apply safeguard measures on ACP imports. The EU has proposed asymmetry in the application of safeguards, as well as liberalisation schedules, “as the means to take account of the development needs of the ACP.”

While negotiations are still to conclude on rules of origin, the two sides have already agreed to allow cumulation at an all-ACP level, i.e. across the different EPAs. In order to ensure that market access will accrue to ACP countries, the EU has also agreed to make rules of origin simpler, more transparent and easier to administer, as well as assisting EPA partners in complying with technical barriers to trade and health and safety standards.

On more controversial areas, such as services, government procurement, investment and competition rules, the text lacks details, stressing instead that the negotiations will take regional specificities into account, and be “guided by regional positions and ambitions.”

### Development and Trade-related Assistance: How Much?

Support for the EPA process (and specific commodities) will be provided through a variety of channels, but the amounts are still to be agreed. Among assistance instruments are the 10<sup>th</sup> European Development Fund and Aid for Trade to support building productive capacity, trade development, trade-related infrastructure and adjustment, as well as trade policy and regulations. These funds are to be delivered by both the European Commission and individual member states.

The text also notes that the Commission has underlined “its readiness in each regional review to provide support for the competitiveness of productive sectors,” and has agreed to contribute “in full complementarity with fiscal reforms, to absorbing the net fiscal impact resulting from EPA liberalisation.” Finding consensus on financing is likely to be the most difficult issue facing negotiators over the next six months.

# EU Sugar Sector Reform, the WTO and Preference Erosion

Paul Goodison

The fact that the EU's Doha Round positions on agriculture are essentially driven by the internal reform process of the Common Agricultural Policy means that there are very real limits to what the EU is likely to agree to with regard to 'sensitive' products such as sugar.

From the European Commission's perspective, the synchronisation of trade liberalisation with domestic support reforms is a political necessity.

## Background

Since 1992, the EU has carried out reforms to the Union's Common Agricultural Policy (CAP) with the aim of shifting agricultural subsidies from *price support for products* to *income support for producers*. The process has been both slow (15 years and counting) and expensive (a 47-percent increase in funding from 1992 to 2004). The underlying objective of the CAP reforms is to enhance the price competitiveness of EU food and agricultural products on domestic and international markets. The first sectors to be reformed in 1992 were cereals, oil and protein crops, which were brought together under a single arable regime. Initially, the next sector scheduled for reform was sugar.

Already in 1992, the European Commission suggested an un-compensated 15-20 percent cut in price support over a seven-year period. It was felt at the time that the measure would not lead to 'major problems' for the sector, while making it possible for the EU to reduce "surplus sugar production by between two and three million tonnes." The economic analysis conducted by DG Agriculture concluded that "price cuts of 25-30 percent would be required to align the profitability of beet growers with that of cereals."

The proposal predated the establishment of the WTO, but it was never implemented. In 2000, the European Commission floated a proposal for a 25-percent price reduction to no avail. The issue was revisited again in 2001, but resistance from the sugar industry and member states' concerns over tackling a central component of farm income ensured that sugar-sector reform was once again deferred.

In 2001, the EU adopted the 'Everything but Arms' (EBA) initiative, under which least-developed countries (LDCs) gained duty- and quota-free access to EU markets. The Commission's initial aim was to fully include sugar in this offer. However, resistance from member states eventually led to the establishment of transitional quotas for sugar, rice and bananas (all sectors where the CAP reform process had either not been initiated or not been completed). Full duty- and quota-free access for LDCs will be granted only in October 2009. These measures, alongside the opening of the EU market to Balkan sugar were intended to create a dynamic that would compel EU member states to bite the bullet of sugar sector reform.

This is the backdrop for Brazil, Thailand and Australia's successful WTO challenge of the EU's cross-subsidisation of sugar exports in 2005. While the WTO verdict put the final nail in the coffin of the unreformed EU sugar regime, the coffin itself had been under construction for over a decade, and formed an integral part of the broader CAP reform process.

## Implications for the Doha Round

CAP reforms have allowed EU market prices to fall dramatically (around 50 percent for various cereals, 41 percent for rice products, 20 percent for beef and 36 percent for sugar by 2010/11) without undermining farm incomes and in some instances, notably in the cereals sector, without undermining overall levels of production. This engineered decline in EU market prices has two important knock-on effects in terms of international agricultural trade: (i) it reduces the need for export refunds to close the gap between EU and world market prices; and (ii) it reduces the level of tariff protection required to prevent any disruption of EU agricultural markets.

It needs to be recognised that in large part EU positions in WTO agricultural negotiations are determined by the degree to which internal processes of CAP reform have been initiated in the sector concerned and the market and price effects of these reforms.

The 'wild card' in EU calculations at the WTO level is the process of dispute settlement. Uncertainty about the full implications of WTO rulings in the sugar and cotton disputes is increasingly influencing how the EU structures its internal reform process and what assurances and understandings it seeks as an integral part of any negotiated multilateral WTO deal. As a consequence, a certain degree of interaction is emerging between the CAP reform process and the WTO. However, Agriculture Commissioner Fischer Boel has made clear that the EU has "built certain assumptions about the Doha Round into our current cycle of CAP reforms. We cannot accept a result to the round that would require us to go back to the drawing board on domestic reform."<sup>1</sup>

## Preference Erosion

In terms of preference erosion, developments in CAP reform mean that substantial additional value (50 percent above current world market prices even after the implementation of the reforms agreed in 2005) will be available to sugar exporters from the African, Caribbean and Pacific (ACP) Group of States to the EU market up to at least 2013.

An important policy response to preference erosion in the sugar sector at this stage is the granting of additional duty-free access to the EU market for ACP exporters of sugar and sugar-containing value-added food products in the context of the Economic Partnership Agreement (EPA) negotiations. This was implicitly recognised by EU member states when they agreed on 16 May to phase in full duty- and quota-free access for ACP sugar by 2015 (see box overleaf).

*Continued on page 16*

## Market Access for Sugar under EPAs

### First Phase:

#### 1 January 2008-30 September 2009

- continuation of the Sugar Protocol with guaranteed prices;
- substantial improvement in market access for least-developed countries (LDCs) for the 2008/09 marketing year through quantities additional to the quota foreseen under the Everything but Arms initiative;
- initial market access for non-LDC ACP countries that are not parties to the Sugar Protocol; and
- additional market access for non-LDC ACP countries that are parties to the Sugar Protocol.

### Second Phase:

#### 1 October 2009-30 September 2015

- free access for ACP sugar subject to a safeguard clause. This safeguard would be applied to only non-LDC ACP members, allowing for a substantial increase of export levels;
- until September 2012, importers of ACP sugar would be required to pay no less than 'a certain price level'. After 2012, a price information system based upon the current system would provide for transparency of the market; and
- a limited number of processed agricultural products with high sugar content would be subject to an enhanced surveillance mechanism in order to prevent circumvention of the import regime.

### Third Phase: From 1 October 2015

- ACP sugar exports to the EU will be duty- and quota-free subject to a special safeguard clause that could be based on the regular EPA safeguard, adjusted to take into account the sensitivity of sugar.

- How much additional market access for non-LDC ACP countries will be granted up to end-September 2009?
- How will this additional market access be distributed? (Will it be on a first-come-first-served basis, or will there be quotas?)
- What will be the automatic volume threshold for the safeguard clause from October 2009?
- Will this automatic volume threshold be applied regionally or globally across the ACP?
- What is meant by the phrase 'a certain price level' until September 2012? Does this mean there will be no guaranteed price for ACP sugar exported to the EU from September 2012?

Questions also arise with regard to the treatment of sugar-containing value-added food products, although it is implied that duty- and quota-free access will be granted, except in cases where 'circumvention of the sugar import regime' could be possible. Given these uncertainties, intense negotiations will be required under the various EPAs before a final agreement can be reached. A key factor in this context is that there is little point in back-loading ACP access to the EU sugar market until after 2013, since it seems likely that by this time a further round of sugar sector price reductions and a projected strengthening of the US dollar against the euro will have substantially reduced any additional value which may be had on the EU market.

It is, however, vital to adopt a long-term perspective in responding to ACP preference erosion. This response should be informed by the fact that the EU's ultimate policy objective is to bring its agricultural prices down to world market levels and do away with tariff protection. It is therefore imperative that ACP countries use the transition between 2008 and 2015 to either

- build long-term price competitiveness, including by fully exploiting the commercial potential of sugar cane biomass;
- move up the value chain to reduce dependence on declining raw sugar prices;
- develop production to serve particular speciality markets that are less price-sensitive (so called 'luxury purchase' components of the market); or
- diversify out of sugar.

In this context additional measures in five areas could usefully be undertaken:

- the establishment of effective co-operation on administrative arrangements to reduce transaction costs on exports to Europe, particularly for small ACP suppliers and countries undertaking diversification;
- the establishment of clear time-bound procedures for the resolution of sanitary and phytosanitary (SPS) disputes, including the establishment of arbitration arrangements in case of non-resolution of the dispute within the agreed timeframe;
- the establishment of Aid for Trade packages to assist in production adjustments to enhance efficiency and reduce costs, meet quality standards, facilitate movement up the value chain and provide targeted support to improve marketing;
- the establishment of aid instruments to support diversification out of the affected sectors (involving the provision of both technical and financial support) within agriculture and beyond; and
- the provision of support to social adjustments in affected sectors and communities to reduce the transition costs and support the maintenance of an investment-friendly environment.

If these measures are effectively put in place and speedily implemented, then many African ACP countries, given their low costs of production, could have a long term-trade relationship with the EU in sugar and sugar-containing value-added food products.

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## ENDNOTE

<sup>1</sup> EU Agriculture Commissioner Mariann Fischer Boel, Carnegie Endowment for International Peace, Washington, 9 February 2007.

However, the European Union's current approach to sugar under EPAs leaves open a number of questions with regard to the trade treatment to be accorded non-LDC ACP countries:



# Patent Licenses, Standards and Antitrust Disciplines

Zhang Naigen

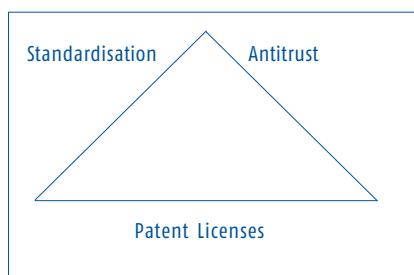
Many countries' technological development and exports are affected by international technical standards that incorporate patented processes. This is particularly so in the developing world.

Chinese companies, for instance, must obtain licenses from patent-holders in the US and EU member states in order to ensure that their exports meet the importers' technical regulations and standards that incorporate patented technologies. This is why the Chinese government is increasingly seeking to establish a fair balance between the interests of exporters and importers, licensees and licensors, particularly with regard to standards that involve patents and potential antitrust issues.

## The Analytical Model

The figure below describes the relationship between patent licenses, standardisation and antitrust disciplines.

Figure 1



This triangle shows that patent licenses provide the only link between standardisation and antitrust. Patent-holders' right to license their inventions is traditionally considered an essential part of the patent system, while technical standards play an important role in modern industries. IPR-related standards involve patents necessary to implement these standards. Antitrust law is regarded as a core element of modern market economies. Patent licenses are market transactions, and as such are

related to possible antitrust enforcement. It is obvious that intellectual property rights issues in standard-setting are of systemic concern, and have broader development implications.

## Guidelines on the Triangle Relationship

In April 2007, the US Department of Justice (DoJ) and the Federal Trade Commission (FTC) issued a joint report, which clarified the policies of antitrust enforcement and intellectual property rights in order to promote innovation and competition.<sup>1</sup> Based on the 1995 DoJ and FTC Antitrust Guidelines for the Licensing of Intellectual Property, this new report addresses the following broader issues:

- the strategic use of licensing and unilateral refusals to license patents;
- competition concerns when patents are incorporated into collaboratively set standards;
- antitrust analysis of portfolio cross-licensing agreements and patent pools;
- variations on intellectual property licensing practices;
- antitrust issues in the tying and bundling of intellectual property rights; and
- competition issues regarding practices that extend the market power conferred by a patent beyond its statutory term.

The report notes that while the basic goals of antitrust and intellectual property law are aligned, “difficult questions can arise when antitrust law is applied to specific activities involving intellectual property rights that do create market power. That may happen when, for instance, a standard of manufacture for an entire industry or the only treatment for a particular disease incorporates patented technology, or when the research and development (R&D), invention, manufacture, or distribution of a product or process without good substitutes involves the licensing of protected technology.” (In 2002, the FTC charged a company with violating federal antitrust laws by “deliberately engaging in a pattern of anticompetitive acts and practices that served to deceive an industry-wide standard-setting organisation, resulting

in adverse effects on competition and consumers” (see box on page 18).

One of the report's conclusions is that *ex ante* consideration of licensing terms by participants in standard-setting organisations can be pro-competitive and that such consideration is unlikely to constitute an antitrust violation *per se*. Patent-holders are encouraged to give prior consideration to ‘reasonable and non-discriminatory’ (RAND) licensing or royalty-free licensing standards, but the DoJ and the FTC take no position as to whether standard-setting organisations should engage in *ex ante* consideration of licensing terms. In practice, such institutions have no responsibility for any negotiations between right-holders and licensees.

The EU has endeavoured to go further in regulating the relationship between patent rights and the public interest. For instance, the 2004 Guidelines on the Application of Article 81 of the EC Treaty to Technology Transfer Agreements note that the creation of technology pools<sup>2</sup> may restrict competition since it “necessarily implies joint selling of the pooled technologies, which in the case of pools composed solely or predominantly of substitute technologies amounts to a price-fixing cartel. Moreover, in addition to reducing competition between the parties, technology pools may also, in particular when they support an industry standard or establish a *de facto* industry standard, result in a reduction of innovation by foreclosing alternative technologies. The existence of the standards and the related technology pool may make it more difficult for new and improved technologies to enter the market.”<sup>3</sup> The guidelines offer several criteria for determining whether a given technology pool has anti-competitive effects.

In China, where companies face numerous trade-related technical barriers abroad,<sup>4</sup> the government must also consider how to deal with patent licensing, standardisation and

*Continued on page 18*

antitrust at the domestic level. In February 2006, the Standardisation Administration of China approved a nation-wide Audio-Video Coding Standard (AVS), which includes many Chinese patents.

In order to promote the adoption of the AVS, the domestic patent-holders concerned issued China's first standards-related patent pool guidelines in September 2006.<sup>5</sup> The licensee may choose to obtain a package of licenses for all patent claims involved in the AVS. The license provided through the AVS patent pool should comply with the competitive license fee principle. A single royalty will be charged for encoders/decoders.<sup>6</sup> While national anti-monopoly legislation is currently being drafted, it is unclear whether the AVS patent pool license guidelines would be compatible with the future Chinese antitrust law.

### Many Actors Involved

Both developed and developing countries face similar problems with regard to the relationship between patent licenses, standardisation and fair competition. Yet virtually no international treaty has expressly addressed this conundrum so far.

#### Rambus vs FTC

In 2002, California-based Rambus Inc. was charged with deliberately misleading a standard-setting organisation (JEDEC), which develops widely adopted technical standards, preferably excluding patented technologies or, at a minimum, ensuring that such technologies are licensed on reasonable and non-discriminatory terms. Rambus participated in JEDEC's work on synchronised dynamic random access memory (SDRAM) standards without informing JEDEC that it was actively working to develop, and did in fact possess, a patent and several pending patent applications that involved specific technologies ultimately adopted in the relevant standards. Some companies using the standards have paid Rambus millions in royalties, while others have challenged its patent rights. Should it prevail in private patent litigation, Rambus could extract royalty payments worth billions from the memory industry.

FTC Press Release 18 June 2002

Article 5A(2) of the WIPO-administered Paris Convention on the Protection of Industrial Property stipulates that the contracting states "have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work."<sup>7</sup> The WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) explicitly provides for the protection of patent licensing rights and allows voluntary legislation to limit anti-competitive practices in the licensing agreement.<sup>8</sup> Article 2.4 of the Agreement on Technical Barriers to Trade (TBT) requires WTO Members to use existing international standards for domestic technical regulations. The International Organisation for Standardisation/International Electrotechnical Commission and the International Telecommunications Union have also developed patent policies for standardisation, but these are non-binding.<sup>9</sup>

### Suggestions for WTO Action

The WTO is the most pertinent international organisation to co-ordinate trade-related intellectual property rights, technical barriers to trade and competition policy for several reasons. First, the TBT Agreement requires Members to adopt, to the extent possible, international technical standards and conformity assessments to ensure that technical standards do not create unnecessary obstacles to international trade. Second, patented technology is increasingly incorporated into international standards. Third, the common goal of the TBT and TRIPS Agreements is to minimise trade barriers. Finally, technical standards are a universal issue that WTO Members with different levels of economic development will be facing sooner or later.

The TBT Committee is the most appropriate forum to tackle these problems. In its May 2005 proposal on IPR issues in standardisation (G/TBT/W/251), China suggested that the committee review the matter regularly in order to gather more information on IPRs related to technical standards. Such information should include any domestic, regional and international co-ordination of the triangle relationship so as to provide Members with more perspectives for policy-making that would allow them to implement the TBT Agreement in a way that balances private rights and the public interest and promotes the goal of minimising barriers to trade. China has also proposed the establishment of a special working group to explore the issue further.

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### ENDNOTES

<sup>1</sup> US DoJ and FTC. April 2007. *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition*.

<sup>2</sup> "Technology pools are defined as arrangements whereby two or more parties assemble a package of technology which is licensed not only to contributors to the pool but also to third parties." European Commission, 2004/C 101/02, paragraph 210.

<sup>3</sup> Idem, paragraph 213.

<sup>4</sup> Chinese companies lost US\$147 billions in 2005 due to trade-related technical measures abroad. See interview with the Director of the Department of WTO Affairs on the impacts of foreign technical barriers on Chinese exports in 2005; <http://www.mofcom.gov.cn>

<sup>5</sup> AVS Working Group. 23 September 2006. *Advisory Guidelines for Patent Pool Licenses of AVS Standards*; <http://avs.org.cn/avsdoc/>

<sup>6</sup> The AVS encoder/decoders include any chip or software that is a complete implementation of all normative AVS requirements, i.e. standards for video, audio, system, DRM, or any combination thereof.

<sup>7</sup> 'Failure to work' means either refusing to practice the patented technology or practicing it on such a limited scale that the benefits of the invention do not accrue to the public.

<sup>8</sup> TRIPS Articles 28.3 and 40.1.

<sup>9</sup> ISO/IEC/ITU Common Patent Policy. March 2006.

## WIPO Members Agree on Development Agenda

Members of the World Intellectual Property Organisation have reached an agreement on recommendations for reforms aimed at ensuring that development concerns are placed at the heart of the work of the UN agency.

In the fourth and final session of the committee dealing with the ‘development agenda’ talks, held in Geneva from 11-15 June, representatives from more than 100 governments successfully negotiated a series of proposals to forward to the 2007 General Assembly, WIPO’s top decision-making body. They also agreed to create a new Committee on Development and Intellectual Property (IP).

Many delegates praised the continuation of a co-operative spirit from the previous session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) in February, where they had managed to agree on a set of initial recommendations. A developing country delegate said a ‘good mood’ prevailed last week, with all members “flexible and constructive towards an outcome.” That the 111 reform proposals submitted by governments over the past two and a half years had been digested into agreed and workable recommendations was widely seen as a giant step forward from the deep divisions a year ago (Bridges Year 10 No.4 page 18).

The recommendations address controversial subjects including WIPO’s provision of technical assistance, as well as broadening the organisation’s focus on issues such as public domain, competition and access to knowledge. However, the US released a statement following the conclusion of the meeting stating that whilst the proposals “reinforce WIPO’s commitment to the needs of developing countries” they also “reaffirm WIPO’s clear mandate as the specialised UN agency that promotes the protection of intellectual property worldwide.”

An African delegate described the accord as “a breakthrough by all standards [that] really reflects the level of conviction among all member states on the need to address the existing imbalance between intellectual property rights and the public interest.”

Brazil and Argentina originally proposed a Development Agenda for WIPO at the 2004 General Assembly (Bridges Year 8 No.9 page 21). They have been joined by 13 other countries – Bolivia, Cuba, Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania, Uruguay and Venezuela – to form a group dubbed the ‘Friends of Development’. The 2005 General Assembly created the Provisional Committee on Proposals Related to a WIPO Development Agenda and charged it with drawing together a cohesive package from the 111 proposals. The committee’s mandate was extended for a further year in 2006 after members were unable to make meaningful progress.

### Focus on the Toughest Proposals

The PCDA’s final session in June had the task of working through 71 proposals towards an outcome document that could be forwarded to the General Assembly. These proposals were what remained after the committee’s February meeting, when delegates boiled down 40 of the 111 proposals into 24 recommendations (Bridges Year 11 No.2 page 22). However, the current set of proposals, contained in ‘Annex B’ of a working document prepared by previous General Assembly Chair Ambassador Manalo, addressed more controversial issues, such as access to knowledge, competition and collaborative innovation models.

The proposals in Annex B were divided into five issue clusters on technical assistance; norm setting, flexibilities, public policy, and public domain; technology transfer, information technology, and access to knowledge; evaluation; and institutional matters including mandate and governance. A sixth, on ‘other issues’ present in Ambassador Manalo’s paper, was incorporated into the preamble of the final recommendations. Each cluster was assigned to a different regional group; the co-ordinators were then tasked with preparing draft proposals in advance of the PCDA.

The preamble of the text setting out the recommendations calls for the immediate establishment of a WIPO Committee on Development and IP. The institution’s inconsequential Permanent Committee on Co-operation for Development Related to Intellectual Property (PCIPD), into which the US and other industrialised countries had previously sought to push the Development Agenda, will cease to exist. The Friends of Development were wary that locating their concerns in the PCIPD would marginalise their objective of main-streaming development into all of WIPO’s activities. A final PCDA meeting will be held prior to the General Assembly in September to approve the Chair’s report and a list of proposals for immediate implementation.

Civil society groups expressed delight with an outcome that seemed unfeasible not long ago. James Love, director of Knowledge Ecology International, welcomed a ‘new vision’ for WIPO that promised to consider “a range of topics, including measures to protect or promote access to knowledge, the implications and benefits of a rich and accessible public domain, and strategies for dealing with abuses of rights, or other measures to protect the public interest.”

Although the compromise was reached by watering down much of the final text, it was important to introduce concepts that WIPO had never broached before, a developing country official said. UK delegate Tom Goodwin noted that while the outcome did not give WIPO a new mandate, members had affirmed the validity of development concerns relating to IP and had recognised that WIPO needed strategies to address what he termed ‘an emerging area’.

Immediately after the accord, members got an early indication of the difficult work ahead. In particular, the US renewed its calls for ‘ambitious plans for substantive patent law harmonisation’, progress on which has been linked to the development agenda negotiations. Developing countries are generally reluctant to harmonise patent rules.

## WHO to Step Up Work on Access to Medicines

Member governments of the World Health Organisation have called for the institution to provide support to developing countries intending to make use of WTO rules that allow the suspension of patent rights in response to grave public health problems.

After intense negotiations at the WHO's annual summit in May, member states adopted a last-minute resolution based on a Brazilian proposal calling for the global health body to take an expanded role in encouraging health research and access to essential medicines.

The resolution on Public Health, Innovation and Intellectual Property largely refers to the role of the WHO Secretariat in supporting the work of an intergovernmental working group charged with developing a framework for supporting sustainable, needs-driven and essential medical research and development (R&D) relevant to diseases that disproportionately affect developing countries. The working group was set up last year to negotiate a global strategy on essential health research based on the recommendations of the WHO Commission on Intellectual Property, Innovation and Public Health, which completed its work in April 2006.

The resolution requests the WHO Secretariat "to provide as appropriate, upon request, in collaboration with other competent international organisations, technical and policy support to countries that intend to make use of the flexibilities contained in the [WTO] Agreement on Trade-related Aspects of Intellectual Property Rights and other international agreements in order to promote access to pharmaceutical products, and to implement the Doha Ministerial Declaration on the TRIPS Agreement and Public Health and other WTO instrument."

In theory, this could see the WHO taking a greater role in the interpretation of TRIPS flexibilities, such as compulsory licenses to temporarily override drug patents. The organisation's Director-General, Margaret Chan, came under heavy criticism when she suggested in February that governments should negotiate with patent-holders before issuing compulsory licenses. She later clarified that prior negotiations were not an obligation and that the WHO 'unequivocally' supported developing countries' use of the flexibilities under the TRIPS Agreement (Bridges Year 11 No.1, page 17).

The World Health Assembly resolution also calls on the WHO Director-General to encourage the development of proposals for health-needs driven research and development, including "a range of incentive mechanisms [...] addressing the linkage of the cost of R&D and the price of medicines, vaccines, diagnostic kits and other health-care products and a method for tailoring the optimal mix of incentives to a particular condition or product, with the objective of addressing diseases that disproportionately affect developing countries." Brazil, supported by Canada, Chile, Norway and others, had originally put forward language referring to the explicit separation of R&D costs from drug prices.

In addition, the resolution asks for further WHO support for consultative meetings in order to set regional priorities. At a technical briefing on the intergovernmental working group at the Assembly, concerns were raised about the level of participation of African and Latin American countries in these consultations, which the group's chair, Peter Oldham of Canada, described as 'absolutely critical'.

The US formally disassociated itself from the resolution.

Director-General Chan noted that she had been struck by the complexities involved in the working group, but added that she was increasingly aware of the importance of intellectual property rights to member states. Assistant Director-General Howard Zucker clarified that the working group's mandate could be extended beyond its current timeframe, which calls for the group to prepare a strategy and plan of action in time for the next World Health Assembly in May 2008 following a final meeting this November.

### Resolutions on Malaria, Avian Flu and Children's Medicines

The World Health Assembly also dealt with the relationship between intellectual property and public health in resolutions negotiated on avian flu, malaria and medicines for children. A last-minute resolution was agreed on the 'Sharing of Influenza viruses and access to vaccines and other benefits', proposed by Indonesia for a "transparent, fair and equitable sharing of benefits" from vaccines developed from virus samples. The country's Health Minister, Siti Fadillah Supari, explained that his government had suspended sample-sharing of the H5N1 bird flu virus with the WHO last December due to concerns that the WHO had passed some samples on without consent, which could have in turn resulted in intellectual property rights that denied developing countries 'equitable access' to future vaccines.

A draft resolution on malaria was agreed after small group consultations mainly between Kenya and the US. Each had submitted a proposal in January, differing primarily in terms of their references to TRIPS flexibilities. Kenya and other developing countries wanted to urge WHO members to provide for full use of flexibilities in their legislation "to increase access to anti-malarial medicines, diagnostics and preventive technologies." In contrast, the US, along with Switzerland and Japan among others, did not want TRIPS flexibilities to be mentioned in this connection. The final compromise inserted a definition of 'pharmaceutical products' into an explanatory footnote stating that a 'pharmaceutical product' was "any patented product, or products manufactured through a patented process, of the pharmaceutical sector" needed to address public health problems in developing countries.<sup>1</sup>

#### ENDNOTE

<sup>1</sup> Paragraph 1 of the WTO General Council Decision on the Implementation of Paragraph 6 on the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and Corr.1). 30 August 2003



# Adventures in WTO Clubland

Robert Wolfe

The Doha round is characterised by a bewildering array of clubs with banal and whimsical names, from the G-4 through the Dirty Dozen and the Friends of Fish to the G-90.

Every Member naturally insists on *participation* in making decisions that affect the country directly, while having *influence* on decisions that affect the evolving structure of global governance. The political practice of multilateralism, however, is not an open-ended Athenian forum where every state can speak freely, expecting its views to be given serious consideration by all others. In the messy reality of the WTO, any country can only play a role by aggregating its efforts with others. The notion of 'clubs' is one way to think about how that process works.

It is common to see international organisations in themselves as 'clubs', meaning places where insiders (certain states and selected officials of those states) know the rules, and outsiders (citizens, other states) are not welcome. There was a time when the GATT could be seen as an exclusive club: only selected countries could be Contracting Parties, and only selected officials penetrated its inner mysteries. The WTO, however, is no longer an exclusive club, and membership automatically implies participation in roughly five dozen formal WTO bodies and in the seven negotiating groups under the supervision of the Trade Negotiations Committee. Perhaps less than a dozen Members have the capacity to monitor and participate in all these meetings, and all countries must find ways to aggregate their efforts with others in clubs.

I define a 'club' as a group of nations united or associated for a particular purpose, a definition that purposely evokes a looser form of association than the common tendency to see informal groups of states working within international organisations as 'coalitions'. These clubs are voluntary – no Member of the WTO has to join a club, nor must a given club accept the participation of any Member.

Clubs provide their members with an opportunity to learn about issues with like-minded colleagues; to co-ordinate positions for WTO meetings; and to debrief on past meetings. Clubs often speak as a group, allowing members to expand support for each other's preferred issues. Clubs also engage in analytic burden-sharing in the preparation of common proposals. The most structured clubs require high-level recognition in capitals, especially for subordinating national strategy to joint negotiating positions; they have formal co-ordination/decision-

making procedures; sometimes meet at ministerial level; and often have sophisticated analytical support. The least-organised are loose consultative mechanisms at technical or delegate affects the effectiveness and influence of their clubs.

Three sorts of clubs are relevant for WTO negotiations:

- Clubs based on a broad *common characteristic* (such as a region, or level of development) can influence many issues, including the round as a whole, but weakly.
- Clubs based on a *common objective* (such as agricultural trade) can have a great deal of influence, but on a limited range of issues.
- *Bridge clubs* can be essential for breaking deadlocks, or managing the negotiations, often by building bridges between opposed positions.

Although various clubs existed in earlier GATT rounds, they have proliferated in the Doha Round. Part of the explanation is based on institutional design factors – the many developing country Members have discovered that clubs are essential in an or-

*Continued on page 22*

Table 1: WTO Clubland in Early 2007

Common characteristics groups	Agriculture	Non-agricultural market access	Rules	Environment	Services	TRIPS	Bridge Clubs
G-90 – the ACP – LDCs – African Group  ASEAN  CARICOM  Small and Vulnerable Economies (SVEs)  Recently Acceded Members (RAMs)  Small and Vulnerable Coastal States (SVCS)	Offensive coalitions: – Cotton-4 – Tropical and Alternative Products Group – Cairns Group – G-20  Defensive coalitions: – G-10 – G-33 – RAMs – SVEs	NAMA-11  Friends of MFN  Friends of Ambition in NAMA  Hotel d'Angleterre  RAMs  SVEs	SCVS  Friends of Fish  Friends of Anti-dumping Negotiations (FANs)	Friends of Environmental Goods  Friends of the Environment and Sustainable Development	G-25  ASEAN – 1  African Group, ACP, LDCs, SVEs  Real Good Friends of GATS/Friends of Friends  Plurilateral 'friends' groups focused on the liberalisation of specific services sectors and modes of delivery	African Group  Disclosure Group of Developing Countries  Friends of Geographical Indications  Friends against Extension of Geographical Indications	Agriculture and NAMA (principal antagonists): – G-4 (Brazil, the EU, India & the US) – G-6 (G-4 + Australia & Japan)  Services: – Enchilada  General (deadlock-breaking): – Oslo or Non-G-6 (Canada, Chile, Indonesia, Kenya, New Zealand & Norway) – Quad (Canada, the EU, Japan & the US) – Dirty Dozen (Quad-plus) – Senior Officials (25-30) – Mini-ministerials (25-30)

ganisation that never votes (the consensus rule) and where nothing is agreed until everything is agreed (the ‘single undertaking’).

Clubs are influenced by the national characteristics of their members, but they are also influenced by other clubs – the many new clubs (G-20, G-33 and G-90, for instance) formed around the time of the Cancun ministerial in 2003 had learned from the practices of the Cairns Group, formed nearly two decades before.

Some domains might have fewer clubs because in the current negotiations the chair holds most meetings in informal plenary; it may also be that clubs proliferate as more WTO Members take a more intense interest in a particular domain. The sector-specific services clubs are a special case. The more active members have always organised themselves in ‘friends’ groups. These groups of experts do not include the WTO secretariat, and decide for themselves who can come to meetings.

The reality of the WTO is that consensus and the single undertaking require every member to understand and feel engaged in the negotiations. When all issues are lumped together, and any Member can block consensus, a bargain must satisfy those Members whose market weight is sufficient to give effect to the deal, but it must also satisfy those Members whose acquiescence is sufficient to give the deal legitimacy.

It is not surprising, therefore, that the real work is done in informal meetings of the various negotiating groups, or in restricted meetings organised by the chair, or in bilateral sessions. No organisation with 150 Members can find consensus on sensitive matters like agricultural reform if all discussions must be held in public, in large groups, with written records. Clubs are part of the solution.

WTO insiders understand the process as a series of nested ‘concentric circles’. In the outer ring are official WTO meetings (mandated by the treaty or the rules of procedure) held only for the record, or informal plenary meetings held mostly for transparency purposes. The real work is done when

the chair meets with a limited number of technical experts from Members, or when s/he invites a small group of key players to explore selected issues. When these discussions reach an impasse the traditional response to negotiating difficulties has been meetings of a restricted group of Members, usually known by the colour of the Director-General’s boardroom. The Green Room is therefore a real place, but the term also refers to a specific type of meeting, whether of ambassadors in Geneva or ministers at the biennial Ministerial Conference.

The original Green Room practice reflected three negotiating realities: informality is vital; the largest Members, especially the US and the EU, must always be in the room; and other interested parties should be engaged in the search for consensus. Part of what the many clubs listed in Table 1 (see page 21) do is to create a claim that one of their number should represent them in the Green Room. The Green Room, often 30 Members, sometimes represented by two or more ministers or officials, is a large group for a negotiation, but all key players plus all groups must be represented if it is to be *inclusive* and therefore legitimate. Theses always include the leading traders, representatives of clubs, and co-ordinators of the regional groups.

The process must also be *transparent* to other Members of the WTO. Representatives in the room must fairly articulate the views of their club, and must expeditiously and comprehensively report on the deliberations. Any results must also be fairly presented by the chairperson when s/he reports on the state of negotiations in plenary meetings, or when s/he drafts documents designed to attract consensus.

Bridge clubs are intended to play a co-ordinating role, but they are outside the WTO concentric circles, since they are not chaired by the chairperson of the regular body, and the secretariat is often not invited. The old Quad has not met at ministerial level since 1999. Part of the effort to re-start the round after the failed Cancun ministerial in 2003 was a process involving the principal antagonists on agriculture: the US and the EU, who are opposed to each other; and Brazil and India who are opposed both to each other and to the US and the EU. These four have tried to sort things out as a ‘new Quad’ or G-4. This Bridge club contains the principal antagonists, but they are all publicly committed to their positions, which makes compromises difficult (see page 1).

Recalling the Uruguay Round precedent of the de la Paix group, senior officials (not ministers) from a group of six WTO Members (Canada, Chile, Indonesia, Kenya, New Zealand and Norway) met in Oslo in October 2006 to discuss key issues blocking progress in the negotiations. None of the six belonged to the G-6, but they did represent many of the major clubs, North and South. Participants in the Oslo group have tried not to attract attention to themselves with their subsequent meetings on all aspects of the round, making it too early to assess the eventual contribution this Bridge club might make.

This picture of power and influence in the WTO is remarkably complex. The jury is still out on whether clubs have helped or hindered the Doha Round, but what we know is that decisions in any social context are taken, or at least shaped, by small groups. Less than 10 participants may be most efficient for decision-making, but effectiveness and legitimacy in the WTO often requires up to 30 Members in order to ensure that all perspectives are heard in the search for consensus. The list will differ by issue.

However the Doha Round ends, and whatever form the next round takes, it is a safe assumption that decision-making will include some sort of Green Room-type meetings, and that clubs will be needed to ensure inclusive and transparent representation of all Members. Within the various domains of the WTO, it also seems probable that Members will find it easier to assemble the requisite critical mass by working together in clubs in an effort to manage the scale and complexity of the agenda. Let us hope that negotiators keep finding whimsical names for the new clubs they will keep forming to fit changing circumstances.

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# Africa's Challenge in Textiles Trade

The textiles and clothing industry in sub-Saharan Africa is facing a period of adjustment following the end of forty years of quota-administered trade in January 2005.

The expiry of the WTO Agreement on Textiles and Clothing was expected to have a particularly negative impact on sub-Saharan Africa (SSA), where the sector provides the main source of exports and foreign exchange earnings for many countries. Given this state of transition and adjustment for SSA countries, ICTSD and the University of Mauritius convened a dialogue between representatives of government and the private sector to assess the current situation and debate possible future strategies for the industry.

Export data from 2005 and 2006 reveal that most SSA countries have seen decreases in exports overall. In addition, the clothing industry will continue to face upheavals as WTO negotiations on non-agricultural market access (NAMA) erode the tariff preferences that are currently essential for the competitiveness of the industry in SSA. Furthermore, the benefits of duty- and quota-free access offered by the European Union under the Economic Partnership Agreements between the EU and members of the African, Caribbean and Pacific (ACP) Group of States could be compromised through the unresolved issue of rules of origin.

While stakeholders at the dialogue were worried about the consequences of preference erosion as a result of the NAMA negotiations, they were even more concerned about helping the region move from being reactive to being proactive by focusing on enhancing competitiveness so as to lessen dependency on preferences in the future.

Sub-Saharan Africa faces a large hurdle in co-ordinating actions between regional authorities in transport and infrastructure, as well as in upgrading the value chain by increasing cotton, yarn and fabric production. Indeed, the question remains as to whether the region should develop its capacities if other regions are more competitive at doing so. At present, Africa is not self-sufficient in fabric and yarn production, and the region's fabric and yarn mills will need significant investments if they are to stand up to international competition.

Stakeholders felt that opportunities for the industry lie in expanding the number of product lines beyond low value-added products, such as the t-shirts and jeans traditionally produced in the region. The better-performing factories in sub-Saharan Africa are already producing higher value-added products and offering 'full package' supply, meaning that the factory can address all the needs of an order for a client in the destination market.

There was general recognition of the important role that governments play in co-ordinating efforts to enhance the competitiveness of a country's industry via direct initiatives to support the textiles and clothing sector, as well as indirect support for infrastructure and the overall business environment. The most striking positive example presented and discussed at the dialogue was Mauritius' experience with government-backed public-private initiatives, which have been essential for the post-ATC recovery of the industry. The Mauritian government has worked with the private sector to co-ordinate efforts to open new markets and develop new product lines and capacities. These efforts to improve business conditions enabled the country to increase its clothing exports by 12 percent in 2006 after experiencing a drop of 15 percent in 2005.

Participants concluded that the overall business climate in sub-Saharan Africa must be improved if the textiles and clothing sector is to remain competitive vis-à-vis Asian factories. In this regard, stakeholders hoped that Aid for Trade would offer assistance to countries in the region to enhance infrastructure – including roads and ports, custom clearance times, loan interest rates and administrative procedures.

For more information, see [http://www.ictsd.org/dlogue/2007-05-24/2007-05-24\\_desc.htm](http://www.ictsd.org/dlogue/2007-05-24/2007-05-24_desc.htm)

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

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July 5-6	Committee on Technical Barriers to Trade
July 9	Council for Trade in Goods
July 9-11	Negotiating Group on Rules
July 10	Committee on Trade and Development
July 23-24	Committee on Regional Trade Agreements
July 24	Dispute Settlement Body
July 25-26	General Council

### Other Meetings

2-6 July Paris	12 <sup>th</sup> Meeting of the CBD Subsidiary Body on Scientific and Technological Advice <a href="http://www.biodiv.org/">http://www.biodiv.org/</a>
July 2-7 Rome	30 <sup>th</sup> Session of the Codex Alimentarius Commission <a href="http://www.codexalimentarius.net/">http://www.codexalimentarius.net/</a>
July 3-12 Geneva	11 <sup>th</sup> Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore <a href="http://www.wipo.int/tk/">http://www.wipo.int/tk/</a>
July 9-11 Brussels	First Global Forum on Migration and Development <a href="http://www.ghmd-fmmdd.org">http://www.ghmd-fmmdd.org</a>

### New Publication from ICTSD

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

Barton, John; Abbott, Frederick; Correa, Carlos; Drexler, Josef and Foray, Dominique. June 2007. Views on the Future of the Intellectual Property System. Issue Brief No.1. ICTSD Programme on IPRs and Sustainable Development

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