

In this issue

- 3 Accessibility and Effectiveness of the New SSM: Lessons from Country Simulations
- 5 Sensitive Products: The July Modalities Text Made Plain
- 7 WTO News
- 12 Is the IMF Closing All Paths to Trade-led Development?
- 14 UNESCO Tackles Trade and Culture
- 15 Trade and Development
- 16 Much Talk, Little Action on Climate Change
- 17 Regional News
- 21 Compliance Is a Hard Nut to Crack in the Biotech Dispute
- 23 ICTSD and Partner News
- 24 Meeting Calendar and Resources

Published by the International Centre for Trade and Sustainable Development

Facts and Figures

The World Bank has compiled data on the procedural requirements for exporting and importing a standardised cargo of goods. Every official procedure is counted – from the contractual agreement between the two parties to the delivery of goods.

The table below shows regional indicators for exporting goods. They include:

- the number of all documents required;
- the time necessary to comply with all procedures required, and;
- the cost associated with the procedures, expressed in US\$ per container.

Export Procedures by Region			
Region	Docs	Days	Cost
East Asia & Pacific	6.9	24.5	885.3
East. Eur. & Centr. Asia	7.0	29.3	1,393.4
Lat. Am. & Caribbean	7.0	22.2	1,107.5
Middle East & N. Afr.	7.1	24.8	992.2
OECD	4.5	9.8	905.0
South Asia	8.6	32.5	1,179.9
Sub-Saharan Africa	8.1	35.6	1,660.1

Source. *Trading Across Borders*. The World Bank, 2007

Chronicle of a Clash Foretold

The latent rift between developed and developing countries' perceptions on what would constitute a balanced outcome for the Doha Round is now explicit and likely to delay the conclusion of the negotiations.

The seriousness of the clash was evident in developed country reactions to a new proposal on industrial tariff cuts from some 60 developing countries seeking substantial changes to the July 2007 draft modalities text on non-agricultural market access (NAMA). The paper was submitted to the October meeting of the WTO's General Council by the NAMA-11 coalition, the African, Caribbean and Pacific Group, Small and Vulnerable Economies and the African Group. The proposal was also endorsed by China and the least-developed countries.

These countries firmly asserted that significant progress in agriculture was "critical for establishing a fair and equitable global trading regime and obtain a balanced and development-friendly outcome from this round." NAMA modalities, they said, must "be built around and lead to a result comparable to what is achievable in agriculture," consistent with the principle of 'less than full reciprocity' in the industrial tariff reduction commitments of developing countries. Developed countries should make deeper cuts in percentage terms than developing country Members, the proponents argued (for further details, see page 7).

A large number of developing countries denounced the draft negotiating text on NAMA as imbalanced as soon as it was released in July. They argued that it showed a much higher level of ambition than the modalities proposed for agriculture, as well as required them to lower industrial tariffs by a far greater percentage than developed countries. Many Members also said the flexibilities suggested in the text were insufficient (Bridges Year 11 No.5 page 2).

Strong Reactions from Both Sides

While Argentina's Ambassador Alberto Dumont stressed that the tariff cuts proposed by NAMA chair Don Stephenson were 'out of the question' for the majority of WTO Members, US Ambassador Peter Allgeier countered that if countries were to negotiate agricultural liberalisation on the basis of the July draft text, they must also accept the ranges on market access and flexibilities in the NAMA draft as a starting point for negotiations on industrial tariffs. The US accepts the 'central importance' of agriculture in the Doha Round, he said, but cautioned that it would be a 'formula for failure' to treat NAMA or services as "simply residual items to be calculated after the dust has settled on agriculture."

US Trade Representative spokesperson Sean Spicer said that developing country intransigence on NAMA could "signal the end of the Doha Round." EU Ambassador Eckart Guth also warned that the proposal did not bode well for the negotiations.

Developing country delegates strongly denied charges that their demands on industrial market access were holding back progress in the talks. One trade diplomat said that instead of trying to derail the round, the proposal was aimed at 'constructive engagement' in line with the NAMA negotiating mandate. Senior Brazilian foreign ministry official Roberto Azevedo called efforts to make developing countries accept the NAMA modalities on a take-it-or-leave-it basis 'frankly unfair, unreasonable and irrational', particularly when the EU, the US and other developed countries were 'picking and choosing' the provisions of the agriculture text they

Continued on page 2

Bridges

Between Trade and Sustainable Development

Published by the International Centre for Trade and Sustainable Development.

Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle
Address: 7 chemin de Balexert
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: ictsd@ictsd.ch
Web: <http://www.ictsd.org>

Regular ICTSD contributors include:

Trineesh Biswas
M. Kamal Gueye
Jonathan Hepburn
Malena Sell
Mahesh Sugathan
David Vivas

The opinions expressed in signed contributions to *BRIDGES* are the authors' and do not necessarily reflect the views of ICTSD. Manuscripts offered for publication are expected to respect good journalistic practice and be compatible with ICTSD's mission. Guidelines for contributors are available on request, as well as on ICTSD's website.

Material from *BRIDGES* can be used in other publications with full academic citation.

© ICTSD and contributors of signed articles.
ISSN 1562-9996

Annual subscription:

US\$225 for OECD country addresses
US\$75 for other countries
Courtesy subscriptions are possible thanks to the support of ICTSD's funders.

The *BRIDGES* series of publications is possible in 2006–2007 through the generous support of the Swiss Agency for Development and Co-operation (SDC), the UK Department for International Development (DfID) and the Rockefeller Foundation.

It also benefits from contributions from ICTSD's core funders: the development co-operation agencies of Denmark, the Netherlands and Sweden; the Ministry of Foreign Affairs of Finland, Christian Aid (UK), NOVIB (NL) and Oxfam (UK).

See inside back cover for information on other ICTSD periodicals.

could live with. "With the level of uncertainty and ambiguity that we have in agriculture today, it is impossible for us to tell if we can live with what is in the NAMA text," he said.

It is currently uncertain whether revised modalities for market access for industrial goods will be circulated in late October/early November as previously expected.

US Move in Agriculture May Not Be Enough

The unforeseen NAMA developments doused the cautious optimism generated by the 19 September US announcement that it was ready to negotiate domestic subsidy cuts within the US\$13 billion to US\$16.4 billion range suggested in the draft agricultural modalities released by Ambassador Crawford Falconer in July.

While welcome, the move was not altogether unexpected. For one, US\$16.4 billion is close enough to the US\$17 billion the US had already floated unofficially, although considerably lower than its formal offer of US\$22.5 billion. Second, the US agreement is conditional to other WTO Members delivering the 'strongest possible' outcomes in market access for agricultural and industrial goods, as well as services. Acting US agriculture secretary Chuck Conner said the US attached 'particular emphasis' to advanced developing countries opening their markets.

Not coincidentally, the US on 4 October submitted its long-overdue notification on farm subsidies to the WTO. The document shows that Amber Box payments in 2002–2005 varied from US\$6.9 billion to US\$12.9 billion, well under the country's current US\$19.1 billion ceiling for most trade-distorting support. However, US chief agriculture negotiator Joe Glauber said the figures demonstrated that the United States' October 2005 offer to reduce its Amber Box limit to US\$7.6 billion would bite into real spending, since the payments had exceeded that amount in three out of the four newly notified years, and seven years out of the past eight. He also argued that even a US\$16.4 billion ceiling for overall trade-distorting support (OTDS) would produce effective cuts in domestic subsidies since US OTDS had been higher than that in five of the past eight years. Trading partners have estimated current US overall trade-distorting support to stand at roughly US\$11 billion.

Members of the G-20 coalition of developing countries, which includes Argentina, Brazil, China, India and South Africa, have indicated that for the negotiations to move forward, the US would need to accept a new OTDS ceiling close to the lower end of the range proposed by chair Falconer. Both developed and developing countries also emphasised that the true impact of the US announcement could only be assessed once there was more clarity on the precise figure, as well as the extent of the concessions the US would demand in return.

Safeguard Duties, Quotas at the Centre of Ag Talks

The first three-week cycle of agriculture negotiations since the release of the July modalities draft wrapped up on 28 September. While big differences still remain, chair Falconer said that Members were now negotiating seriously rather than 'posturing for the sake of posturing'.

The September discussions covered a wide range of topics, but did not address the level of subsidy and tariff cuts. Instead, Members tried to fill in the blanks in the July draft regarding issues such as the designation and treatment of special and sensitive products, the special safeguard mechanism (SSM) to be established for developing countries, cotton, tropical products and preference erosion (see page 7 for details).

Two issues in particular stood out in the discussions. One was whether developing countries would have the right to temporarily impose safeguard duties above their current bound tariff rates in case of import surges or significant price drops (see related article on page 3). The second issue concerned quota expansion for sensitive products. Tariff cuts on these products will be smaller than those required by the general formula, but more market access must be provided by expanding import quotas (see related article on page 5).

Another two-week cycle of WTO agriculture negotiations started on 8 October, and chair Falconer could issue a revised modalities text toward the end of the month.

Accessibility and Effectiveness of the New SSM: Lessons from Country Simulations

Raul Montemayor

In July 2004, WTO Members agreed that a new mechanism would be established to help developing countries cope with sudden surges in agricultural imports or price depression. The negotiations, however, have made slow progress, partly due to scant data on the potential effects of such a measure.

A new study commissioned by the International Centre for Trade and Sustainable Development examined three specific issues in order to evaluate the Special Safeguard Mechanism or SSM proposals of the G-33 and various modifications suggested by other negotiating parties in the WTO.¹

First, it attempted to determine the historical frequency and severity of import surges and price depressions in countries covered by the study, and assess whether there is sufficient basis for demanding special safeguard privileges. Second, on the assumption that an SSM is warranted, the study assessed the *accessibility* of the mechanism by quantifying the frequency in which remedies could be availed of during episodes of import volume surges and price depressions under various trigger, threshold and other parameter settings. Third, it examined the *effectiveness* of the SSM by isolating periods of problematic gaps between import and domestic prices and calculated the frequency with which the SSM would have been able to bridge the gap between the two during such situations.

The simulation model developed for the study used historical data on monthly import volumes and prices and domestic prices, mainly from 2000 to 2005 from six countries (the Philippines, Ecuador, Fiji, Senegal, Indonesia and China) for 27 commodities. Available statistics on production and consumption, tariff rate quota (TRQ) commitments were also utilised in the simulations, as were most-favoured-nation (MFN) tariffs.²

Frequency and Severity of Import Surges

The analysis revealed a significant frequency of import volume surges and price depressions among the commodities in the countries covered. On average, annual cumulative imports exceeded three-year import volume moving averages by more than 10 percent in about one out of every six months. Price depressions occurred slightly more often, with import prices falling below three-year moving average roughly one out of every five months. The frequency of both import quantity surges and price depressions settled at a still significant level of 11 percent of total months covered when a higher 30 percent threshold over historical moving averages was applied.

Access to the Special Safeguard Mechanism

Access to SSM remedies averaged nearly half of total months when applying a uniform 10 percent threshold over three-year moving averages for both volume and price-based measures. Overall, a five instead of three-year average for both volume and price triggers resulted in a slightly better access rate for any type of SSM (50 percent versus 48 percent). The availability of the remedy was not significantly impaired even when thresholds were raised to 30 percent, or when the maximum period for imposing SSM duties was adjusted to six months, or allowed only up to the end of each year, as against the 12-month duration originally proposed by the G-33. This implies that there may be room to accommodate Ambassador Falconer's assumption that SSM measures should be invoked only in 'extraordinary' and 'special' cases, such as those involving large deviations from triggers. Access to the SSM increased perceptibly when a July-June implementation cycle was utilised instead of a calendar year, and more so when restrictions on the application of safeguard duties on imports falling within TRQ commitments were suspended.

Importantly, the availability of the SSM dropped to less than half when so-called market tests were imposed, i.e. when volume surges had to coincide with price depressions in order to

trigger remedies. In this regard, it could be argued that the link between import volumes and prices is not always symmetrical, nor do abrupt movements in both volumes and prices need to coincide in order to result in serious harm to producers in importing countries. In fact, irretrievable harm to domestic markets and local producers may have already occurred by the time import price and volume trends are aligned in a way that allows SSM remedies under market test conditions. Further, previous episodes of sudden short-term surges in cheap imports have had widespread and protracted effects on domestic farmers' production cycles and markets.

Effectiveness

On average, in six out of twelve months in a year, the prices of imports – inclusive of MFN bound duties – fell below corresponding domestic prices by more than 10 percent. SSM remedies were available in about four of these six 'problematic' months, but were effective in reducing the price gaps to less than 10 percent in only two of the months involved. The effectiveness of the remedy did not appear to be considerably influenced by adjustments in the way import prices were converted to local currencies, or when imposition periods were adjusted from twelve to six months or only up to the end of each year. There also appeared to be some room for increasing thresholds and reducing remedies without unduly impairing the quality of the SSM.

Effectiveness rates improved when a July-June instead of a calendar year was used as the annual implementation cycle, and more significantly when restraints on the application of safeguard duties on TRQ imports were set aside. In turn, the ability of the measure to correct 'problematic' price gaps was cut to a third of baseline levels when market tests were applied. The SSM was also significantly less effective if WTO Members were not allowed to exceed Uruguay Round bound

Continued on page 4

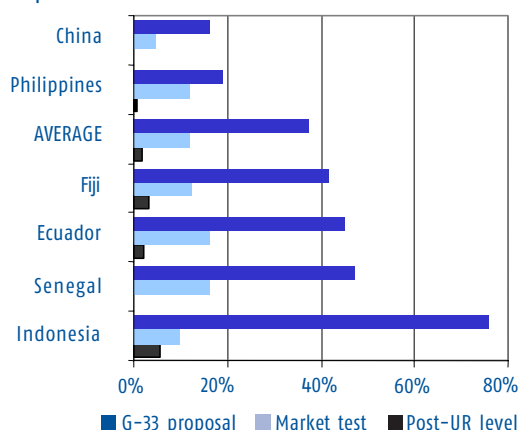
rates when they applied the additional duty. In this scenario, the effectiveness rate plunged to two percent, thereby rendering the SSM virtually useless (see figure below). Among the 20 commodities covered that registered positive effectiveness rates under the baseline scenario, eleven saw their effectiveness rates drop to zero, while the rest experienced declines of at least 88 percent compared to their baseline levels.

Countries could also study the costs and benefits of unilaterally lowering their bound tariffs on selected products to in-quota levels in exchange for enhanced access to the SSM. A legal opinion would, however, be needed on whether such a unilateral move would allow a country to start imposing safeguard duties on imports falling within their original TRQ commitments.

Product Coverage

Although the simulation did not specifically address the issue of product coverage, the results of the simulation can be used by each country to identify specific commodities that tend to be particularly vulnerable to import surges and price depressions. There may be some merit to suggestions to exclude exported commodities from SSM coverage, as alluded to by Ambassador Falconer. However, there are logically defensible situations where the poor state of marketing infrastructure forces the production in a remote area to be exported to nearby foreign markets while imports are allowed to satisfy demand in the consumption areas. Limiting SSM coverage to domestically produced commodities and their substitutes is also problematic. In some countries, almost all types and varieties of fruit are considered substitutes and competitors of the few locally produced fruit commodities.

Impacts on SSM Effectiveness



Perhaps a better approach to this issue is to be flexible and liberal in the matter of product coverage, as the G-33 have proposed, while ensuring that triggers, thresholds and remedies are able to prevent an arbitrary and unreasonable application of SSM measures.

Preferential Trade

Some export-oriented countries have proposed that imports under preferential trade agreements be excluded in computing volume and price triggers and in determining whether SSM remedies could be invoked. Unfortunately, it was not possible to accommodate this proposed modality in the simulations. Limited as they already were, the import statistics could not be disaggregated by source country. It was also impossible to separate imports subjected to MFN tariffs from those benefiting from preferential rates under regional and similar trade agreements. This in itself raises questions about the extent to which such an approach could be put into practice in developing countries.

That said, excluding non-MFN imports from trigger computations and threshold breaches would be similar to raising the minimum level of deviation from triggers before SSM duties can be invoked. In this regard, the simulations show that overall access to the SSM did not decrease significantly when the volume threshold was raised from 10 to 30 percent. It is, however, improper to immediately infer from these simulation results that excluding non-MFN imports from triggers and threshold breaches can be accommodated to some extent without impairing the effectiveness of the SSM. The magnitude of the volumes and level of prices of imports under preferential trade agreements vary greatly by country and commodity, and a uniform threshold adjustment will not be able to take into account all possible scenarios.

It does not necessarily follow that excluding non-MFN imports from the SSM mechanism will result in better market access for MFN exporters. Volume triggers will be reduced, while price triggers may go down, such that both will be easier to breach. MFN exporters will have to compete exclusively with each other for a smaller SSM-exempt import volume, while their non-MFN competitors will effectively be shielded from any safeguard duty.

Some Preliminary Conclusions

There appears to be substantial latitude for WTO Members to accede to higher thresholds, and even reduced levels of remedies, without diminishing either access to, or the effectiveness of, the SSM. However, this clearly has limits, and particular attention should be paid to proposals to introduce consumption parameters in the determination of triggers, market tests, or remedies and caps based on percentages of bound tariffs, particularly if a country's bound tariffs are already low. Priority should also be given to price-based remedies, given their clear superiority over volume-based measures, and the fact that the harmful effects of imports – including volume surges – are normally expressed in the form of price depressions.

A potentially less controversial six-month limit to the period for imposing SSM duties also appears to be bearable, as would a year-end limit modelled on the SSG.

The simulations also show that, since SSM remedies would be effective in bridging problematic price gaps in only two out of every six 'problematic' months in a year, historical levels of market access are unlikely to seriously be impaired. This may help assuage the concerns of export-oriented WTO Members that SSM duties would be imposed in an abusive manner. And finally, if developing countries are to benefit from the SSM, they need to upgrade their capacity to collect accurate data in order to have the capacity to detect import surges and price depressions promptly, and impose safeguard duties when necessary.

Raul Montemayor is National Business Manager of the Philippine Federation of Free Farmers Co-operatives.

ENDNOTES

¹ Raul Montemayor. September 2007. *Implications of Proposed Modalities for the Special Safeguard Mechanism: A Simulation Exercise*. ICTSD. Geneva

² Due to incomplete data and the limited scope of the study, any findings should be considered as indicative rather than conclusive.

Sensitive Products: The July Modalities Text Made Plain

Maria Marta Rebizo and Ariel R. Ibañez

Echoing persistent differences in WTO Members' positions, the market access pillar was far less developed than those for domestic support or export competition in the draft agricultural modalities circulated by chair Crawford Falconer in July.

In paragraph 13 of the Doha Declaration, ministers of WTO Member countries committed themselves to comprehensive negotiations aimed at 'substantial improvements' in agricultural market access. That improvement is being put into practice through a general 'tiered' tariff reduction formula, where the highest bound tariffs face the steepest cuts, with developing countries benefiting from smaller reductions. The resulting tariff will be the maximum duty permitted for a particular product and a particular country in future WTO disciplines.

Reflecting the compromise reached among WTO Members in July 2004 (Bridges Year 8 No.7 page 3), chair Falconer proposed two main deviations from the general reduction formula: 'sensitive' products (available to all WTO Members) and 'special' products, which only developing countries may designate to safeguard their food- and livelihood security, as well as rural development needs. This article focuses only on sensitive products.

Unlike their 'special' counterparts, sensitive products need not conform to any particular criteria. They will be self-designated by either developed or developing countries and will be subject to lesser tariff cuts than those required by the general formula. However, the smaller tariff reduction must be compensated through a corresponding tariff rate quota (TRQ) expansion for the product in question. The two main issues about sensitive products are the number of products that could be designated and the treatment accorded to those products.

How Will Sensitive Products Be Chosen?

While countries will be able to decide the products they wish to designate as 'sensitive' independently of any objective criteria, the number of tariff lines that may be selected will be limited. In chair Falconer's proposal that number ranges from 4 to 6 percent of 'duty-free' tariff lines (i.e. those that are not already duty-free) for developed countries and between 5.2 and 7.8 percent for developing countries. Estimations made in Argentina show some examples of what this means for the EU, the US, Japan, China, India and South Africa (see table below).

Chair Falconer proposed two cases in which Members could choose a larger number of sensitive products. The first of these concerns situations where more than 30 percent of a country's tariff lines (as set in out in its WTO schedule of commitments) fall within the highest tier of the formula. Here, the Member would be required to significantly reduce tariffs for a great quantity of protected agricultural products, which means that it would be in need of a broader exemption.

Effects of Sensitive Product Designation

Country	Duty-free tariff lines		Total imports affected	
	%	No.	%	US\$ million
European Union	4	64	6.8	4,749.8
	6	96	8.1	5,622.9
United States	4	54	0.2	132.6
	6	81	0.4	225.5
Japan	4	54	0.8	287.0
	6	82	0.8	298.8
China	5.3	52	24.6	2,888.5
	8	79	24.8	2,915.0
India	5.3	37	33.1	1,327.2
	8	54	33.1	1,327.9
South Africa	5.3	31	3.3	36.5
	8	47	3.5	39.5

Note: The criterion used in the selection of sensitive products was ordering tariff lines in a descending order.

8 or 10.6 percent for developing ones. These figures are yet to be finalised.

Many WTO Members, including the Cairns Group and the G-20, argue that since it has already been agreed that the compensation for a sensitive product designation is TRQ expansion (as opposed to TRQ 'creation'), only products currently subject to TRQs in a country's schedule of commitments should be eligible for a sensitive designation. On the other hand, Members such as the EU hold that any product may be subject to quotas regardless of its current TRQ status. This point still lacks of clarity, even if Ambassador Falconer's proposal seems to lean towards the first point of view.

How Will They Be Disciplined?

Two aspects are important here: (i) how much smaller the tariff reduction required for sensitive products should be, and; (ii) the extent of compensation necessary to offset the deviation from the general formula.

Regarding the first issue, bound tariffs for sensitive products will be reduced less than those of goods falling under the general formula. Chair Falconer proposed a cut from one- to two-thirds of the tariff reduction formula that would be applicable to developed and developing Members' non-sensitive products (paragraphs 56 and 57). That deviation, however, comes with a price tag; the bigger it is, the higher the compensation required.

The price is tariff-rate quota expansion. This leads to the second issue, which is the thorniest point because of the complexity of identifying how to implement this concept and, in particular, what criteria should be developed in order to ensure that the tariff cut deviation is duly compensated.

Developed countries with protectionist farm interests expect to grant minimal compensation for the lower tariff cuts while,

Continued on page 6

logically, agricultural exporters look forward to a much more ambitious contribution.

For instance, the EU maintains that deviation should only be partially compensated to be coherent with the concept of sensitive products. Fully compensated deviation would present no gain for the sensitive-product designation, and thus the creation of the category would not make sense, the argument goes. Competitive farm exporters counter that the Doha Round mandate to achieve 'substantial improvement' in market access can only be accomplished by a full compensation for the smaller tariff reduction.

The general rule proposed by chair Falconer for TRQ compensation in developed countries is an expansion of 4 to 6 percent of domestic consumption if the deviation is two-thirds of what would be required by the general formula, and 3 to 5 percent if the deviation amounts to one-third (paragraph 58). The expansion would have to be extended to all WTO Members on a most-favoured-nation basis (paragraph 64).

The application of this rule, however, presents a technical difficulty because domestic consumption data is only accessible at a level (such as like bovine meat, poultry meat or cheese) which encompasses many six- or eight-digit HS tariff lines. Importing Members, such as the EU and the G-10, argue that they would like to designate only a few tariff lines of all those included in a particular sector, so any criterion should be based on the domestic consumption regarding individual tariff lines. This approach is called 'partial designation'.

The European Union has proposed that the share of imports in eight-digit HS tariff lines of a given sector should be used to allocate the share of consumption. This method, however, does not take into account the fact that the most heavily protected tariff lines are likely to have a smaller share of imports, and would therefore perpetuate existing distortions in a Member's tariff schedule: the 'partial designation' approach clearly reduces the benefit of TRQ expansion for those WTO Members that are strong agricultural exporters.

The latter, including the Cairns Group, advocate for a 'sectoral' approach. In other

words, they want all products contained within a given sector to be designated 'sensitive', which would mean that TRQ expansion would be required for each of them.

The Falconer proposal does not resolve this problem. The HS-level of sensitive-product designation was one of the main topics of discussion during the chair's September consultations, and remains yet to be decided.

Flexibilities in TRQ Expansion

The implications of the Falconer draft become more complex when it proposes an array of exceptions to the general tariff-reduction formula that threaten to diminish its effectiveness. The first three of these would result in a smaller compensation for a deviation from the formula. The other two might lead to increases, but would be difficult to implement.

The first exception is intended for cases where out-of-quota imports represent more than 50 percent of those within the existing TRQ (paragraph 60). In such circumstances, chair Falconer proposed that TRQ-expansion could be reduced by a quarter if current bound duties exceed 50 percent, and by a fifth if current bound rates are lower than 50 percent. This situation could occur with regard to US imports of bovine meat, EU imports of wheat, bovine and poultry meat, and Mexican imports of wheat and corn.

The second exception addresses situations where existing TRQs already present 10 percent or more of domestic consumption and the minimum deviation is used (paragraph 61). In those cases TRQ expansion could shrink to 2.5 or 3.5 of domestic consumption. If a TRQ represents 20 percent or more of domestic consumption, expansion could be limited to 2 or 3 percent. This reduction could be relevant to TRQs for wheat, peanuts and skimmed milk powder in Japan, tobacco in the US and corn in China.

The third exception is a kind of safeguard in cases of abrupt surges in out-of-quota imports (doubling or tripling those within the TRQ) as a consequence of the implementation of the tariff reduction commitments agreed in the Doha Round (paragraph 62). In those cases the new TRQ could be reduced by up to a half.

The fourth and fifth exceptions (paragraph 59) outline an additional TRQ-expansion commitment for two specific categories of Members. The first group comprises countries that choose to designate a higher percentage of their tariff lines as sensitive, an option open to Members that have more than 30 percent of their import duties in the top tier. The second involves countries that still have more of the 5 percent of their tariff lines above 100 percent after the implementation of the Doha Round reduction commitments. In both cases, the Members in question should guarantee a 'higher overall average TRQ expansion' (4.5 percent or 6.5 percent of domestic consumption). This proposal also entails a technical problem because domestic consumption of products under various TRQs is expressed in different units of measurement, which makes it difficult to build the 'overall average TRQ expansion'.

All these exemptions are more generous for developing countries. Chair Falconer proposed that new quotas for their sensitive products should amount to two-thirds of those required from developed country Members, and specified that self-consumption by subsistence farmers would not be included in the calculation of domestic consumption (paragraph 63).

In spite of the complex and detailed treatment developed by Ambassador Falconer for sensitive products, many aspects remain to be negotiated. The outcome of the those negotiations, together with the regulation of 'special' products and the special safeguard mechanism (see page 3), will tell what this round will provide in terms of improved market access for agricultural products.

Maria Marta Rebizo and Ariel R. Ibañez are, respectively, economist and legal officer at the Institute for International Agricultural Negotiations (Fundación INAI) in Buenos Aires. Any opinions expressed in this paper are their own and do not reflect those of INAI.

Tangible Progress in Some Areas of Agriculture Talks

Farm liberalisation negotiations held in September took place in a 'transformed' atmosphere, chair Crawford Falconer said. Members sought to achieve greater clarity in several key areas, but did not address the contentious numbers for tariff and subsidy cuts, or the use of flexibilities.

All countries may designate a certain percentage of tariff lines as sensitive (chair Falconer has suggested 4-6 percent for developed countries and 5.3-8 percent for developing countries). Tariff cuts on these products will be smaller than those required by the general formula, but more market access must be provided by expanding import quotas. Members agreed in September to use the share of imports in domestic consumption as the baseline for quota-expansion, rather than previous import levels, as the EU had proposed. While competitive exporters of farm goods strongly favour the consumption baseline, many Members that do not possess detailed consumption data are expected to face technical difficulties in using this method of calculation.

The membership is still divided on the level of precision in designating sensitive products. The EU and G-10 countries want to use the eight-digit level of the Harmonised System (HS) of customs classification. This would make it possible to strategically pick individual products from a wide variety of categories. The six-digit HS level advocated by export-oriented WTO Members is much less specific, and using it would mean that 'sensitive' designations would comprise relatively broad categories consisting of many tariff lines. This would result in greater market access since import quotas would need to be expanded for each tariff line (see page 5).

Special Product Indicators

Developing countries may designate an 'appropriate number' of Special Products (SPs) based on their food security, livelihood security and rural development needs. Such products will not be subject to formula tariff cuts. In September, WTO Members left aside the divisive issue of how many SPs could be selected. Instead, they examined for the first time the list of SP indicators – or selection criteria – proposed by the G-33 in March (Bridges Year 11 No.2 page 6).

Negotiators focused, *inter alia*, on whether verifiable data was available on the G-33 indicators. Canada found this to be the case for two of them: the share of domestic production in total national consumption of a product; and a product's share in farm household income or the total value of agricultural production. However, Canada suggested that available data was not sufficient to evaluate whether a significant proportion of the agricultural population or labour force is employed in producing the product.

Farm-exporting countries argued that some of the indicators could be abused, including one that would make staple foods and products that make a significant contribution to consumers' nutritional or calorific intake eligible for SP status. Some also objected to an indicator aiming to protect small farmers by making eligible products grown on smaller-than-average farms, or those under ten hectares in size. They argued that the ten-hectare threshold – although half the G-33's original proposal – was too large.

Malaysia expressed qualms about an indicator that looks at the significance of domestic consumption of a product in comparison to total world exports, or whether a significant proportion of total world exports of the product come from a single country. As a major palm oil producer, the country is believed to be particularly concerned about potential restraints on its growing exports to India.

As for the G-33's proposal for a product to qualify as special if it contributes significantly to a country's agricultural customs tariff revenue, several trading partners claimed that the relevance of this indicator would hinge on how the revenue is used.

Exporting countries made a new proposal for the tariff treatment of SPs, suggesting that the extent of the deviation from standard tariff cuts could be linked to the difference between applied duties and the bound ceiling rates; the larger the gap between the two, the less the

tariff cut on the product could deviate from the formula. G-33 countries objected, arguing that Special Products respond to livelihood concerns, not trade interests. They also noted that bound levels were an inappropriate basis for calculating tariff cuts for SPs, not least because many Members simply bound all tariffs at an identical rate.

Members are still working on lists of tropical products, or crops grown as alternatives to illicit drug cultivation. A number of developing countries are concerned that fast and deep liberalisation in this area would erode the long-standing trade preferences they enjoy for some of the products involved. Although there is no consensus on these issues, Ambassador Falconer said Members were "inching towards an ever more realistic appraisal of what our options are."

Special Safeguard Mechanism

The main proponents of the Special Safeguard Mechanism (SSM) are the developing countries of the G-33 coalition, which argue that they need an instrument to protect domestic producers against sudden import surges or price drops. Two issues in particular still remain unresolved. The first is whether safeguard duties could be imposed only when a price decrease coincides with a surge in imports. The second major point of contention centres on whether the safeguard duty could exceed the imposing country's bound tariff at the WTO. While strong farm goods exporters opposed allowing tariff increases in excess of current maximum bound levels, the G-33 argued that this might sometimes be necessary for the safeguard to be effective (see page 3).

Nothing New on Cotton

To the great disappointment of several least-developed countries, no progress at all was made on the faster and deeper reduction of cotton subsidies mandated by the Hong Kong ministerial declaration. The United States is the principal target here, but US Ambassador Peter Allgeier told reporters on 2 October that the US would not propose anything new until "we know what the overall agricultural package looks like."

NAMA Negotiations May Make or Break Doha Round

After a majority of developing country WTO Members made clear their continued opposition to the July draft text on market access for industrial goods, the outcome of the talks is uncertain. Meanwhile, new research offers developing countries ammunition to defend their positions.

A large coalition of developing countries presented a controversial proposal on non-agricultural market access (NAMA) to the General Council on 9 October. The sponsors' core demands were lower percentage tariff cuts for poor countries and a level of ambition comparable to that in agriculture (see page 1).

The paper also proposed a five-year implementation period for developed country tariff reductions and ten years for developing countries. Small and vulnerable economies (SVEs) should be allowed to take on smaller commitments than other developing countries, and be granted a longer implementation period. Extra time, as well as additional flexibilities, would also be 'appropriate' for recently acceded Members (RAMs) subject to formula cuts, i.e. China, Croatia, Oman and Taiwan. (Earlier in the NAMA consultations, other WTO Members were largely unconvinced by the RAMs' new offer to limit the use of flexibilities they had sought originally.)

The so-called 'paragraph 6' group of poor countries with binding caps on fewer than 35 percent of their tariff lines should not be required to bind more than 70 percent of them, instead of the 90 percent suggested by chair Stephenson.

Row over Customs Unions

Sharp differences emerged at the General Council meeting on the suggestion that some developing countries would need additional flexibilities to 'preserve the common external tariff in customs unions'.

Concerns about the effect of tariff liberalisation on developing country customs unions only recently came to prominence in NAMA discussions. South Africa, for instance, shares a customs union (SACU) with four neighbours not required to apply the tariff reduction formula. They stand to be disproportionately affected by a cut in the bloc's external tariff. Brazil argued that Mercosur countries should also be given additional flexibilities in support of regional integration efforts.

The US and the EU said that while they were prepared to consider specific and limited exemptions, granting one to Mercosur as a whole was out of the question. The EU, however, recognised that special treatment could be considered for SACU, which – unlike the Latin American bloc – is a fully fledged customs union.

New Simulations Show Cuts Would Bite in Applied Tariffs

A simulation exercise carried out by the WTO Secretariat in early September sheds some light on how the proposed coefficients and other disputed elements in the NAMA talks could play out.

The simulations factored in different coefficients for developed and developing countries, as well as the flexibilities available to the latter under paragraph 8 of the NAMA annex of the July 2004 framework agreement. These comprise the possibility of (a) applying less than formula cuts to up to 10 percent tariff lines (provided that these are not less than half the formula cuts and do not exceed 10 percent of the total value of a Member's imports); or, (b) keeping tariff lines unbound, or not applying 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.

The outcomes for developed countries under coefficients of eight or nine – suggested in the July 2007 draft modalities – differed only marginally. For developing countries, the simulations applied coefficients ranging from 19 to 26. Ambassador Stephenson had proposed to limit the variation to 19-23 despite calls from Brazil, India, South Africa, China and others for a developing country coefficient of at least 30 (the higher the coefficient, the higher will be new bound tariff ceiling). The Secretariat's simulations computed the impact of the flexibilities only for the range proposed in the July modalities draft, although many developing countries hold that these should be available independently of the coefficient eventually agreed upon.

Contrary to major industrial powers' assertion that a coefficient of 20 at the most would be necessary to ensure 'effective' cuts in the applied tariffs of nations such as Brazil, the simulations show that many developing countries' current applied tariffs would be reduced even with a coefficient as high as 26. The greatest reduction for all developing countries would result from the application of a coefficient of 19 with no flexibilities.

The table below shows the highest and lowest possible post-Doha Round bound and applied tariffs that could result from the use of different coefficients and flexibilities, as well as the range of reduction percentages that some of the key Members in the NAMA negotiations would be required to undertake under the scenarios envisaged in the Secretariat's simulations.

Possible outcomes of NAMA negotiations for selected WTO Members

Country	AVG bound tariff %	New AVG bound % ¹	Reduct. % per dutiable ² bound	AVG applied tariff % ³	New AVG applied % ¹	Reduct. % per dutiable ² applied
Argentina	30.6	11.6 – 13.9	60.8 – 53.3	10.4	7.4 – 9.0	16.7 – 9.0
Brazil	29.8	11.4 – 13.8	60.2 – 52.6	11	8.5 – 9.7	15.6 – 7.5
China	9	5.5 – 6.6	31.7 – 25.2	9	5.5 – 6.5	31.9 – 25.5
India	43.7	12.4 – 19.1	68.2 – 59.9	19.4	11.8 – 17.9	18.6 – 7.0
S. Africa	18.6	8.5 – 9.9	48.8 – 40.9	9.9	5.6 – 6.4	30.1 – 21.3
EU	4	2.1 – 2.2	38.1 – 35.6	4	2.1 – 2.2	38.1 – 35.6
Japan	3.8	1.8 – 1.9	41.2 – 38.6	3.4	1.8 – 1.9	40.3 – 37.6
US	4	1.9 – 2.0	40.2 – 37.7	3.9	1.9 – 2.0	40.2 – 37.7

¹ The ranges of potential new tariffs correspond to coefficients from 19 to 26 for developing countries, and to coefficients 8 and 9 for developed country Members.

² The calculation for dutiable tariff reductions leaves out products that are already duty-free.

³ The figures for applied tariffs refer to the year 2005.

Source: NAMA Simulations by the WTO Secretariat. September 2007

Rwanda Tests Public Health Waiver

Rwanda is set to become the first nation to use a WTO procedure designed to allow developing countries without manufacturing capacity of their own to import of patented medicines produced under compulsory licence in another country.

The WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) allows members to issue compulsory licences in specific circumstances, including public health emergencies, effectively suspending patent rights on products to clear the way for the production of cheap generics. However, the agreement also stipulates that such generics should be 'predominantly' produced for the domestic market, thus limiting the amount that can be exported to countries with an insufficient domestic pharmaceutical base.

To address this, WTO Members agreed in August 2003 to waive the domestic consumption requirement under certain conditions to allow poor countries to import drugs produced under compulsory licence elsewhere. This provisional waiver was made into a formal amendment to the TRIPS Agreement in December 2005, despite criticism from health activists that its administrative requirements were so complex that no country had tried to use it. The amendment will enter into force once 100 WTO Members have ratified it; meanwhile the 30 August waiver applies.

Nearly four years after the adoption of the waiver, Rwanda became the first WTO Member to test the mechanism when it notified the WTO on 17 July 2007 of its intention to import 260,000 packs of Apo-Triavir, a generic version of a patented HIV/AIDS drug from Canada.

According to the waiver, a country seeking to import generic copies manufactured under compulsory license must notify the TRIPS Council of its intention to use the system, including the name and expected quantity of the product needed. It must also confirm (unless it is a least-developed country like Rwanda) that it lacks the domestic capacity to manufacture the product, and has granted or intends to grant a compulsory licence for it. The exporting country may only manufacture the specific quantity of the product notified to the WTO, and must export the total production to the importing country, which must in turn take 'reasonable measures' to prevent re-exportation.

On the potential supplier side, Canada was one of the first countries to respond to the decision through the adoption of the Canadian Access to Medicine Regime (CAMR) in May 2005. The legislation was put into practice on 19 September 2007, when the Canadian Intellectual Property Office granted generics manufacturer Apotex a compulsory licence to produce and export to Rwanda 260,000 packs of Apo-Triavir, a copy of the fixed-dose combination of three drugs under patents held by Glaxo Smith Kline, Shire and Boehringer Ingelheim. Apotex says its product will cost US\$0.405 a unit compared to US\$20 for the brandname equivalent in the United States. Moreover, it predicted that the price would drop once production of the active pharmaceutical ingredients was ramped up. The licence is valid for two years and restricted to Rwanda exclusively.

Canada has notified to the TRIPS Council that it has granted a compulsory licence under the system created by the waiver. Such notifications must include the name and address of the licensee, the product and quantity for which the licence has been granted, the country to which the product will be supplied and the duration of the licence. Before shipment, Apotex needs to create a website providing information about the quantity and destination of the medicine. The company must also provide details on the features that make the batch of Apo-Triavir destined to Rwanda readily identifiable – through characteristics such as packaging and/or distinctive shaping or colouring of the drug itself – in order to ensure that the generics are not illegally diverted into other markets. All WTO Members must ensure that legal means are available to prevent the importation into, and sale in, their territories of products produced under the system and diverted to their markets inconsistently with its provisions.

Fisheries Update

Wrapping up a week of discussions on fisheries subsidies on 28 September, chair Guillermo Valles Galmés of the WTO negotiating group on rules said there was 'near-consensus' on the prohibition of measures that promote fleet overcapacity and overfishing.

A large number Members praised a joint submission by Argentina and Brazil, which spelled out exceptions to the general prohibition of subsidisation, available to developing countries under special and differential treatment (TN/RL/GEN/151). The proposal combines previous papers by the two countries into a single draft legal text that could be inserted into future WTO disciplines on fisheries subsidies. Developing countries would be allowed to subsidise the construction and repair of fishing vessels and support fishing fleets with fuel or ice, so long as this only exploits non-endangered species in national waters. They could also offer government support for filling fishing quotas agreed with a regional fisheries management organisation based on international standards. Subsidies for fishing activities related to the subsistence and livelihood of fishermen and their families would likewise be permitted.

Chile, China, Costa Rica, the EU, India, Thailand and the US and were among the many delegations to express general agreement with the paper. Australia, the EU and New Zealand did, however, call for additional clarifications to prevent abuse of the special and differential treatment provisions. The US said the paper was 'very valuable', but regretted its omission of specific exceptions for small and vulnerable economies.

Norway objected to allowing developing countries to subsidise fishing vessels for use in the high seas, while Japan expressed reservations about permitting them to subsidise large fishing vessels.

Chair Valles is expected to release a draft negotiating text on fisheries disciplines once the agriculture and NAMA chairs have issued their revised modalities papers.

Disputes Involving China on the Increase at the WTO

China has initiated dispute settlement proceedings on US trade remedy action targeting some of its paper exports. Panels have also been established on China's industrial subsidies and the country's enforcement of intellectual property rights.

The decision to pursue the trade remedy case marks the second time that China has sought to use the WTO dispute settlement mechanism. The first was in 2002, when it joined several countries in a complaint against US steel duties.

Last spring, the US started to impose provisional countervailing duties worth up to 20 percent on Chinese coated paper, along with anti-dumping levies of up to 99.6 percent. It claims that favourable loans and tax measures have inappropriately supported Chinese paper companies. The final duty determinations are expected in October.

China's 14 September request for consultations claimed that US authorities had failed to demonstrate that alleged countervailable subsidies were specific to an enterprise or industry, as required by Article 2.1 of the Agreement on Subsidies and Countervailing Measures (SCM). In addition, the US violated SCM Article 14 by not properly calculating the supposed benefits accruing to the paper sector, and failed to ensure that the countervailing duties corresponded to the actual level of subsidisation, as required by SCM Articles 17 and 19.

China also charged that the anti-dumping duties violated Articles 7 and 9 of the Anti-dumping Agreement since they were not based on the amount of dumping found to exist.

While anti-dumping duties are meant to discourage foreign companies from exporting goods at below home market prices, the purpose of countervailing duties is to offset government subsidies provided to the imported product.

In introducing the countervailing duties, the US departed from a 23-year policy of not authorising the imposition of such measures on 'non-market' economies such as China. The rationale behind this policy was that in non-market economies, governments and enterprises were so interlinked that subsidies could not practicably be identified and isolated.

By the same token, non-market economies are easier targets for anti-dumping duties, since their home market price levels may not adequately reflect costs. Indeed, US companies have benefited from a lower burden of proof while pursuing the imposition of anti-dumping duties on a wide range of Chinese exports.

After a 60-day consultation period, China may seek a formal panel to rule on the dispute.

US Obtains IPR Panel

A dispute settlement panel was established on 25 September on US charges that China does not adequately pursue and punish those who infringe intellectual property rights, such as trademark and copyright protection. Specifically, the US asked the panel to investigate whether China's threshold for initiating criminal proceedings against offenders is too high; whether the practice of releasing to the market seized counterfeit goods after fake logos have been removed (instead of destroying the products) is WTO-compliant, and; whether unauthorised reproduction of copyrighted works is illegal under Chinese law only if it is accompanied by distribution (Bridges Year 11 No.3 page 10). Argentina, the EU, Japan, Mexico and Taiwan requested third party rights in the dispute.

China asserted forcefully that its intellectual property laws were consistent with WTO rules. It also claimed that the US was attempting to impose on developing countries obligations beyond those required in the TRIPS Agreement.

That agreement requires Members to "ensure that enforcement procedures [...] are available under their law so as to permit effective action against any act of infringement of intellectual property rights [...] including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements." However, it also explicitly states that the provisions on enforcement do "not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general."

Another IPR-related dispute initiated by the US against Chinese restrictions on the importation and distribution of books, journals, films and music is still at the consultation stage, with the EU as a third party (Bridges Year 11 No.3 page 10).

Subsidy and Auto Part Disputes

On 31 August 2007, the Dispute Settlement Body established a single panel on US and Mexican complaints regarding China's alleged subsidies to domestic industry, often through export-contingent tax breaks and loans provided by local and provincial authorities (Bridges Year 11 No.1 page 10). China has previously maintained that some of the incriminated programmes have ceased to exist and that others will be adjusted when the Income Tax Law of the People's Republic of China for Enterprises enters into force on 1 January 2008 (Bridges Year 11 No.2 page 10). Australia, Canada, Chile, the EU, Japan, Taiwan and Turkey have requested third party rights in the dispute.

The panel report in the dispute concerning tariffs imposed by China on auto parts will be delayed until January 2008. Canada, the EU and the US charge that a 25-percent tariff levied on components that make up more than a certain percentage of a vehicle assembled in China exceeds the 10-percent tariff for automotive parts in China's schedule of commitments. The US also alleges that the 25-percent duty violates the WTO Agreement on Trade-related Investment Measures because it gives manufacturers an incentive to favour domestic products over imported ones (Bridges Year 11 No.1 page 10).

EU Appeals Brazil Tyres Case

The EU has formally appealed a WTO ruling against Brazil's import restrictions on retreaded tyres, despite having nominally won the dispute.

The EU had argued before the panel that Brazil's measures were motivated by a desire to protect the local retreading industry from import competition rather than by the pursuit of genuine public health objectives as claimed by Brasilia. The panel ultimately concluded that although the limitations could be justified under GATT Article XX(b) to protect human health and the environment, Brazil applied them in a way that amounted to an unjustified and discriminatory restriction of trade (Bridges Year 11 No.4 page 7).

While announcing the appeal on 3 September, the EU welcomed the panel's recognition that the restrictions were inconsistent with WTO rules. However, it disagreed with the "extremely narrow condemnation of Brazil, which makes it possible for Brazil to implement the ruling merely by stopping the importation of used tyres and without removing the import ban on retreaded tyres" (Bridges Year 11 No.5 page 8).

The EU appeal (WT/DS332/9) asserts, *inter alia*, that the panel merely assessed whether the import ban was *capable* of making a potential contribution to the protection of human, animal and plant life and health within the meaning of Article XX(b), rather than demonstrating that the measure was *necessary* to achieve those objectives. In assessing reasonable available alternative measures, the panel had "referred to the evidence submitted by the parties in a selective and distorted manner." It had, for instance, 'wrongly excluded' some of the alternatives proposed by the EU, such as improving waste tyre disposal. The appeal also charges that the panel's approach to the Article XX(b) defence shifted the burden of proof to the EU.

The European Commission insisted in a press release that the appeal did not only seek to defend the EU's own trade interests, "but also the general interest that WTO rules be applied so as to ensure real and effective protection of public health and the environment, rather than allowing protectionism." The panel was wrong to conclude that Brazil's import ban "reduces public health risks when the EU had clearly shown that banning the import of retreads does not reduce waste," particularly "in a country such as Brazil where domestic used car tyres cannot be retreaded," the Commission said.

The statement also called the panel's decision to refrain from addressing Brazil's exclusion of tyres from fellow Mercosur members from the import ban 'clearly discriminatory', adding that it made 'no sense' from the perspective of protection of public health. Brazil had argued that the exception was necessary due to binding regional obligations; the panel had noted that the volume of tyres imported from those countries was currently not significant.

Green Groups Slam EU Decision

The case represents the first-ever dispute against trade restrictions imposed by a developing country for health and environmental reasons. Although the Commission emphasised that the EU was "strongly in favour of environmental and public health protection," environmental groups have urged it to withdraw the challenge. In a joint letter addressed to Trade Commissioner Peter Mandelson, the World Wide Fund for Nature and the Center for International Environmental Law called the panel ruling "an important contribution to the progressive development of WTO's jurisprudence on environment and trade." They added that it would be in the EU's interest that the panel's interpretation of WTO law stands given that "the EU has in the past and is currently defending European environmental and health policies at the WTO and will likely have to defend others in the future." The German NGO Forum on Environment and Development used similar arguments in its condemnation of the appeal. The Commission, however, holds that the Brazilian measures "were not intended to protect the environment at all, and [...] had no such effect."

The appeal process, which started on 3 September, should last for 90 days.

Beef Hormones

A confidential interim report in the *beef hormones* dispute between the EU, the US and Canada has found that EU regulations on growth hormones in beef still do not comply with the requirements of the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures, sources familiar with the ruling say.

The report concerns a case brought by the EU against trade sanctions that the US and Canada continue to apply to European imports on the grounds that the EU has not complied with WTO rulings in the beef hormones dispute. The EU, however, notified to the Dispute Settlement Body on 14 October 2003 that it had fully complied with the rulings since the entry into force of a new regulation, based on further scientific risk assessments, on the use of hormones in animal husbandry (Bridges Year 7 No.7 page 13).

Although the US and Canada dismissed the EU's claim that the new regulation had brought it in line with its WTO obligations, they refused to seek a compliance panel to adjudicate the matter. Instead, they continued to apply the sanctions, forcing the EU to initiate a new dispute in which it essentially had prove its own compliance. Ordinarily, it is up to the complainant in a dispute to show that the defendant has not complied. This shift in the burden of proof has systemic implications that go well beyond the rights and wrongs in the beef hormones case (Bridges Year No.9 page 11).

According to sources familiar with the report, the panel also faulted the US and Canada for maintaining the sanctions without a non-compliance finding from the WTO. This would result in the rather bizarre conclusion that while the EU has not complied with earlier rulings, the US and Canadian sanctions are illegal.

The interim report was handed to the parties in late July, more than two years after the panel started its deliberations. The final verdict is expected in the course of October. It is likely to be circulated to the public a month or two later.

Is the IMF Closing All Paths to Trade-led Development?

Aldo Caliari

The International Monetary Fund's latest review of criteria for surveillance over member governments' exchange rate policies threatens to dramatically reduce developing country economies' options for growth, job creation and diversification through trade.

Last June, the IMF decided on modifications to the main guidelines on the implementation of Article IV of its Articles of Agreement.¹ The guidelines, issued originally in 1977, regulate the Fund's role in exercising surveillance over the exchange rate policies of member countries. Ironically, the revisions will reduce policy space for developing countries to successfully use a trade- and export-led growth model, exactly the type of model that the Fund – and its sister institution, the World Bank – has preached for over twenty years developing countries should pursue.

This explains the strong reaction by the Group of 24, a developing country coalition in the IMF. When plans for the new language of the decision were unveiled, the group expressed particular concern that “expanding the principles for the guidance of members in the decision would blur the distinction between surveillance over exchange rate policies and over domestic policies.”

The IMF Board stressed that the 2007 decision would ‘not create new obligations for members’. But the changes in the new document are far from inconsequential, especially for a number of countries that had been able to establish the necessary exchange rate conditions for having a shot at harnessing trade for capital accumulation and development.

The new guidelines reiterate that a “member shall avoid manipulating exchange rates for the international monetary system in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other members.”

But to the hitherto existing principles that should guide the Fund's assessment of what constitutes ‘manipulation’ it has added one that reads: “A member should avoid exchange rate policies that result in external instability.”

The 1977 decision also contained a list of developments that “would require thorough review and might indicate the need for discussion with a member.” To that list, the revised guidelines add ‘fundamental exchange rate misalignment’ and ‘large and prolonged current account deficits or surpluses’.

As a result, all that is needed for an IMF member's policies to become objectionable is that they be detrimental to some loose notion of ‘external stability’. In fact, according to the Managing Director, Mr Rodrigo Rato, the new guidelines have the intention of putting external instability at the center of the system of surveillance.

Official statements, such as those by the IMF Deputy Managing Director John Lipsky, hold that the decision had broad support. His account, however, contrasts sharply with statements by the IMF's Executive Director for China Ge Huayong, who claims that the guidelines were passed by “a minority of developed countries which have a lot of voting rights.” News reports mention at least two nations that did not support the changes.

Targeting Developing Countries Success Stories?

The new decision follows months of US pressure on the IMF to induce the Chinese government to revalue the exchange rate of the yuan, which many Americans blame for the growing US trade deficit. It may not be a coincidence that the decision uses the expression ‘fundamental exchange rate misalignment’, which closely mirrors the language in a bill – widely seen as a response to rising resentment against cheap goods imported from China – currently under consideration in the US Congress (Bridges Year 11 No.4 page 12).

The decision represents a step backward not only for China, but for any developing country trying to develop through exports. In the last few years, and especially as a reaction to the collapse of 1997, several Asian developing countries have aimed at increasing their level of reserves so they would be insured against a speculative attack, and spared the need to resort to the IMF. Massive purchases of foreign currency by these countries had the result of favouring low real exchange rates, with the mutually reinforcing effects of enhancing their competitiveness and accumulating sizeable current account surpluses. As increased export revenues put pressure on their currencies to appreciate, further intervention in capital inflows and the exchange market to keep currencies at that same (low) level were pursued.

The same trend has been followed by some countries in Latin America, notably Argentina. After the collapse of the one-to-one dollar-peso parity peg following the financial crisis in 2002, the continued maintenance of a competitive exchange rate for exports is one of the keys to the successful growth rates that the country has managed to sustain for four consecutive years now.² It is worth noting that Argentina could not have maintained this regime had it not been able to make early repayment of its outstanding loans from the IMF, which was insisting on flotation of the exchange rate as a condition for renewing its loan agreement.

Denying the Role of Exchange Rates as Policy Tools

The utilisation of the exchange rate as an instrument to enhance trade performance of domestic producers is based on a solid assessment of the historical experiences of those developing countries that successfully developed through trade. In the view of some economists, all countries that have done this were able to “maintain exchange rates that are attractive to exporters over long periods of time.”³ On the other hand, the revaluation of exchange rates has frequently impacted negatively on competitiveness, income and growth prospects.⁴

Moreover, as pointed out by UNCTAD, the exchange rate is an important policy instrument to provide domestic producers profit incentives to invest in non-traditional export sectors. Thus, a low real currency price can not only help boost the volume of exports, but also diversify their composition. Some, like Dani Rodrik, go as far as saying that “a credible, sustained real exchange rate depreciation may constitute the most effective industrial policy there is.”⁵ Roberto Frenkel has noted that “central bank intervention in the exchange market should be oriented to signaling the long-run stability of a competitive real exchange rate in order to give proper incentives to tradable industries, reduce the uncertainty of investment and employment decisions, and prevent unsustainable balance of payments and debt trends.”⁶ A competitive real exchange rate level leads to higher job generation, not only in the tradable, but also in the non-tradable sector.

By definition, the type of ‘sustained’ and ‘stable’ exchange rate required for the success of the export-based development strategy is going to require a degree of government exchange rate and monetary policy intervention. This is exactly the type of intervention that the IMF is trying to ban with its new Decision on Surveillance, with the identification of ‘large and prolonged current account surpluses’ as a factor that should trigger pressure from the IMF to correct (in this case, revalue) the exchange rate.

The decision also raises a number of issues regarding the practical difficulties in interpreting the degree of discretion it accords to the IMF authorities, which is likely to expand significantly. A main difficulty is assessing what constitutes ‘manipulation’. Indeed, there is no general agreement among economists (let alone politicians) on what constitutes a currency misalignment or, for that matter, to what extent a misalignment should be tolerated. The 1977 decision’s emphasis on the existence of an intent to ‘gain an unfair competitive advantage’ throughout all these years had left space for developing countries to pursue some degree of intervention guided by development priorities. The interpretation of newly-added expressions such as ‘result[ing] external stability’ or ‘currency misalignment’, as if they were objective situations whose existence anybody can easily determine, potentially leaves their judgment to the IMF. That the IMF is the same institution where the 2007 decision was apparently approved ‘by a minority of developing countries with a lot of voting rights’ is certainly not reassuring.

At the same time, the IMF review missed a golden opportunity to tackle a crucial issue for developing countries trying to develop through trade. Just as a stable and competitive exchange rate helps countries improve trade performance, the short-term volatility of exchange rates is harmful to such performance since it hinders any efforts to sustained and predictable investments in export-oriented economic activities. In fact, providing adequate signals in this area might account for much more improvements in supply-side capacities than all the Aid for Trade agenda together can muster (certainly more than it has mustered to date).

Exchange rate misalignments among countries that issue hard currency frequently cause episodes of exchange rate overshooting in developing countries that are associated to pronounced over and undervaluation, boom and busts cycles that hurt even those whose ‘fundamentals’ are in the best of shapes. Several civil society organisations refer to this large asymmetry in a 2003 letter to the WTO Working Group on Trade, Debt and Finance: “Since the fall of the *par value* Bretton Woods system in the 1970s, instability and misalignments of currency exchange rates have distorted real comparative advantages and the value of concessions on tariff and price-based trade liberalisation measures agreed to in successive trade negotiations. The IMF, having lost its leverage over countries whose currencies are held as international reserves, has proved to be an inefficient instrument for exercising surveillance over the monetary policies of those countries.”

There is certainly no willingness in the IMF’s major shareholders to vest the Fund with prerogatives that may allow it to play an effective role as co-ordinator or ‘umpire’ of the exchange rates for leading hard currency-issuers. Interestingly, noting this vacuum, UNCTAD’s

last Trade and Development report calls for a new code of conduct to subject real exchange-rate changes to multilateral oversight.⁷

The review of surveillance was a key part of the IMF Medium-term Strategy that Mr De Rato masterminded in an effort to reinvigorate the shattered credibility and relevance of the institution in the global economy. It is, however, hard to believe that the credibility of the Fund as a multilateral institution will be anything but harmed by the outcome of the review. Hopes of the IMF playing an impartial role in overseeing multilateral exchange rate co-ordination are all gone in the sheer face of the extreme similarity between the US government’s objectives and the outcome of the decision. Moreover, the blatant way the decision disregarded the will expressed by the G-24 Ministers confirms, once again, how little the voice of developing countries matters at the Fund.

Paradoxically, the impact that this decision will undoubtedly have on the credibility of the Fund has a silver lining. As a stream of early repayments continues to flow into the International Monetary Fund, credibility and quality – rather than the ‘power of the purse’ – are all the IMF has left to get the attention of developing country governments. Therefore, it is very likely that the number of countries that actually have to pay attention to IMF surveillance will continue to decline.

Aldo Caliari is Director of the Rethinking Bretton Woods Project at the Center of Concern in Washington D.C.

ENDNOTES

¹ IMF, Bilateral Surveillance over Members’ Policies, June 15 2007 (2007 Decision), Part II

² Frenkel, Roberto, 2007. *Argentina’s Monetary and Exchange Rate Policies after the Convertibility Regime Collapse*.

³ Agosin and Tussie, 2003. *Trade and Growth: New Dilemmas in Trade Policy*.

⁴ UNCTAD, 2007:28. *Trade and Development Report*

⁵ Rodrik, Dani, 2004. *Growth Strategies*. Harvard University

⁶ Frenkel, 2004. In *Diversity in Development: Reconsidering the Washington Consensus*. FONDAD

⁷ UNCTAD, 2007:29

UNESCO Tackles Culture and Commerce

A new international treaty entered into force in March, encouraging parties to adopt measures to protect the diversity of cultural expressions that may be imperilled by the quickening pace of globalisation.

Since the early 1980s, international trade in cultural goods has grown six-fold, increasing from US\$9.5 billion in 1980 to US\$60 billion in 2002. According to the World Bank, cultural and creative industries account for more than 7 percent of world GNP, which represents a global commercial value of US\$1.3 trillion. A handful of countries export the lion's share of cultural goods, with Europe leading at 51.8 percent, followed by Asia (20.6 percent) and North America (16.9 percent). Likewise, rich countries account for more than 90 percent of all cultural imports, led by the US, the UK and Germany. In contrast, Latin America and Africa were estimated to represent 3 and 1 percent, respectively, of world trade in cultural goods in 2002.

Some statistics on the diversity of cultural expressions are startling. For example, while Hollywood accounts for 85 percent of box office revenue worldwide, in Africa just 2 percent of the population has seen African films. There thus appears to be both a decrease in the dissemination of cultural goods on a global scale, and a decline in the production of, and access to, a diversity of such goods and services.

In addition, cultural industries are progressively taking over traditional forms of creation and dissemination and bringing about changes in cultural practices. The diminishing diversity of languages offers a striking example: while there are more than 6000 living languages in the world, those used in commerce and new technologies are increasingly dominant. It is estimated that a language disappears every two weeks and there are predictions that 90 percent of them will be extinct within a hundred years.

Convention on Cultural Diversity

It is against this backdrop that the members of the UN Educational, Scientific and Cultural Organisation (UNESCO) adopted a Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹ in October 2005. The treaty, which entered into force in March 2007, recognises that cultural goods and services cannot be treated

as mere commodities. It explicitly allows parties to protect and promote the diversity of their cultural expressions¹ through, for instance, adopting measures aimed at:

- providing opportunities for the creation, production, dissemination and enjoyment of domestic cultural activities, goods and services, including provisions relating to language;
- providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution;
- providing public financial assistance; and
- enhancing diversity of the media, including through public service broadcasting.

Parties to the convention may also take 'all appropriate measures' to protect and preserve cultural expressions in situations where they have determined that these are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.

Relationship with WTO Rules

A major point of contention during the negotiations for the new treaty was how its provisions would relate to WTO disciplines. Opponents, such as the US, saw its main purpose as an attempt to give additional legitimacy for the maintenance and possible expansion of measures – maintained by countries such as Canada, China, France, South Korea and many others – that restrict market penetration of foreign films and music, as well as other cultural products or services (magazines, audiovisual broadcasts, etc.). Its proponents considered it as a necessity to safeguard the survival of their cultural identity, language and traditions.

The convention has been ratified by 67 individual countries, as well as the European Union as a whole. The US voted against its adoption, arguing that the instrument remained "too flawed, too open to misinterpretation and too prone to abuse for us to support." The US also stressed that the convention "must not be read to prevail over or modify rights and obligations under other international agreements, including WTO agreements. Potential ambiguities in the convention must not be allowed to endanger what the global community has achieved, over many years, in the areas of free trade, the free flow of information, and freedom of choice in cultural expression and enjoyment."

The language regarding the treaty's relationship with other international agreements is indeed ambiguous: on the one hand it affirms that parties will not 'subordinate' the convention to any other treaty, and on the other it specifies that nothing in it "shall be interpreted as modifying rights and obligations of the parties under any other treaties."

Thus, should a WTO dispute arise regarding measures taken to protect the diversity of cultural expressions, a defendant in the case could refer to the rights accorded by the convention, while a complainant could evoke the clause that it does not modify the defendant's obligations under other treaties. Non-parties, such as the US, would of course not be bound by the convention's provisions at all. Legal scholar Joost Pauwelyn, however, has argued that the WTO "presumably would not wish to isolate itself from the rest of the international law-making world by closing its eyes to any legislative initiative agreed on outside its own building, be it consented to by the disputing parties or not."²

ENDNOTE

¹ Cultural expressions are defined as "those expressions that result from the creativity of individuals, groups and societies, and that have cultural content." Cultural content, in turn, refers to the "symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities."

² Pauwelyn, Joost. "The UNESCO Convention on Cultural Diversity and the WTO: Diversity in International Law-making?" *ASIL Insights*, 15 November 2005

UNCTAD Calls for Caution in North-South Trade Agreements

Developing countries should carefully weigh the long-term growth implications of preferential or free trade agreements with developed countries, a new United Nations report suggests.

The number of free trade agreements notified to the WTO has grown from 20 in 1990 to 159 in 2007, and may reach 400 by the year 2010. While the proliferating accords are often defended as useful stepping stones for the advancement of broader trade liberalisation, the WTO has reported that the expansion of these deals has led to discrimination in world trade by granting favours to some countries that are denied to others, and have often diverted trade from where it would have gone under more evenly competitive conditions.

The UN Conference on Trade and Development (UNCTAD) acknowledged in its *Trade and Development Report 2007* released in early September that such treaties have been successful in providing transitory gains in market access and higher foreign direct investment, but it also warned that they may limit developing countries' scope for government intervention, which may be necessary to preserve long term growth of competitive industries.

UNCTAD also noted that strong domestic lobbies in developed countries often limit the scope of trade agreements; for instance, EU and US farm subsidies do not make it onto the negotiating tables in bilateral agreements. Rich nations also use trade deals to pursue far-reaching obligations on investor protection and intellectual property rights. The report further cautioned that even the advantages afforded by tariff cuts under bilateral agreements can prove ephemeral: they risk being eroded if the rich-country partner enters into agreements with other developing countries.

Furthermore, the study argued that North-South trade agreements had reduced or eliminated the scope for instruments such as infant industry protection, widely used in the past by now-industrialised countries to improve their own supply capacity. While the merits of such policies are hotly debated by economists, UNCTAD maintained that they were vital in improving industrial capacity, economic growth and the attainment of developmental objectives over the long term. "The gains for developing countries from improved market access are far from guaranteed, whereas the loss of policy space is certain," the report concluded.

South-South Agreements More Beneficial

On the other hand, the study suggested that similar deals with other developing nations – so-called 'South-South' agreements – might promote greater efficiency and industrialisation, and speed countries' integration into the world economy. UNCTAD recognised that FTAs among developing countries could also be useful in promoting regional integration, but emphasised that such attempts must go beyond the simple liberalisation of trade and financial relations to "include co-ordinated action in policy areas that strengthen the potential for growth and structural change in developing countries, including macroeconomic, financial, infrastructure and industrial policies." Regional co-operation on trade facilitation, transport infrastructure, and industrial development were particularly promising, it said.

New Code of Conduct for Exchange Rates Needed

UNCTAD also called attention to the effect of exchange rate fluctuations, often driven by financial market activity. "Arbitrary changes in the exchange rate can affect international trade in a way similar to tariffs and export subsidies," it said, arguing that the world economy needed a "new international code of conduct to avoid exchange-rate instability and misalignments." In the absence of 'appropriate global exchange-rate arrangements', UNCTAD suggested that developing countries could consider managing their exchange rates through accumulating large foreign reserves, as well as taxing capital flows and currency market interventions. Region-wide mutual financial assistance could also prove valuable, the report noted.

WIPO Update

On 28 September, member governments of the World Intellectual Property Organisation (WIPO) formally adopted a new Development Agenda, meant to insert a development dimension across all of the institution's activities.

The agenda consists of 45 recommendations dealing with six areas of activity: (a) technical assistance and capacity-building; (b) norm-setting; (c) technology transfer, information and communication technology, and access to knowledge; (d) assessment, evaluation and impact studies; (e) institutional matters and; (f) enforcement.

Many of the 19 recommendations slated for immediate implementation aim to change institutional culture and practices. They stress that WIPO's technical and legislative assistance must be development-oriented and member-driven, and that its staff and consultants should be neutral and accountable. For instance, the Secretariat's advice to developing countries with regard to the implementation and operation of the TRIPS Agreement should include understanding and use of the flexibilities available under the treaty, rather than just focus on the rights and obligations it contains. Another recommendation urges governments to accelerate work on genetic resources, traditional knowledge and folklore without excluding the possible development of an international legal instrument in this field.

The recommendations also call for the inclusion of a wide range of stakeholders from civil society into WIPO's norm-setting and other activities. The latter should take into consideration "the preservation of the public domain [...] and deepen the analysis of the implications of a rich and accessible public domain." Upon request by member states, the Secretariat should undertake assessments of possible development impacts of IPR protection.

A new Committee on Development and Intellectual Property will meet twice in the next year to consider the implementation of these recommendations, as well as the other 26, many of which have either financial or human resources implications.

Much Talk But Little Action on Climate Change

As a key United Nations conference in Bali next December draws closer, political activity around issues related to the mitigation and adaptation to climate change is intensifying worldwide.

Parties to the Kyoto Protocol agreed in August on the need to cut greenhouse gas emissions to less than 25-40 percent of their 1990 levels by 2020 (the present commitment period ends in 2012).

At a late September climate summit hosted by UN Secretary-General Ban Ki-moon, the EU and Japan called for halving emissions by 2050 compared to the 1990 benchmark, and leader after leader underlined the seriousness of the situation.

Pakistan's Environment Minister Syed Faisal Saleh Hayat said that rich countries should deepen their reduction commitments in the next phase of the Kyoto Protocol, as well as help poorer nations avoid increases in their own greenhouse gas emissions. Prime Minister Keith Mitch of Grenada called global warming was 'the single most important threat' facing the security and very existence of small island developing states, which should be given priority in any global fund set up to cope with climate change.

Numerous developed and developing countries appealed to the United States to join the protocol, but Secretary of State Condoleezza Rice gave no sign of a change of heart in the long-held US position that major developing country emitters must agree to binding reduction commitments first. The latter countered that the ball still lay firmly in the developed country court, although many – including China and Brazil – also stressed that they were already taking measures to mitigate the effects of climate change on a voluntary basis.

US Defends Non-binding Targets

Immediately after the UN summit, President Bush convened a meeting of the world's 16 greatest greenhouse emitters.¹ The purpose was to further develop his suggestion that these nations should jointly develop a new 'long-term global goal' to reduce greenhouse gasses, after which each country would work to achieve the goal by establishing "its own ambitious mid-term national targets [...] based on national circumstances" (Bridges Year 11 No.4 page 12).

Responding to allegations that the initiative sought only to let the United States off the hook, US Ambassador to the EU Boyden Gray drew a parallel with the development of the Montreal Protocol on phasing out ozone-depleting substances. In that process, he argued that "the US pulled aside a dozen or so big economies in an effort to inject some focus and prioritisation into an unwieldy process involving more than 150 countries. The effort worked and ultimately culminated in [...] the most successful international environmental agreement ever negotiated" (Financial Times, 27 September 2007).

While many hailed the White House meeting as a welcome sign of renewed US engagement on the climate front, the gathering did not produce any concrete commitments to action.

Earlier in September, Asia-Pacific Economic Co-operation (APEC) members agreed on 'aspirational' climate goals to reduce energy intensity by at least 25 per cent by 2030 and to increase forest cover by 20 million hectares by 2020. The Economist suggested that the APEC summit merely created "the illusion that something is being done and so weakens other efforts to reach meaningful agreements on, for example, climate change and trade."

Trade-related Measures Raise WTO-consistency Concerns

To implement whatever targets are agreed in Bali, governments are likely to take measures to ensure that their industries do not suffer politically unacceptable consequences.

In the US, for instance, a bill has been introduced to Congress that would require the administration to annually review the climate policies of the country's five largest trading partners – currently Canada, China, Mexico, Japan and Germany – to determine whether they have taken measures comparable to those of the US to limit greenhouse gas (GHG) emissions. US importers of GHG-intensive goods from countries found not to have taken comparable actions would need to purchase 'international reserve allowances' (i.e. GSG emission credits) issued by the US government.

While such a measure could possibly qualify as an exception under GATT Article XX(g), which allows measures "relating to the conservation of exhaustible natural resources," China and Mexico have already indicated that it would need to be discussed at the WTO. On 26 September, Mexico's Environment Minister Juan Rafael Elvira Quesada warned that the proposed legislation would "only lead to a series of protectionist measures that have no link to the environment at all," adding that Mexico "would not be in accord with this measure."

The approach under consideration in the EU could be even more controversial, as the European Parliament has called upon the European Commission to consider the possibility of imposing offsetting tariffs on imports from countries that are not parties to the Kyoto Protocol – in practice the US and Australia. So far, the Commission has rejected the idea, partly because such a tariff might be challenged at the WTO.

On a different front, Japan and the US have united forces to push for the elimination or reduction of import tariffs on energy-saving products, such as fuel and solar cells, as well as wind power generators. Japan reportedly wants to make the initiative one of the major achievements of the G-8 summit it will host in 2008. While other G-8 members are expected to support the initiative in principle, differences are likely to arise over the list of products targeted, particularly with regard to the automobile sector.

ENDNOTE

¹ Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, South Korea, Mexico, Russia, South Africa, the UK and the US.

Peru FTA Approval Moves to Congress

The clock for congressional consideration of the US–Peru free trade agreement started ticking in late September, but Democrats still have concerns.

President Bush submitted implementing legislation on the treaty to Congress on 27 September. The House Ways and Means Committee and the Senate Finance Committee have 45 days to consider the proposal. The House then has 15 days for a full floor vote, with a Senate floor vote to follow within two weeks of the House decision.

Link to Trade Adjustment Assistance May Cause Delay

While US–Peru agreement appears to have enough bi-partisan support to secure passage, House Speaker Nancy Pelosi announced on 26 September that she would hold off a floor vote until a revamped trade adjustment assistance (TAA) bill had been developed and approved. Meanwhile, Senator Max Baucus predicted that the Finance Committee would pass the Peru–US pact with a comfortable majority, and said he was consulting with Ways and Means chair Charles Rangel on the elements of a new TAA bill.

Democrats in general consider that an expanded trade adjustment assistance programme is essential to ensure that US workers affected by free trade deals have adequate access to retraining and health benefits. Ways and Means trade subcommittee chair Sander Levin has said the new TAA programme would extend to services workers (in addition to those employed in manufacturing), and could cover jobs displaced due to technological advances.

Although the Democratic leadership rallied around the Peru agreement after extensive changes were approved on its labour and environmental provisions (Bridges Year 11 No.5 page 14), some freshman legislators have vowed to oppose even if an expanded TAA bill is approved.

The China Connection

Representatives Betty Sutton and Bill Hare, who lead the ‘no’ vote campaign, maintain, *inter alia*, that the Peru FTA lacks teeth to enforce the new labour and environmental obligations. More generally, they have criticised the Democratic leadership for consenting to consider a trade deal promoted by the Bush administration before tackling more pressing priorities, such as legislation on China’s exchange rate.

In July, competing currency bills were approved in two different Senate committees. While their details differ, both would require the administration to take action at the International Monetary Fund and, ultimately, at the WTO against countries that refuse to reform their exchange rate policies after US authorities have found their currencies to be ‘fundamentally misaligned.’ One of bills also mandates the Commerce Department to take ‘currency undervaluation’ into account when calculating anti-dumping duties on foreign goods (see page 19). No similar legislation has yet been submitted to the House Ways and Means Committee.

KORUS Update

Faced with strong opposition from Democrats demanding more access for US automobiles and beef, the Bush administration appears to be in no hurry to start congressional consideration of the Korea–US FTA signed last June. Korea, on the other hand, is no mood to take up the Democratic challenge. Seok-young Choi of the Korean Embassy in Washington said on 26 September that his government “could not see any further concessions on the automotive agreement. [...] It has no intention to change the agreement at all.” Mr Choi nevertheless expressed confidence that Congress would eventually approve the FTA. The Korean government, he said, was hoping that the National Assembly would pass the agreement before the end of Roh Moo-hyun’s presidency on 20 February 2008.

Also on the bilateral front, China and Peru have announced the launch of FTA negotiations, most likely before the end of the year. Although there is no official timeline, Peru’s foreign affairs minister José Antonio García Belaunde predicted that the deal would be signed in 2008.

CAFTA Update

On 7 October, Costa Rica became the first nation in the world to approve a free trade agreement by popular vote. More than 60 percent of voters turned up at the ballot box, and the ‘yes’ carried the day by 51.6 percent.

At issue was the DR–CAFTA pact concluded between the United States and Costa Rica, the Dominican Republic, El Salvador, Honduras and Nicaragua in 2004. The treaty has entered into force for all parties except Costa Rica, where wide-spread and organised opposition held the administration back from introducing implementing legislation to Congress. The government eventually decided settle the fate of CAFTA through a national referendum.

The pre-referendum debate reached fever pitch after a strategy memo on CAFTA approval was leaked to the public on 6 September 2007. The memo – addressed to President Oscar Arias by second vice president Kevin Casas and parliamentarian Fernando Sanchez – recommended that the government engage in an all-out media campaign portraying a ‘no’ vote as equivalent to violence and disloyalty to democracy.

The government should imply, the memo suggested, that a failure to approve CAFTA would lead to massive job losses, as well as increased instability and vulnerability to interference from countries such as Cuba, Venezuela and Nicaragua. Although the administration stressed that the strategy proposed by the memo was never acted upon, vice minister Casas resigned on 29 September and Fernando Sanchez has given up his position as president of two key legislative commissions.

In related news, Costa Rica will host the initial round of negotiations on a Central America–EU Association Agreement on 22 October. That treaty is expected to be slightly less controversial than CAFTA since it will include development co-operation and political dialogue, as well as trade liberalisation.

In Brief

European and Korean negotiators clashed on tariff concessions at their September meeting on a bilateral free trade agreement that both sides hope to conclude promptly.

Chief among the EU's concerns was that Korea was proposing to cut tariffs on European industrial and agricultural goods more slowly than it had agreed to do under the US-Korea FTA finalised in June. According to chief EU negotiator Ignacio Garcia Bercero, EU exporters of some industrial goods would face higher Korean import tariffs than their US competitors for five years, and even longer in the case of some agricultural products.

Chief Korean negotiator Kim Han-soo countered that there was no reason why the EU should automatically obtain a deal identical to the one Korea negotiated with the US, particularly as the EU's own offer in some areas fell short of US concessions. Nevertheless, Korea Times reported on 21 September that the two sides ultimately agreed to use the US-Korea pact as a benchmark for further negotiations.

The EU has offered to eliminate duties on 72 percent of bilateral trade as soon as the agreement is signed. The share of duty-free trade would rise to 79 percent within three years, and tariffs on all Korean goods would be phased out completely within seven years.

Korea reportedly is willing to lift tariffs immediately on 45 percent of bilateral trade. Tariffs on all EU industrial goods 'with some exceptions' would be removed within three years. In terms of value, 68 percent of European goods would enter Korea duty-free within three years of the FTA's entry into force.

As with the US, market access for automobiles is a key issue for the EU. Brussels wants Korea to remove technical standards that restrict EU exports, and seeks a quick elimination of Korea's 8 percent tariff on automobile imports. Last year, 74,000 Korean cars were sold in Europe, while Korea imported only 15,000 vehicles from the EU.

EU-Andean Trade Pact Underway

The European Union and the four members of the Andean Community launched negotiations for an Association Agreement in September.

The initial meeting focused on clarifying the expectations of both sides regarding the three pillars of the future agreement, i.e. development co-operation, political dialogue and trade liberalisation.

Bolivia will be the Andean lead country on co-operation. The issues covered in those discussions will include economic and social development, and poverty alleviation in particular; reinforcing social cohesion, with emphasis on the most underprivileged sectors; and ways to deal with asymmetries between the two sides, as well as within the Andean Community (CAN) itself. The political dialogue will address many of the same issues, with Ecuador as the Andean focal point. Peru will lead the trade talks, and Colombia will be in charge of the overall negotiations.

The EU and the CAN agreed to exchange initial proposals on tariff reduction modalities by mid-November. These will be discussed during the December round of the talks, which will attempt to define the objectives and methods for the negotiations. Parties are expected to submit initial market access offers in time for discussion at a meeting during the first quarter of 2008. Both sides hope that the negotiations can be completed within two years.

Asymmetries Will Be a Challenge

The EU made clear from the start that it would only negotiate with the Andean countries as bloc. However, disparity between the different parties' economies is likely to present a major challenge in the trade negotiations. While it is more or less expected that all CAN countries will obtain longer implementation periods for tariff concessions, and perhaps other flexibilities as well, Bolivia and Ecuador are requesting special treatment due to the smaller size of their economies. In addition, Bolivia confirmed in September that it was not prepared to negotiate concessions contrary to its national interests in services, investment, intellectual property rights or public procurement.

With regard to the limitations sought by Bolivia, Europe's chief negotiator Juan Aguiar Machado said the EU would take into account the problems and sensitivities of other CAN members. He added that Bolivia's specific concerns would be addressed in the detailed negotiations that would follow the establishment of a broad framework that would apply to all parties.

Another hurdle facing the CAN is the determination of a common baseline tariff for the market access negotiations. While the Andean Community is a customs union on paper, the regime allows member countries to maintain numerous exceptions to the common external tariff they adopted in 1995. CAN countries are to meet on 15 November to try and come up with an average figure from which tariff reductions would start.

Venezuela Ponders CAN Re-entry

In related news, Venezuela is considering reintegrating the CAN, although it also intends to remain a member of Mercosur, which comprises Argentina, Brazil, Paraguay and Uruguay. In April 2006, President Chavez withdrew his country from the Andean Community, at least partly in protest to Colombia and Peru having negotiated free trade agreements with the United States (Bridges Year 10 No.3 page 18).

Venezuela's economy dwarfs those of the current Andean Community members, and it re-entry into the bloc could further exacerbate the asymmetries in the EU-CAN negotiations. It is likely, however, that Venezuela will only rejoin the group as an associate member, if it does so at all.

US Congress to Tackle Farm Bill and Yuan Exchange Rate

The US Senate is expected to start debate on a new farm bill in the third week of October. Congressional consideration of controversial pending legislation on China's currency is also on the cards in the coming weeks.

While the final details of the new farm bill to be submitted to the Senate Agriculture Committee by its chair Tom Harkin were not known at press time, it was already clear that the legislation would differ from that adopted by the House of Representatives in July.

For instance, it was expected that the Senate version would propose to lower the US\$1 million income cap for individual farmers eligible for subsidies approved by the House. Confidential draft legislation, circulated for comment by Senator Harkin in August, would have limited direct and counter-cyclical payments to individuals in a given crop year to US\$50,000, and capped marketing loan gains and loan deficiency payments at US\$150,000. The House-approved bill grants US\$65,000 for direct payments and US\$65,000 for counter-cyclical payments, while marketing loan gains are unlimited. In all, the Senate bill would probably reduce direct payments to farmers by US\$1-2 billion, Mr Harkin said on 3 October.

Like the House-approved legislation, the Senate farm bill is expected to include the administration's proposal that counter-cyclical payments should be based on revenue rather than price, but only as an option that farmers could choose. In a 24 September teleconference, acting agriculture secretary Chuck Conner described revenue-based countercyclical payments as 'the absolute best disaster help' that can be given to farmers since they would respond to situations where a "producer may have had a very, very high price and unfortunately no crop to sell under that price." He also warned that direct payments tied to production might not be considered as Green Box support at the WTO. "This would be a very, very unfortunate path for the new farm bill to take," he said.

Senator Harkin reportedly opposes the permanent disaster relief programme adopted by the House. He may, however, have to accept it since the measure is included in the Finance Committee's funding package, which would also provide more support for his high-priority areas, i.e. conservation, rural development and renewable energy programmes.

The new Senate farm bill is expected to propose an overhaul of US food aid in order to make it more effective (the Government Accountability Office found this spring that overhead now counts for 65 percent of US emergency food aid). According to Reuters, the bill would set aside US\$600 million a year for longer-term programmes designed to bolster agriculture and health in fragile countries, rather than just responding after crises have hit. Even more controversially, it would also establish a four-year pilot programme worth US\$100 million for buying US food aid from overseas, deviating from long-standing procurement rules that require domestic crops. US farmers and shippers adamantly oppose using the agriculture budget for such purchases.

Congress and Administration at Odds over China Legislation

Congressional action is also expected in late 2007 or early 2008 on two bi-partisan bills on currency policy reform. The Senate Finance Committee has already approved (by 20-1) bill S. 1607, introduced by Senator Max Baucus with 11 co-sponsors, including presidential candidates Hillary Clinton and Barack Obama. A competing bill (S. 1677) by Senator Christopher Dodd and 10 other sponsors has passed in the Committee on Banking, Housing and Urban Affairs. Neither, however, has yet been debated by the Senate as a whole. Nor has similar legislation been introduced in the House of Representatives.

The primary goal of both bills is to oblige the US government to take action against the yuan's low exchange rate for the dollar. Bill S. 1677 instructs the Secretary of the Treasury to find that country is manipulating its currency if it has (i) a material global current account surplus; (ii) significant bilateral trade surpluses with the United States; and (iii) engaged in prolonged

one-way intervention in the currency markets. The legislation proposed by Senator Baucus concerns action against countries designated by the Treasury as having a 'fundamentally misaligned' currency based on the criterion of "a significant and sustained undervaluation of the prevailing real effective exchange rate." The bill would require the administration to take the currency misalignment into account when calculating anti-dumping duties, as well as prohibit the federal government from procuring products or services from such countries.

Both bills would require the US government to consult with the country concerned. Should those consultations, and subsequent negotiations under IMF auspices, not produce a change in its exchange rate policy, the US Trade Representative would have the legal obligation to initiate dispute settlement proceedings at the WTO.

The Bush administration has so far resisted popular pressure to make China revalue the yuan through legislation or litigation. In September, treasury secretary Henry Paulson warned that business leaders he had consulted on the pending bills had expressed serious concern over the dangers of taking "unilateral punitive action that could lead to a trade war or that would be unsettling to the markets." Senator Charles Schumer, a sponsor of the Baucus bill, retorted that it was "Alice in Wonderland logic to say that when the Chinese manipulate their currency, it helps our exports."

The US has also taken issue with China's export restrictions on raw materials used to produce steel, computer chips and other consumer goods. The US alleges that such measures amount to 'price manipulation' since they ensure that domestic manufacturers have an oversupply of cheap commodities, and thus a huge edge over foreign competitors. The US made these remarks 'for the record' during a September WTO review of China's implementation of its accession commitments, rather than as a prelude to a new WTO dispute, a US trade official said.

EU GMO Update

Reflecting wide-spread mistrust of genetically engineered farm and food products in Europe, EU agriculture ministers on 26 September once again failed to muster the qualified majority required for the authorisation to market genetically modified organisms (GMOs) found safe by the European Food Safety Authority. The continued stalemate means that the final decision will be taken by the European Commission later this year.

The products at issue were three strains of insect-resistant and herbicide-tolerant maize. The market approval sought covered all uses except cultivation. So far, every EU-wide GMO marketing authorisation granted since the approval process resumed in 2004 has been given by the Commission after member states failed to reach a decision. Luxembourg, Greece and Austria have been among those consistently voting against GMO approvals.

In related news, the European Court of Justice (ECJ) on 13 September overturned a blanket ban on the cultivation of genetically modified organisms (GMOs) in Upper Austria. The decision dealt a blow to the region, which sees itself as a pioneer of GM-free farming, with broad popular support.

The European Commission had already condemned the ban in 2003, and again in 2005. The ECJ noted that Austria had not been able to refute the Commission's argument that the ban could not be justified by new and 'uniquely local' scientific evidence. It also ruled that governments had no right to deprive individual farmers of the choice to grow biotech crops approved for commercial cultivation in the EU. With the ECJ's rejection of Austria's appeal, the region has exhausted all legal avenues to keep its total cultivation prohibition in place. However, uncontested precautionary legislation in Upper Austria will continue to make it difficult for farmers to get permission to use GM seeds and plants.

TRIPS Amendment Vote Delayed in EU

Parliamentarians are holding off a vote on a new public health provision until EU governments guarantee that they will not seek to hinder developing countries' access to affordable drugs.

The European Parliament's international trade committee on 9 October once again prevented the ratification of a controversial amendment to WTO intellectual property rules aimed at easing poor countries' access to patented drugs (for details of the amendment, see page 9). The committee cited a continuing failure by EU member states to guarantee that they would help developing nations manufacture and import affordable medicines.

On 12 July 2007, EU parliamentarians across the political spectrum passed a resolution making their consent to the amendment conditional on the Union's member governments promising political and financial support for developing country public health programmes. Foremost among the demands was an explicit joint statement from the European Commission and EU member states that the latter would remain free to use all exceptions in the TRIPS Agreement under their domestic patent laws to authorise the production and export of generics to address developing countries' public health needs. They also asked the statement to "ensure that the Commission refrains from taking action to interfere with these proceedings."

The parliamentarians' mistrust of the member states' true commitment to facilitating developing countries' access to generics stems partly from a sharp exchange between EU Trade Commissioner Peter Mandelson and Thai Health Minister Mongkol Na Songkhla over Thailand's decision to issue compulsory licences for two HIV/AIDS drugs and one heart disease treatment (Bridges Year 11 No.1 page 17).

In a letter dated 10 July, Commissioner Mandelson expressed concern that the Thai government might be taking 'a new approach' to access to medicines. Pointing to Bangkok's statement asserting that pharmaceutical companies "should offer their drugs for no more than 5 percent above the generic cost," he argued that a 'systematic policy' of applying compulsory licences would be 'detrimental to the patent system'. Such an approach, he maintained, carried the risk of scaring away pharmaceutical investment, and did not appear to be justified by TRIPS rules and associated flexibilities.

The EU trade chief encouraged the Thai government to seek 'direct discussions' with the patent-holding companies, particularly with France's Sanofi-Aventis, the makers of Plavix, a blood thinner used to treat a non-communicable heart disease. Minister Mongkol countered that the 5 percent premium applied only to the three medicines for which compulsory licences had been issued to secure generics for government health programmes. He emphasised that it was not applicable to the private market for the three drugs or to any drugs not under compulsory licence. Nor was the premium a criterion used to determine whether to issue compulsory licences, he said, asking Mr Mandelson for evidence to support his allegations that this was the case. Bangkok has maintained that it had tried to negotiate lower prices with the companies in question – although it is not required to do so by WTO rules – but to little avail (see related story in Bridges Year 11 No.2 page 17).

Mr Mandelson's letter has been heavily criticised by parliamentarians, as well as civil society organisations. Médecins sans Frontières and Oxfam noted that his message to Thailand differed markedly from the guarantees sought by the European Parliament. "We are surprised that your intervention made in the name of the European Union comes at the very moment the European Parliament is requesting the Council and the Commission to find ways to solve issues around access to medicines," they wrote in a letter to the trade commissioner.

The European Council, the Commission and the Parliament were to hold a 'trialogue' to discuss this request on 17 October. A parliamentary vote on the TRIPS amendment ratification is scheduled for 22 October.

Compliance Is a Hard Nut to Crack in the Biotech Dispute

Alessandra Arcuri

With the 21 November deadline rapidly approaching for the implementation of WTO rulings in the biotechnology dispute, the European Union has few options for full compliance with the panel's findings.

Difficulties arise both from the ambiguities left in the September 2006 panel reports, as well as the complex European legal structure governing the approval of genetically modified organisms (GMOs). As is well known, three groups of measures were challenged and found in violation of WTO law: (i) the EU's so-called *de facto* general moratorium on GMO approvals; (ii) some 'product-specific measures', i.e. the EU's failure to approve several specific GMOs; and (iii) a number of EU member states' safeguard measures (Bridges Year 10 No. 7 page 13).

When it comes to implementation, the first two sets of measures do not present major problems. With respect to the part of the rulings concerning the 'general' moratorium, despite some doubts voiced by the US,¹ it seems clear that full implementation has been achieved both because the moratorium has been judged 'applicable to *all* applications for approval' and because the EU resumed GMO approvals in May 2004. In relation to the EU-wide product-specific measures, it suffices to note that by the beginning of 2007, most of the contested products had already been either approved by European authorities or withdrawn by the applicants.²

Of course, it does not follow that the rulings related to the general moratorium will have no influence on future European politics regarding GMOs. While Commission spokesman for trade issues Peter Power stated that the impact of the judgement was entirely 'of historical interest', its political relevance should not be underestimated. The importance of decisions about past issues is well-captured by George Orwell's idea that those who control the past, control the future. The current activism of the Commission in approving (*de facto* unilaterally) several new GMOs lends support to this observation.

Where the Trouble Begins

While compliance with the general moratorium and product-specific ban rulings looks assured, individual EU member states' national approval bans do indeed present major problems of implementation. In this respect, the European Commission does not have many viable options, and the few that exist are unlikely to be found satisfactory by the complainants (i.e. the US, Canada and Argentina).

The solution most likely to satisfy the complainants would be the withdrawal of the safeguard measures maintained by six member states at the time of the ruling. To date, only Italy has done so, but the other five show no signs of following suit. Given that this solution is unlikely to emerge spontaneously, the Commission could go in two directions to implement the rulings. The first would be taking further action to force the member states to lift their bans. Alternatively, the Commission could argue that something has changed and that the existing safeguard measures are now in compliance with the rulings.

Forcing Withdrawal

The Commission could ask member states to drop their national safeguard measures by submitting a draft decision requesting them to lift the bans. Indeed, the Commission already tried this back in 2005: a decision was first submitted to the Regulatory Committee in accordance with the so-called comitology procedure and, after the Committee failed to reach a decision, was forwarded to the Council on 24 June 2005. The latter rejected the Commission's proposal in its entirety, reaching – for the first time ever – a qualified majority on issues concerning GMOs approval!

At this point, the Commission could have re-submitted a decision to the Council. Such a strategy was in fact pursued in the case of Austria, but the Council rejected the proposal on 18

December 2006. On 20 February 2007, the Council once again reached a qualified majority to reject the Commission's draft decision, this time calling upon Hungary to lift its bans (not part of the measures contested in the WTO dispute). Based on these precedents, there is little hope that the Council will change its position in the near future.

One might still argue that the Commission could challenge the member states' measures by bringing an infringement action before the European Court of Justice (ECJ).³ Even if this option is legally conceivable, in practice it would be highly controversial. In substantive terms, the Commission might argue that the measures are violating EU law, but the ECJ's acceptance of such an argument would render the comitology procedure established by the law almost meaningless. Another argument that the Commission could present to the court would be the direct effect of WTO law. This, however, is a much contested doctrine, and the politically charged atmosphere surrounding GMOs does not provide the best of opportunities for trying to apply it.⁴

If the question is legally intricate at best, politically it would be highly inappropriate for the Commission to initiate litigation at the ECJ. Thus, it seems that the Commission cannot do much more than what it has already unsuccessfully attempted in order to force the member states to revoke their bans.

Arguing for Compliance

The main reasoning of the panel for finding the national bans in violation of the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures was two-fold: the documents relied upon by the member states did not qualify as a risk assessment as defined in Article 5.1 and Annex A(4) of the SPS Agreement. Furthermore, Article

Continued on page 22

5.7, which allows countries to take provisional measures when available scientific evidence is insufficient to determine a product's safety (see box below), was not applicable since a proper risk assessment had already been conducted both by the EU's scientific committees and by the national competent authorities. This interpretation has been criticised on various grounds; the main problem, in my view, is that WTO Members could easily pre-empt the rights of others to invoke Article 5.7 by conducting a risk assessment first. In other words, under the panel's interpretation there is a serious risk that Article 5.7 will be *de facto* inapplicable.

Under this scenario the only way to achieve compliance is for the member states to conduct a new risk assessment that meets the requirements of Article 5.1. At present, however, this is not likely to happen. However, Article 5.7 may be somewhat resuscitated if one re-reads the rulings in light of the panel's annexed letter (annex K of the reports), opening up another road to compliance.

SPS Article 5.1:

"Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organisations."

SPS Article 5.7:

"In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organisations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time."

A Possible Way Out?

It has been argued that the panel's letter has somewhat relaxed the straight-jacket interpretation given in its original reports.⁵ In particular, the part of the letter stating that the panel's findings "leave room for the possibility that even if at a given point in time relevant scientific evidence is sufficient to perform a risk assessment, a situation might subsequently arise where the relevant scientific evidence could be considered insufficient to perform a risk assessment [...] It is conceivable [...] that relevant new scientific evidence would negate the validity of the scientific evidence on which an existing risk assessment relied, without, however, being sufficient, in quantitative and qualitative terms, to allow the performance of a new risk assessment." Accordingly, one could argue that, should a new risk assessment be conducted by the countries imposing the bans, and should this prove that the relevant scientific evidence is no longer sufficient, Article 5.7 might still be invoked (provided that its other conditions are fulfilled). It remains to be seen how such a scenario would play out in practice.

While this approach seems more consistent with the overall European approach (for one, because of the importance for the EU of keeping alive the essence of the precautionary principle, embodied by Article 5.7), it is undeniable that it rests on a far-fetched interpretation of the reports where the panel's letter assumes a surprisingly central role. Moreover, it is likely that such a course of action would leave the complainants unsatisfied and spur new controversies; possibly, it would lead to developments similar to those that took place in the *Beef Hormones* saga (see page 11).

These notes have attempted to shed light on why the EU member states' national GMO approval bans are expected to raise serious implementation problems. It follows that the establishment of a compliance panel pursuant to Article 21.5 of the Dispute Settlement Understanding is the most likely next step. Notably, the original dispute focused on specific measures adopted in relation to the approval of GMOs, not European legal framework as such. Ironically, compliance in this case may be at odds with some features of the EU's current GMO approval regime itself.⁶

Alessandra Arcuri is Assistant Professor International Economic Law and Law and Economics, School of Law, Erasmus University Rotterdam. The author is grateful to Sara Poli for thoughtful comments. The usual disclaimer applies.

ENDNOTES

¹ On 21 November 2006, US Ambassador Peter F. Allgeier stated at the WTO Dispute Settlement Body "[a]lthough the EC has approved a handful of biotech applications following the initiation of the dispute in 2003, the EC has yet to lift the moratorium in its entirety."

² Poli, S. 2007. 'The EC's Implementation of the WTO Ruling in the Biotech Dispute' in 32 *European Law Review*, pp. 705-26

³ See Shaffer, G. and Pollack. 2007. *Regulating Risk in the Global Economy: The Law and Politics of Genetically Modified Foods*, Chapter 6. Oxford University Press

⁴ For an overview see Cottier, T. and Schefer, K. 1998. 'The Relationship Between World Trade Organization Law, National Law and Regional Law' 1 *Journal of International Economic Law*, pp. 83-122; see also Antoniadis, A. 2007. 'The European Union and WTO: a Nexus of Reactive, Coactive and Proactive Approaches' in 6 *World Trade Review*, pp. 45-87

⁵ For a brilliant analysis of this issue see Poli, *op. cit.*, pp. 721-23.

⁶ I believe that the implementation problems are in great part related to the fact that both European law concerning GMOs and WTO law simultaneously endorse two contrasting regulatory philosophies: on the one hand, an eminently technocratic approach where risk is conceived as something that can be fully understood by science and thereby rationally managed; on the other hand, a deliberative approach where understanding risk involves scientific knowledge but also culture, psychology and politics. This issue is further analysed in Arcuri, A. *Interpreting the Concepts of 'Risk Assessment' and 'Insufficiency of Scientific Evidence': Juggling Between the Logics of Different Epistemic Communities?* Paper presented at the Seventh Annual WTO Conference, BIICL, May 2000, London

Trade, Climate and Competitiveness

At a recent ICTSD dialogue held in Shanghai, experts and policy-makers shared insights on the impact of current and potential future climate change mitigation measures on China's trade flows and competitiveness.

Carbon Leakage

OECD members are increasingly concerned about 'carbon leakage', i.e. the relocation of energy-intensive industries to countries such as China or India, which are exempt of mandatory greenhouse gas reduction targets under the UN Convention on Climate Change.

Several dialogue participants argued that concerns over carbon leakage were exaggerated. While China has indeed allowed many energy- or natural resource-intensive companies to operate on its territory, further relocations of such industries will not be accepted under the new 'greening trade and investment' strategy. Since mid-2006, the government has also imposed export tariffs on natural resources, eliminated or reduced export tariff rebates and tightened financial credits for processing plants in an effort to control the production and trading of products that require high energy or natural resource inputs.

Competitiveness and Border Tax Adjustments

Views were mixed on how China should respond to potential border tax adjustments (BTAs) in OECD countries. Such initiatives, allegedly aimed at 'levelling the playing field', are already under consideration in the EU and the US (see page 16). Some said that China should start thinking about policy options for offsetting potential risks of foreign BTAs, such as a carbon tax, a carbon-related export tariff, or even taking on mandatory commitments in international agreements. Others argued that BTAs based on the 'levelling the playing field' argument were morally unacceptable since developed countries were responsible for the lion's share of historic greenhouse gas emissions.

It was also pointed out that many countries not bound by the Kyoto Protocol had introduced policies to limit the impacts of global warming. Australia, for instance, will phase out the standard incandescent light bulb by 2009, whereas the EU will only phase out heavy anti-dumping duties on Chinese energy-saving light bulbs by the same deadline.

Impact of Climate Change Policies on Chinese Exports

Some participants believed that energy efficiency requirements in OECD markets had negative impacts on Chinese exporters. According to a recent national survey, industries' direct costs for compliance with technical barriers – including energy efficiency standards – amount to US\$36 billion, while indirect costs reach US\$19 billion. Others argued that China had benefited, and would continue to benefit, from stricter energy efficiency standards. They pointed to significant market access gains for high value-added products, such as new generation air conditioners and energy-saving light bulbs (China produces around 80 percent of the world supply of compact fluorescent light bulbs). In the end, there was an emerging consensus that – as a Chinese proverb states, 'instead of cursing the darkness, light a candle' – the best way forward would be to turn challenges into opportunities.

Technology Transfer

While technology is a central piece of the Chinese climate change strategy, few the latest technologies are currently transferred to the country. For instance, only ten percent of the technologies involved in 9902 international technology transfer contracts in 2005 were patented. Similarly, advanced technologies are rarely transferred under the Climate Convention's Clean Development Mechanism. Chinese experts believe that this is due to a number of reasons, including strict IP protection, licensing or export controls, and non-binding commitments in industrial countries, as well as China's own tariff and non-tariff barriers, and its weak legal system for IP protection, particularly with regard to know-how.

For further details, see www.ictsd.org/dlogue/2007-09-25/

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

BRIDGES Regional Editions

PUENTES

entre el Comercio y el Desarrollo Sostenible

Co-publisher: Centro Internacional de Política Económica para el Desarrollo Sostenible (CINPE), San José, Costa Rica
Web: <http://cinpe.una.ac.cr>

PONTES

entre o Comércio e o Desenvolvimento Sustentável

Co-publisher: Fundação Getúlio Vargas, São Paulo
Web: <http://www.edesp.edu.br>

PASSERELLES

entre le commerce et le développement durable

Co-publisher: ENDA – Tiers Monde, Dakar, Senegal
Web: <http://www.enda.sn>

Other ICTSD Periodicals

BRIDGES Weekly Trade News Digest

A weekly electronic news service on trade, sustainable development and the WTO.
Editor: Trineesh Biswas

BRIDGES Trade BioRes

Co-publisher: IUCN – The World Conservation Union
A bi-weekly electronic news service on trade, sustainable development and biological resources.
Editor: Malena Sell

TRADE NEGOTIATION INSIGHTS

Co-publisher: ECDPM
Bi-monthly publication on trade negotiations of particular importance to Africa and ACP countries.
Editors: El Hadji Diouf, Christophe Bellman and Sanoussi Bilal

ECLAIRAGE SUR LES NEGOCIATIONS

Co-publisher: ECDPM
Publication bi-mensuelle sur les enjeux des négociations commerciales pour les pays d'Afrique et ACP.
Rédaction: El Hadji Diouf, Christophe Bellman et Sanoussi Bilal

PASSERELLES SYNTHÈSE MENSUELLE

Co-publisher: ENDA – Tiers Monde
Publication électronique mensuelle sur les questions de commerce et développement durable d'importance particulière à l'Afrique.

PUENTES QUINCENAL

Co-publisher: CINPE
Servicio de información electrónico quincenal enfocado a la difusión de noticias relacionadas al comercio y el desarrollo sostenible.

PONTES QUINCENAL

Co-publisher: Fundação Getúlio Vargas
Serviço de informação eletrônico quincenal focado na difusão de notícias relacionadas ao comércio e ao desenvolvimento sustentável.

For subscription details, visit <http://www.ictsd.org> or send an e-mail to subscribebridges@ictsd.ch

WTO Meetings

- Oct. 18-19 Committee on Sanitary and Phytosanitary Measures
- Oct. 19 Working Group on Trade and Transfer of Technology
- Oct. 22 Dispute Settlement Body
- Oct. 23-24 Council for Trade-related Aspects of Intellectual Property Rights
- Nov. 6 Committee on Trade and Development – Session on Aid for Trade
- Nov. 14 Committee on Trade and Development – Dedicated Session
- Nov. 19 General Council

Other Meetings

- Oct. 16-17 Expert Meeting on the Participation of Geneva Developing Countries in New and Dynamic Sectors of World Trade
www.unctad.org/
- Oct. 20-22 World Bank and IMF Annual Meeting Washington www.imf.org/
- Oct. 23-24 High-level Dialogue on Financing for New York Development
www.un.org/esa/

New Publications from ICTSD

www.ictsd.org

Selivanova, Yulia. 2007. The WTO and Energy: WTO Rules and Agreements of Relevance to the Energy Sector. Issue Paper No. 1. ICTSD Programme on Trade and Environment

Corrales-Leal, Werner; Baritto, Felipe and Mohan, Sarah. September 2007. Special and Differential Treatment for Small and Vulnerable Countries Based on the Situational Approach. ICTSD Programme on Competitiveness and Sustainable Development

ICTSD. June 2007. Trade and Sustainable Land Management in Drylands. ICTSD Programme on Agricultural Trade and Sustainable Development

Selected Documents Circulated at the WTO

Committee on Subsidies and Countervailing Measures. 14 September 2007. Notification of Laws and Regulations. Responses to questions posed by the United States (G/SCM/Q1/CHN/62)

Dispute Settlement. 4 September 2007. Australia – Measures Affecting the Importation of Apples from New Zealand. Request for consultations by New Zealand. (WT/DS367/1)

Dispute Settlement. 4 September 2007. Brazil – Measures Affecting Imports of Retreaded Tyres. Notification of an appeal by the European Communities. (WT/DS332/9)

Dispute Settlement. 18 September 2007. United States – Preliminary Anti-dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China. Request for consultations by China. (WT/DS368/1)

Negotiating Group on Rules. 10 September 2007. Fisheries Subsidies: Proposed New Disciplines. Revised proposal from Indonesia (TN/RL/GEN/150/Rev.1)

Negotiating Group on Rules. 17 September 2007. Special and Differential Treatment. Proposal from Argentina and Brazil (TN/RL/GEN/151)

Other Selected Resources

Chite, Ralph. July 2007. Farm Bill Budget and Costs: 2002 vs 2007. Congressional Research Service. Washington D.C.

Gallagher, Kevin and Zarsky, Lyuba. September 2007. The Enclave Economy: Foreign Investment and Sustainable Development in Mexico's Silicon Valley. MIT Press. Cambridge. Mass.

Kojima, M.; Mitchell, D. and Ward, W. August 2007. Considering Trade Policies for Liquid Biofuels. World Bank. Washington D.C.

Liapis, Peter. 2007. Preferential Trade Agreements: How Much Do They Benefit Developing Countries. OECD. Paris

Organisation for Economic Co-operation and Development and the UN Food and Agriculture Organisation. 2007. OECD-FAO Agricultural Outlook 2007-2016. OECD. Paris

Teh, Robert and Prusa, Thomas. September 2007. Trade Remedy Provisions in Regional Trade Agreements. WTO. Geneva

Torres, Hector. August 2007. Reforming the International Monetary Fund – Why its Legitimacy is at Stake. In the *Journal of International Economic Law* Vol. 10 No.3

United Nations Conference on Trade and Development. September 2007. Trade and Development Report 2007. UNCTAD. Geneva

Worldwatch Institute. August 2007. Biofuels for Transport: Global Potential and Implications for Sustainable Energy and Agriculture. Earthscan. London

