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LEAD STORIES

AG, NAMA CHAIRS RELEASE DRAFT AGREEMENTS, POINT WAY TO DOHA COMPROMISE

WTO Members will need to drop longstanding demands and agree to deeper subsidy and tariff cuts for there to be any hope of an accord in the troubled Doha Round of trade talks, according to the terms set out in draft agreement texts issued on 17 July by the chairs of the agriculture and industrial goods negotiations.

That further concessions are necessary for a deal is hardly news. What is different this time is that the chairs have identified specific figures for the cuts that they think could form the basis for an acceptable agreement, enabling a comparison between, say, potential constraints on US farm spending and India's future industrial tariff rates.

The numbers, the chairs suggested, indicated that divisions had narrowed and a commercially substantial compromise was within reach – but not without political courage.

Several trade analysts have said that a clear presentation of potential Doha Round compromises would help governments and interest groups assess what was at stake. The chair of the agriculture negotiations, Ambassador Crawford Falconer (New Zealand), said that he hoped to galvanise shifts in countries' bargaining positions by describing a "compromise that no Member can quite bring themselves to articulate."

"You will have to change your positions to reach an agreement," non-agricultural market access (NAMA) Chair Ambassador Don Stephenson (Canada) wrote, reminding Members that he had only been asked to propose a deal because they had failed to strike one on their own. In a similar vein, Falconer wrote that "pain will be required to get agreement," stressing that he had done his best to spread it "in a reasonably balanced way."

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Members are set to provide preliminary reactions to the papers during committee meetings next week, with in-depth negotiations to start at the beginning of September, after the WTO's annual holiday.

Deeper subsidy cuts from US, EU

The agriculture chair's text set out two potential levels of ambition for farm subsidy cuts, linking higher cuts to relatively deeper tariff reduction. It would have the US cap overall trade-distorting support (OTDS) at \$13 billion or \$16.4 billion, equal to a 73- or 66-percent cut respectively.

Though lower than the \$22.5 billion ceiling Washington has formally tabled and even the \$17 billion figure it has broached unofficially, both of the newly proposed upper limits remain higher than the roughly \$12 billion cap sought by the G-20 group of developing countries. The two potential caps also exceed the \$11 billion that the US is estimated to have spent on trade-distorting support last year. Washington, which has maintained that it could not lower the subsidy ceiling any further unless assured of greater market access elsewhere, noted that current payments are low even by recent standards, and wanted to retain the freedom to raise payments to farmers should commodity prices drop.

With regard to the heavily trade-distorting 'amber box' payments that make up a major share of OTDS, Falconer's draft agreement penciled in a 60-percent reduction for the US, matching Washington's own proposal. In theory, the US might be able to meet a relatively low OTDS cap by making deeper reductions to other kinds of trade-distorting support entitlements, especially a barely used 'product-specific de minimis' allowance that would amount to about \$5 billion. However, practical restrictions on how payment schemes can be classified would mean that this would likely entail at least some restructuring of farm subsidy programmes.

Falconer's text would have the EU lower its OTDS spending entitlement by 75 or 85 percent, more than the 70-percent reduction Brussels has proposed.

Of the relatively less distorting components of OTDS, 'blue box' spending would be capped at 2.5 percent of the value of production, while 'de minimis' entitlements would be reduced either to a similar level or 2 percent. Both would be subject to some rules aimed at preventing spending from being concentrated on a small number of products.

Although the standard basis for calculating future product-specific subsidy limits would be spending from 1995 to 2000, Falconer created a special provision for

the US to take into account the entire period from 1995 to 2004, when its payments were higher.

The paper set out rules for the elimination of export subsidies by 2013, in accordance with Members' agreement at the Hong Kong Ministerial Conference in December 2005.

Tariff cuts: more than EU, less than US

As for market access, the agriculture chair's text would have developed countries slash farm tariffs worth 75 percent and above by between 66 and 73 percent, which is higher than the 60 percent that Brussels has described as the most it could tolerate. Though the upper end of this range is close to what the G-20 wanted for industrialised countries, it is lower than the cuts sought by the US. Tariffs lower than 75 percent would be classified into three other bands, each slated for correspondingly gentler rates of reduction.

Developing countries, Falconer suggested, would cut tariffs by two-thirds of whatever is agreed to for developed nations, but would be allowed some adjustments to keep their average reduction below 36 or 40 percent. Although the 36-percent average corresponds to the G-20's own proposal, the group would have to move up to 40 percent in order to get the higher subsidy cuts from the US.

The text makes no mention of a cap on farm tariffs, a G-20 objective to which Japan and the other G-10 countries with heavily protected farm sectors are adamantly opposed.

Flexibilities: few details on 'special products'

Falconer proposed allowing developed countries to ordinarily designate up to 4 or 6 percent of their tariff lines as 'sensitive', making them eligible for tariff cuts one- to two-thirds lower than that demanded by the formula in return for the creation of new import quotas. The EU had wanted 8 percent of tariff lines to be eligible for this flexibility; Japan and the rest of the G-10 had wanted as many as 15 percent. Meanwhile, the G-20, the US and the Cairns Group farm exporters wanted no more than 1 percent of products to be accorded 'sensitive' status.

As per the paper, for the smallest deviation, governments would create new tariff quotas equivalent to 3 or 5 percent of domestic consumption of the product in question. For the full two-thirds deviation from the formula (i.e., a 20-percent instead of a 60-percent reduction), new access opportunities would have to equal at least 4 or 6 percent of domestic consumption. If the country is already importing

substantial quantities of a sensitive product, quota expansion requirements would be softened.

In comparison, Falconer provided no specific details about the number or treatment of the 'special products' that developing countries will be able to shield from tariff cuts to safeguard food and livelihood security and rural development concerns, justifying this on the grounds of insufficient progress.

Debate on the issue has been polarised: the US and some other exporters warn of diminished market access opportunities, while the G-33 developing countries insist that the livelihoods of subsistence farmers should not be made subordinate to export interests elsewhere.

Nevertheless, Falconer wrote that "we are well beyond the utterly entrenched positions of a year ago." He suggested that Members could work on the basis of a G-33 proposal to develop verifiable indicators for food and livelihood security and rural development, and possibly identify a minimum number of products that developing countries would be allowed to designate as 'special' irrespective of what the indicators yield.

In May, Falconer raised the ire of the G-33 by suggesting that no more than 5 to 8 percent of tariff lines should be eligible for 'special product' status, and that even these should all be subject to at least some tariff reduction (see BRIDGES Weekly, 2 May 2007, <http://www.ictsd.org/weekly/07-05-02/story1.htm>).

Other issues on which Falconer refrained from commenting in detail included the special safeguard mechanism (SSM), and the conflicting demands between Latin American countries seeking deep tariff cuts for tropical products and states fearing the erosion of the trade preferences they currently enjoy for the very same crops.

NAMA: "Start with the end in mind"

After playing second fiddle to ever-contentious agriculture for much of the Doha Round negotiations, divisions on NAMA came to the fore last month, when the US and the EU blamed India and Brazil's refusal to cut industrial tariffs for the breakdown of their trade summit in Potsdam (see BRIDGES Weekly, 27 June 2007, <http://www.ictsd.org/weekly/07-06-27/story1.htm>). India and Brazil countered that the farm subsidy reform they were being offered was too paltry to merit deeper tariff reduction.

Acknowledging the many unresolved differences between some Members, NAMA Chair Stephenson encouraged governments "to start with the end in mind" when assessing the deal that he deemed plausible.

"After the modalities I have proposed have been applied," he wrote about his draft negotiating text, "developed countries will have bound tariffs below 3 percent on average, and tariff peaks below 10 percent even on their most sensitive products. The two largest developed Members will have more than 90 percent of their duties below 5 percent and less than 2 percent of duties between 7 and 8.5 percent - their new tariff peaks."

"In the developing countries applying the formula, bound tariffs will be below 12 percent on average, and only a handful will have averages above 15 percent," he added. "In these same countries, 80 to 90 percent of bound duties will be lower than 15 percent, dramatically reducing the "overhang" in their tariff schedules."

Coefficients of 8-9, 19-23

Stephenson's text prescribed a 'Swiss formula' coefficient of 8 or 9 for industrialised countries, while developing nations accept a coefficient between 19 and 23. Under the Swiss formula, a Member's coefficient effectively becomes its new tariff ceiling: when fed through the formula, all duties are slashed to below the level of the coefficient, with lower ones reduced more gently.

A coefficient of 8 would cut the US' average bound tariff rate from 3.3 percent to 2.3 percent. More significantly for trade flows, it would sharply reduce tariffs on the handful of politically sensitive products that Washington has protected throughout half a century of liberalisation – often the very products, such as textiles, that developing countries export competitively. For instance, the highest industrial import tariff applied by the US is 55 percent, according to recent WTO data. A Swiss formula with a coefficient of 8 would slash this to about 7 percent. The EU's top rate would fall from 26 percent to 6.1 percent.

Developing countries would face larger percentage cuts to their bound tariff rates. Brazil's average bound tariff would fall from 30.8 percent to 11.75 percent with a coefficient of 19, and to 13.1 percent with a coefficient of 23. Its current average applied rate is 12.6 percent. The 30 coefficient it was seeking would have yielded a 15.2 percent average bound ceiling. According to calculations carried out by the WTO Secretariat last year, a coefficient of 20 would force reductions to duties currently levied on about half of Brazil's tariff lines; for India, the figure would likely rise over 60 percent.

The US, the EU, and other developed countries had pushed for coefficients of 10 and 15, arguing that this was necessary for "real market access," by which they mean a substantial cut in applied tariffs rather than

simply the bound ceiling rates that are the standard basis for WTO calculations.

Brazil and India, in contrast, had sought a coefficient no lower than 30, complaining that the industrialised countries' demands would require poor countries to make disproportionately deep cuts to their industrial tariffs. The NAMA-11 bloc, to which they belong together with other developing countries such as South Africa, Indonesia, and Argentina, has noted that coefficients as far apart as 10 and 35 would cut their own bound rates by close to 50 percent, and lead to roughly equivalent 25-percent cuts to the tariffs applied both by them and by rich countries (see BRIDGES Weekly, 13 June 2007, <http://www.ictsd.org/weekly/07-06-13/story1.htm>).

The figures in Stephenson's text closely mirrored a late-June "possible middle ground solution" proposed by eight Latin American and Asian nations, in which they called for a developed country coefficient of "less than 10," and one for developing countries "between the upper teens and the low twenties" (see BRIDGES Weekly, 27 June 2007, <http://www.ictsd.org/weekly/07-06-27/story1.htm>). Sources suggest that the NAMA-11 gave that notion a cool response. Furthermore, most of the sponsors of that paper, such as Chile, Colombia, Costa Rica, Hong Kong, Mexico, Peru, Singapore, and Thailand, that either have unusually low tariffs to begin with or already face duty-free trade with their principal trading partners due to bilateral agreements, and thus are less likely to worry about major dislocation as a result of the Doha Round.

Stephenson also provided for developing countries to shield a limited proportion of imports from the full force of the reduction formula: they would be allowed to subject up to 10 percent of tariff lines to only half of the regular cut, so long as this did not affect more than a tenth of total manufactured imports. Alternately, they could exclude 5 percent of tariff lines from cuts altogether, up to a maximum of 5 percent of import volume. Developing countries electing not to use either flexibility would be eligible for a coefficient three points higher than that agreed to for their peers.

Only 31 developing countries will apply the overall tariff reduction formula. Least-developed countries are exempt from reduction commitments. Different approaches would be used to determine the future tariff ceilings of small economies and countries with a high proportion of unbound tariff lines.

China and other recently acceded Members had asked to be granted a coefficient higher than other developing countries, as a result of the far-reaching liberalisation commitments they had to make in order to join the

WTO. However, Stephenson's text only granted them extended implementation periods.

The NAMA chair said little about sector-specific liberalisation initiatives, suggesting simply that sectoral negotiations would need to be finished in time for Members to reflect them in their commitment schedules.

Key Members' reactions muted

The US and the EU gave the papers a cautious welcome. Gretchen Hamel, a spokesperson for the US trade representative's office, said that both texts would "demand close analysis as we develop a comprehensive US reaction." She stressed that Washington would "participate actively and constructively in the upcoming consultations and negotiations" to revise the two documents.

EU trade and agriculture spokespersons said that the draft negotiating texts "represent a useful step forward." "Our first reaction is that the texts provide a basis for further work in the Doha round," they said in a statement, "though there are points on which we have important concerns and other significant issues in the negotiations that are not included in these texts."

In the agriculture text, Falconer refrained from commenting on the extension of geographical indication protection to products other than wine and spirits (say, Parma ham), a key EU demand that is strongly opposed by Argentina and the US.

Reuters reported from New Delhi that Indian officials indicated it would be premature to comment on the proposals prior to a more careful examination, but that the G-20 would release a statement on them later in the week.

The most critical initial reaction from a major player in the negotiations came from Brazilian Foreign Minister Celso Amorim, who told journalists in Brussels on 18 July that the "papers have problems," according to Associated Press. Following a meeting with EU Trade Commissioner Peter Mandelson, he said that Brazilian officials were still in the process of studying the texts, but that they appeared to lean more in the direction of industrial tariff cuts than towards farm subsidy reform.

Civil society, lobby groups, France more vocal

Oxfam International described the farm subsidy cuts provided for in Falconer's paper as "a step in the right direction," though not quite enough. However, it criticised the industrial tariff cuts demanded of developing countries, warning that they would cause unemployment and impede industrial development.

Oxfam concluded that “the overall cost to developing countries of opening their agricultural and industrial markets remains far too high in return for the modest reforms in agriculture in rich countries.”

Focus on the Global South, an advocacy group, said that the draft agriculture text’s modest reforms to rules governing ‘green box’ subsidies would let the US and the EU go “scot-free” on farm reform. Such payments, which are deemed not to distort production, are exempt from reductions in the Doha Round. Nevertheless, the advocacy group’s Aileen Kwa argued that green box spending “is trade distorting by its sheer quantity,” pointing to the fact that the bulk of EU and US subsidies now fall in this category.

Meanwhile, others argued that the farm subsidy cuts set out by Falconer went unacceptably far. Using language more commonly heard from developing country governments, French Agriculture Minister Michel Barnier, France’s agriculture minister, said the “WTO document confirms the deep imbalance in the Doha negotiations” – except he meant that the tilt was against the EU. Ireland’s agriculture minister and EU farm groups expressed similar views.

While France and Ireland have been at the forefront of a group of EU member states that have repeatedly called for no new concessions on agriculture trade, Falconer’s text did not appear to be much more popular with the farm lobby on the other side of the Atlantic. The National Cotton Council said it was “alarmed” by the paper’s inclusion of cotton-specific additional subsidy reductions, as proposed by Benin, Burkina Faso, Chad, and Mali, four West African countries affected by US cotton subsidies (see BRIDGES Weekly, 8 March 2006, <http://www.ictsd.org/weekly/06-03-08/story2.htm>). These additional reductions would see ‘amber box’ cotton payments slashed by over 80 percent even if the general reduction is only 60 percent. Claiming that the WTO had been “taken hostage by a small, select set of interests that unfairly target a specific sector” of the US economy, the group urged the Bush administration to seek the removal of the cotton-specific provisions.

US industry group the National Association of Manufacturers was more positive, calling Stephenson’s text “a focal point for debate,” albeit one that did not cut tariffs deeply enough.

Based on Members’ reactions, Falconer and Stephenson will revise their texts in September. If there are signs that countries may be able to salvage a deal, delegates say that ministers would be brought to Geneva to finalise an agreement. Without an accord by early 2008, the Doha Round is expected to go into hibernation for years, if not indefinitely, as election campaigns get underway in the US and then in India.

ICTSD reporting; “France slams new WTO proposals,” AGENCE FRANCE PRESS, 17 July 2007; “India says too early to comment on WTO texts,” REUTERS, 17 July 2007; “Rich nations get off easy in WTO draft - aid groups,” REUTERS, 18 July 2007; “Brazil says WTO proposals have ‘problems,’” ASSOCIATED PRESS, 18 July, 2007

BRAZIL LAUNCHES WTO CASE AGAINST US FARM SUBSIDIES

Brazil has launched a WTO case against the legality of a broad range of US farm support programmes.

The request for consultations, dated 11 July, is the first step in WTO dispute settlement procedures. Closely mirroring a complaint made by Canada earlier this year, it comes at a time when hopes for a Doha Round agreement – and with it new caps on agriculture subsidies – are diminishing.

The Brazilian government alleges that since 1999, the US has often exceeded its WTO spending limits for heavily trade-distorting agriculture subsidies to support commodities including wheat, corn, sorghum, cotton, rice, and livestock. It is also targeting some tax breaks and export credit guarantees, arguing that they are tantamount to prohibited subsidies.

The case follows Brazil’s own successful WTO suit against US support for cotton growers in 2005. If the two sides cannot resolve their differences within 60 days, Brazil will be free to seek the creation of a panel to adjudicate the dispute.

Specifically, Brazil claims that Washington surpassed its \$19.1 billion entitlement for such ‘amber box’ spending in 2000, 2001, 2002, 2004, and 2005, as well as the prior \$19.8 billion ceiling in 1999. With the exception of 2002, these are the same years targeted by Canada.

The document setting out the complaint highlights the US’ failure to notify the WTO of its subsidy expenditures since 2001 – before spending under the lavish 2002 farm bill came into effect – making its compliance difficult to assess. Nevertheless, “available public information indicates that the domestic support that the US provided... exceeded its commitment levels” in 2002, 2004, and 2005, thus violating multilateral trade rules. The public information Brazil refers to comes primarily from US government sources.

As for the years from 1999 to 2001, Brazil argued that the US had improperly notified amounts within its spending limits, by excluding payments under a range of programmes -- including ‘production flexibility

contract' payments, market loss assistance payments, and various disaster relief schemes. In Brazil's view, these payments should have been classified as amber box support; taking them into account would have put the US over the limit.

US officials dismissed Brazil's claims, as they had done with Canada's, arguing that subsidies remained within legal limits. Gretchen Hamel, a spokesperson for the US trade representative's office told Bloomberg that the "claims were unfounded when they were made by Canada, and they are just as unfounded when they are made by Brazil."

Hamel also said she was "puzzled" by the Brazilian government's decision to target an export credit guarantee programme, saying that Washington had already modified the scheme in question in response to the cotton ruling. The US' compliance with that decision – disputed by Brazil – is currently being examined by a separate panel.

Brazil emphasised that the systemic significance of the matter justified pursuing a case of its own, even though it had previously signed onto Canada's request for consultations.

A press release from the Brazilian foreign ministry said that "mere participation as a third party in the dispute recently brought by Canada on the same subject would not offer an opportunity commensurate with Brazil's needs." As a third party, Brazil would have been able to make presentations to the dispute panel, but would not have been eligible to take any retaliatory action.

Canada has openly acknowledged that its case aims to pressure Washington to cut trade-distorting farm subsidies, both as part of the Doha Round negotiations and as Congress writes the new farm bill mapping out future agricultural spending. Ottawa requested consultations with the US in January, and in June sought the creation of a panel to rule on the dispute after the disagreement could not be resolved (see BRIDGES Weekly, 13 June 2007, <http://www.ictsd.org/weekly/07-06-13/wtoinbrief.htm>).

The US blocked this request, but is unable to do so a second time. The Canadian and Brazilian cases are so similar that one source said that panels in the two cases could conceivably be fused.

Notably, Brazil's request did not mention the issue of whether US farm subsidies were distorting world prices to the detriment of producers elsewhere. Trade-distorting subsidies with such adverse effects are not permitted under the WTO Agreement on Subsidies and Countervailing Measures. In its initial request for consultations, Canada had argued that US corn subsidies were causing such "serious prejudice,"

undercutting Canadian farmers and pushing down world prices. However, it refrained from asking the dispute panel to investigate the issue.

If the WTO talks collapse completely, a series of disputes may follow, as countries seek to win through litigation at least part of what they could not achieve at the negotiating table. Many of these could deal with agricultural subsidies that cause "serious prejudice" to farmers elsewhere.

Development campaign group Oxfam has identified several US and EU farm subsidy programmes that would be vulnerable to WTO challenge, either for adversely affecting farmers in developing countries or illegally encouraging the use of domestic inputs in processed goods. US subsidies to corn, rice, and sorghum were pushing down global prices for the commodities, Oxfam said in a November 2005 paper, affecting farmers in developing countries as diverse as Argentina, Haiti, Ghana, Guyana, Kenya, South Africa, and Zambia. However, current high commodity prices for corn in particular – and the resulting drop in subsidy disbursements – may make "serious prejudice" hard to establish.

The same report contended that Brussels' largesse to tomatoes, peaches, and citrus fruits was denying commercial opportunities in the EU or elsewhere to producers in countries including Brazil, Chile, and China.

However, some trade analysts warn that a spate of controversial new dispute ruling would put a serious strain on the WTO system, and could boost support in the US Congress for pulling out of the multilateral institution altogether.

ICTSD reporting; "Brazil Files Broadest Attack on U.S. Farm Aid at WTO," BLOOMBERG, 12 June 2007.

OTHER NEWS

EUROPEAN PARLIAMENT DELAYS VOTE ON TRIPS AMENDMENT, PENDING NEW SUPPORT FOR AFFORDABLE DRUGS

The European Parliament has delayed the ratification of an amendment to WTO intellectual property rules aimed at easing poor countries' access to patented drugs, demanding that EU member states first take concrete steps to help developing nations manufacture and import medicines at affordable rates.

The parliament's international trade committee announced on 17 July that promises of monetary and political support from the EU's 27 member governments remained insufficient.

Five days earlier, European Parliament members from across the political spectrum passed a resolution identifying the complementary policies they deemed necessary to ensure that ratifying the amendment would promote access to medicines in poor countries. They also demanded that the EU stop seeking WTO-plus intellectual property protections for pharmaceuticals in bilateral and regional trade negotiations with developing countries.

However, EU member states' inadequate response to these objectives made it impossible to approve the amendment, the trade committee said. With the committee's decision pushed back to 10 September, the issue will not come up for a parliament-wide vote later that month or in October. Under EU procedures, the European Parliament must assent to the potential amendment before each of the member states can ratify it.

WTO Members agreed on the formal changes to the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) in December 2005. For the amendment to enter into force on schedule, two-thirds of WTO Members – some 100 countries – need to ratify the changes by 1 December. Thus far, however, only seven have done so (see BRIDGES Weekly, 27 June 2007, <http://www.ictsd.org/weekly/07-06-27/story4.htm>).

The amendment makes permanent a 2003 waiver from TRIPS rules setting out the conditions for Members to legally issue compulsory licences for the production and export of cheap generic copies of patented drugs to poor countries.

Echoing civil society critics of the proposed amendment such as Médecins sans Frontières (MSF), several members of European Parliament (MEPs) have complained the waiver on which it is based is so complex that it has never once been used to export medicine.

The resolution MEPs adopted on 12 July stressed that the TRIPS amendment "represents just part of the solution to the problem of access to medicines and public health." In it, they urged the Council of EU member governments to "support the idea... that other measures to improve healthcare and infrastructure are equally indispensable."

The entry into force of the TRIPS Agreement in 1994 had hampered developing countries' ability to produce and afford generic drugs, the resolution suggested, and

the amendment's mechanism was difficult, if not impossible to use effectively.

Arguing that "EU policy should aim at maximizing the availability of pharmaceutical products at affordable prices in the developing world," the parliament called on the European Commission and member states to commit funding for transfer of pharmaceutical-related technology to poor countries. It also asked them to boost financial support for the development of drugs to treat diseases that disproportionately affect developing countries, and to play a more active role in the World Health Organisation's intergovernmental working group (IGWG) that is seeking to develop alternatives to patents to spur pharmaceutical innovation (see BRIDGES Weekly, 23 May 2007, <http://www.ictsd.org/weekly/07-05-23/story2.htm>).

Financial assistance aside, the resolution also called for the European Commission and member states to provide political support for governments that seek to "provide essential medicines at affordable prices under their domestic public health programmes" by using flexibilities in TRIPS rules permitting the suspension of patents in exchange for a royalty payment.

Such support is not always forthcoming in practice. Alexandra Heumber, a spokesperson for MSF in Brussels, said that compulsory licences for HIV/AIDS medicines recently issued by Brazil and Thailand provided Brussels with an opportunity to reaffirm its support for the use of the flexibilities highlighted in the 2001 Doha Declaration on TRIPS and Public Health. Instead, however, the European Commission questioned their decisions, even though they were well in line with WTO rules (see BRIDGES Weekly, 31 July 2007, <http://www.ictsd.org/weekly/07-01-31/story2.htm>).

MSF believes that compulsory licensing and the ensuing generic competition could help make expensive second-line HIV/AIDS treatment more widely affordable in developing countries such as Thailand. Heumber noted that after Thailand suspended the patent on HIV/AIDS drug efavirenz, enough of the medicine was imported in a single day in January to allow 20,000 additional patients to be treated.

Several of the parliament's demands echoed recommendations made by Frederick Abbott, a professor of international law at Florida State University, and Jerome Reichman, a law professor at Duke University, in a report on the TRIPS amendment commissioned by the EU. In that paper, they warned that making the amendment functional for access to medicine would require vigilant and deliberate government action, including a "combination of political will, good lawyering, financial support for appropriate implementation efforts and collective action." They

wrote that the effectiveness of the amendment could be enhanced through regional cooperation on procurement and compulsory licensing, as well as the creation of funding mechanisms other than patent rights to encourage the development of new drugs.

In a recent interview with Bridges, Abbott suggested that attempts to re-negotiate the TRIPS amendment would likely end in a stalemate, and potentially risked producing even more restrictive provisions.

Targeting EU policy vis-à-vis bilateral free trade agreements, the parliament asked member states to explicitly mandate the Commission not to “negotiate pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, in the framework of the negotiation of the Economic Partnership Agreements with the ACP [African, Caribbean, and Pacific] countries and other future bilateral and regional agreements with developing countries.”

This prompted EU Enlargement Commissioner Olli Rehn to insist that the EU was “committed” to not including provisions affecting access to medicine in either the EPAs or other trade agreements. Intellectual Property Watch reports that Rehn, speaking in the place of Trade Commissioner Peter Mandelson, said that the fact that the waiver had not been used was not very significant, since it had strengthened the hand of developing countries in price negotiations with pharmaceutical companies. However, the study by Abbott and Reichmann said that on the basis of draft agreement texts in the EPA negotiations, the European Commission had been pushing for intellectual property provisions that risked impairing the availability of generic drugs.

MSF’s Heumber welcomed the “strong coalition” of support from all political groups for the resolution, describing it as proof that the parliament was aware that many policies would need to be pursued to safeguard access to medicine for patients in the developing world. She reiterated that all governments that signed on to the Doha Declaration on TRIPS and Public Health should support developing nations’ efforts to use compulsory licences in order to support public health programmes.

ICTSD reporting; “Parliament Delays WTO IP Health Deal Till EU Boosts Bilateral Drug Access,” INTELLECTUAL PROPERTY WATCH, 12 July 2007; “EU pledges easier drug access for poor nations,” REUTERS, 11 July 2007.

NO CONSENSUS ON FISHERIES SUBSIDIES AS DELEGATES BREAK FOR SUMMER

Convergence on fisheries subsidy disciplines continued to elude delegates to the WTO Negotiating Group on Rules at the committee’s last gathering before the global trade body’s annual August break.

Discussions at the 10 July meeting focused on two new proposals on special and differential treatment (S&DT) for developing countries, and artisanal and small-scale fisheries. The papers, from Indonesia (TN/RL/GEN/150) and Brazil (TN/RL/W/212), followed appeals by the chair for a clearer definition of these issues, which Members have struggled to outline over recent months.

Marine conservationists and coastal states also petitioned the WTO on these issues ahead of last week’s meeting.

Members remain divided into two broad camps on how to structure rules aimed at curbing fisheries spending and consequent over-fishing. Japan, Korea, Taiwan and the EU want a ‘bottom-up approach’ that would ban specific types of subsidy payments, such as those that directly contribute to increased fishing capacity. They contend that this would make for clear, workable, and effective fisheries regulations.

In contrast, several countries, including New Zealand and the US, have argued for a ‘top-down’ method that would ban all fishing subsidies save for some negotiated exceptions. Supporters of this approach argue that a comprehensive prohibition represents the best option for halting over-fishing.

Indonesia’s proposal echoes the latter sentiment, calling for a blanket ban with carve-outs for S&DT and artisanal and small-scale fisheries.

Diving into murky waters

In its proposal, Indonesia defines ‘artisanal fishing’ as subsistence-based fishing close to the shore with a proportionate engine-to-tonnage ratio, primarily carried out by individuals or families. ‘Small-scale fishing’ is similarly delineated based on the volume of operations and their proximity to coastal lines. The continued allowance of subsidies for both artisanal and small-scale fishing would be conditional upon governments’ proving that support is not contributing to over-fishing, and that it is following a fisheries management programme.

Where countries lack the capacity to demonstrate or monitor resources, Indonesia included a provision that

would require developed countries to offer their poorer counterparts technical assistance to strengthen fisheries management capacity and to help them fully engage in national and regional fisheries management organizations (RFMO). This, Indonesia said, would allow developing countries to access relevant scientific information and engage in marine research and conservation activities, both vital components to maintaining healthy global fish stocks.

Indonesia also appealed to Members to create a subgroup to the Subsidies and Countervailing Measures Committee, comprised of fisheries experts from Member governments and international institutions. This subcommittee would be called upon to provide scientific information and guidance when Member states contest the potential elimination of subsidy programmes.

Common divisions, common lines

Members from both sides of the fisheries debate lauded the Indonesian proposal for being one of the first to comprehensively outline technical assistance, special and differential treatment, and artisanal and small-scale fisheries.

Nevertheless, the traditional divisions prevailed. New Zealand, Chile, Thailand, Brazil and the Philippines welcomed Indonesia's call for sweeping prohibitions on fisheries subsidies. They praised its text for bringing together the rules group's previous work on the issue. The US also expressed support for the proposal, but asked whether the exemption for small-scale fisheries represented too large a carve-out from the proposed disciplines.

Japan, Korea, and Taiwan, on the other hand, expressed their objection to Indonesia's paper, report sources. Taiwan went a step further, noting that the proposal would risk transforming the WTO into a fisheries management organisation.

The EU also expressed opposition to the Indonesian proposal, because of the provision that would make it mandatory for developed countries to provide technical and financial assistance to developing nations. As the delegated stated, the EU already endows developing countries with significant funding, but this is not seen as an obligation, whereas Indonesia's text would.

Members brainstorm, Brazil outlines recommendations

Following the formal meeting on fisheries subsidies, the Negotiating Group on Rules held an informal brainstorming session focusing primarily on Brazil's recent proposal on artisanal and small-scale fisheries.

Drawing from its previous submissions, Brazil's newest text once again calls for a broad prohibition of subsidies, but with an additional delineation of specific exemptions for S&DT.

Brazil defines artisanal and small-scale fisheries

In its text, Brazil argues that since artisanal and small-scale fisheries create only negligible effects on fish stocks, subsidies and resources should continue to be permitted. Following along similar lines as Indonesia's proposal, this exemption would be conditional upon Members' observing best practices and implementing fisheries management programmes.

Brazil defines artisanal and small-scale fisheries as those relying on non-mechanised means. Other issues taken into account include how the fishing activities are performed, such as whether the fisherman works mainly with himself and his family for a small profit trade.

Brazil also calls for additional S&DT provisions to allow poorer countries the policy space to develop their industry, such as through modernising fleets. Here again, this flexibility would be permitted only within certain, well-defined parameters, to guard against over-fishing.

Fighting for fish

In anticipation of last week's meeting, marine conservationists and some coastal states once again called for a broad elimination of fisheries subsidies.

Marine advocacy group Oceana on 9 July released a report on the state of the world's fisheries. It also outlined ways for the WTO to incorporate policies that would halt over-fishing and support marine conservation.

Oceana called on WTO Members to agree to disciplines on fisheries subsidies that support marine conservation and work towards replenishing global fish stocks before they are irrevocably depleted. The group also recommended that subsidies should be allocated for strengthening effective fisheries management systems, rather than operating costs such as modernising vessels.

Similarly, Kenya, along with a loose coalition of other coastal states including Mauritius and Madagascar, petitioned the WTO on 9 July to eliminate subsidies to the fishing sector. "Over-fishing is the single most largest threat to the survival of the industry and unless the WTO eliminates the massive subsidies it provides to the sector across the globe, we are going to see this practice go on unabated and we risk clearing entire

fish population,” said Simon Helphill, a board member of the Kenyan government’s Marine and Fisheries Research Institute (KEMFRI).

While this move is consistent with Kenya’s stance on fisheries subsidies, it is not shared by all coastal developing countries. In early June, for example, a group of eleven small and vulnerable economies (SVEs), including Pacific island nations such as Fiji and the Solomon Islands, put forth a text (TN/RL/W/210) arguing that blanket bans would be “unduly punitive” for them, especially in light of their minimal effect on over-fishing (see BRIDGES Weekly, 13 June 2007, <http://www.ictsd.org/weekly/07-06-13/index.htm>).

Out for summer

Despite progress within the fisheries discussions in recent months, significant divisions persist. Moreover, several Members have expressed concern about moving forward until the state of other negotiating areas – especially the deadlocked talks on agriculture and industrial goods trade – is more clearly defined. Delegates say that the overall impasse in the Doha Round talks might be more of an obstacle to the fisheries subsidies negotiations than differences on the issue itself.

The next meeting of the Negotiating Group on Rules is scheduled for the end of September.

ICTSD reporting.

IN BRIEF

PANAMA APPROVES FTA WITH US

Panamanian legislators voted overwhelmingly on 11 July to approve a free trade agreement with the US, taking a step toward the entry into force of a pact that was signed by leaders of the two countries in late June (see BRIDGES Weekly, 4 July 2007, <http://www.ictsd.org/weekly/07-07-04/story2.htm>).

The agreement, which would slash tariffs and other trade barriers between the two countries, was passed by a vote of 58 to 3 (with one abstention) in Panama’s National Assembly. The deal now awaits legislative approval in the US, with a vote expected in the fall.

Some analysts predict that the US Congress will also approve the deal, given that it was re-negotiated at the last minute to incorporate provisions related to the environment, labour, and access to medicine, as per

the terms of a May compromise on trade policy between senior Democratic lawmakers and the Bush administration (see BRIDGES Weekly, 16 May 2007, <http://www.ictsd.org/weekly/07-05-16/story2.htm>).

But although three top Democratic lawmakers spoke favourably about the accord with Panama, they said on 29 June that they would wait to vote on it until a congressional delegation could travel to Panama City to confirm that the government had in fact changed environmental and labour laws in accordance with the recent modifications. For his part, Panamanian President Martin Torrijos has said that his country will have no trouble complying with the new rules.

US Trade Representative Susan Schwab reacted strongly to the Democrats’ statement, writing in a letter to House Speaker Nancy Pelosi that “unilaterally requiring another sovereign country to change their domestic laws before the US Congress approves a trade agreement would be a fundamental break with US law, policy, and practice.”

Under the terms of the agreement, Panama will immediately remove tariffs on nearly 90 percent of US exports of consumer and industrial products; remaining import duties will be gradually eliminated over the next 10 years. The pact also allows Panamanian farmers greater access to the long-protected US sugar market.

Nearly half of Panamanian imports come from the US; trade between the two nations totalled \$3.1 billion in 2006.

ICTSD reporting; “Panama lawmakers ratify US free trade deal,” REUTERS, 11 July 2007; “Panama Ratifies Free Trade Deal with US,” ASSOCIATED PRESS, 12 July 2007; “Panama: National Assembly passes trade accord,” WW4 REPORT, 16 July 2007.

WIPO COMMITTEE ON GENETIC RESOURCES, TRADITIONAL KNOWLEDGE EXTENDED ONCE MORE

A World Intellectual Property Organisation (WIPO) committee agreed last week to simply continue discussions, after failing to make any progress on how to protect traditional knowledge, genetic resources and folklore from misappropriation.

The eleventh session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) met from 3-12 July in Geneva.

Since its first meeting in 2001, the IGC has been characterised by a North-South divide, with the latter calling for new binding legal instruments to deal with misappropriation (see BRIDGES Trade BioRes, 4 April 2007, <http://www.ictsd.org/biores/04-04-02/story1.htm>).

With negotiations on potential treaties stalled, the recent session – supposed to be the committee's last – focused primarily on the IGC's "future work." The week was taken up by informal negotiations and what delegates called "informal informal" meetings between the Africa Group, Australia, Brazil, Canada, Japan and the US. Several indigenous peoples' groups and other organisations also participated, though some expressed frustration at their lack of access to the negotiations between states (BRIDGES Weekly, 11 July 2007: <http://www.ictsd.org/weekly/07-07-11/story3.htm>).

Agreement on how to proceed was only reached late during the final plenary session. The IGC will ask WIPO's September General Assembly to renew its mandate once more, with the committee reminded "to accelerate its work and to present a progress report to the [2008] General Assembly." The renewed mandate also maintains that "no outcome of its work is excluded, including the possible development of an international instrument or instruments."

IGC Chair Ambassador Gusti Agung Wesaka Puja (Indonesia) described the decision as a "new direction" to "further explore" issues. However, Peruvian delegate Alejandro Neyra said the renewed mandate was "basically the same" as the previous one. Where developing countries had sought a commitment to "work towards a common position", for instance, developed countries, particularly the US and Canada, were careful to avoid language that might expand the mandate, Neyra said. They ensured the final text calls only for "work towards further convergence of views."

Sources report that the renewal of the committee's mandate was never really in question. In fact, one suggested that developed countries were keener to renew the mandate than some developing nations, as an easy and inconsequential gesture of commitment to deal with the misappropriation of genetic resources and traditional knowledge.

The decisions of the IGC are available at http://www.iprsonline.org/resources/docs/igc11_decisions.pdf.

ICTSD Reporting; "WIPO Committee Extends, Adjusts Mandate on Traditional Knowledge, Folklore", INTELLECTUAL PROPERTY WATCH, 13 July 2007

WTO IN BRIEF

US REQUESTS DISPUTE PANEL ON CHINESE SUBSIDIES

The US announced on 12 July that it had requested the creation of a WTO dispute panel to examine its claim that a range of Chinese government tax policies have been effectively serving as illegal subsidies.

Washington alleges that Beijing has implemented a series of illegal tax refunds, reductions, and exemptions that discriminate against imports while supporting the export of Chinese manufactured goods.

The US, later joined by Mexico, initiated dispute settlement proceedings over the Chinese subsidies in early February (see BRIDGES Weekly, 7 February 2007, <http://www.ictsd.org/weekly/07-02-07/story4.htm>). Just prior to the joint consultations on the dispute, which were held in March, China did away with one of the challenged subsidy programmes, but instituted a new set of income tax exemptions that the US and Mexico also claimed were out of step with WTO rules (see BRIDGES Weekly, 28 March 2007, <http://www.ictsd.org/weekly/07-03-28/story4.htm>). To address this last dispute, the three nations held supplemental consultations on 22 June; like the March talks, however, the latest round of negotiations also failed to resolve the disagreement.

"Although our two rounds of WTO consultations with China have been constructive, they have not resolved our concerns about China's apparent use of trade-distorting subsidies that it pledged to eliminate upon joining the World Trade Organization," Sean Spicer, a spokesperson with the US trade representative's office, said in a written statement.

Mexico is also expected to request a WTO dispute panel over the Chinese subsidies, according to the USTR statement.

In keeping with WTO rules, the Dispute Settlement Body will consider the US request at its next meeting, scheduled for 24 July. China can block the US' request once, but would be unable to do so a second time.

The Bush administration has recently intensified pressure on China to reform many of its international trade policies, as the US Congress has increasingly called for measures to address the large US trade deficit with China, which reached a record \$232.6 billion last year.

ICTSD reporting; "U.S. takes subsidies dispute with China to World Trade Organization," ASSOCIATED PRESS, 12 July 2007; "US seeks WTO China subsidies probe as talks fail," REUTERS, 12 July 2007.

EVENTS & RESOURCES

EVENTS

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

Coming Up: 19-25 July

2 - 27 July, Geneva, Switzerland. ECONOMIC AND SOCIAL COUNCIL (ECOSOC) 2007 SUBSTANTIVE SESSION. The 2007 Substantive Session for ECOSOC will be organised as follows: high-level segment (2-5 July 2007); dialogue with the Executive Secretaries of the regional commissions (6 July 2007); coordination segment (6-10 July 2007); operational activities segment (10-13 July 2007); humanitarian affairs segment 16-18 July 2007; general segment (19-26 July 2007); and conclusion of the work of the Council (27 July 2007). For more information, email ecosocinfo@un.org. internet: <http://www.un.org/docs/ecosoc/meetings/2007/>

23 July – 10 August, New York, New York. THIRTY-NINTH SESSION OF THE COMMITTEE TO ELIMINATE DISCRIMINATION AGAINST WOMEN. This Committee will hold its thirty-ninth session at UN headquarters in New York from 23 July to 10 August 2007. The Committee is expected to examine the following country reports from States Parties: Cook Island, Belize, Brazil, Estonia, Guinea, Honduras, Hungary, Indonesia, Jordan, Kenya, Liechtenstein, New Zealand, Norway, Republic of Korea and Singapore. internet: <http://www.un.org/womenwatch/daw/cedaw/39sess.htm>

26-29 July, Ravello, Italy. 11th INTERNATIONAL CONFERENCE ON AGRICULTURAL BIOTECHNOLOGIES: NEW FRONTIERS AND PRODUCTS - ECONOMICS, POLICIES AND SCIENCE. Topics that will be discussed at this conference include the impact of agricultural biotechnology on international trade, biotechnology and developing countries, and regulation of biotechnology. The conference is being organised by the International Consortium on Agricultural Biotechnology Research

(ICABR), Catholic University of Leuven, CEIS-University of Rome, Rutgers University, and the Economic Growth Center, Yale University. internet: <http://www.economia.uniroma2.it/conferenze/icabr2007/>

WTO Events

An updated list of forthcoming WTO meetings is posted at: http://www.wto.org/meets_public/meets_e.pdf. Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland, and are open to WTO Members and accredited observers only.

19 July: WORKING PARTY ON THE ACCESSION OF MONTENEGRO

20 July: TRADE POLICY REVIEW BODY - BAHRAIN

20 July: NEGOTIATING GROUP ON TRADE FACILITATION

24 July: DISPUTE SETTLEMENT BODY

26 July: TRADE NEGOTIATIONS COMMITTEE

Other Upcoming Events

31 July - 1 August, New York, New York. CLIMATE CHANGE AS A GLOBAL CHALLENGE. This thematic debate will be convened by UN General Assembly President Sheikha Haya Rashed Al Khalifa following a request from the European Union and the Association of East Asian Nations New York Committee. The first day of the debate will consist of two interactive panel discussions, bringing together experts on the impact of climate change, mitigation and adaptation strategies, new technologies, and finance. During the second day, there will be a general discussion open to all; Secretary-General Ban Ki-moon's Climate Change Envoys will participate in the opening of the discussion. internet: <http://www.un.org/ga/president/61/follow-up/thematic-climate.shtml>

22-25 August, Jaipur, India. BUILDING SKILLS ON COMMERCIAL & ECONOMIC DIPLOMACY - TRAINING SEMINAR FOR MID-LEVEL CIVIL SERVANTS AND EXECUTIVES. This training seminar, organised by the India-based CUTS Institute for Regulation and Competition, will impart knowledge and information on multiple aspects of commercial and economic diplomacy in the context of globalisation and economic relations among countries. The seminar will feature presentations from experts of various

backgrounds, who will conduct sessions with case studies and hands-on exercises. The seminar is aimed for mid-level government officials (from trade and other economic ministries), representatives from intergovernmental and multilateral agencies, and other stakeholders such as business persons. internet: www.circ.in/pdf/BrochureCDS02.pdf

27-31 August, Vienna, Austria. UNFCCC DIALOGUE AND KYOTO PROTOCOL AWG 4. This will be the fourth workshop of the 'Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention' and the fourth session of the Ad Hoc Working Group on Further Commitments for Annex I parties under the Kyoto Protocol (AWG). internet: www.unfccc.int

3-14 September, Madrid, Spain. EIGHTH SESSION OF THE CONFERENCE OF THE PARTIES TO THE UN CONVENTION TO COMBAT DESERTIFICATION (COP-8). COP-8 of the CCD will consider the following agenda items: programme and budget for the biennium 2008-2009; review of the implementation of the Convention; review of the report of the Committee on Science and Technology; review of activities for promotion of relationships with other relevant organisations; follow-up to the World Summit on Sustainable Development; Regional Coordination Units; and review of the 2006 International Year of Deserts and Desertification activities. internet: <http://www.unccd.int/>

4-5 October, Geneva, Switzerland: WTO PUBLIC FORUM 2007: "HOW CAN THE WTO HELP HARNESS GLOBALISATION?" The WTO Public Forum 2007 will address how the WTO can help harness globalisation. The sub-themes are: 1. Global Governance: the challenges that interdependence and globalisation present and the role the WTO can play to ensure that globalisation works to the benefit of all peoples; 2. Coherence: (a) the need for national and international coherence; and (b) the contribution of the WTO to the construction of a coherent multilateral system; 3. Economic Growth: trade as a vehicle for growth and development; and 4. Sustainable Development: the interaction of trade and sustainable development. internet: http://www.wto.org/english/forums_e/public_forum2007_e/forum07_e.htm.

RESOURCES

CONCLUDING EPA NEGOTIATIONS: LEGAL AND INSTITUTIONAL ISSUES.

European Centre for Development Policy Management. July 2007. The Economic Partnership Agreements

(EPAs) between the EU and the six African, Caribbean, and Pacific (ACP) regions are due to be concluded by 31 December 2007. While all parties are currently committed to the timely conclusion of the EPA negotiations by the end of the year, some ACP regions may not find themselves in a position to do so. The negotiations have been marred by delays, with numerous issues remaining to be addressed by the negotiators. In this context, this study reviews the legal commitments and institutional arrangements necessary for the timely conclusion of the EPA negotiations. It also considers the legal and institutional consequences of the failure by an ACP country or EPA regional grouping to sign an EPA by the end of 2007 or to later ratify it. The report is available at http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index2?readform&http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/F0B2592B42141909C1257308005011A1?OpenDocument.

GLOBAL DEVELOPMENT FINANCE 2007. The World Bank, June 2007. Global Development Finance is the World Bank's annual review of recent trends in and prospects for financial flows to developing countries. It is intended to serve as a resource for governments, economists, investors, financial consultants, academics, bankers, and the development community at large. Volume I, Analysis and Outlook, reviews recent trends in financial flows to developing countries. Volume II, Summary and Country Tables, includes comprehensive data for 138 countries, as well as summary data for regions and income groups. The report is also available on CD-ROM, with more than 200 historical time series from 1970 to 2005, and country group estimates for 2006. The report is available for purchase at http://publications.worldbank.org/ecommerce/catalog/product?item_id=6357582.

APPEAL WITHOUT REMAND: A DESIGN FLAW IN THE WTO DISPUTE SETTLEMENT AND HOW TO FIX IT. By Joost Pauwelyn. International Centre for Trade and Sustainable Development, July 2007. This study analyses one aspect of World Trade Organisation (WTO) dispute settlement: when the Appellate Body reverses a panel report but it cannot currently send the case back to the panel. This aspect is commonly referred to as the absence of a 'remand process' in WTO dispute settlement. The study examines the origins and extent of this 'design flaw' and offers solutions to alleviate the problem. The study argues that WTO dispute settlement needs an explicit remand process because of the increasing complexity of trade disputes and also to save the time, resources and other costs involved in a complete re-filing of a dispute in a system without remand. The report is available at http://www.ictsd.org/issarea/dsu/resources/Pauwelyn_Remand.pdf.

ACCESS TO JUSTICE IN THE WORLD TRADE ORGANISATION: THE CASE FOR A SMALL CLAIMS PROCEDURE. By Håkan Nordström and Gregory Shaffer. International Centre for Trade and Sustainable Development, July 2007. The current dispute settlement system of the WTO creates a particular challenge for small WTO Members since litigation costs are more or less independent of the commercial stakes involved in a dispute. Reviewing the aims and practices of small claims procedures at the national level, the authors analyse whether a similar institution could be introduced at the WTO. The paper does not intend to propose a specific model, but rather to explore the rationale for such a procedure and its possible contours in order to provoke further discussion of this and related issues. The report is available at http://www.ictsd.org/issarea/dsu/resources/Nordstrom%20&%20Shaffer_Small_Claims.pdf.

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BRIDGES Weekly Trade News Digest® is published by the International Centre for Trade and Sustainable Development (ICTSD), <http://www.ictsd.org/>.

Contributors to this issue of *BRIDGES Weekly Trade News Digest* are Trineesh Biswas, Paige McClanahan, Nico Tyabji, and Caitlin Zaino. Editor: Trineesh Biswas. Assistant Editor: Paige McClanahan. Director: Ricardo Meléndez-Ortiz. ICTSD is an independent, not-for-profit organisation based at: 7, ch. de Ballexert, 1219 Geneva, Switzerland, tel: (+41-22) 917-8492; fax: 917-8093. Excerpts from *BRIDGES Weekly Trade News Digest*® may be used in other publications with appropriate citation. Comments and suggestions are welcomed and should be directed to the Editor or the Director.

BRIDGES Weekly Trade News Digest is made possible through the generous support of the Government of the United Kingdom (DFID) and ICTSD's core donors including the Governments of Finland, Denmark, the Netherlands and Sweden; Christian Aid (UK) and NOVIB (NL). *BRIDGES Weekly* also benefits from support for the *BRIDGES* series of publications from donors including the Rockefeller Foundation and the Swiss Agency for Development and Cooperation. ISSN 1563-003X

