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LEAD STORIES

LAST ROLL OF THE DICE FOR THE DOHA ROUND?1
EU APPEALS WTO RULING IN RETREADED TYRE
DISPUTE WITH BRAZIL 3
NOVARTIS PATENT CHALLENGE DISMISSED IN
INDIA 4

OTHER STORIES

REVISED WHO PLAN FOR PHARMACEUTICAL R&D
CALLED A 'REASONABLE PLACE TO START' 6
DISPUTE PANEL CREATED IN CHINA SUBSIDY
CASE, AS US RATCHETS UP PRESSURE 8

IN BRIEF

EU SET TO KEEP EXTRA DUTIES ON ENERGY-
SAVING LIGHT BULBS FROM CHINA 9

EVENTS & RESOURCES

VACANCY 10
EVENTS 10
RESOURCES 11

LEAD STORIES

LAST ROLL OF THE DICE FOR THE DOHA ROUND?

Trade diplomats from around the world have returned to the bargaining table after a month-long holiday in an attempt to salvage a compromise in the Doha Round of global trade talks. Prospects for a WTO accord remain dim, with officials pointing to wide gaps on tariff and subsidy cuts compounded by an inauspicious political climate in Washington.

Nevertheless, Crawford Falconer, the New Zealand ambassador who chairs the agriculture negotiations, seemed content with the first day of meetings on 3 September, telling journalists that delegates were "all in a mood to roll their sleeves up and get to work."

He was speaking after Members kicked off three weeks of intensive discussions on the depth of cuts to farm tariffs and trade-distorting subsidies, issues that have bedeviled the Doha Round almost from its inception in late 2001. Talks on industrial tariffs, which proved even more divisive this summer, are set to pick up slowly next week (see BRIDGES Weekly, 1 August 2007, <http://www.ictsd.org/weekly/07-08-01/story1.htm>).

The talks on both agriculture and non-agricultural market access (NAMA) are expected to follow from the terms for a potential deal identified in mid-July by the chairs of the two negotiating committees (see BRIDGES Weekly, 18 July 2007, <http://www.ictsd.org/weekly/07-07-18/story1.htm>). They put together the draft agreements after Members proved unable to bridge differences on their own.

Falconer's draft agriculture text received a lukewarm welcome from Members, albeit not without some sharp complaints. However, the compromise terms outlined by his NAMA counterpart, Canadian Ambassador Don Stephenson, drew far more polarised responses. This corresponded to the tenor of the debate, though some praised the chair for identifying a 'middle ground'. The NAMA-11 group, which includes Brazil, India, and South Africa, complained that the text was unfairly demanding of developing countries. Argentina and Venezuela went so far as to call it an unacceptable

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basis for further talks (see BRIDGES Weekly, 1 August 2007, <http://www.ictsd.org/weekly/07-08-01/story2.htm>). The US and the EU, though more muted, argued the precise opposite – that developing countries should have been required to cut industrial tariffs more deeply. US Trade Representative Susan Schwab warned last week that a refusal to negotiate on the basis of Stephenson's text "could really derail the Doha talks."

The two negotiating committee chairs have steadfastly reminded governments that an agreement will be impossible unless they depart from long-held bargaining stances. Both intend to revise their draft agreement texts on the basis of the upcoming discussions.

Falconer said that he was encouraged by delegates' willingness to dispense with the traditional reiteration of their respective positions, and instead proceed directly to consultations with each other to prepare for technical negotiations. He called on them to only discuss "something different, something new, something fundamentally changed."

The agriculture chair indicated that he would hold three weeks of consultations with a group of roughly 30 delegations representing a wide array of Member interests. These would initially focus on market access issues, first for industrialised countries and then for developing ones. Falconer's draft text included few specific parameters on a number of developing country-specific market access issues, such as the 'special products' that they will be able to shield from the full force of tariff reduction, the 'special safeguard mechanism,' and the linked issues of tropical products and preference erosion. Important developing country groups such as the G-20 and the G-33 in particular have called for more clarity about how they will be dealt with.

A transparency meeting for all Member delegations has been scheduled for 14 September, with a pause for stocktaking to start a week later. Falconer did not hint at when he hopes to present delegates with a revised draft text, although he allowed that a "vague sense of intuition" suggested that clear signs of direction would have to become apparent by mid-October.

One delegate said that the course forward in the NAMA talks was less clear. Some capital-based negotiators were expected to be at WTO headquarters in Geneva next week to discuss how to proceed in light of the disagreements on Stephenson's text although nothing specific had been scheduled thus far. The official said that the gaps in Members' positions on NAMA did not appear to leave much space for an agreement.

APEC to call for progress

In any event, the resumption of negotiations has prompted a new round of exhortations for progress from political leaders, despite the ineffectiveness of similar encouraging remarks in recent years. Pacific Rim leaders meeting at the Asia-Pacific Economic Cooperation summit in Sydney later this week are expected to issue a statement expressing "great concern" about the lack of progress in the Doha Round and calling for the talks to "enter their final phase this year," according to Reuters.

US President George W. Bush told APEC business representatives that "we will show flexibility when it comes to making sure this round is as successful as possible."

Earlier this week, Brazilian Foreign Minister Celso Amorim expressed the conviction that the talks would be successfully concluded. Senior foreign ministry official Roberto Azevedo recently told Reuters that Brazil was "ready to make the necessary adjustments" to its industrial sector, so long as it is able to secure more farm reform in September.

A less cheerful view came from French Finance Minister Christine Lagarde, who told a Paris business audience that "the gap among the parties is too wide." "For now, I don't see it [a Doha accord]," she said.

US agricultural subsidies remain one of the crucial gaps. Washington has come under heavy fire from developing countries for refusing to cap trade-distorting subsidies at a level close to the \$11 billion it spent last year – its formal offer has been a \$22.5 billion ceiling, with \$17 billion broached informally. Falconer's text suggested that this would have to come down to somewhere between \$13 billion or \$16.4 billion, with the higher limit linked to farm tariff cuts substantially lower than those sought by the US.

In an interview with the BBC on 4 September, EU Trade Commissioner Peter Mandelson said that a new farm subsidy offer from the US "holds the key to unlocking" the negotiations, though other players in the talks – including the EU – would also have to make fresh concessions. "I think that the United States has to pitch its offer within [the Falconer text's] range for it to be sellable to the other negotiators in this round," he said. "I think they can do that economically. I think they can get away with it politically. But if they don't, I think I can only see the stalemate continuing and the talks facing collapse." Mandelson warned that a failure to make "some sort of breakthrough this autumn" could condemn the round to the "deep freeze," perhaps never to re-emerge.

Geneva-based negotiators are not optimistic about the signs they see from Washington. The House of

Representatives voted in July to largely continue and expand lavish agriculture subsidy practices over the next five years, as key Democrats backed down from reform plans in an attempt to secure fragile support in recently-won rural constituencies. Although the bill faces revision in the Senate, the vote points to the rough ride that will await attempts at subsidy reform.

Moreover, the abysmal popularity of the Republican Bush administration means that it might not be able to convince the Democrat-controlled Congress to grant it 'trade promotion authority' (TPA) even if a Doha Round deal appears to be coming together. Indeed, the Associated Press reports that leading Democratic presidential candidate Senator Hillary Rodham Clinton (New York) has said that she would oppose TPA as long as Bush is in the White House. Trade diplomats from other countries want this 'fast-track authority' renewed to ensure that Congress would have to vote yes-or-no on a Doha Round deal, and not be able to pick it apart.

Delegates widely share the belief that the Doha Round needs to be concluded by early 2008, or else face a lengthy hibernation period as elections in the US and India leave negotiators even more constrained. Argentina will hold presidential elections in late October of this year.

ICTSD reporting; "Bush says Pacific Rim leaders can help advance stalled global trade talks," ASSOCIATED PRESS, 5 September 2007; "Australia, EU urge US to unlock trade talks impasse," REUTERS, 4 September 2007; "Trade diplomats 'roll sleeves up' in new WTO push," REUTERS, 3 September 2007; "Amid calls for 'urgency,' WTO talks off to a cautious restart," ASSOCIATED PRESS, 4 September 2007.

EU APPEALS WTO RULING IN RETREADED TYRE DISPUTE WITH BRAZIL

The EU has formally appealed a WTO ruling against Brazil's import restrictions on retreaded tyres, taking the unusual step of challenging a decision in which it was nominally victorious.

Brussels is complaining that the dispute panel "disregarded the actual facts in Brazil and went against established WTO law," and that as a result, the ruling is unacceptably easy for Brasilia to implement (see BRIDGES Weekly, 20 June 2007, <http://www.ictsd.org/weekly/07-06-20/story3.htm>).

In the dispute, the EU had argued that the import measures were motivated by a desire to protect local

tyre manufacturers 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 were in theory justifiable to safeguard health and environmental considerations, Brazil applied them in a way that amounted to an unjustified and discriminatory restriction of trade.

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."

Retreaded tyres are used tyres reprocessed for a second and final use. Brazil had argued that these tyres had a shorter life span than new ones and therefore contributed to a faster accumulation of waste tyres, which in turn provide fertile breeding grounds for disease-carrying mosquitoes.

The panel effectively accepted Brazil's claim that the sheer volume of waste tyres was already beyond the country's capacity for environmentally responsible disposal, and said that the import restrictions and associated fines were necessary to meet the public health goals. WTO rules, specifically GATT Article XX(b), allow governments to limit trade when necessary in order to protect human, animal, or plant life and health.

Where Brazil erred, ruled the panel, was in how it applied the measures. The so-called 'chapeau', or introductory paragraph, of GATT Article XX specifies that permissible trade restrictions must not be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination... or a disguised restriction on international trade."

The principal reason for this conclusion was that Brazil's retreaded tyre industry had actually imported large quantities of otherwise-banned used tyres between 2000 and 2005, after receiving numerous court injunctions allowing them to do so (government objections notwithstanding). Thus, that period saw used tyre imports soar, including from the EU, while imports of EU retreads ground to a halt. The panel found that the court-sanctioned imports of used tyres defeated the very purpose of the retread ban, and had benefited Brazilian tyre makers at the expense of their competitors elsewhere.

In June, Brazilian officials welcomed the ruling, pointing to the panel's acceptance of their health- and environment-related justifications for the import

restrictions. At the time, some trade lawyers expressed surprise at the extent to which the panel agreed with Brasilia's arguments and left the door open for many of the limitations to be maintained with only minor modifications.

Sources in Brazil now suggest that the government is planning to give the tyre import ban the strength of federal law. This would put an end to the court injunctions that the panel deemed unacceptable, while leaving in place the import ban to which the EU objects.

Brussels: retread import ban did not reduce waste

Brussels argues that the panel should not have let Brazil off so lightly. Claiming to have "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," it said that the panel was simply wrong to conclude that Brazil's import ban reduces public health risks.

Furthermore, the EU criticised the panel for "discount[ing] alternative measures that would serve public health in Brazil much more effectively," such as improving waste tyre disposal.

As for the panel's decision to refrain from addressing Brazil's exclusion from the import ban of tyres from Mercosur partners Argentina, Paraguay, Uruguay, and Venezuela, a statement from the European Commission called it "clearly discriminatory," saying that it "makes 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.

The case, which represents the first-ever challenge against trade restrictions imposed by a developing country for health and environmental reasons, was closely watched by green groups. Thus, while faulting the panel's interpretation of the exceptions in GATT Article XX, the EU took pains to emphasise that it was "strongly in favour of environmental and public health protection," but the Brazilian measures "were not intended to protect the environment at all, and... had no such effect."

Brussels insisted that it was appealing "these points of the panel's ruling to defend not only its 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."

According to the timetable for WTO dispute settlement, the appeal, which started on 3 September, should last for 90 days.

The EU's appeal (WT/DS332/9) is available online at <http://docsonline.wto.org/>.

ICTSD reporting.

NOVARTIS PATENT CHALLENGE DISMISSED IN INDIA

Pharmaceutical giant Novartis saw its challenge to Indian patent law dismissed in the Chennai High Court on 6 August. The multinational had filed the suit after the Indian authorities denied it a patent on Glivec, a cancer medicine, in January 2006, thus allowing the production of cheap generic copies of the drug to continue freely.

The stringent standards of patentability upheld by the court mean that fewer medicines will be eligible for patents. This in turn broadens the scope for the production of generic drugs.

The decision was welcomed by health activists, who had warned that an expansive interpretation of patent eligibility would have stopped India from producing inexpensive medicines for the world's poor. "This is a huge relief for millions of patients and doctors in developing countries who depend on affordable medicines from India," said Tido von Schön-Angerer, director of the Médecins Sans Frontières (MSF) campaign for access to essential medicines.

But Novartis announced it would divert research and development (R&D) funding planned for India to China instead. Daniel Vasella, the Swiss multinational's CEO, said: "This [ruling] is not an invitation to invest in Indian research and development, which we would have done. We will invest more in countries where we have protection. It's not a punishment. It's just a question of the culture for investment."

The court reaffirmed a section of Indian patent law requiring inventions to be significantly improved before they can be eligible for another patent, a clause designed to counter the undue prolongation of patent terms through only minor tweaking. It said it did not have jurisdiction to rule on whether this was compliant with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as Novartis had charged.

The case followed the Chennai Patent Office's rejection of Novartis' patent application for the beta crystal form

of cancer drug imatinib, marketed as Glivec (or Gleevec in the US). The office said it did not satisfy legal requirements for 'novelty' and 'inventive step', two of the main criteria used to evaluate patent applications. Novartis, however, had been granted the patent in almost 40 other countries, including China. Consequently, Novartis took its case to the Chennai High Court in May 2006, appealing the decision and challenging the Indian Patent Act (BRIDGES Feb-Mar 2007, <http://www.iprsonline.org/ictsd/news/bridges11-1.pg15-16.pdf>).

The crux of the Patent Office's argument rests on Section 3(d) of the Indian Patent Act, which denies patentability to "a new form of a known substance" unless it results in "enhancement of the known efficacy of the substance". Brought in with the 2005 legislation that made Indian patent law compliant with the WTO TRIPS Agreement, the clause was intended to stop patent "evergreening", whereby minor changes to already-patented molecules are used as a basis for acquiring fresh patents and hence extended periods of protection. These, in turn, delay the entry of generic competitors into the market.

Indian Health Minister Anbumani Ramadoss said in April that the government was "very concerned" that the case's outcome might restrict India's ability to produce medicines cheaply. Along with former Swiss President Ruth Dreifuss, Archbishop Desmond Tutu, and members of the European Parliament and the US Congress, Ramadoss was among the nearly half a million people who signed an MSF petition urging Novartis to drop the case.

MSF, which purchases 84 percent of the AIDS drugs it distributes from Indian generic producers, said that "a ruling in favour of the company would have drastically restricted the production of affordable medicines in India that are crucial for the treatment of diseases throughout the developing world" because the Novartis challenge became a test case for Section 3(d).

How to define "enhancement of efficacy"?

The original form of imatinib, developed in 1992, cannot be patented in India since pharmaceutical products were ineligible for such protection there until 1995. The 'beta crystalline' form of the molecule was developed for patients to take as a pill and launched as Glivec in 2001.

As a developing country, India was not required to fully comply with TRIPS rules, which include pharmaceutical product patents, until 2005. In the interim, however, it introduced a temporary system of 'exclusive marketing rights' for new products that would then be considered for patents with the advent of full TRIPS compliance.

When Novartis was granted one of the first such exclusive marketing rights, for Glivec in November 2003, the price increased from \$230 to \$2,740 per year.

After India reformed its patent laws to make them compliant with WTO rules in 2005, Novartis was refused a patent for Glivec on the basis that the beta crystalline form did not provide a significant enough "enhancement of efficacy" of the original imatinib molecule. Novartis responded with a writ to the High Court appealing against the ruling. It argued that Section 3(d) of the Indian Patent Act was "unconstitutional as it is vague, arbitrary and violative of Article 14 of the constitution (right to equality)", and alleged that it contravened India's obligations under the TRIPS Agreement.

Defending the patent-worthiness of Glivec, Novartis research chief Paul Herrling said "medical progress occurs through incremental innovation. If Indian patent law does not recognise these important advances, patients will be denied new and better medicines".

A different view came from Brian Druker, the key researcher behind imatinib. Most scientists he worked with are "primarily motivated by the pursuit of knowledge as a means to help patients," he said, and "it is, therefore, of great concern that the results of their efforts can't reach patients and save lives because of pricing strategies and patent policies such as 'patent evergreening'... used by partners further down the drug development process."

India attempts to differentiate genuine innovation from evergreening by using the "enhancement of efficacy" concept, says Health GAP's Brook Baker, a professor at Northeastern University. However, the definition of "enhancement of efficacy" remains unclear. The High Court suggested only that efficacy can be defined as "the ability of a drug to produce a desired therapeutic effect." It did not provide any guidance on how enhancements might be quantified, such as in terms of fewer side-effects or lower dosages.

Novartis maintains that Glivec boosts bioavailability (i.e. the degree to which the drug is absorbed by the patient) by 30 percent over the original form of imatinib, which should constitute an enhancement of efficacy. The Chennai Patent Office disagreed in rejecting the application, but more guidance to the definition may be provided during Novartis' appeal, which has been referred to the Indian Patent and Trademark Appellate Board (IPAB).

Tahir Amin, director of the Initiative for Medicines, Access and Knowledge (I-MAK), told Bridges that "the real issue lies in how the IPAB will define efficacy. This is what will determine the scope of patenting in India

and thus the extent to which incremental innovations will be protected”.

TRIPS compliance unlikely to surface at WTO

The Chennai High Court declined to rule on Novartis' assertion that Section 3(d) of the Indian Patent Act contravened TRIPS rules, saying it had no jurisdiction to rule on international treaties. In effect, it said that only the WTO was fit to make that decision.

If Novartis wants the WTO to rule on the matter, it will have to persuade the Swiss government to bring a case against India at the global trade arbiter's headquarters in Geneva.

However, Felix Addor, Deputy Director General of the Swiss Federal Institute of Intellectual Property, said "the issue of a WTO panel is not on the agenda of the Swiss Government at this point of time". Meanwhile, Indian Commerce and Industry Minister Kamal Nath insisted that "Our patent laws are WTO compliant".

In a press release issued after the court announced its decision, Novartis asserted that "during the India Trade Policy Review in late May 2007, the WTO urged India to strengthen its intellectual property rights system. It commended India for taking steps to align its national standards with international requirements but added that 'effective implementation of IPR-related legislation would be in the interest of India itself'."

Professor Baker said that Novartis had quoted selectively from a summary of individual Members' comments on the review, and that the extensive report itself contained "no discussion even questioning the legality or TRIPS-compliance of the India Patent Act generally or of section 3(d) in particular".

Baker also found it unlikely that Novartis had changed its R&D investment strategy on the basis of the court's ruling. He told Bridges that "it's virtually impossible to imagine this decision [to shift investment to China] turned on Section 3(d)" given the other business conditions taken into consideration, such as the low cost of clinical trials and researchers.

According to Indian press reports, at least a dozen large international pharmaceutical companies have invested heavily in the country since the amendment of the Patent Act in 2005.

ICTSD Reporting; "Indian Law on Generic Drugs is Upheld," INTERNATIONAL HERALD TRIBUNE, 6 August 2007; "Novartis Case May Not Reach WTO," HINDUSTAN TIMES, 8 August 2007; "Don't Abuse Patents: Scientists," LIVE MINT, 15 August 2007; "Novartis to move Indian R&D," FINANCIAL TIMES, 21

August 2007; "MNCs Still Bullish on India R&D," BUSINESS STANDARD, 27 August 2007.

OTHER STORIES

REVISED WHO PLAN FOR PHARMACEUTICAL R&D CALLED A 'REASONABLE PLACE TO START'

The World Health Organization has released an updated version of a potential plan to spur innovation aimed at developing affordable treatments for diseases that disproportionately affect poor countries.

The forty-one page document, dated 31 July, contains a wide range of ideas for how to identify research needs, ramp up pharmaceutical development and innovative capacity, and improve access to medicines. Notably, it highlights the relationship between intellectual property and pharmaceutical innovation, both through the use of flexibilities in WTO rules and the exploration of incentives outside the traditional patent system. The suggestions in the draft plan were based on a text developed at the last meeting of the WHO's Intergovernmental Working Group (IGWG) on Public Health, Innovation, and Intellectual Property as well as written comments submitted by 22 countries and regional groups (see BRIDGES Weekly, 25 April 2007, <http://www.ictsd.org/weekly/07-04-25/story3.htm>).

Although critics called the new draft vague and unfocused, WHO officials defended the decision to include most proposals rather than discarding several to produce a more targeted plan of action. There is "a thin line to be walked between including too little or too much," argued one vice-chair of the committee. Another official told Bridges that a less inclusive text would not have been consonant with the secretariat's approach to the talks in the IGWG. "We have sought to sort out the concerns of all parties with a passionate interest in advancing research and development for neglected diseases," added WHO Assistant Director-General Howard Zucker.

GlaxoSmithKline's Jon Pender said that the text formed "a reasonable basis for discussion."

Health activists say that only a small share of global spending on medical research focuses on problems faced predominantly by developing countries, even though they account for the bulk of avoidable ill-health. Some see the ongoing deliberations at the WHO as an opportunity to explore alternatives to drug patents as a means of encouraging innovation and the development of new and affordable drugs.

Nuts and bolts of the new draft

The draft global strategy states that despite recent progress on innovation and access to medicines, the sheer scale of “avoidable suffering and mortality” means that “more must be done.” To this end, it aims to “provide a medium-term framework for an enhanced sustainable basis for needs-driven, essential research and development relevant to diseases that disproportionately affect developing countries.” It focuses on “diseases or conditions of significant public health importance in developing countries for which an adequate treatment for use in resource-poor settings is not available.”

Like the previous version, the revised plan of action is structured around eight elements: prioritising research and development needs; promoting research and development; building and improving innovative capacity; technology transfer; managing intellectual property; improving delivery and access; ensuring sustainable financing mechanisms; and establishing monitoring and reporting systems. It simplifies parts of the earlier text, and incorporates many -- though not all -- suggestions by governments. The new draft presents the plan in table format, linking specific actions to stakeholders, time frames, and measurable indicators of progress.

Additionally, the draft proposes a focus on 14 diseases, including diabetes, cardiovascular disease, cancer, HIV/AIDS, tuberculosis, Chagas disease, dengue, leishmaniasis, and malaria. One source admitted that he was “puzzled” about where this came from, especially since as it was not raised in the country submissions.

Another close observer of the process noted that the plan failed to include concrete instructions on precisely how to accomplish the various priorities, such as identifying research gaps. Also absent were details on how any of this would be funded.

Alternatives to patents discussed

The new draft softens language on the appropriate level of intellectual property protection in bilateral trade agreements, following questions from the US and Australia about whether the WHO text should address issues dealt with in other international fora. For instance, a phrase saying that governments should “assure that bilateral trade agreements do not seek to incorporate ‘TRIPS-plus’ protection” is replaced with “promote bilateral trade agreements that do not incorporate ‘TRIPS-plus’ protection.”

As highlighted by several country submissions, the draft calls for greater collaboration between the WHO, the

WTO and the World Intellectual Property Organization for purposes such as strengthening education and training in the management of intellectual property. In this regard, sources at WIPO and the WTO have indicated that they are providing technical advice to the WHO upon request. However, they added that implementing proposals that assign tasks to other international organisations might require further reflection, since institutions have their own mandates and accountability structures.

At the same time, the revised text added items suggested by countries, such as Brazil's proposal to assess the impact of data-exclusivity regulations. In response to the South-East Asia region's call for the WHO “to compile good practice and lessons on the implementation of TRIPS flexibilities,” the new draft highlights the dissemination of best practices as a means of promoting legislation that makes use of TRIPS flexibilities.

The draft does not change the element entitled, “management of intellectual property.” The US government, a traditionally strong proponent of far-reaching intellectual property rights, had called this “unclear.” Brazil, on the other hand, criticised it for “mistakenly assum[ing] that the problems faced by developing countries on this matter are circumscribed to administrative concerns” alone, rather than obstacles to innovation and access arising from the structure of existing intellectual property protections.

However, the draft does not adopt some specific suggestions by countries, such as the South-East Asia Region's call for an “operational interpretation of ‘inventive steps,’” relating to the technical term used in the evaluation of whether a patent applicant's invention is sufficiently innovative to deserve a patent. Nor does the draft adopt Egypt's suggestion for a set of guidelines for the transfer of technology.

Guilherme Patriota, a counsellor at Brazil's mission in Geneva, said that he was “not dissatisfied” with the draft and called it a “fair start.” He noted that it contains two important elements: the use of flexibilities under the 2001 Doha Declaration on TRIPS and Public Health, and work on new models for innovation, especially those that aim to decouple drug prices from research funding, such as the prize fund model.

The draft also calls for further discussion of ‘patent pools’, a medical research and development treaty, advanced market commitments and public-private partnerships, as ways of encouraging innovation and lowering drug costs. Patent pools, for instance, are created when patent owners agree to licence their innovations as a package, allowing third party licensees to exploit the technology encompassed by the entire

bundle. Although such arrangements can lead to economies of scale, lower prices, and increased innovation, no pharmaceutical patent pool has yet been formed. Advanced market commitments are binding promises, generally by governments, to purchase a vaccine or medicine if and when it is developed. Canada, Italy, Norway, Russia, and the UK this year launched one such attempt, encouraging research targeting pneumococcal diseases, a major cause of pneumonia and meningitis.

The new text also makes strong links between trade-related issues and access to medicines, including support for generic production of essential medicines, the removal of tariffs and taxes on health care products, and the use of best manufacturing practices.

Spring Gombe and Thiru Balasubramaniam of Knowledge Ecology International were mixed in their response to the draft. They noted that it “contains some welcome statements of access to medicines, support for the use of TRIPS flexibilities and new methods to create incentives for research and development for new medicines,” but said that “the plan of action is vague with neither a clear sense of ownership nor any sense of urgency.”

Médecins Sans Frontières’ Ellen ‘t Hoen was similarly lukewarm, telling Intellectual Property Watch that “the document lacks clear direction and allocation of responsibilities. However, it is encouraging to see that it does not shy away from including new proposals such as a patent pool to deal with immediate access issues and new rules to incentivise R&D.”

Several member governments were reluctant to comment on the text, as they will soon have to enter into negotiations on it. Regional consultations are scheduled for August and September, and the second meeting of the IGWG is scheduled for 5-10 November.

In principle, the final plan of action should be ready for members to adopt at the May 2008 meeting of the World Health Assembly, though members such as Bolivia and Bangladesh, have recommended a one-year extension.

The WHO’s Zucker anticipates “a very lively discussion” at the committee’s meeting in November.

ICTSD reporting; “WHO Draft Negotiating Text on IP Cautiously Received,” INTELLECTUAL PROPERTY WATCH, 8 August 2007.

DISPUTE PANEL CREATED IN CHINA SUBSIDY CASE, AS US RATCHETS UP PRESSURE

The US is turning up the heat on China at the WTO, pushing separate cases against Chinese tax and intellectual property policies.

A WTO dispute panel was created on 31 August to investigate allegations by the US and Mexico that Beijing offers a series of illegal tax refunds, reductions, and exemptions that discriminate against imports while effectively subsidising the export of Chinese manufactured goods, in contravention of international trade rules. At a meeting of the Dispute Settlement Body that day, a US representative repeated Washington’s charges against China, and asked for the creation of a single panel to jointly examine its claims along with Mexico’s. “Although we continue to prefer to reach a mutually agreed solution to this dispute, unfortunately to date we have not been able to do so,” said the delegate.

At the same gathering, China blocked the creation of a separate panel to examine the US’ complaints that Beijing is tolerating intellectual property rights violations and maintaining trade barriers against books, music, and other copyrighted goods. WTO rules prevent China from doing so a second time should the US repeat its request.

The US delegation said that consultations with China in June “did provide some helpful clarifications,” but failed to resolve the dispute, which was initiated in April (see BRIDGES Weekly, 18 April 2007, <http://www.ictsd.org/weekly/07-04-18/story4.htm>).

Washington claims that China is doing too little to enforce copyright and trademark protection on a wide range of goods such as books, CDs, and DVDs. It argues that Beijing sets an unacceptably high bar for punishing copyright infringements with criminal prosecution, allowing large-scale commerce to take place in pirated movies and music with the threat of little more than an administrative fine.

Furthermore, the US contends that the Chinese government’s policies on intellectual property-right infringing goods – including counterfeits – are too lax. It also says that China’s denial of copyright law protection to works that have not received censorship approval for publication and distribution in the country allows for wide-scale piracy without the risk of legal punishment.

China’s commerce ministry said that the US and Mexico’s subsidy complaint was based on “a huge misunderstanding of Chinese policies.” A statement on

the ministry's website said that "some of the subsidies mentioned in their lawsuit had already been abolished," and that a new tax law had brought regulations into accord with WTO rules.

Notably, China argued that instead of genuine incompatibility between its policy and WTO strictures, the case was "motivated by the need of domestic politics" in both the US and Mexico.

The George W. Bush administration filed the two cases earlier this year following heavy pressure from the new Democratic majority in Congress to take action against perceived Chinese subsidy and intellectual property rights violations, and also to fight artificially low currency exchange rates that make Chinese and Japanese exports more competitive (see BRIDGES Weekly, 28 March 2007, <http://www.ictsd.org/weekly/07-03-28/story2.htm>).

Several US politicians blame these practices in part for the country's record trade deficits, as well as politically-sensitive job losses in the manufacturing sector, although many economists say that mechanisation is more responsible for the latter.

Congress is currently considering legislation to encourage China to boost the value of the yuan, although Reuters reports that progress is unlikely before next month. One proposal threatens the withdrawal of insurance and export financing, and raises the spectre of WTO litigation should China not comply. The Bush administration has thus far opposed demands for a WTO case against China's exchange rate policy.

ICTSD reporting; "Congress could delay action on China currency: aides," REUTERS, 4 September 2007; "WTO opens investigation into alleged Chinese industrial subsidies," ASSOCIATED PRESS, 31 August 2007.

IN BRIEF

EU SET TO KEEP EXTRA DUTIES ON ENERGY-SAVING LIGHT BULBS FROM CHINA

A divided European Commission decided last week to retain heavy anti-dumping duties on energy-saving light bulbs from China for an additional year, angering environmental groups who argue that the move will impede efforts to curb climate change.

The EU's executive body on 29 August announced that it would urge member states to remove the extra tariffs in 2008, effectively backing down from plans to eliminate them this year. Governments are set to vote on the proposal during the next week.

Brussels has imposed the duties of up to 66 percent since 2001, claiming that "state intervention or other market distortions" meant that the Chinese bulbs were being sold in the EU "at less than their real value."

EU consumers might have been grateful for cut-rate light bulbs, and the Commission argued that it was in member states' interest to end the duties – not least to cut energy use and greenhouse gas emissions. Nevertheless, European manufacturers seeking more time to adjust to Chinese competition won a reprieve.

Eivind Hoff, a trade and investment advisor for environmental group WWF, described the EU's move as "narrowly protectionist." Pointing to a "severe contradiction" between Brussels' energy efficiency objectives and the prolongation of the extra taxes, he said that it sent "a regressive message to developing country producers that they will be excluded from markets for cleaner products created by the higher environmental standards expected by European consumers."

WWF estimates that a rapid switch from traditional incandescent bulbs to more efficient lamps could reduce EU greenhouse gas emissions by 0.5 percent. The Commission acknowledges that domestic production can account for only a quarter of the EU's demand for energy-efficient light bulbs.

The four European companies that manufacture such bulbs were split on the issue, based largely on how much they have invested in China. Osram, a German company that produces many bulbs in the EU itself, was the only one to lobby heavily for the extension of the duties, reports Associated Press. Dutch multinational Philips, which manufactures many bulbs in China, pushed for scrapping them. EU Trade Commissioner Peter Mandelson said that the case illustrated "the complexities of managing anti-dumping rules in a global economy and against the broad range of EU interests."

Duties notwithstanding, the EU has been a vocal proponent of liberalising trade in environmental goods as part of the Doha Round WTO talks.

ICTSD reporting; "Europe to keep tariffs on light bulbs," INTERNATIONAL HERALD TRIBUNE, 29 August 2007; "EU won't lift charges on Chinese energy-saving light bulbs for another year," ASSOCIATED PRESS, 29 August 2007; "Towards a Low Carbon Future: The

Case for China and EU Collaboration," THE WORLD TODAY, October 2007 (forthcoming).

EVENTS & RESOURCES

VACANCY

The World Trade Institute (WTI), a joint center of the Swiss universities of Berne, Fribourg and Neuchâtel, with an interdisciplinary focus on the field of international trade regulation, is seeking to fill the position of Director of Studies (100%). For a full job description please see the vacancies section of the WTI's website at <http://www.wti.org>. To apply, please send your CV, certificates, and a statement of interest to Ms. Margrit Vetter, World Trade Institute, Hallerstr. 6, 3012 Bern, Switzerland, or margrit.vetter@wti.org. For inquiries, please call +41 31 631 3270.

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: 6-12 September

3-14 September, Madrid, Spain. EIGHTH SESSION OF THE CONFERENCE OF THE PARTIES TO THE UN CONVENTION TO COMBAT DESERTIFICATION (COP-8). This session will review the implementation of the Convention, the report of the Committee on Science and Technology, activities for promotion of relationships with other relevant organizations, and the 2006 International Year of Deserts and Desertification activities. Internet: <http://www.unccd.int>

9-13 September, Washington, DC. FOREIGN TRADE ZONES: WHAT THE TRADE PRO NEEDS TO KNOW. Organised by the Washington International Trade Association. This workshop is aimed at informing professionals about free trade zones (FTZs) and their applications. A panel of experts on the subject is featured, which include officials familiar with FTZs. Internet: http://www.wita.org/index.php?tg=addon/4/form&id_app=25&trt_step=1&id_step=163

10-12 September, Geneva, Switzerland. MULTILATERALISING REGIONALISM. Sponsored by the WTO and the Graduate Institute of International Studies; co-organised by the Centre for Economic Policy Research (CEPR). Multilateralising Regionalism

is a two and a half day conference dedicated to exploring the relationship between regionalism and the multilateral trading system. The first two days of the conference will explore how regional trade agreements might be tamed through a multilaterally based approach to redefining trade cooperation. The final half day will consist of a high-level discussion by policymakers and scholars of the issues teased out in the first part of the conference. Internet: http://www.wto.org/english/tratop_e/region_e/conferenc_e_sept07_e.htm.

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.

3-21 September: AGRICULTURE WEEKS

13-14 September: COMMITTEE ON REGIONAL TRADE AGREEMENTS

Other Upcoming Events

17-23 September, Oxford, United Kingdom. CLIMATE CHANGE: SCIENCE, POLITICS AND THE MANAGEMENT OF UNCERTAINTY. This conference will address the linkages of science and politics, within a context of uncertainty, and the difficulties of making policies to address the problems of global warming. It will review lessons learned in recent years, from the Kyoto Protocol to initiatives at the level of state governments, cities and communities and also attempt to define what approach or combination of approaches is most likely to bring the best ecological, social and economic outcomes. Internet: <http://www.21stcenturytrust.org/2007.html#1>

4-5 October, Geneva, Switzerland. WTO'S 2007 PUBLIC FORUM ON HOW THE WTO CAN HELP HARNESS GLOBALIZATION. The Forum is intended to provide civil society, academics and the public with a unique opportunity to debate with WTO Members how the WTO can best contribute to the management of globalization. Trade and global governance, the contribution of the WTO to the construction of a coherent multilateral system and the interaction between trade and sustainable development will be but a few of this year's topics. Participants can come to Geneva or participate online. Internet:

http://www.wto.org/english/forums_e/public_forum2007_e/programme_e.htm

15-16 October, Stratford-upon-Avon, UK: SUSTAINABILITY IN FOOD AND AGRICULTURE: THE ROLE OF THE PRIVATE SECTOR AND GOVERNMENT. Organised by the International Food & Agricultural Trade Policy Council (IPC). Recognizing that agriculture and food security face a range of pressing challenges from increasing population growth to global warming, IPC will bring together international food and agricultural trade experts, environmental experts, farm leaders, government officials, and agribusiness and food retail executives to discuss how the private sector and governments can best address these sustainability challenges. The seminar will also discuss the role of trade in the sustainability debate. For further information, contact Amy Testa, tel: +1 202 328 5117; email: testa@agritrade.org; internet: http://www.agritrade.org/events/sustainability_agricultur_e.html.

RESOURCES

MARKET MECHANISMS FOR SUSTAINABLE DEVELOPMENT: HOW DO THEY FIT IN THE VARIOUS POST-2012 CLIMATE EFFORTS? International Institute for Sustainable Development (IISD), July 2007. This report examines how a future market mechanism that supports sustainable development could fit in the various scenarios being considered for the post-2012 period (when the Kyoto Protocol's first commitment period expires). The report considers a range of options and approaches to post-2012, arguing that a successful future regime will need to balance the demands and expectations of both developed and developing countries. Available online at: http://www.iisd.org/pdf/2007/market_mechanisms.pdf

THE 2007 US FARM BILL: IMPLICATIONS FOR DEVELOPING COUNTRIES. International Food & Agricultural Trade Policy Council, 2007. The consequences of US farm policy stretch beyond US borders and often negatively affect global markets, US trading partners, and developing countries. The reauthorization of the US farm bill this fall provides US legislators with the opportunity to correct trade-distorting practices and level the playing field in international agricultural trade. The brief suggests that US farm policy reform should take into account the impacts on developing countries and more effectively influence the wider international commercial and political objectives of the United States. The brief is available at http://www.agritrade.org/Publications/farm_bill_briefs.html.

BIOFUELS FOR TRANSPORT. Worldwatch Institute, July 2007. At a crucial time in world debate, this book explores, dissects and analyzes the complex and controversial issue of biofuels. With a global perspective, the work takes on a comprehensive analysis that lays out the potential benefits and risks in the technological, agricultural, economical, social and environmental sectors by utilizing five country studies (Brazil, China, Germany, India and Tanzania). Available online at: <http://shop.earthscan.co.uk/ProductDetails/mcs/productID/753/>

TRADE NEGOTIATIONS INSIGHTS/ECLAIRAGE SUR LES NÉGOCIATIONS. The International Centre for Trade and Sustainable Development (ICTSD) has this week launched the new-look version of Trade Negotiations Insights and Eclairage sur les Négociations. Now monthly, these publications will feature more articles, news and analysis of the key ACP events relating to trade, development and regional integration. To subscribe, simply fill out the periodical subscription form online at <http://www.ictsd.org/tni/index.htm> or send an email to vhanson@ictsd.ch.

Back issues of *BRIDGES Weekly Trade News Digest*® can be accessed at: <http://www.ictsd.org/weekly/archive.htm>.

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