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Facts and Figures

- The US has asked for higher agricultural tariff reductions from developing countries in exchange for its cuts in domestic support. Recent data on trade weighted protection shows, however, that the US currently faces far higher average applied agricultural tariffs in developed (20.5%) than in developing countries (7.9%, if South Korea is excluded).
- For US exporters, the proposed tariff cuts – including sensitive and special product flexibilities – will result in effective cuts in average applied tariffs from 20.5 to 14.6 % in developed country markets and from 7.9 to 7.4% in developing countries (excluding Korea). In contrast, the domestic support reductions offered by the US are unlikely to bite into current spending levels.

Average applied farm tariffs facing the US

	Initial Protection %	Post Doha Round Cuts	
		W/o Sensitive & Special %	With Sensitive & Special %
All WTO Members	19.5	11.6	15.9
WTO Developed	20.5	10.0	14.6
WTO Developing	20.8	13.5	18.8
–Developing excl. Korea	7.9	6.4	7.4
–Small & Vulnerable	11.7	11.4	11.7
–Recently Acceded	16.0	12.4	14.3
– LDCs	9.7	9.7	9.7

Source: ICTSD, IPC and IFPRI. March 2008. *The Impact of the 2008 Draft Modalities on Agricultural Market Access in the United States (draft)*.

Fail or Succeed: It's Time to Choose

The ever-shifting goalposts for a preliminary Doha Round deal have been pushed to late May despite small signs of movement in technical talks on industrial and agricultural market access.

Intense discussions took place in March among eleven key agricultural net exporters and importers on quota expansion for the 'sensitive' products that countries may partially exempt from the steep cuts that would be required for goods that fall within the highest tariff category.

Sugar, cereals, poultry, meat and dairy are among the tariff lines most likely to be designated as 'sensitive' by countries with an essentially defensive stance on agricultural trade. In light of the relatively slight mandatory tariff reductions facing such products, farm exporters consider securing larger import quotas for them as the most effective means of generating any new trade flows from the round.

While it had already been agreed that domestic consumption would be used as a basis for quota expansion, a host of technical problems – including the lack of precise data from major importers such as Canada, the EU, Japan, South Korea and the US – had emerged as a serious obstacle to broader progress since farm exporters were unable to assess the extent of their potential market access gains. And thus the decidedly unglamorous issue of how to calculate tariff rate quota expansion came to be hottest item on the agriculture agenda.

Small Group Reaches 'Consensus'

The importer/exporter group was set up in hopes that any compromise it could work out would be acceptable to the wider WTO membership since the participants (Argentina, Australia, Brazil, Canada, the EU, Japan, New Zealand, Norway, Switzerland, Uruguay and the US) reflected a representative cross-section of interests.

However, only Australia, Brazil, Canada, the EU, Japan and the US were involved in hammering out the 'consensus approach' reached in the small hours of 3 April. Argentina in particular objected to both the process and the result.

The need for the exercise arose partly from agricultural exporters' concern that importing countries would allocate a significant proportion of domestic consumption to highly processed products, to the detriment of the share of unprocessed commodities, which make up the bulk of their exports.

Broadly speaking, the small-group compromise would require at least 90 percent of domestic consumption to be counted as relatively unprocessed 'core' products. Processed products would only be allowed to make up the remainder (see page 5 for further details).

Members Need Time to Digest Proposal

WTO delegates, as well as many agricultural experts, acknowledged that they had difficulty in understanding the highly technical small group text, and predicted it would take some time for capitals to have a clear idea of its implications.

While most sources said it was too early to comment on the text, one delegate speaking on condition of anonymity called the consensus a 'self-serving' agreement among a small group

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Bridges

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See inside back cover for information on other ICTSD periodicals.

of protagonists. The source asserted that the 'consensus' blatantly ignored the legitimate interests of the majority of developing country exporters and offered no tradeoffs for the disappointingly small quota enlargement. More consultations on the paper are expected.

More Engagement Seen on Industrial Market Access

Long-deadlocked talks on liberalising trade in manufactured products appear to have budged slightly on the 'exchange rate' between the tariff-cut formula and the flexibilities available to developing countries – a critical sticking point throughout the negotiations (see page 7). While consensus still remains 'such stuff as dreams are made of', chair Don Stephenson will hold confidential meetings with individual delegations in the coming weeks to explore possibilities for compromise.

What Next?

It has long been established that the first step toward a Doha Round grand bargain must be an agreement on the parameters for concluding negotiations on agriculture and industrial market access. Revised 'modalities' texts in the two crucial areas are now expected sometime in late April or early May. 'Horizontal' negotiations will then follow, first among Geneva-based trade diplomats and subsequently involving senior capital-based officials. The process will culminate in a ministerial-level meeting, tentatively slated for the latter half of May. That meeting is expected to focus on the 'headline numbers' for the subsidy and tariff cuts that have deliberately been left aside in the largely technical negotiations conducted in Geneva over the past few months.

A 'signalling conference' on services is likely to be held around that time as well. While the main purpose of the gathering will be to provide some comfort for those (mostly developed) countries that see increased market access in this area as one of their principal gains from the Doha Round, it is still unclear what the precise agenda will be, or who will attend the meeting.

Meanwhile, the bigger picture for the Doha Round remains highly uncertain. For one, positions are still far apart on the 'headline numbers' that will be the main focus of the ministerial meeting. In addition, belief in trade liberalisation as the best tool to counter the effects of a likely global economic slowdown is on the wane in many countries.

In the United States, for instance, the House of Representatives on 9 April indefinitely suspended consideration of a free trade agreement with Colombia. Leading Democrats Nancy Pelosi and Charles Rangel said the administration's push for a congressional vote on the issue was a sign of a 'misplaced set of priorities', and called upon President Bush to "focus on the economy and work in a bipartisan manner on a new stimulus package to help America's working families." Some policy mavens see this as a harbinger of acrimonious debate on the benefits of trade liberalisation in case a Doha deal is reached before the November elections.

Earth Calling?

A number of analysts have also pointed out the apparent disconnect between the WTO farm negotiations and the real world. While the former can be seen as a battle between strong exporters, intent on opening markets, and countries essentially focused on protecting domestic producers from cheaper imports, in the real world many governments are busy devising strategies to contain increasingly violent protests caused by skyrocketing food prices and looming supply shortages (see related article on page 12). India, for instance, has eliminated tariffs on most edible oils and may do the same for staple grains. Saudi Arabia has slashed import duties on poultry, dairy and cooking oils from 20 to 4 percent. Many other food-importing countries have either taken (or are considering) similar measures, while several exporters have imposed restrictions on foreign sales of staples such as rice or wheat.

The World Bank estimates that 33 countries around the world face potential social unrest because of the acute hike in food and energy prices. "For these countries, where food comprises from half to three-quarters of consumption, there is no margin for survival," World Bank President Robert Zoellick said. He called for a 'new deal' for global food policy focused "not only on hunger and malnutrition, access to food and its supply, but also the interconnections with energy, yields, climate change, investment, the marginalisation of women and others."

Least-developed Countries Seek Seat at WTO Table

The world's poorest countries have identified a common set of objectives aimed at securing tangible benefits from the Doha Round. Among their top priorities are full duty- and quota-free market access and the elimination of rich country cotton subsidies.

The objectives agreed by least-developed country (LDC) trade ministers in Maseru, Lesotho, in late February are unusually specific, reflecting a greater sense of common purpose within the diverse group.

Although none of the demands are new, many have remained peripheral in the negotiations. The lack of urgency may stem from the perception that LDCs are in any case getting the round 'for free' since they, unlike other developing countries, are not expected to make new market access commitments. Nevertheless, these countries will not be able to increase their minuscule share of global trade – less than one percent of the world total – unless other, more pro-active measures are taken to ease their integration into the multilateral trading system.

The Maseru Declaration therefore focuses mainly on removing barriers to LDC exports, as well as broader questions related to the treatment of the poorest countries in the WTO.

Remove Import Tariffs and Quotas

While many LDCs already enjoy virtually free access to many of their most lucrative export markets, some of their key products, such as textiles, still face important barriers in other countries.

Thus, the first priority singled out by LDCs in Maseru was to obtain greater specificity on the duty- and quota-free market access that developed countries agreed to grant them at the 2005 WTO ministerial conference in Hong Kong. The commitment applies to 97 percent of LDC tariff lines, with an aspirational goal of eventually extending coverage to all products. While a 3-percent carve-out may seem relatively insignificant, the Dhaka-based Centre for Policy Dialogue has estimated that given most LDCs' undiversified export baskets, it would suffice to "essentially deprive them of market access for all of their products."

Developing countries declaring themselves 'in a position to do so' should also provide duty- and quota-free access, although they have more flexibility regarding coverage and timing. At least Brazil, China, India and Mexico have already taken steps toward this goal.

The Hong Kong deadline for achieving unrestricted access for the mandated 97 percent of tariff lines was 2008 or 'no later than the start of the implementation period' of Doha Round commitments. No timeframe was specified for removing barriers to the totality of LDC exports.

LDCs have repeatedly sought more precision on the products that trading partners will include in the 97 percent tariff lines, as well as the phase-in period they envisage for granting full access for all LDC exports. These attempts have stalled in the WTO Committee on Trade and Development, where the US particular has made it clear that the Hong Kong commitment will only apply once (and if) the Doha Round concludes, and that all questions related to timing depend on the period agreed for implementing new commitments more generally.

In Maseru, LDCs called upon developed countries to grant 'commercially meaningful' duty- and quota-free access to 97 percent of their tariff lines by the end of this year. They also demanded developed nations to specify, on a 'line-by-line basis', when they would extend coverage to the remaining 3 percent. The phase-in should be completed by the end of the Doha Round implementation period at the latest, they said.

Rules of Origin and Monitoring

Nominally unrestricted access will not lead to significantly increased exports unless they are accompanied by simplified rules of origin, which determine how much of a product's 'value added' must occur in an LDC for it to qualify. LDCs asked WTO Members to base the new

rules of origin on the model agreement they have drafted (TN/CTD/W/30).

The Maseru Declaration also calls for mechanism to be set up under the industrial market access and agriculture modalities to oversee duty and quota elimination on LDC products, as well as to monitor the implementation of simpler and more transparent rules of origin.

Deal with Cotton Subsidies

In 2003, four West African LDCs launched an initiative aimed at a rapid elimination of rich country cotton subsidies, which had depressed world prices to the point that these low-cost producers could no longer export their cotton at a profit. Five years on, LDCs have obtained a general commitment that trade-distorting subsidies will be reduced more steeply and faster on cotton than on other agricultural products, but negotiations on how that would be achieved have not even started. In Maseru, LDCs asked that a safety net be set up address revenue losses caused by declining prices.

Preference Erosion

One of the key concerns of least-developed countries is how to mitigate the erosion of their long-standing trade preferences, which will inevitably result from general tariff cuts on agricultural and manufactured products.

The Maseru Declaration suggests that the EU and the US be allowed to phase in tariff cuts on certain products, mostly textiles and clothing, over 15 years (around three times longer than the standard period). Such demands, in particular with regard to tropical products, face stiff opposition from competitive exporters in other developing countries.

There is also wide-spread concern among LDCs that some of the sectoral liberalisation initiatives (faster and deeper tariff cuts in specific sectors of interest to the majority of major exporters) in the industrial goods negotiations may completely cancel out the margin of preference that their exports currently enjoy. For instance, the elimination

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of tariffs on fish and fish products could be devastating for some coastal LDCs.

Services Priorities

Although LDCs are formally exempt from taking on new market access commitments in services, many are under pressure to bind their current levels of openness, especially in the telecommunications and financial services sectors. At the same time, no progress has occurred on their long-standing demand for a 'legal mechanism' that would allow other WTO Members to grant more favourable treatment to their services, and service suppliers in particular, than they do to those originating in other countries.

The main targets of market opening for service providers are the EU and the US. In the latter, trade negotiators argue that their hands are tied since even temporary admission of foreign service providers falls within immigration laws, while in the EU popular sentiment is increasingly averse to opening borders to foreigners who might compete for jobs, and possibly seek long-term residency in 'fortress Europe'. LDCs also face resistance from a number of developing countries concerned about the detrimental effects that preferential treatment for LDCs could have on the foreign employment opportunities for their own citizens.

Trade-related Assistance

The principal multilateral mechanism for assisting LDCs in capturing benefits from international commerce is the Integrated Framework for Trade-related Technical Assistance for Least-developed Countries. Launched in 1997 under the auspices of six intergovernmental agencies, including the WTO, the initiative was revamped last year in order to ensure 'increased, additional, predictable financial resources', to strengthen in-country capacities to manage, implement and monitor the process, and to enhance governance. In Maseru, however, LDCs were still asking for the 'operationalisation' of the mechanism so that they could start benefiting from the facilities it is supposed to offer.

LDCs also called for 'immediate measures' to move the Aid for Trade process from analysis and needs assessment to implementation, as well as a scaling up of the overall official developed assistance envelope so as to ensure that substantial additional resources are available (see opposite).

WTO Approves Aid for Trade Roadmap

Increasing developing country ownership of Aid for Trade and identifying ways to measure the impacts of such assistance will be the WTO's main objectives for 2008.

The Aid for Trade (A4T) initiative was formally launched at the WTO's ministerial conference in December 2005 in Hong Kong, where the EU, Japan and the US pledged funds for activities aimed at helping developing countries, and the least-developed among them in particular, "to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO agreements and more broadly to expand their trade."

A task force set up to 'operationalise' this concept within the WTO delivered its recommendations in July 2006 (Bridges Year 10 No.5 page 8). The organisation's principal role with regard to Aid for Trade is to monitor the implementation of those recommendations both in terms of the funds disbursed and the results achieved in making weaker economies better equipped to participate in international trade. Recipient governments are expected to drive the process through the identification of needs and priorities, and donor countries can channel their contributions through bilateral programmes or regional/ international institutions involved in trade-related development assistance.

Focus on Advancing 'Concrete' National and Sub-regional Plans

WTO Director-General Pascal Lamy received the go-ahead for his 2008 Aid for Trade 'roadmap' from the WTO Committee for Trade and Development on 25 February.

The roadmap refers to the A4T activities planned for this year by the WTO. A 'limited number' of national and sub-regional Aid for Trade reviews will be held in Africa, Latin America and the Caribbean, and in Asia and the Pacific. Each of the reviews will focus on three parts: assessing plans, determining priorities, and agreeing on how plans and priorities should be implemented. Mr Lamy promised that the meetings would be "more focused, technical and results-oriented" than those held last year. The process will culminate in a global Aid for Trade review that will take place within the first six months of 2009.

The overarching objectives guiding WTO activities in the run-up to that event are to strengthen the recipients' ownership of A4T, to improve monitoring and to move from awareness-raising to the development and implementation on concrete national and sub-regional plans. Mr Lamy laid particular emphasis on monitoring not just financial flows, but the impact of Aid for Trade activities. Finding ways to measure progress is a priority, he said, and the goal is to come up with a 'basket of performance indicators' to help assess trade capacity in developing countries. The World Bank and the OECD, as well as other institutions, have been requested to assist in the identification of such yardsticks.

Unease Growing over Doha Round Linkage

Independently of the WTO review, some poor countries are concerned about what they perceive as donor governments' attempts to link their potential Aid for Trade gains with the conclusion and outcome of the Doha Round negotiations. Formally, there is no such linkage. The A4T task force emphasised that Aid for Trade was 'important in its own right' and "should assist developing countries to benefit from increased trade opportunities multilaterally (both from previous rounds and from the anticipated results of the DDA), regionally, bilaterally and unilaterally." It also stated categorically that A4T was "a complement to the Doha Round, but not conditional upon its success."

Donor governments have already committed themselves to helping build the supply-side capacity and trade-related infrastructure that would allow developing countries to expand their trade. A good faith implementation of this commitment will easily absorb any amount of assistance made available to beneficiaries regardless of the Doha Round outcome.

Market Access Continues to Divide Farm Negotiations

Derogations from new market access disciplines in agricultural trade were once again the focus of WTO discussions in March. While limited progress was achieved on sensitive products, deep divisions persist on exemptions available only to developing countries.

Both developed and developing countries will be able to apply smaller tariff cuts to a number of 'sensitive' products than would be required by the general formula. Increased market access must be provided, however, though a combination of tariff reductions and larger import quotas.

Sensitive products are expected to provide the greatest market access gains in the Doha Round, and quota expansion is considered the most efficient way to secure those gains. While it has already been agreed that the expansion will be on based domestic consumption, highly technical discussions among major exporters and importers on the calculation method used for such data dominated the agriculture talks in the latter half of March.

When Canada, the EU, Japan, Norway, Switzerland and the US first released their data month ago, top exporters Argentina, Australia, Brazil, New Zealand and Uruguay complained that the information was incomplete and implied even less market-opening than expected. By late March, most of the data gaps had been filled, with information missing only from Switzerland on certain products and from the EU on fruit and vegetables.

Despite New Proposal, Processed Goods Still Problematic

Although a complex and still ill-understood compromise on how to calculate quota expansion was reached by six countries in early April, agricultural exporters remain concerned about its implications. They fear that the proposed calculation methodology would result in processed forms of certain highly protected products accounting for too great a proportion of domestic consumption, which would decrease the relative consumption share of unprocessed commodities, which make up the bulk of their exports (see page 1).

Under the six-country proposal, some 481 tariff lines likely to be designed as 'sensitive' would be divided into broad categories, such as barley, wheat, butter or ice cream. This classification would be further split between 'core' products, mostly comprised of raw materials, and more highly processed 'non-core' products that could account for no more than ten percent of total (separate methodologies were suggested for calculating domestic consumption of dairy products and for fruit and vegetables). The purpose of these divisions was to ensure that the majority of countries' estimates of domestic consumption would count as relatively basic commodities. Broadly speaking, this approach would result in at least 90 percent of domestic consumption being counted as relatively unprocessed 'core' products.

The share of domestic consumption allocated to the different core products within a particular category could well affect would-be exporters differently. For instance, the 'beef and veal' category includes no less than nine 'core' products, each of which is assigned a percentage of domestic consumption. It is conceivable that one beef exporter might prefer a higher percentage for frozen meat, while another would want fresh meat to receive a higher weighting.

G-33 Scorns New Paper on Special Products

In late February, the depth of divisions on another key issue in the talks was evident in reactions to a new paper from a group of developed and developing country exporters on the Special Products (SPs) that developing countries alone will be able to shield from tariff cuts.

The document, sponsored by Australia, Canada, Costa Rica, Malaysia, New Zealand, Paraguay, Thailand the US and Uruguay, proposed restricting the number of SPs to no more than 8 percent of tariff lines, to be divided into two tiers of 4 percent each. Products in each category would be subject to cuts of 25 and 15 percent respectively.

The sponsors suggested that an additional category of 'super specials' – taken from the second tier and representing no more than 1 percent of all tariff lines – could be eligible for lower

tariff cuts (and could possibly be completely exempt from them). However, these would have to fulfil a series of requirements, such as not accounting for more than a certain percentage of the value of total agricultural imports.

The rationale behind the Special Product designation is that developing countries need additional derogations from market opening commitments due to their food security, livelihood security and rural development needs. This view is particularly strongly defended by the G-33 coalition of developing countries, which include India, Indonesia and China. The group has proposed allowing up to 20 percent of tariff lines to be designated as 'special'. It also insists that 8 percent of tariff lines be exempt from any cut (Bridges Year 12 No.1 page 1), and has rejected efforts to impose trade-related conditions upon what it argues is essentially a tool to help protect subsistence farmers and rural communities.

Negotiators from the G-33 described the exporters' new proposal as a 'maximalist' negotiating position that was unhelpful in forging consensus at this stage in the talks.

Ambassador Crawford Falconer, who chairs the agriculture negotiations, warned that the indicators proposed by the G-33 for guiding the selection of SPs may be too broad. He implied that one in particular – granting eligibility to any product that has received Amber or Blue Box trade-distorting support in any year since 1995 – should be discussed further, as it could allow almost any product to be selected as 'special'.

Tropical Products

Informal consultations also took place in March between the Tropical Products Group and other WTO Members on the list of products the group has proposed for tariff elimination or steep cuts. Costa Rica reported that some of the responses were constructive, but said the proponents were seeking more, particularly from those countries that currently have the highest tariffs.

No Consensus Yet on Fisheries Subsidy Rules

Exemptions from proposed subsidy disciplines and requirements related to stock management remain the main points of contention in WTO negotiations on a new agreement aimed at reducing fleet overcapacity, widely recognised as a key contributor to the global fisheries crisis.

At its March meeting, the negotiating group on WTO rules completed its initial review of the draft annex on new fisheries disciplines proposed by chair Guillermo Valles Galmés last November.

While the first round of talks held in late January had focused on prohibited and permitted subsidies, as well as special and differential treatment for developing countries (Bridges Year 12 No.1 page 7), the March meeting was to discuss other elements of the chair's text. However, many delegations brought up additional concerns relating to the draft provisions on special and differential treatment (SDT) and fisheries management regimes.

Special & Differential Treatment

Barbados called for more flexibility for small and vulnerable economies (SVEs). It noted that these countries' share of global marine capture fisheries – less than 0.72 percent of the world total – had a negligible impact on global fish stocks, and proposed that SVEs should be allowed to provide subsidies for boats up to 25 metres in length (instead of the 10 metre limit suggested for developing countries), as well as for operational costs, such as fuel, ice, bait and insurance (TN/RL/W/226). Brazil, Dominica, the Dominican Republic, India, Japan, Korea and Turkey supported the proposal.

In a joint statement, India and the African, Caribbean and Pacific Group argued that the proposed STD provisions did not address developing countries' need to preserve policy space and pursue development goals. These countries emphasised that the fisheries sector – and artisanal and small-scale fishing in particular – was a key factor in their poverty eradication efforts.

Fisheries Management

Norway suggested amendments to proposed fisheries management disciplines in order to ensure that any permitted subsidisation does not result in overfishing. In particular, Norway argued that every Member should have an 'over-arching' obligation to establish a legal and institutional

framework to ensure the long-term conservation and sustainable use of fisheries resources. It further stated that the right to subsidise should be conditioned on the establishment of management plans for individual fish stocks.

A number of both developed and developing country delegations said that requiring a management plan for every fish stock would be too burdensome and costly. India noted that the Norwegian proposal would result in an even greater burden on developing countries than what was proposed in the November draft. The EU, New Zealand and the US also expressed reservations.

In contrast, several developing countries supported Norway's deletion of the draft provision that would require a peer review of Members' fisheries management systems to be conducted under the auspices of the FAO. Many expressed concerns about the delay that such a procedure would entail. Taiwan in particular objected to the involvement of an organisation that does not include all WTO Members. The EU maintained its support for the peer review concept, although it said that Taiwan's concerns should be addressed. It also proposed setting up a 'WTO-equivalent' body in order to ensure a strong enforcement mechanism on fisheries subsidies, but it remains unclear whether such a body would be within or outside the WTO.

General Subsidy Disciplines and Notification Obligations

A number of delegations, including Australia, Brazil, El Salvador, Mexico, New Zealand, Thailand and the United States, expressed support for the chair's text (Article IV) regulating subsidies leading to overcapacity or other negative effects on straddling or highly migratory fish stocks.

Discussions on notification and surveillance (Article VI) centred on whether countries should notify subsidies before or after granting them. Most Members, including China, South Africa, Thailand and the US, seemed to prefer the *ex post* option. A number of developing countries expressed concern that the administrative burden might be too high for them. The EU supported the chair's text, but felt that the surveillance element was not strong enough.

Transitional Provisions and Dispute Settlement

Australia, the EU and Japan backed Canada's view that it would be premature to discuss transitional provisions (Article VII) until the final package was known. Brazil proposed that the transition period for developing countries be extended from four to five years. This was supported by China, Fiji, Hong Kong, India and Indonesia. Korea and Taiwan called for a five-year transition for developed countries and eight years for developing countries. The Philippines and Thailand suggested aligning the transition periods with those agreed in the agriculture negotiations.

Many delegations objected to the draft provision that any non-notified subsidy would be presumed prohibited. These included Brazil, Canada, China, Fiji, India, South Africa, Turkey and the US. India highlighted the difficulty that developing countries would have in obtaining information across national and local government bodies.

Ambassador Valles Galmés expressed concern over the persistent differences on how to prohibit fisheries subsidies. He urged delegations to engage more fully in the negotiations and said that informal consultations, like those held in the agriculture and NAMA negotiating groups, might be necessary.

The rules group is scheduled to meet again in the week of 21 April 2008, starting with discussions on anti-dumping and followed by further negotiations on fisheries subsidies.

NAMA Talks Budge at Last, but Major Differences Persist

While some flexibility has appeared in WTO talks on how developing country interests could be accommodated in the long-stalled negotiations on industrial market access, the larger question of balance between developed and developing country commitments remains unresolved.

Despite their deep-seated differences with regard to the February 2008 negotiating draft on industrial market access (NAMA), WTO Members engaged in serious discussions in March on the parameters for tariffs reductions on manufactured products in developing countries.

At issue were the coefficient in the tariff-cutting formula the latter would have to apply (the higher the coefficient, the higher will be the post-Doha bound tariff) and the derogations from this formula available to them ('flexibilities' in NAMA-speak). The relationship between these elements has been the main bone of contention throughout the negotiations.

Sliding Scale Explored

In his February 2008 draft negotiating text, NAMA chair Don Stephenson had suggested that WTO Members could consider a 'sliding scale' between the formula coefficient and the flexibilities. He based the proposal on the perception that some Members could accept a higher coefficient for countries that agree not to use their flexibilities, while others could accept a lower coefficient if the flexibilities were increased, and a third group was ready to consider increased flexibilities if the coefficient was low enough (Bridges Year 12 No.1 page 5).

Of the various options the chair had proposed to solve this conundrum, Members seemed most willing to discuss a limited 'sliding scale', with three separate options for the coefficient and flexibilities. Ambassador Stephenson's examples for this option – he strongly stressed that these did not prejudice the position of Members – had a 'pivot' coefficient of 21. That coefficient would correspond to the tentative flexibility figures on the table since July 2004: the possibility to either subject 10 percent of tariff lines to just half the cut required by the general tariff reduction formula, or to exclude 5 percent of tariff lines from cuts altogether. The acceptance of a lower coefficient would increase the percentage of tariff lines eligible for the flexibilities, while a higher one would entail fewer 'flexibility products' (see table below).

One delegate noted that to move the discussion forward, Members need to agree on the 'pivot' – the value of the coefficient that corresponds to the base flexibility numbers of 10 and 5 percent. Brazil also said that the 'exchange rate' between the tariff reduction formula and the flexibilities would have to be negotiated in order to reframe the equation in a way that would maximise ministers' chances of success.

Other Options Considered

Members also showed considerable interest in an alternative option that would have left the coefficients alone, but varied the number of products eligible for flexibilities in accordance with the size of the deviation from standard tariff obligations.

Canada, Iceland, Japan, Norway, Switzerland and the US proposed a 'formula-plus' approach, in which those developing countries that elect to participate in sector-specific liberalisation

initiatives would be rewarded with 'credit' in the form of a higher coefficient. The credit could vary depending on the number of tariff lines and the share of world manufacturing trade covered by the sector in question. The paper stressed that participation in sectoral initiatives – which have been proposed for a wide range of products, from fish and forestry products to chemicals and toys – remained voluntary.

Hong Kong, Singapore and Thailand expressed support for these ideas, but Chile, India and Mexico said they were not interested.

No Agreement on Numbers

Some statements made at the March meeting pointed to the very real divisions that persist. For instance, the US insisted that it could not accept a developing country coefficient higher than 23 – a figure that the NAMA-11 coalition of developing countries has rejected in the past (Bridges Year 12 No.1 page 5). And when Norway and several developing nations said that the coefficient for rich countries should be below 8 – the lowest figure suggested in the February draft, the US and the EU refused.

The NAMA-11 called for the next revision of the negotiating text – expected in April or May – to include the possibility of a higher percentage of tariff lines to be eligible for half-formula cuts or zero reduction. In contrast, many developed countries think that the 10 and 5 percent limits currently pencilled in are already too high, particularly if they are associated with a high formula coefficient.

Furthermore, agreement on NAMA modalities will require more than just numbers for the formula and flexibilities. Other outstanding questions include special tariff treatment for small and vulnerable economies and for the dozen-odd developing countries with a low proportion of bound tariffs. A deal will also have to pass muster with the group of least-developed countries, which has asked for greater clarity on how other countries will go about granting duty- and quota-free access to its members' exports (see page 3).

Illustrative table on sliding scale between developing country coefficients and flexibilities

	Coefficient*	Flexibilities*	
		% of tariff lines eligible for half formula cuts**	% of tariff lines eligible for no cuts***
July 2007 Text	19-23	10	5
Examples of how the 'sliding scale' could work			
Pivot	21	10	5
Low coefficient	19	14	7
High coefficient	24	0	0

* There is no consensus on any of these figures. They are cited for illustrative purposes only.

** These tariff lines may not exceed 10 percent of the total value of a Member's non-agricultural imports.

*** These tariff lines may not exceed 5 percent of the total value of a Member's non-agricultural imports.

Panel Finds EU Beef Ban Unjustified by Risk Assessment

On 31 March, a WTO dispute settlement panel issued yet another verdict in a long string of rulings that have faulted the European Union's import ban on hormone-treated beef on the grounds that it is not sufficiently backed by scientific evidence.

Legal scholar Tim Josling has called the beef-hormone conflict 'the mother of all food safety trade disputes', not because of its commercial value, but its precedent-setting nature as the first-ever WTO ruling on a trade measure justified by the defendant on the grounds of precaution.

Background in a Nutshell

In 1988, the EU prohibited domestic use of six growth-promoting hormones in animal husbandry across the European Union, as well as banned imports of meat produced with these growth promoters.

The US and Canada challenged the import prohibition at the WTO in 1996, and two years later the Appellate Body ruled that the EU had not based the restrictions on risk assessments showing ill-effects to human health due to the consumption of hormone-treated meat as required by the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures.

Instead of ending the import ban, the EU commissioned a series of further studies aimed at providing the required scientific evidence. Meanwhile, the complainants imposed retaliatory duties on European exports (worth US\$116.5 million for the US and US\$11.6 million for Canada). The sanctions are still in force.

In 2003, the EU notified the WTO that it had permanently prohibited the hormone oestradiol-17 β (including associated imports), and prolonged the provisional import embargo on the other five hormones on precautionary grounds until more conclusive scientific evidence was available. The EU claimed that the measures were based on valid risk assessments and that it was now in full compliance with WTO rules. Therefore, the US and Canada should lift the sanctions, and the case would be closed.

The complainants refused to do this, however, arguing that the EU's additional research did not fulfil WTO criteria for risk assessments any more than its previous submissions had done. Then-spokesman for the

US Trade Representative Richard Mills was particularly scathing about the EU's claim of 'overwhelming' new evidence showing that oestradiol-17 β was a 'complete carcinogen'. He contended that the compound also occurred naturally and that oestradiol-levels in hormone-treated beef represented "a tiny fraction of what occurs naturally in an egg or one glass of milk."

In 2004, EU challenged the US and Canada's maintenance of the trade retaliation as illegal in light of the new evidence it had presented to back up the import restrictions.

The report of the panel adjudicating that claim was released to the public on 31 March 2008. Although it did fault the two complainants for keeping the retaliatory measures in place without a WTO confirmation of EU non-compliance, its main finding was that the European Union still had not provided adequate scientific justification for the import ban.

Risk Assessment Insufficient

The SPS Agreement allows countries to impose trade restrictions for health and safety reasons, but the measures must be based on scientific risk assessments (Article 5.1).

While the panel conceded that the EU had "evaluated the potential for the identified adverse effects to be associated with oestrogens in general", it also said the EU study did not satisfy the SPS Agreement's definition of a risk assessment since it had "not provided analysis of the potential for these effects to arise from consumption of meat" from cattle treated with oestradiol-17 β for growth promotion purposes.

Reflecting the views of the experts it had consulted on the EU's scientific studies, the panel also concluded that the evidence did not support the EU's contention that the presence of residues of oestradiol in hormone-treated meat led to an increased cancer risk.

As for the five hormones that the EU regulated on the basis of the precautionary principle, the panel concluded that Brussels did not adequately establish that it was impossible to perform a risk assessment within the meaning of the SPS Agreement. Furthermore, it said that the EU did not come forward with a 'critical mass' of new evidence that would fundamentally undermine past international scientific findings (notably by a joint FAO/WHO expert committee) that meat from animals treated with the hormones was safe.

US, Canada Satisfied, but EU Remains Defiant

US Trade Representative Susan Schwab noted that the findings confirmed the principle that measures imposed for health reasons must be based on science. Canadian Trade Minister David Emerson added that the WTO had once again confirmed that the import ban was inconsistent with the EU's international trade obligations. Washington and Ottawa said they now expected the EU to lift the ban.

In contrast, the European Commission focused on the procedural errors the panel had found regarding the maintenance of the sanctions, and demanded that the US and Canada remove their retaliatory measures. It also stated that the EU disagreed with the panel's adverse findings regarding compliance with the SPS Agreement. Commission spokesperson Peter Power said the ruling would not "affect [the EU's] internal rules and procedures on hormones."

European environmental and animal rights groups complained that the verdict put "the interests of North American exporters before those of European consumers, the environment and animal welfare," and ignored the precautionary principle for the sake of market expansion.

The EU is widely expected to appeal the ruling.

WIPO Struggles with Enhancing Development Dimension

Member governments of the World Intellectual Property Organisation have taken a timid step toward implementing a development agenda for the institution. Frustration is growing, however, over the lack of progress on enhanced protection for genetic resources and traditional knowledge.

Last September, the WIPO General Assembly adopted 45 recommendations aimed at making development the overarching goal of the organisation, notably through shifting its emphasis from ever-stronger protection of private rights to considering intellectual property rights as instruments to promote innovation and the transfer and dissemination of technology.

Nineteen of these ‘development agenda’ proposals were slated for immediate implementation, while the remaining 26 recommendations were to be acted upon once their human and financial resources implications had been identified and resolved. A Committee on Development and Intellectual Property was set up to monitor progress on the proposals scheduled for early action and to chart the way forward for further reforms (Bridges Year 11 No.7 page 23).

The committee’s inaugural meeting, held in early March, provided the first opportunity to assess the level of engagement of the membership at large in changing WIPO’s institutional culture and approach to intellectual property protection.

Old Divisions Apparent

A difference in emphasis was readily apparent in the general statements made by those in favour of the development agenda and others much more cautious of far-reaching reform.

Developing countries, in particular the African Group and the Group of Friends of Development, emphasised the importance of the implementation phase. India underlined that the challenge now was to effectively mainstream the development dimension in all of WIPO’s activities. Many developing countries stressed that the committee should take a holistic approach and propose activities for all 45 recommendations.

In contrast, the EU and the US focused on the need to ensure that the implementation of proposals requiring additional financial and human resources is undertaken only after information on those implications is available.

Several civil society organisations called for greater transparency and balance in WIPO’s technical assistance activities, as well as offered suggestions on how the institution could expand its work on the public interest and development aspects of intellectual property, such as improving access to knowledge and expanding the public domain.

No Definitive Conclusions Reached on Specific Proposals

Progress was slow on the examination of the concrete proposals on the table. After a lengthy discussion on procedures and working methods, only six recommendations – all pertaining to technical assistance and capacity-building – were discussed in detail.

These included:

- a new requirement for WIPO’s technical assistance to be ‘development-oriented, demand-driven and transparent’, taking into account the different levels of development of the organisation’s member states;
- additional funding to WIPO, the establishment of specific trust funds for least-developed countries, and a continued high priority to finance activities in Africa to promote the legal, commercial, cultural and economic exploitation of intellectual property in these countries;
- WIPO’s obligation to display general information on all technical assistance activities on its website and provide its members details of specific activities;
- WIPO’s collaboration with research institutions and private enterprises to assist developing countries in accessing databases for patent searches;
- the request that WIPO should create a database to match specific IP-related development needs with available resources in order to bridge the digital divide; and

- assistance to member states’ infrastructure and other facilities so as to make national IP institutions more efficient and promote fair balance between IP protection and the public interest.

Before the committee’s next session in July, the WIPO secretariat is to assess the human and financial resource requirements of the activities proposed for these and other not yet implemented recommendations. Chair Trevor Clarke will conduct informal consultations before the meeting. In July, the secretariat is also to provide members with a progress report on the list of 19 ‘immediate action’ proposals, taking into consideration suggested changes and/or new activities.

Focus on Goals, Not Process, Proponents Argue

Several delegates said they were insufficiently prepared to provide concrete suggestions for activities to implement the recommendations due to lack of time to react to the initial working papers circulated for the March meeting.

Deliberations therefore centred on the activities proposed for the secretariat, which many developing countries found to be confined to a listing of activities already undertaken or planned, often without a clear link to the goal of achieving a more balanced, inclusive and development-oriented intellectual property system, the ultimate purpose of the whole exercise.

Brazil noted that the committee was not tasked to give a ‘certificate of development agenda compliance’ to ongoing activities, and proposed that the group focus on proposals for future work. Another Friends of Development delegate expressed concern that the development agenda deliberations would become engulfed in conceptual disagreements like those on genetic resources, traditional knowledge and folklore (see page 10). While acknowledging that progress had been limited in March, a developed country delegate nevertheless insisted that the implementation of the development agenda should be viewed as a long-term process.

Continued on page 10

Solutions Sought on Genetic Resources Impasse

Only marginal progress was made at the late February meeting of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

The committee was set up in 2000 to address concerns about the misappropriation of genetic resources/traditional knowledge and folklore that currently fall outside formal intellectual property protection systems, such as WIPO or the WTO Council for Trade-related Aspects of Intellectual Property Rights (TRIPS). The regulation of access to genetic resources/traditional knowledge and the sharing of commercial benefits arising from their use are also being discussed under the United Nations Convention on Biological Diversity (Bridges Year 12 No.1 page 15).

In each of these fora, the major point of contention is whether there is a need for a legally-binding international agreement – and if so, how far-reaching such an instrument should be.

Stalemate Continues

Many see the WIPO committee primarily as an effort to deflect the heat from the WTO, where developing country pressure has been steadily mounting to amend the TRIPS Agreement so it would oblige patent applicants to disclose any genetic resources/associated traditional knowledge involved in their inventions (see page 11). However, the IGC itself has reached an impasse over the need for an international instrument to protect the resources, knowledge and cultural expressions of indigenous or other local communities.

Broadly speaking, biodiversity-rich developing countries see the development and adoption of such a treaty as the logical conclusion of the committee's work. Industrialised countries, such as the US, Japan and Canada, oppose this view.

At the IGC's February session, the latter continued to maintain that further analysis of the relationship between intellectual property and genetic resources, traditional knowledge and folklore was needed. The US, for example, said a fuller understand-

ing of the issues was necessary. Japan argued that no clarity had yet been achieved regarding basic definitions, or even the objectives of the discussions. The EU thought it premature to discuss the international aspects of preventing misappropriation.

Developing countries, on the other hand, renewed their call for negotiations on a legally binding treaty. The African Group was among those supporting this view. It proposed the establishment of a 'focused expert group' to help build consensus to advise the committee. The suggestion was widely welcomed as a good starting point for the committee's next meeting. Overall, however, little substantial discussion took place.

India remarked that domestic experiences and national views were now well known, and that it was time to "explore opportunities to come to some sort of conclusion." Brazil also said that "discussions needed to move beyond statements."

Gap Analyses Offer Some Hope

Faced with a continued stalemate, WIPO Members eventually agreed to conduct 'gap analyses' to identify points of divergence with regard to traditional knowledge and for traditional cultural expressions, while re-focusing the IGC on the issues on which consensus exists.

These analyses will describe existing international obligations, provisions and possibilities for the protection of both, including gaps in such protection. Considerations relevant to determining whether those gaps will need to be addressed, as well as possible options – legal and otherwise – for addressing them.

These documents will be made available by the WIPO secretariat in draft form by 31 May. IGC participants will have the opportunity to comment on the drafts until the end of June. Final drafts will be published by mid-August for consideration in October.

Due to time constraints, genetic resources were not discussed. The EU suggested placing the issue as the first item on the agenda for the next IGC meeting. Latin American, Caribbean, and African countries argued it would be more appropriate to focus discussions on traditional cultural expressions, as deliberations on that topic were more advanced. Members ultimately agreed that the next IGC meeting would allot sufficient time to genetic resources, as well as traditional knowledge and folklore.

At the outset of the meeting, the IGC approved sixteen requests for accreditation from various indigenous peoples groups and non-governmental organisations.

Participation by indigenous communities has become an important feature in IGC discussions. This session of the IGC was the first after the United Nations adopted a Declaration on the Rights of Indigenous Peoples, which recognised the right of indigenous peoples "to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions."

Lack of Substance Deplored

Despite the agreement on how to proceed, many delegates admitted that they were frustrated over the lack of substantive discussions at the meeting. Several representatives from both developed and developing countries noted that there was no perceptible evolution in positions already well-known to committee, and doubted that further studies would lead to a breakthrough. Some developing country delegates contacted by Bridges also expressed concern that the motivation behind the EU's renewed push for prioritising consideration of genetic resources was more inspired by a desire to curb their efforts to change WTO patentability criteria than a genuine belief in WIPO being the most appropriate forum for finding effective solutions to biopiracy.

The next IGC session, scheduled for 13-17 October, will consider establishing inter-sessional mechanisms to push the talks forward in a structured and focused manner.

Déjà Vu on Patent Rules in TRIPS Council

Despite growing support for requiring patent applicants to disclose the biological resources or traditional knowledge involved in their inventions, WTO Members remain divided on the issue.

Nearly all developing country WTO Members – or 80 out of the organisations's total membership of 151 countries – now support the inclusion of a disclosure requirement in the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) in order to prevent misappropriation of genetic resources and associated traditional knowledge (TK).

They have proposed an amendment that would require patent applicants not only to disclose where (or from whom) they obtained the genetic resources and any associated TK, but also oblige them to provide evidence of compliance with prior informed consent from the source/ country of origin, as well proof that benefits arising from the commercial use of the resources and/or knowledge will be shared in a fair and equitable manner. The amendment proponents argue that only a threat of patent revocation if disclosure requirements are not adequately met will prevent biopiracy.

Only a handful of developed countries spoke at the short March meeting of the TRIPS Council, and their interventions largely reiterated long-standing positions.

Australia, Canada, Japan, Korea, New Zealand and the US stated again that they did not believe there was a conflict between the TRIPS Agreement and the Convention on Biological Diversity, and thus saw no need for amending WTO patent rules. They argued for considering alternative methods for preventing the misappropriation of traditional knowledge and genetic material, such as the database system proposed by Japan (IP/C/W/504 and IP/C/W/472). More facts-based discussions on concrete cases of misappropriation were needed, they said.

The US has previously argued that the proposed origin disclosure requirement would be ineffective in achieving the proponent's primary objective of preventing mistakenly granted patents. Information indicating country of origin, *ex situ* collection sites, etc., the US argued, would do little to ascertain "appropriate inventorship, novelty or inventive step, because such information does not generally address the considerations underlying these requirements, such as acts of invention or the state of the relevant art" (IP/C/W/434).

The EU reiterated that it was prepared to negotiate a disclosure of origin obligation, but that it would not support requirements for either prior informed consent or proof of equitable benefit-sharing. It also argued that in order to preserve the viability of the patent system, a failure to provide accurate information on the origin of genetic resources or traditional knowledge used in an invention should not result in patent revocation. Sanctions, it claimed, should be sought outside patent law. It also said that the World Intellectual Property Organisation, rather than the WTO, was the appropriate forum for discussions on disclosure (see page 10).

Nevertheless, the TRIPS Agreement itself provides for a review of Article 27.3(b), which deals with the patentability of plants and 'essentially biological' processes for producing them. The Doha mandate asked WTO Members to broaden this review to look at the relationship between the TRIPS Agreement, the Convention on Biological Diversity, and the protection of traditional knowledge and folklore.

Members Look to Doha Round to Press Claims

Despite the lack of substantive debate at the March meeting, the amendment proponents are determined to obtain a confirmation that the disclosure requirement proposal will be addressed in the Doha Round negotiations once a preliminary deal has been struck in agriculture and industrial market access. Another group of countries spearheaded by the EU is seeking similar assurances regarding geographical indications for food names.

UNCTAD XII Preview

The United Nations Conference on Trade and Development (UNCTAD) will hold its quadrennial summit on 20-25 April in Accra, Ghana. The overarching theme of this year's meeting is addressing the development opportunities and challenges of globalisation, with a high-level segment focusing on Africa. Although the continent's GDP is estimated to have increased by 7 percent last year (even without counting the contributions of Nigeria and South Africa), not a single sub-Saharan country is on target for meeting the UN Millennium Development Goal of halving the proportion on people living extreme poverty by 2015.

The high-level segment is expected to address delays in the fulfilment of pledges for increased development assistance – whether trade-related or not – to African countries, as well as the effects of high food and energy prices. By some estimates, the cost of oil could cancel out any benefits that African countries are reaping from debt-relief initiatives.

The elaboration of the final text to be adopted in Accra is lagging behind schedule. In late March, consensus was still lacking on 230 paragraphs of the document.

The role and mandate UNCTAD are perennials of the quadrennial summits. This year, one of the main sticking points is whether the organisation's mandate should be expanded to cover the trade and development implications of climate change and migration. Some member governments are concerned about duplication of work underway in other UN institutions, as well as the danger of UNCTAD spreading its resources too thin. Another bone of contention is reinforcing the organisation's 'role and effectiveness' in research and analysis, inter-governmental consensus-building and technical co-operation. At previous gatherings, member governments have often differed sharply on the policy advice dimension of the institution's work, with some developed countries advocating that UNCTAD should mainly focus on collecting and presenting data.

Biofuels: Food vs Fuel Revisited

Jane Earley

Soaring prices for staple commodities, such as wheat, soy and corn, have brought the food security implications of increased production of biofuels under greater scrutiny.

Since the biofuel bubble burst into the public realm a few months ago, some countries have scaled back plans to increase the share of such fuels in their domestic energy mix. This is due to both the inevitable necessity of importing feedstocks from developing countries, where their production is perceived to contribute to environmental problems, and the fact that biodiesel profitability has been impaired by high prices of vegetable oils.

Food price inflation caused by food and fuel competition for the same land has also been part of the paradigm, leading many to question whether biofuels are really sustainable in the larger context of food security. All of this has major implications for the world trading system, which has long been characterised by the low value of agricultural commodities.

In the context of an impending recession and new climate change regulations, the food/fuel debate has taken on new urgency. There is no question that food prices have risen, including in countries where large numbers of people are already at risk.

Biofuel development is a factor in some places, but a number of other elements not linked to agriculture also account for the trend.

Factors Affecting Food Prices

Foremost among these are energy price increases. The rise in commodity prices tied to energy markets is unmistakable, and has been a factor for the past 15 months. When the price of crude petroleum rises from US\$30 to US\$100 a barrel, it inevitably affects food production, which is largely mechanised in most production centres. It also has consequences on transport, processing, packaging, distribution and retail sales, because price increases are usually passed on through the value chain.

Since commodities are valued in dollars, the decline in the dollar exchange rate has also had an effect. Since 2001, the dollar has steadily depreciated vis-à-vis other currencies, and for the last two years has been down 15 percent on a trade-weighted basis.

Trade-linked growth is another factor. China's 8-10 percent annual growth, accompanied by imports of key industrial and agricultural inputs, has put upward pressure on prices, including those for ocean freight rates.

In addition, some agricultural developments unrelated to biofuels have played a role in world food price increases. For instance, wheat prices have risen sharply due to Australia's prolonged drought, which has greatly reduced its wheat crop. China's import demand has surged, particularly for soybeans for vegetable oil and animal feed, putting pressure on soy prices. Dairy prices have also been affected by a worldwide shortage of stocks relative to increases in demand fuelled by higher incomes and changing consumer patterns in emerging economies.

Biofuel Concerns

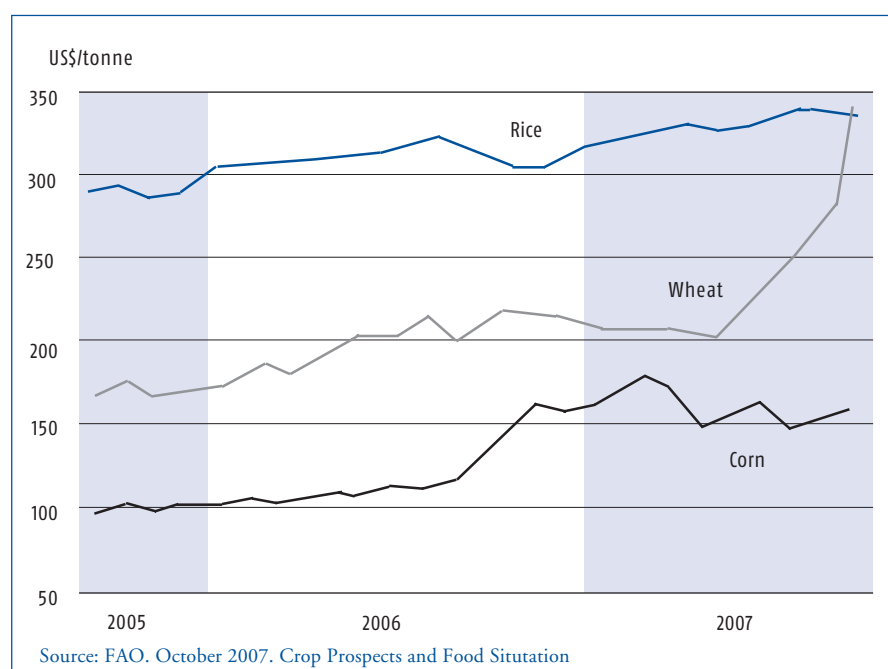
However, biofuel production is undeniably a major factor in food price increases. This is

particularly so in cases where farmers have stepped up cultivation of biofuel feedstocks to fulfil ambitious government mandates to improve the percentage of renewables in the energy mix, and where those feedstocks are also used for food.

Investment in new refining capacity and the continuation of rapid buildout in the biofuel sector, spurred by subsidies, have ensured high feedstock prices. Europe's biodiesel programme and the US fuel ethanol programme impose a massive additional demand on the farm production base, driving up prices for all grains and oilseeds, which compete for the same land. Many other countries have launched similar programmes without thinking about the aggregate effect on world markets.

This has been the major cause of higher prices for corn, wheat and soybeans. To illustrate:

International prices for rice, wheat and corn from September 2005 to September 2007



many US farmers grow both soybeans and corn. However, since biofuel mandates subsidise corn ethanol, a large number of producers are devoting more acreage to corn to the detriment of soybeans, which are not primarily used for biofuels in the US. This has created a relative shortage of soy in the market, with corresponding price increases. And, since soy is primarily used to feed livestock, the shift has resulted in higher prices for meat and milk. Corn, also used to feed livestock, is also more expensive because of demand for corn ethanol. Likewise, high fructose corn syrup (HFCS) is now almost as expensive as sugar because it is a corn product.

However, not all commodities used as biofuel feedstocks have experienced price increases. A global sugar surplus has kept the world price comparatively stable, around 10-12 cents a pound.

Are High Prices Here to Stay?

The major question is whether these are short- or long-term trends. Absent subsidies and mandates that artificially keep demand high, the biofuels production would only develop if it remains profitable to grow and refine them for a market. Petroleum supply obviously has a bearing on these conditions. So does climate change regulation, which will create demand for biofuels that reduce net carbon emissions. A worldwide economic slowdown would reduce these upward price pressures, but price volatility would most likely characterise both short- and long-term scenarios. Finally, climate change itself in the long term may make growing the current 'first generation' biofuel crops too costly due to reduced yields in their present locations.

The likelihood in the short term is that, even with normal crops, prices are going to stay high compared to historical standards, and short stocks could contribute to increased volatility. Since world grain stocks are now very low, any crop disasters will have a powerful price impact. For instance, bad crops in the US, Europe or China could temporarily push up grain and oilseed prices by as much as 50 percent compared to their present levels. Monetary policies that contribute to a declining dollar will also continue to account for higher commodity prices.

Good or Bad for Developing Countries?

Many developing countries have historically been negatively affected by low commodity prices. What do high prices mean for them? The UN Food and Agriculture Organisation has estimated that high prices in 2006 increased the food import bill of developing countries by 10 percent over 2005 levels. The increase for 2007 was estimated at 25 percent. This assessment does not take into account the benefits of high prices to producers within these countries, some of whom are also exporters. Developing countries that both produce and export grains and oilseeds will benefit from the expanded markets and higher prices that these commodities will command.

However, a recent US government report on the implications of rising food prices makes some sobering assessments for other developing countries.¹ Despite a slight increase in food availability in the next decade, less-developed countries that are also highly import-dependent will experience stronger demand for grains and oilseeds, and will have less capacity to access these essential commodities because of price increases. Least-developed countries are on balance becoming more import dependent, and price increases for basic commodities will accentuate this trend and raise the price of food aid (see box). This could account for a food gap by 2016 of 27 million tonnes, on the assumption that the food price increases of 2007 are continued. (The 'gap' is the amount of food necessary to raise consumption of all income groups to the nutritional requirement of roughly 2,100 calories a day per person).

It is important to note that biofuel competition for acreage used for grains and oilseeds is an important contributing factor in this scenario, but not the only one. Also implicated are rising energy prices, greater world food demand and stagnant food aid. But because biofuel policy is predicated in part on the assumption that these fuels can reduce greenhouse gas emissions, the ambitious mandates to produce them should also be re-examined in light of the carbon emissions caused by the land and forest conversion that their acreage demands.² This will be a challenge for national governments that understand the global nature, not only of fuel, but

of food, and the need to balance their biofuel policy priorities.

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ENDNOTES

¹ Rosen, Stacey and Shapouri, Shahla. February 2008. *Rising Food Prices Intensify Food Insecurity in Developing Countries*. In *Amber Waves*

² Fargione, Joseph et al. February 2008. *Land Clearing and Biofuel Carbon Debt*. In *Science Magazine*

Food Aid Impacts

- The United Nations World Food Programme is facing an 'unacceptable' choice of either providing 40 percent less food per recipient or reaching out to 40 percent fewer people due to a budget gap of US\$500 million for 2008. The shortfall was mainly caused by a 40-percent rise in commodity prices since 2007.

Among examples of the 'newly hungry' cited by the agency were:

- 2.5 million people in Afghanistan, who cannot afford the price of wheat, which rose more than 60 percent in 2007.
- Consumers in Bangladesh, where the price of rice has risen 25 to 30 percent over the last three months. In 2007, the price increased about 70 percent.
- Rural communities in El Salvador, who are buying 50 percent less food than they did 18 months ago with the same amount of money. This means their nutritional intake, on an already poor diet, is cut by half.

- Citing a 41-percent increase in the cost of running its Food for Peace programme over the last six months, the US Agency for International Development is scaling back emergency food aid, potentially affecting up to eight million people. USAID is currently conducting a country-by-country assessment of food price increases in order to prioritise assistance to would-be beneficiaries.

Tropical Biomass and the Global Biofuels Market

Francis Johnson

The average productivity of biomass produced in tropical and sub-tropical climates is more than five times higher than that of biomass grown in the temperate regions of Europe and North America. In theory at least, this should give developing countries a tremendous comparative advantage.

However, most research and development funding, as well as a considerable amount of direct subsidies, are provided for the production of biomass in European Union and in North America, where technology and strong infrastructure can compensate somewhat for the natural disadvantage.

Consequently, there are fundamental distinctions between tropical and temperate bioenergy resources in terms of the natural resource base, physical productivity, technology and the availability of capital. Such distinctions underpin the basic reality that North-South biofuels trade is in effect a way to tap into the high productivity of tropical biomass; where such trade is fair and equitable, it can promote sustainable development and achieve global and regional benefits. In order to understand the context for biofuels trade and its role in sustainable development, it is necessary to review some basic principles and the current status of bioenergy and biomass.

Current Use of Biomass

Biomass accounts for about 11 percent of total primary energy consumed globally, more than other renewables and nuclear power together. Fossil fuels continue to account for the overwhelming share of global

primary energy consumption, nearly 80 percent of the total. Other renewables, including hydro, account for less than 3 percent of all primary energy consumption (Figure 1a). Biomass is also by far the most significant among renewable energy sources, accounting for about 80 percent of renewables used (Figure 1b). Modern bioenergy (such as bioethanol, biodiesel and biogas) could potentially surpass large hydro in the coming years, given the significant rate of growth in liquid and solid biomass use and the increasing reluctance in many regions of the world to accept the environmental impacts of large-scale hydro.

Traditional Uses of Biomass

Over 80 percent of biomass energy is used at low efficiencies for cooking, heating and lighting by more than two billion consumers, who rely on traditional biomass fuels and/or have no access to modern energy services. Dependence on traditional biomass in sub-Saharan Africa is far greater than any other world region. The impacts of lack of access to modern energy are felt in many ways – the sometimes deadly effects of indoor air pollution, the tremendous amount of time devoted to gathering firewood, the lack of health and education services that require reliable energy supplies and many other problems. Cleaner and safer renewable fuels, such as gel fuel made from bioethanol, have been proposed as a solution to health and safety issues that can – at the same time – take advantage of the region's under-utilised agricultural capacity.

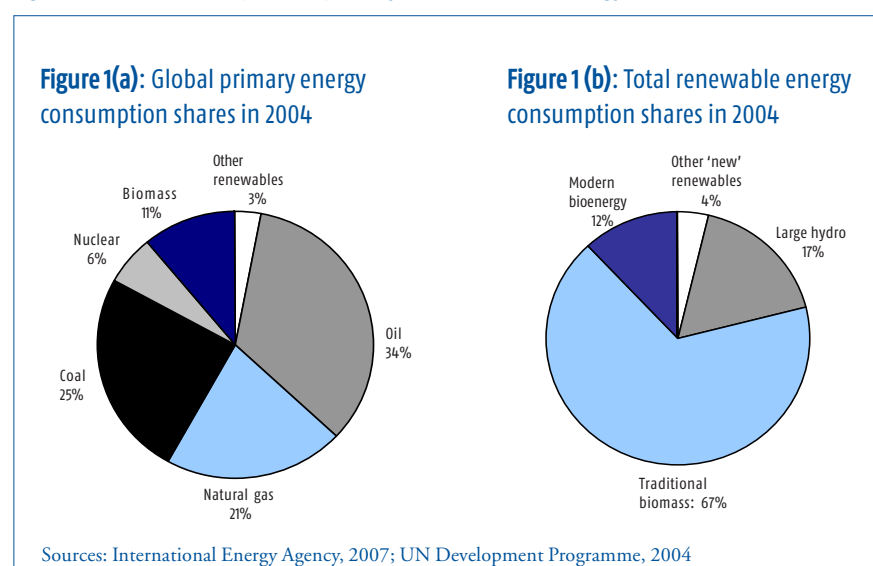
The deforestation observed in developing countries in the 1970s was at first attributed to household consumption for woodfuel and charcoal, but subsequent research showed that it was in fact mainly caused by companies and industries that were clearing land for agricultural uses and timber. Furthermore, the notion that communities would quickly descend into a 'tragedy of the commons' in their use of forest resources turned out to be a gross simplification that ignored the role of informal institutions. Local communities that had control over their own resources often showed a marked ability to implement informal customs and institutions to preserve some land and forest for future uses.

Biomass and Livelihoods

It is important to assess bioenergy within the overall biomass resource base and the socio-economic context of affected communities. Trade-offs among the many uses of biomass are

often summarised as the 4Fs: food, feed, fibre and fuel. Even this division is too simplified; biomass serves or impacts many inter-connected and critical functions/services, including housing, materials, maintenance of biodiversity, ecosystem integrity, nutrient cycles, water quality, erosion control and recreation. Proper management and utilisation of biomass and bioenergy also helps shape the role of citizens and communities as caretakers for resources they will pass on to future generations.

Figure 1: Global consumption of primary and renewable energy in 2004



The bioenergy development strategies for particular regions should be based on socio-economic priorities in combination with the overall resource base that is available and the subset of that resource base that can be harvested for bioenergy use. A consideration of these broader issues must include the extent to

which development of biomass resources can help create, maintain and/or expand sustainable livelihoods for the local population, as well as in other areas that are connected socially, economically and ecologically to the local or regional community or communities involved.

Ian Scoones has identified several livelihood indicators in terms of enhancing social capital, improving the quality of work and insuring future natural resource availability:

- the creation of working days;
- poverty reduction;
- well-being and capabilities;
- livelihood adaptation, vulnerability and resilience; and
- natural resource base sustainability.

Bioenergy generates far more jobs than any other energy source – renewable or non-renewable. Furthermore, these jobs are created mainly in rural areas where poverty is worst and thus can help to slow down or even reverse migration to urban centres. It is harder to generalise about the impacts of bioenergy development with respect to the other four indicators. Rapid degradation of forests and soils for short-term profit will obviously not lead to sustainable livelihoods, whereas careful managed growth strategies can not only maintain the resource base but in some cases enhance it.

Global Bioenergy Potential

A 2004 recent study by Edward Smeets et al found that the bioenergy potential of sub-Saharan Africa – after accounting for food production and resource constraints – was the greatest of any of the major world regions. The high potential results from the large areas of suitable cropland in the region, large areas of pasture land presently used and the low productivity of existing agricultural production systems. Estimates of the long-term bioenergy potential for the region can serve as guidelines for development strategies that can harness the biomass resource base in a sustainable manner.

It is important to note that these are techno-economic potentials and there will inevitably be social and cultural issues that would restrict use of some lands for energy production. Nevertheless, the tremendous potential for bioenergy, after accounting for food production, means that the margin for future development is significant. The concentration of the potential in sub-Saharan Africa in combination with the lack of potential in Europe poses interesting questions for future development and trade in bioenergy. The bioenergy and biofuels policies followed in the EU could offer new export market opportunities for sub-Saharan Africa and other developing countries.

Liquid Biofuels

Biofuels have been around for over a hundred years and bioethanol in particular saw significant use in the early part of the twentieth century. Before the era of cheap oil and during times of conflict such as World War II, biofuels were recognised as a valuable domestic alternative to imported oil. The resurgence of interest in biofuels in recent years is partly due to similar reasons of energy security, but now the added issues of rural development and climate mitigation make the case for biofuels even more compelling. The past several years have witnessed a growing interest in fuel ethanol as a substitute to petrol in the transportation sector on a global scale. Bioethanol production has nearly doubled in five years, while biodiesel has quadrupled, although starting from a much lower base.

Among the various biomass and biofuel options, bioethanol and biodiesel have the greatest significance in terms of international trade in the near-term. However, market developments to date suggest a preference for domestic consumption, due primarily to energy security concerns; the only major exporter of biofuels is Brazil. Furthermore, with national subsidies in most producing countries and with only a few major players, the conditions for a competitive international commodity market are not yet developed. The future direction of biofuels trade is tied to agricultural reform in the case of bioethanol. Biodiesel is classified as an industrial product and is not subject to the high import tariffs that still exist in the EU, US and elsewhere.

Food vs Fuel

Given the high level of poverty and malnutrition found in many developing countries, there is growing concern that food security may be jeopardised by expanding bioenergy production. The food vs. fuel debate (see page 12) is sometimes used to discourage bioenergy development, even though the correlation between the two is not necessarily negative. In fact, increased food and fuel production can go hand-in-hand, especially when new agro-industrial biotechnology methods are deployed. Furthermore, where equity concerns can be addressed, the income provided from bioenergy production can in some cases more than compensate for displaced food production. If large-scale displacement occurs, it is vital that policies and institutions redirect such income towards investment in greater agricultural productivity and/or address distributional issues related to the benefits accrued.

Another issue that will inevitably arise, especially in some regions of sub-Saharan Africa, is the availability of water for irrigation in agriculture, which will reduce the potentials achievable in scenarios that include irrigation. The availability of water for large scale bioenergy expansion appears to be globally constrained. Some regions and/or countries, particularly South Africa, are projected to be in water deficit by 2015 or 2020. Elsewhere, however, a fair amount of irrigation already exists, and therefore the key issues relate to changes in the scale and scope of irrigation in different hydrological zones. Furthermore, the scope for improvements in irrigation in agriculture, as well as in biomass production, is quite significant.

Sustainability Criteria

There has been considerable effort during the past few years aimed at the development of sustainability criteria for biomass and biofuels, both within regions and in the context of international trade. It is worth reiterating that there are no 'one size fits all' solutions' in the context of bioenergy and biofuels'. Socio-economic and environmental impacts must be assessed within the context of pre-existing ecological, cultural, agro-industrial and land use systems that are specific to the area under consideration. However, it is possible to devise a 'check list' of sustainability criteria most likely to be rel-

Continued on page 16

evant to a bioenergy project. In their case studies on Ukraine and Brazil, Smeets et al have identified the following key criteria:

- land use patterns: deforestation, competition with food, protection of natural habitats;
- socioeconomic: child labour, minimum wages, employment, health care, education; and
- environmental: soil erosion, fresh water use, fertilisers, pollution and agricultural chemicals.

The studies assessed the costs of applying these criteria both in a 'loose' and 'strict' fashion, the latter set sometimes being defined as not merely minimising negative impacts, but making positive improvements, most notably in the provision of health care and education services. It is worth considering whether the concept of

sustainability in bioenergy projects or programmes should mandate simply that conditions measured according to these criteria not be negatively impacted; or whether true sustainability should entail positive improvement. At the same time, it is important to recognise that bioenergy in some cases will replace fossil fuels, and as such the costs and benefits must be compared to those of the fossil fuels being replaced.

Sustainability criteria for bioenergy will inevitably have to address certain core criteria, which will differ considerably across different regions and crops. The core criteria would likely cover

- land use and land ownership, including food security;
- maintenance of biodiversity;
- reduction and minimisation of greenhouse gas emissions;
- soil erosion and degradation;
- water use and contamination; and
- socio-economic impacts.

The criteria would also have to be applied at varying levels: local, regional, national and international (i.e. particularly in relation to trade). Undoubtedly there will be conflicts across the scales and consequently a governance system – or perhaps an environmental regime – would have to be somewhat flexible but also capable of maintaining fairly high standards.

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Uneven Progress in New EU-ACP Trade Agreements

Negotiations on Economic Partnership Agreements between the European Union and regional groupings in Africa, the Caribbean and the Pacific are advancing in fits and starts, and will not conclude everywhere by the end of this year as the EU had hoped.

As of January 2008, the European Union was supposed to have replaced its long-standing unilateral trade preferences for African, Caribbean and Pacific (ACP) countries, most of which are former colonies, by reciprocal 'economic partnership agreements' (EPAs). The EU's motives were two-fold. On the one hand, the preferences had not proved efficient in significantly boosting economic development or trade volumes in the recipient countries. On the other, a number of WTO Members were becoming increasingly reluctant to renew the waivers the EU needed to continue offering more favourable market access to ACPs than to other developing countries.

While the two sides agreed on the broad framework for the EPAs in June 2000, negotiations have progressed extremely slowly. Reasons for the delay include the EU's insistence on concluding pacts with regions rather than individual countries, as well as the 'comprehensive' nature of the future agreements, which will include not only trade in goods and development

co-operation, but also much more controversial new elements, such as services, intellectual property, investment and competition policy.

Faced with the imminent expiry of the latest – and virtually certainly the last – WTO waiver for the unilateral preferential regime, the EU offered late last year to conclude interim agreements on goods only with any interested groups or countries. Practically all ACPs that stood to suffer significant trade losses initialled such deals (Bridges Year 11 No.7 page 17). A brief synthesis of the main developments since then follows below.

Caribbean Aims at Full EPA by June

The Caribbean was the only EPA region to conclude a comprehensive draft agreement last year. An internal review of the text is now underway in the region, which both sides hope to formally sign by the end of June. The deal could then be applied on a provisional basis, although it cannot officially enter into force until national parliaments have ratified it.

That process will take pace against a backdrop of considerable criticism, not only on the merits and demerits of the agreement, but also on the lack of public consultation during its negotiation. Ambassador Richard Bernal, who heads the Caribbean Regional Negotiating Mechanism, has admitted that the EPA is not a 'panacea', but defended it as the best deal achievable both in commercial and in development terms.

Pacific Islands Unite Behind Push for a Comprehensive EPA

Pacific ACP trade ministers agreed in late March to proceed as a group with negotiations of a comprehensive EPA by the end of the year. There are strong calls for a parliamentary process that would allow for substantial public scrutiny before ratification, fuelled by tensions over the EU's reluctance to address the Pacific region's key offensive interests, such as the temporary movement of service providers and Aid for Trade commitments.

Interim Agreement Close in Central Africa

Central Africa and the EU have completed negotiations on an interim agreement, which the European Commission claims “is now final and will be used by both parties in the process leading to signature and ratification.” Although the text is supposed to apply to the region as a whole, only Cameroon, which had already initialled an interim deal last year, currently figures on the list of Central African parties to the treaty.

According to the document, the EU will grant immediate duty-free access to all Central African goods except sugar and rice, which are subject to a transition period. Central African countries will eliminate import duties on most EU goods gradually between 2010 and 2023, although tariffs will remain at their present levels for a number of (mostly agricultural) products.

By January 2009, the parties must negotiate provisions necessary for a ‘progressive, asymmetric and reciprocal liberalisation’ of trade in services. Central African countries have reservations about this due to the lack of a regional study on the impacts of services liberalisation. The text also sets out objectives and a ‘way forward’ for a development partnership, as well as trade-related issues, such as investment and competition policy.

The current aim is to finalise the interim agreement for the entire region by July 2008.

The Race Is on in West Africa

While both Ghana and the Ivory Coast are on course to sign full EPAs by mid-2008, the two regional commissions steering the West African negotiations (ECOWAS and UEMOA) are struggling to harmonise the interim agreements they initialled last year. The Cameroonian and Ivorian deals will eventually be folded into the broader West African agreement, but negotiators say that the EU must first agree to give more support for accompanying measures to increase competitiveness, address adjustment costs and support EPA implementation.

ECOWAS, which claims it is politically committed to negotiating a full EPA by mid-2009 or earlier, has set a 30 June deadline for agreement on a common external tariff, which it plans to base on that in force in the UEMOA monetary union among the regions francophone countries. The issue remains controversial, however. The UEMOA common tariff has four bands ranging from zero to 20 percent, but Nigeria wants to add a fifth tier of 50 percent, largely to help protect its pharmaceutical industry. A five-tiered structure is also favoured by the Western African private sector and civil society organisations.

Talks on the comprehensive EPA are set to continue in April and in June. In parallel, West Africa is developing a regional market access offer which it aims to finish in May.

Difficulties Abound in Southern Africa

In the Eastern and Southern Africa region (ESA), overlapping economic integration schemes and diverging interests have contributed slow progress. ESA countries are also concerned about certain standard EU provisions, such as the ‘standstill’ clause, which prohibits parties from raising tariffs above the levels prevailing at the EPA’s entry into force even on products exempt from reduction commitments. They also object to the EU’s determination to prohibit new export taxes (or raising the level of existing ones), as well as its insistence on a most-favoured-nation clause, under which EPA parties must extend to each other any more favourable market access granted to another trading partner after the EPA’s entry into force. Brazil has already brought this requirement to the attention of the WTO General Council as a potentially serious impediment to South-South trade (Bridges Year 12 No.1 page 8).

In March, EU officials resolutely refused to revise the Union’s position on these issues, as they had already done with other EPA partners. Trade Commissioner Peter Mandelson told negotiators of the Southern African Development Community (SADC) that while the EU was prepared to be flexible “on the basis that we move forward rather than backward,” there was “no way of reopening the process that has already been negotiated.”

On their part, ESA ministers have agreed to seek solutions to questions related to special treatment for least-developed countries (LDCs), rules of origin and cumulation, development co-operation, additional resources and delivery mechanisms for EPA costs. In February, LDC trade ministers singled out simplified and more flexible rules of origin as one of the group’s key priorities in the Doha Round negotiations (see page 3).

Keep ‘Grand Vision’ in Mind

Chungu Mwila, the director for investment promotion and private sector development at the Common Market for Eastern and Southern Africa (COMESA), acknowledged that there was a conflict between regional trading blocks in Eastern and Southern Africa. He suggested that the next logical step would be a COMESA customs union and common external tariff. While work was already underway on how to best to harmonise the three main trade regimes in the region, he urged negotiators to keep in mind that ultimately they should fit into the ‘grand plan’ of a continent-wide African common market.

SADC to Pick up Pace on EPA

Member countries of the Southern African Development Community agreed at a SADC-EU ministerial conference held in Gaborone in March to work toward applying their interim EPA agreement from July 2008, as well as to try and conclude a full EPA by the end of the year.

Angola underlined the importance of remaining a part of the EPA process, claiming it intended to accede to the full EPA once the agreement had been concluded.

Speaking at the Gaborone ministerial, Botswana’s Trade Minister Neo Moroka stressed that the Southern African region faced a complex process of transformation that could rival anything Europe had ever experienced. He emphasised that trade remained a key factor for integration and poverty eradication in the region, and that central to this was the setting up of a SADC free trade area in 2008, a customs union by 2010 and a common market by 2015. Many, however, consider this timeframe overambitious.

Burden-shifting in WTO Dispute Settlement: The Prima Facie Doctrine

James Headen Pfitzer and Sheila Sabune

The burden of proof in dispute settlement has been referred to as a legal response to ignorance. However, clarification is necessary to establish what constitutes the ‘prima facie’ evidence that allows a dispute to go forward under WTO jurisprudence.

While the notion of *prima facie* (often translated as ‘on the face of it’) is a standard of evidence without a fixed definition, international tribunals have characterised it as evidence that “unexplained or uncontradicted is sufficient to maintain the proposition affirmed.”¹

Under WTO jurisprudence, a complainant that is unable to pass the *prima facie* test runs the risk of failure.

Lawyers with a background in common law find this fact troubling since WTO panels are not confined to considering only the factual record presented by parties. (Under Article 13 of the Dispute Settlement Understanding, panels may seek information from anywhere they deem appropriate to supplement evidence provided by the parties. This is also the practice of civil law courts and most international tribunals).

The Prima Facie Standard and Burden of Proof within the WTO

‘Burden-shifting’ refers to the point in legal proceedings when a court has completed its analysis of whether the challenger has presented enough evidence to warrant a case and starts to consider counterclaims presented by the defendant and, possibly, other parties with an interest in the dispute.

The WTO Appellate Body (AB) first addressed this issue in its 1997 report on *US – Shirts and Blouses* (WT/DS33/AB/R). That ruling confirmed the original GATT practice regarding the allocation of burden of proof: the complaining party must establish the violation it alleges before a panel can start consideration of evidence presented by any other parties.

The 1998 Appellate Body report on *EC – Hormones* (WT/DS26/AB/R) clarified that this standard was to be applied to all WTO disputes. The AB emphasised that the burden of proof could shift only once the panel had conducted an analysis to determine

that the complaining party had met the requisite *prima facie* standard. It further noted that the defending party’s ability to refute evidence presented by the claimant should have no effect on the initial determination of whether the complainant was able to satisfy the *prima facie* standard.

What Evidence Should Be Considered?

The Dispute Settlement Understanding (DSU) does not contain an explicit standard of review of what constitutes *prima facie* evidence. In *EC-Hormones*, the AB explained that “the issue of failure to apply an appropriate standard of review [...] resolves itself to the issue of whether or not the panel [...] made an objective assessment of the facts.” While this language is consistent with DSU Article 11, the task of developing the jurisprudence for its implementation has been left to the Appellate Body.

However, AB rulings have been far from consistent with respect to exactly what evidence should be considered by a panel in deciding whether a *prima facie* case has indeed been presented.

For instance, in February 1999 the Appellate Body applied the *US – Shirts and Blouses* burden-shifting approach in *Japan – Measures Affecting Agriculture Products* (WT/DS76/AB/R). It would be an abuse of authority for a panel to investigate under its own initiative and then proceed to rule in favour of a complaining party that had failed to establish a *prima facie* case, the AB stated. This ruling clearly limits the evidence that panels may consider during the *prima facie* analysis to that provided by the complainant.

Only months later, however, the Appellate Body directly reversed itself with respect to the evidence a panel should take into account in its *prima facie* determination. In *Canada – Measures Affecting the Export of Civilian Aircraft*, it ruled that a panel was free to request and consider information from parties or anyone else. In particular, the AB specified that the panel was under no obligation to wait until the complaining party had presented a *prima facie* case before conducting its own investigation. The Appellate Body further explained that outside information might indeed be necessary to determine whether the complaining party had presented a *prima facie* case. This view was reiterated in the Appellate Body’s 2006 report on *US – Zeroing*.

And yet, in its 2005 ruling on *US – Gambling* (WT/DS285/AB/R), the Appellate Body had reverted to its original position that a panel should be satisfied that the complainant had established a *prima facie* case before considering other evidence, such as a defendant’s rebuttal. In other words, a panel should refrain from further proceedings on a claim for which the complaining party has failed to make a *prima facie* case.

In light of such contradictions, it is not clear how a panel should conduct its *prima facie* analysis. Would it be justified in simultaneously considering outside evidence and argumentation presented by both parties, as advocated by the Appellate Body in *Zeroing* and *Aircraft*? Or should a panel limit itself to considering only evidence proffered by the complainant, as laid out in *Shirts*, *Hormones* and advanced in *Gambling*? Clarification is necessary.

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ENDNOTE

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Who Gains from Farm Tariff Cuts?

Recent ICTSD, IPC and IFPRI analysis shows that the February 2008 draft agriculture modalities would lead to a significant overall reduction in EU and US tariffs. Many key developing country exports would nevertheless continue to face significant import duties.

The average trade-weighted applied tariff would fall from 7.9 to 3.5 percent for goods entering the US market. However, tariffs for some products – such as sugar, tobacco and dairy – would only be reduced to 16.5, 12.8 and 12.4 percent from 46.8, 42.6 and 28.1 percent, respectively. Tariffs on products likely to be designated as sensitive would fall from 50.4 to 29.3 percent. These products include important developing country export commodities, such as processed dairy, beef, sugar, chocolate, tobacco goods and frozen orange juice.

The overall EU outcomes are largely similar although the specific figures and products differ. While average trade-weighted agricultural tariffs would fall to 9.5 percent from 23.4 percent, sugar, cereals, meat and dairy would continue to face significantly higher tariffs than other products. These products are also most likely to be designated as sensitive.

By contrast, the February draft's provisions on domestic support are not projected to lead to any decrease in actual applied spending for the US after the end of the implementation period. Estimates of US farm expenditure until 2015 show that total Amber and Blue Box, as well as overall trade-distorting domestic support (OTDS), spending is likely to remain nearly constant, while Green Box payments are expected to increase substantially. Current bindings for product-specific support for dairy would be exceeded by US\$400 million in 2010 and US\$700 million in 2015. The increases in sugar support would reach US\$15 million in 2015 and US\$400 million for cotton.

In the EU, the ongoing common agricultural policy (CAP) reform will yield significant reductions in domestic support. However, the February modalities are unlikely to result in substantial changes in actual spending until 2013/2014 when current projected rates of Amber Box and OTDS payments will reach the proposed limits. Product-specific support is expected to be converted to Green Box-compatible terms, or limited due to budgetary constraints.

Market Access for EU and US Exporters

The proposed modalities offer improved overall gains in market access for US and EU exports. Overall applied tariffs facing US exports will be reduced by 20 percent – down from 15.72 to 12.54 percent. Gains in developed country markets will be the largest, reducing average tariffs from 20.46 to 14.63 percent. Cuts proposed by chair Falconer would reduce the 'water' in developing country tariffs and, on average, result in real cuts in applied rates even after accounting for sensitive products, and special product flexibilities (see Facts and Figures on page 1).

Similarly, average tariffs applied to EU exports would be reduced from 18.2 to 11.7 percent. After taking into account sensitive products, the average applied tariff would fall from 18.9 to 12.1 percent in developed country markets. Reductions in applied tariffs would be minimal in small and vulnerable economies and recently acceded WTO Members when special flexibilities for their positions are considered. The analysis also shows that sensitive products provide the greatest protection against EU exports in developed country markets. More specifically, without sensitive products, tariffs facing EU exports in developed countries would be reduced from 18.9 to 8.8 percent. When sensitive products are taken into account, the average tariff rises from 8.8 to 12.1 percent – a 38 percent increase. In developing countries, the initial average tariff facing EU exports goes down from 19.1 to 15.2 percent if no flexibility is allowed, and to 17.8 percent when flexibilities are taken into account. This represents an increase of only 17 percent.

The research was presented at an ICTSD dialogue on the draft agriculture modalities on 12 March 2008. Detailed findings of the studies can be found at www.ictsd.org/dlgue/2008-03-12/2008-03-12-doc.htm

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- May 21-23 Trade Policy Review Body – China

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- Apr. 20-25 UNCTAD XII Ministerial Conference
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