

Year 12 No.3 May 2008

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Published by the International Centre for Trade and Sustainable Development

Facts and Figures

- According to a recent limited poll, just 3 percent of North Americans – compared to 27 percent last September – believe the Doha Round is likely to create substantial new opportunities for exporters of industrial goods. Expectations are also sharply down in Asia, Australia and New Zealand. In the EU and Africa, however, belief in more access for manufactures has grown by about 10 percent, to 42 percent and 57 percent respectively.
- Between 84 and 87 percent of respondents in Australia and New Zealand, North America, Latin America and the Caribbean think that exceptions for sensitive products and special safeguards could seriously undermine real improvement in market access for farm goods. Three-quarters of Europeans and Asians share this view. For Africa, figure is 57.2 percent.
- A mere 11 percent believe that the round will bring substantial gains for trade in services. In Australia and New Zealand all respondents think such increases unlikely. Less than 4 percent of N. Americans hold hopes for significant gains, while in Europe optimism reaches 33 percent. In other regions the figure varies from 7 to 15 percent.

Source: Universities of Adelaide and Barcelona. April 2008. *Barometer of International Trade Relations*.

Doha Round at Crossroads

Reactions to the latest draft negotiating texts on agriculture and industrial market access point to a difficult time ahead if a preliminary Doha Round deal is to be struck in June or early July.

The two papers, released on 19 May, reflect a persistent gap in positions on the main points of contention rather than a tendency toward convergence. At the time of writing, agriculture negotiators had agreed to extend efforts to bridge differences into the second week of June, while multilateral meetings on industrial goods were temporarily suspended as 'pointless'. An informal meeting of key ministers in Paris on 5 June was expected to give an indication of how the Doha Round end-game was likely to play out.

Contradictory Views on Balance

The 2005 Hong Kong ministerial conference instructed negotiators to "ensure that there is a comparably high level of ambition in market access" for agriculture and industrial goods. However, India's Commerce and Industry Minister Kamal Nath noted that many developed countries still refused to cap their agricultural tariffs even at levels of 100-150 percent at the end of the Doha Round, but expected developing countries to bind their industrial tariffs at 26 percent or below for almost all products. Argentina's chief trade negotiator Alfredo Chiaradia also said that the revised texts showed "greater ambition on industrial goods for developing countries than there is on agriculture for developed countries."

In contrast, the EU and the US strongly insisted that emerging economies must offer more on non-agricultural market access (NAMA) before a deal could be envisaged. EU spokesperson Peter Powell said that unless ministers meeting in Paris gave instructions to senior negotiators to 'start real and genuine negotiations' in Geneva, the Doha Round would "face a situation of stalemate and suspension." US Trade Representative Susan Schwab also warned that the talks were 'at a crossroads' and that much would depend on the signals emerging from Paris.

Agriculture: Few Changes but Clearer Options

The May agriculture text leaves largely unchanged the hotly contested ranges of figures suggested in earlier drafts for domestic subsidy and tariff cuts. These issues have not been discussed at the WTO in recent weeks, and it is widely accepted that they can only be resolved at ministerial level. Many negotiators have expressed concern over the effect that the newly approved US farm bill could have on those talks (see page 19).

The new draft includes a complicated compromise elaborated by six countries on estimating domestic consumption of sensitive agricultural products. This highly technical issue is important to farm exporters, because mandatory expansion of import quotas for sensitive products will be based on domestic consumption. A number of countries have complained that the compromise caters too much to the special interests of a few key importers. Not enough to everyone's liking, however. Intent on keeping intact its supply-managed dairy, poultry and egg sectors, Canada – an active participant in the group that authored the agreement – now maintains that it "firmly opposes proposals for any over-quota tariff cuts or tariff quota expansion for sensitive products."

The revised text presents two 'either/or' options for the special safeguard mechanism (SSM) under which developing countries will be allowed to temporarily raise tariffs to guard against

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Bridges

Between Trade and Sustainable Development

Published by the International Centre for Trade and Sustainable Development.

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ISSN 1562-9996

Annual subscription:

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

The *BRIDGES* series of publications is possible in 2007–2008 through the generous support of the UK Department for International Development (DfID).

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

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import surges or sudden price declines. Minister Nath objected to the level of price and volume triggers that must be met before additional duties can be imposed, as well as the “absurdly low number of products (3–8, *ed.*) for which the SSM could be invoked during a year.” There was ‘no way’, he said, that developing countries could accept the SSM provisions in their present form.

The new draft also reflects continuing lack of convergence on the number and treatment of the ‘special’ products (SPs) that developing countries will be allowed to shield from standard tariff cuts on the basis of their food and livelihood security and rural development needs. The G-33 coalition of developing countries has strongly objected to the range of figures included in the text on the number of SP tariff lines and the tariff cuts required for the products.

On 3 June, chair Crawford Falconer said that Members had made ‘incremental progress’ that was likely result in a revision of his May draft, clarifying language and simplifying options for senior officials and, ultimately, ministers (see page 5 for details on the agriculture text).

NAMA: A Text in Search of a Negotiation

The 19 May revision of the non-agricultural market access (NAMA) modalities contains few surprises. It does, however, offer a more detailed elaboration of a possible ‘sliding scale’ between the depth of general tariff cuts and the use of exceptions for developing countries. The text also adds options – all in brackets denoting lack of consensus – on the treatment of developing country customs unions, the implementation period for tariff cuts for recently acceded Members such as China, and an ‘anti-concentration clause’ that would limit the extent to which developing countries could shield products in a single sector from tariff cuts.

Developing country criticism of the NAMA draft has focused most strongly on the fact that the May revision would still require them to make a proportionately greater tariff reduction effort than developed countries. Both Argentina and India stressed that the new text ignored the core mandate of the Doha Round that ‘less than full reciprocity in reduction commitments’ would be required from developing countries. Minister Nath rejected the entire notion of linking developing country tariff cuts to the use of flexibilities. He also objected to the possibility that developing countries be allowed to maintain higher average tariffs in exchange for participating in more exacting, but voluntary, sectoral liberalisation schemes.

US WTO Ambassador Peter Allgeier quipped that judging by the draft, the acronym NAMA meant ‘no additional’ rather than ‘non-agricultural’ market access. He also warned that in order to salvage a Doha Round agreement, Members should negotiate “a very different outcome than is suggested in this paper.” In a similar vein, Commissioner Mandelson told the European Parliament that “any developed or emerging economy that thinks it can come to the Doha table empty-handed on industrial goods will go home the same way because on that basis I could not sell a political deal in Europe and I would not try.”

On 2 June, chair Don Stephenson noted that a week of NAMA meetings had made divergences worse and that no real negotiations had taken place. He said it would be ‘pointless’ to continue the process under the circumstances, and urged negotiators to engage in a serious effort to bridge positions in informal groups of WTO delegates and capital-based senior officials, expected in Geneva in the second week of June. Ambassador Stephenson added that he was prepared to resume chairing meetings ‘in any format’ if Members had tentative convergence to share or helpful proposals to put forward. Earlier, he had warned that the 19 May text would be revised only if there was ‘real convergence’ to record (see page 7 for details on the NAMA text).

Moving into Higher Gear, but When?

At the time of writing, it was unclear when senior officials would start considering the agriculture and NAMA drafts in tandem rather than in separate negotiating groups. In any case, once this ‘horizontal’ process has run its course, ministers were expected to converge in Geneva in what many saw as the last chance of securing a conclusion to the Doha Round this year. The exact dates of the ministerial were yet to be decided. Meanwhile, the chairs of the services and rules negotiations have released ‘comfort texts’ aimed at reassuring Members that their concerns will be addressed in the final phase of the round (see pages 9 and 10).

Rising World Food Prices: How to Address the Problem?

Joachim von Braun

Strong and new forces of change in the world food equation are transforming food consumption, production and markets. Unlike the pattern prevailing for the past few decades, today's global agricultural system is very much driven by the demand side.

With income growth in emerging economies, globalisation and urbanisation, the demand for agricultural products will continue to grow and shift toward high-value commodities. Partly driven by the expansion of biofuels and demand for feed, strong global cereal consumption is likely to continue. The International Food Policy Research Institute (IFPRI) projects that by 2015, cereal demand will increase by up to 20 percent across all regions.¹

Slow Production Response

On the supply side, global production response has been slow. The overall productivity growth in agriculture is simply too low to cope with the increase in demand. Between 2000 and 2006, cereal supply grew by a mere 8 percent and stocks declined to low levels. The production response to high prices is mainly impaired by land and water constraints, as well as underinvestment in agricultural innovation. Increased production – driven by higher yields, not by area expansion – and improved productivity require substantial investments in research and development (R&D), services and input supply systems. Climate change and rapid population growth further increase the need for more agricultural science and technology investment. Yet, growth in global public agricultural R&D expenditures, especially in developed countries, has slowed down.

Other important factors that explain the drastic agricultural price increases include production shocks (such as Australia's drought) and low grain stocks, which make markets more volatile. The flow of speculative capital from financial investors increasingly interested in rising commodity prices also contributes to increasing food-price volatility. Trade restrictions triggered by high prices in many countries further narrow the global market.

Upward Trend Will Continue for Many Key Prices

The rise in agricultural commodity prices has indeed been dramatic. Since 2000 – a year of low prices – the price of wheat has quadrupled, the price of corn almost tripled and the price of rice more than doubled.² When adjusted for US\$ depreciation, the price increases are lower, but still dramatic, with often serious consequences for the purchasing power of the poor.

IFPRI's global scenario analysis suggests that real world prices for cereals and meat will continue to be high. While current peaks may not remain for the long run, rice, wheat and maize prices will increase by about 20 to 30 percent by 2015, while beef, pork and poultry prices are projected to grow by up to 10 percent. These projections do not factor in the current price raises that are triggered by trade policies, such as export restrictions.

Energy and Biofuels

Biofuel production contributes to the changing world food equation and adversely affects the poor through price-level and price-volatility effects, as well as through ill-designed bioenergy programmes. Increases in ethanol and biodiesel production, which largely draws on maize and oilseeds, will have a strong effect on agricultural prices and there is now a close correlation with energy prices. IFPRI models project that, until 2020, biofuel expansion may *ceteris paribus* result in price increases of 26 percent for maize and 18 percent for oilseeds.³

The worrisome implication is that volatile energy prices will translate into larger food-price fluctuations. Some governments have adopted subsidy regimes for biofuels and energy crops that undermine the comparative advantage of developing countries. Subsidies for biofuels that use agricultural production resources act as an implicit tax on basic food, which constitutes a large share of the expenditures of the poor. It makes sense for many countries to wait for

the emergence of more efficient technologies, and plan to 'leapfrog' to these technologies later.

Climate change is expected to have an adverse impact on agricultural production. Developing countries with limited adaptive capacities will experience the greatest production losses and increased food insecurity. In many African countries, for example, agricultural production will be negatively affected, thereby increasing food insecurity and malnutrition.

Viable mitigation strategies for the agricultural sector in the developing world exist, but key constraints need to be overcome. A new and more comprehensive post-Kyoto international climate change regime, for instance, must be negotiated, and fair rules of access to carbon trading are required.

Impacts on the Poor

Higher agricultural prices will have uneven impacts across countries and population groups. Net-exporting countries will benefit from improved terms of trade, although some of them are missing out on this opportunity by imposing export bans to protect consumers.

Net importers, however, will struggle to meet domestic food and feed demand or pay high subsidies to shield consumers from price increases. As almost all countries in Africa are net cereal importers, they will be hit hard.

Surging and volatile food prices most dramatically affect those who can afford it the least – the poor and food insecure. The few poor households that are net sellers of food could benefit from higher prices, but those that are net buyers – the large majority of the world's poor – will be harmed. Although adjustments in wages, employment and in capital flows to the rural economy will take time to reach them, opportunities exist to transform the challenge into gains for the poor.

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The nutrition of the poor is at risk as higher food prices will induce them to limit their food consumption and shift to even less-balanced diets, with adverse impacts on health.

A 1-percent increase in the price of food in low-income countries typically leads to a 0.75-percent decrease in food spending.⁴ At the household level, the poor spend about 50 to 60 percent of their overall expenditures on food. For a five-person household living on US\$1 per person per day, a 50-percent increase in food prices removes up to US\$1.50 from their US\$5 budget, and growing energy costs add to their adjustment burden. In Bangladesh, Pakistan and Kenya, for instance, the poor are increasingly experiencing shortages due to rising food prices.

About 160 million people continue to live in extreme poverty, on less than 50 cents a day. In times of hardship, the poorest suffer silently, but the middle class typically has the ability to organise, protest and lobby. Since early 2007, social unrest related to high food prices has occurred in more than 30 countries.

Government Responses So Far

In an attempt to minimise the effects of high food prices on their populations, many countries are taking desperate steps that can add up to policy failures.

Argentina, Bolivia, Cambodia, China, Egypt, Ethiopia, India, Indonesia, Kazakhstan, Mexico, Pakistan, Russia, Senegal, Tanzania, Thailand, Ukraine, Venezuela and Vietnam are among those that have imposed restrictions on exports or price controls or both. For instance, China has banned rice and maize exports, while India has banned exports of non-basmati rice and pulses, and raised the minimum export price of basmati rice. Argentina has raised export taxes on soybeans, maize, wheat and beef; and Ethiopia and Tanzania have banned exports of major cereals. Other nations, including net food-importing developing countries have reduced import barriers. Morocco, for example, has cut tariffs on wheat imports from 130 to 2.5 percent; Nigeria has slashed duties on rice imports from 100 to 2.7 percent; Peru has removed import taxes on wheat and maize. Senegal has waived duties on cereal imports.

These policy responses may reduce risks of food shortages in the short-term, but they are likely to backfire by making the international market smaller and more volatile. Price controls reduce farmers' incentives to produce more food and divert resources towards helping people who do not really need it. Export restrictions and import subsidies have harmful effects on import-dependent trading partners and also give wrong incentives to farmers by reducing their potential market size. Any long-term strategy to stabilise food prices will need to include increased agricultural production.

Needed Policy Actions

Food price increases now play a dominant role in increasing inflation, and undermining livelihoods and food security in many countries. It would be a misguided policy to address these specific inflation causes with general macroeconomic instruments. Rather, specific market- and productivity-related policies are needed to deal with the causes and consequences of high food prices. This new situation calls for effective and coherent policy actions in five areas:

- Developed countries should facilitate flexible responses to price increases by eliminating trade barriers. Biofuel subsidies and excessive blending quotas should be revoked and a full-scale moratorium on biofuels from grains and oil seeds considered for some months. Programmes that set aside agricultural resources, except in well-defined conservation areas should be terminated. While some progress has been made in reducing trade-distorting policies, many remain, and poor countries cannot match them. The new food situation is changing trade regimes in many countries and this will inevitably have important implications for the current Doha Round negotiations, which should be completed.
- Developing countries should increase their short- and medium-term investments in agricultural research and extension, rural infrastructure and market institutions to achieve long-term agricultural growth. New trade-distorting policies with which countries hurt each other should be ended. Government interventions and investments should be supported by good governance practices.
- Investment in agricultural science and technology at a national and global scale is needed to address the long-term problem of boosting production response. A global R&D initiative for accelerated agricultural productivity makes economic sense, is pro-poor and sustainable, and serves security.
- Global actions are needed to calm markets quickly. These should include making futures trading more costly at the commodity exchanges and appropriate regulation of exchanges; a temporary moratorium for grain and oilseeds based biofuels, as mentioned above; establishment of a global public grain stock, for instance as a coordinated set of pledges among a to be established 'coalition of the caring' consisting of main grain producer countries (including co-ordinated releases from such a reserve when prices increase excessively).
- Comprehensive social protection and food and nutrition initiatives are required to address the acute risks facing the poor due to reduced food availability, high prices and limited access to income-generating opportunities. Increased resources for the World Food Programme are needed as part of a global response. Social safety nets such as food or cash transfers should target the poorest people with a focus on early childhood nutrition.

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ENDNOTES

¹ von Braun, Joachim. 2007. *The World Food Situation – New driving forces and required actions*. IFPRI. Washington D.C.

² FAO. 2008. International commodity prices database

³ von Braun, Joachim. 2007. *When Food Makes Fuel – The promises and challenges of biofuels*. Crawford Fund. Canberra

⁴ Regmi, Anita et al. 2001. 'Cross-country Analysis of Food Consumption Patterns' in *Changing Structure of Global Food Consumption and Trade*. US Department of Agriculture Economic Research Service. Washington D.C.

Work Continues on May Agriculture Draft

A possible further revision of the 19 May draft modalities for concluding the Doha Round negotiations on agriculture could help senior officials inch toward a compromise on some important technical issues ahead of a ministerial showdown expected in late June or early July.

However, it should be said at the outset that key differences remain unresolved. These include in particular the extent of subsidy and tariff cuts, which by common consent will be left for ministers to decide.

Significantly divergent draft provisions reflect the deep and persistent divide that still prevails on the number and treatment of the Special Products that developing countries will be able to slate for gentler tariff reductions on food security, livelihood security and rural development grounds, as well as the special safeguard mechanism under which developing countries will be allowed to raise applied tariffs to mitigate the impacts of sudden rises in import volumes or declines in prices. Given the continued lack of convergence, these issues are also likely to end up on the ministerial plate.

However, chair Crawford Falconer said that ongoing negotiations on tropical products and preference erosion could still bear fruit before the talks move into a horizontal phase where senior negotiators will start considering tradeoffs between agriculture and non-agricultural market access (NAMA).

Market Access Remains the Thorniest Area

Of the three areas of the agriculture talks, market access remains the most problematic. While Members have long agreed that tariffs will be classified into a series of bands, with the highest duties subject to the largest cuts, agreement is still lacking on the percentage by which tariffs in each band will be reduced. The May 2008 draft provides figures for the percentage cuts in the lower bands, taking the mid-point of the indicative ranges the chair had proposed previously. Cuts for the highest band, which are the most controversial, are still expressed as a range, and – unlike the lower bands – are still in square brackets denoting lack of consensus.

Also controversial has been the inclusion of a minimum 54-percent average cut for developed countries, which in the latest draft is no longer in square brackets. One source suggested that Members would now be unlikely to have difficulty achieving this, as the new text allows them to take into consideration, when calculating this average, the enhanced liberalisation relating to tropical products and the tariff ‘escalation’ on processed products.

Special Safeguard Mechanism: Two Very Different Options

Whether duties imposed by developing countries under the special safeguard mechanism (SSM) could exceed their bound Uruguay Round tariffs has been one of the most hotly contested issues in the negotiations, and clearly remains so still.

The revised text on the SSM reorganises the options that the chair had set out before, setting them out as two broad options for negotiators to decide on (see table below).

May 2008 revision: maximum potential SSM tariff based on surges in import volumes

UR Tariff	Post DR tariff	Post DR tariff plus SSM remedy under different import volume triggers					
		Small surge		Medium surge		High surge	
		Option A ¹ 5–10%	Option B ² 30–35%	Option A 10–30%	Option B 35–55%	Option A 30% <	Option B 55% <
350	188 ³	282	188	329	213	376	218
130	74.5	114.5	74.5	130.4	93.1	149	96.9
50	31	71	31	81	38.8	91	40.3
15	10	50	10	60	12.5	70	13

¹ Option A refers to paragraph 124 (a), (b) and (c). The percentage refers to the surge necessary for SSM action.

² Option B refers to paragraph 124 (d), (e) and (f). The percentage refers to the surge necessary for SSM action.

³ We assume here a cut 46.3 percent (2/3 of the mid-point between 66 and 73)

Option A would allow applied tariffs to be raised as soon as imports exceed the preceding three-year rolling average by 5 percent. If the surge is more than 30 percent over the baseline, the applied tariff could be at least doubled. Importantly, Option A could result in a safeguard duty that exceeds the Uruguay Round bound tariff. This would be particularly easy when the post-Doha rate is low (see table below).

Option B has much higher volume triggers. It would also limit applied tariff increases to the Uruguay Round bound level even when the import surge exceeds 55 percent. For volume increases between 35 and 55 percent, the tariff could be raised at most to the mid-point between Uruguay Round and the new, lower Doha Round bound rates. When faced with a 30 percent surge, a developing country could raise its applied tariff only to the Doha Round bound level. Since all WTO Members have the right to increase applied tariffs up their bound levels, developing countries would need no SSM provision to take such action.

In practice, the Uruguay Round limitation is likely to affect products not subject to full formula reductions. For any ‘special’ products totally exempt from tariff cuts (see below), the SSM could not be used at all.

SSM duties would normally apply for 12 months, the text says, unless seasonal products are involved, in which case the limit would be six months. In addition, the mechanism could not be invoked for more than three to eight products (these numbers are bracketed) in a given 12-month period.

Special Products Text Revised

Developing countries may designate a proportion of their agricultural tariff lines as ‘special’ based on their food security, livelihood security and rural development needs. These products are eligible for ‘more favourable treatment’. The number SP tariff lines and the nature of ‘more favourable treatment’ remain among the most polarising issues in the negotiations.

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The revised text captures the extent of the divisions through including the highest and lowest proposals put forward by Members. For instance, developing countries could be allowed to designate a minimum of 8 percent and a maximum of 20 percent of their tariff lines as special. Either 40 percent or none of these Special Products would be exempt from undertaking tariff cuts. Remaining tariff lines would undertake an average 15-percent cut, with a minimum 12-percent and maximum 20-percent cut per line. This simplifies the previous draft, which had suggested up to three different categories of SP tariff lines.

The G-33 coalition of developing countries has rejected the lower figures included in the revision (Bridges Year 12 No.2 page 5).

Sensitive Products Compromise

It has been agreed since July 2004, that all WTO Members may designate a certain number of their agricultural tariff lines as sensitive. The current, still bracketed, figures suggest that the limit be 4-6 percent of all tariff lines for developed countries and one-third more for developing countries.

Tariffs on these products will be cut less steeply than the formula would require, but 'substantial improvement' in market access must be offered, notably through the expansion of existing import quotas.

How to calculate the amount by which a given quota must be enlarged dominated the agriculture negotiations in the recent weeks.

Although agreement has been reached that quota expansion should be based on the domestic consumption of the product in question, lack of data and the level of precision – 'beef' in general or specific cuts of beef – made it difficult to would-be exporters to assess how much their market access would improve.

The May modalities revision includes, as one of two options, the complex methodology for designating sensitive products first put forward in early April by Australia, Brazil, Canada, Japan, the EU and the US – informally dubbed the G-6 (Bridges Year 12 No.2 page 1). It provides countries with a means to allocate, at the more detailed 8-digit tariff level under the harmonised sys-

tem, product-specific domestic consumption data which is often available only at the broader 6-digit level. Members had earlier agreed that domestic consumption figures will be used as the basis for quota expansion.

While some countries, such as Argentina, still oppose this approach, others have agreed that it could serve as a basis for further negotiations.

Developed country Members which still have more than 4 percent of their tariffs above 100 percent after the tariff cut formula has been applied will have to offer additional quota expansion, which the new draft stipulates should be 0.5 percent of domestic consumption. The draft also includes some additional options for developing countries that have to expand import quotas for their sensitive products.

Tropical Products and Preference Erosion

The group of Latin American countries that favour enhanced liberalisation for tropical products has continued to negotiate informally with the EU, as indeed has the African, Caribbean and Pacific (ACP) group of countries that are concerned about the erosion of preferential access to developed country markets. For some particularly controversial products, such as bananas and sugar, the two groups seek opposing treatment. Tropical liberalisation proponents were reported to be continuing detailed negotiations on individual tariff lines with various developed country importers, in the hope of establishing either one common list of products for enhanced liberalisation or a set of country-specific liberalisation commitments.

More Leeway for New WTO Members' High Tariffs

The text provides some new flexibility for 'recently acceded Members' (RAMs) – a group of countries, including China, that have argued that they have already undertaken onerous accession commitments recently, and thus should be treated more leniently. Whereas the previous draft proposed allowing these countries to moderate by 7.5 percent the tariffs cuts they make in all bands, the new one would allow cuts to tariffs in the top two bands to be moderated by up to 10 percentage points, and those in the bottom two bands to be moderated by five percentage points.

Options for Current Special Safeguard

Whether to eliminate or retain the existing 'special agricultural safeguard' (SSG) has also been contentious, with efficient agricultural exporters in the Cairns Group calling for its immediate termination, and importing Members such as the EU, Japan and Switzerland favouring its continuation. The latest draft again offers two options: either eliminate it for developed countries, or reduce its use to 1.5 percent of their scheduled tariff lines. For developing countries, it proposes a new figure of 3 percent of lines.

Domestic Subsidies

The draft retains the bracketed 66 or 73 percent proposed cut for overall trade-distorting subsidies for the US and Japan, as well as the 75 or 85 percent cut for the EU. All other Members would have to undertake a 50 or 60 percent cut. The US in particular is under pressure from other Members to reduce its maximum permitted subsidy level.

The new draft now contains an annex giving a detailed breakdown of US subsidies that could be subject to requirements under the less trade-distorting Amber Box, as well as a cleaned up version of proposed Green Box disciplines aimed at ensuring that subsidies in this category really are 'minimally' trade-distorting.

Changes to Text Still Possible

At the time of writing, Members were scheduled to meet towards mid-June to take stock of informal consultations on a number of issues. Chair Falconer held out hope that at least options on the SSM could still be streamlined, and that ongoing negotiations on tropical products/preference erosion could yield enough progress to be reflected in a revised text, possibly to be issued in the latter half of June. It was hoped that the exercise would lead to a draft with as few 'moving parts' as possible to facilitate ministerial decision-making (see page 1).

New NAMA Text Sparks Old Reactions

The revised chair's makes clear that long-standing divisions on liberalising trade in industrial goods have not narrowed. In particular, a new proposal linking the depth of developing countries' tariff cuts to their use of exceptions has attracted criticism from a variety of stakeholders.

The NAMA talks have been characterised from their inception by two key questions related to fairness and balance. The first – embedded in the Doha ministerial declaration – is that 'less than full reciprocity in reduction commitments' will be required from developing countries. The second, agreed by trade ministers in 2005, is that there must be a comparable level of ambition in the outcome of the agriculture and industrial market access negotiations.

The majority of developing countries consider these mandates to mean that they should be allowed to cut tariffs by a smaller percentage than developed WTO Members, as well as have the right to retain considerably higher post-Doha duties. This view is particularly strongly defended by the so-called NAMA-11, a group that includes heavy weights such as Argentina, Brazil, India and South Africa.

In contrast, major developed countries, whose average bound tariffs are already low, have sought to narrow the gap between tariffs in the two groups of countries.

Coefficients Largely Unchanged

The depth of tariff cuts in the Doha Round will be determined by the 'coefficient' inserted in the reduction formula: the higher the coefficient the higher the final maximum tariff.

The numbers tentatively pencilled in for developing countries since July 2007 ranged from 19 to 23. For developed countries, the unofficial range was 8-9. The May 2008 draft slightly widens this scope to 7-9.

However, the coefficients are only half of the equation. The other half consists two 'flexibility' options for developing countries. The relationship between these elements has been the main point of contention throughout the negotiations.

Flexibilities Suggested in Earlier Drafts

In July 2004, WTO Members agreed that, as a special and differential treatment measure, developing countries could shield some tariff lines from the full force of formula cuts in one of two ways. Under the first, they could apply only half formula cuts to a certain percentage (10 percent suggested) of tariff lines provided that these do not exceed a given limit of the Member's total non-agricultural imports (also proposed at 10 percent). As an alternative, a developing country could leave a smaller proportion of tariff lines (5 percent pencilled in) unbound or unchanged, again with a proviso limiting the coverage of this exception to a corresponding percentage of total NAMA imports. Earlier modalities drafts had also suggested that countries opting not to use the flexibilities could have a coefficient higher than the proposed maximum of 23.

Coefficients and flexibilities for developing countries proposed in the May 2008 draft

	Coefficient	Flexibilities	
		Tariff lines eligible for half formula cuts	Tariff lines eligible for no cuts
July 2007 Text	19-23	10%, but must not exceed 10% of the total value of non-ag imports	5%, but must not exceed 5% of the total value of non-ag imports
May 2008 Text	19-21	12-14%, but must not exceed 12-19% of the total value of non-ag imports	6-7%, but must not exceed 6-9% of the total value of non-ag imports
	21-23	10%, but must not exceed 10% of the total value of non-ag imports ¹	5%, but must not exceed 5% of the total value of non-ag imports
	23-26	None	None

¹ A bracketed footnote here suggests that South Africa "shall have recourse to [1-6] additional percentage points."

These tentative numbers were rejected by the NAMA-11, whose members argued that – due to their much higher initial bound tariffs – the proposed ranges for developed and developing countries would require the latter to make a far greater reduction effort, contrary to the 'less than full reciprocity' principle.

New Tradeoffs Proposed

Since the release of the February text, Members had explored a possible 'sliding scale' between developing country flexibilities and coefficients (Bridges Year 12 No.2 page 7). The major novelty in the May 2008 revision is that it attempts to flesh out potential tradeoffs between these elements in a more concrete manner.

Most notably, it suggests significantly greater flexibilities – both for the number of eligible tariff lines and the percentage of imports covered – in exchange for a low coefficient. A middle of the range coefficient would correspond to a smaller percentage of eligible tariff lines, while countries choosing a high coefficient would have to renounce the flexibilities altogether (see table below).

Reactions Vary Widely

The tradeoffs outlined in the text were meant to open up some negotiating space in the talks where entrenched positions combined with slow progress in agriculture had resulted in a virtual standstill. Nevertheless, initial reactions were not encouraging.

India's Commerce and Industry Minister Kamal Nath stated that linking coefficients to flexibilities was "beyond the [Doha Round negotiating] mandates since the two were different modalities intended to address different objectives." He went on to say that the number and trade limitations on flexibilities failed to take into account the realities and sensitivities in developing countries, and called for 'complete revision' of the text before taking the matter for deliberation at ministerial level.

Continued on page 8

More broadly, Minister Nath observed that the text ignored “the core mandate of the Doha Round of less than full reciprocity in reduction commitments and comparability in ambition between NAMA and agriculture.”

In contrast, EU and US business groups slammed the revised text as a ‘step backwards’ that would give an ‘unfair advantage’ to emerging economies. Another source claimed that an import volume limit of 19 percent could fully cover every product a country would want to protect with its entitlement to subject 12 to 14 percent of NAMA tariff lines to half-formula cuts.

More Time for RAMs

Only four countries – China, Croatia, Oman and Taiwan – in the recently acceded WTO Members (RAMs) group will be required to make tariff cuts according to the developing country formula. In a nod to the group’s demands for more flexibility, the revised draft includes a new bracketed option with regard to products on which accession commitment tariff reductions were incomplete on 1 January 2003. On these tariff lines, the text proposes a two- to three-year grace period – starting from the Doha deal’s entry into force – before the RAMs concerned must begin implementing the reduction commitments resulting from the current negotiations. This option would give additional time to China, which had not yet fully implemented its accession tariff reduction commitments in 2003.

Under the previous draft, the grace period would have started running for each product as soon as accession commitments had been fully implemented, which for China happened largely between 2005 and 2007. This proposal is retained as an alternative in the May 2008 draft.

RAMs would also have two to three extra years to implement Doha Round commitments over the standard developing country transition period of eight to ten years.

A footnote in the new draft clarifies that RAMs have agreed to postpone consideration of additional flexibilities, including a higher coefficient than other developing countries, until the broader developing country parameters are agreed.

Sectoral Initiatives

The new text restates the principle that participation in sector-specific negotiations – aimed at deeper tariff cuts than those resulting from the application of the formula – is voluntary. It does, however, contain a bracketed suggestion that developing countries taking part in such initiatives could be given ‘credit’ in the form of a higher formula coefficient. Minister Nath called this linkage “nothing but a blatant violation of the mandate.” In contrast, EuroBusiness and the US National Association of Manufacturers called on their governments to “make clear that OECD-only sectoral agreements are not an option. High-income developing countries like China, Brazil and India must participate fully in the sectoral process if it is to proceed.”

Wide Range of Options in Brackets

The revised paper reflects several recent proposals, including a number seeking special treatment for individual countries.

For instance, one bracketed provision would allow South Africa to shield an extra number of products from standard tariff cuts, so that the Southern African Customs Union (SACU) does not have to choose between preserving its longstanding common external tariff and exposing countries like Lesotho and Namibia to international competition.

A proposal from Mercosur, the South American trade bloc, to exclude intra-customs union trade from import value calculations was also present as a bracketed option. Several countries opposed this since it would exclude Brazil and Argentina’s substantial bilateral trade in autos, leaving them more room to use the flexibilities. Unlike the EU or SACU, Mercosur is not a fully functional customs union with a joint commitment schedule at the WTO.

An anonymous developed country senior diplomat quoted by Reuters said the special treatment proposed for developing country customs unions would have a ‘devastating’ effect on liberalising trade in manufactured goods. The source cited analysis showing that Brazil could shield 20 percent of its industrial tariff lines under the proposal, while for Argentina the figure could be as high as 32 percent.

Another potential option in the new text is a relatively recent EU-US proposal to constrain the ability of developing countries to choose which products to shield from tariff cuts. Responding to fears that entire industrial sectors could be blocked off, the proposal – hotly opposed by countries including China and Brazil – would prevent large swaths of a particular industrial sector from being shielded from standard liberalisation obligations. Chair Don Stephenson acknowledged that there was ‘no consensus’ on this issue.

Other Flexibilities

Developing countries that have bound less than 35 percent of their industrial tariffs at the WTO are exempt from applying the formula.¹ Instead they should bind 70-90 percent of these tariff lines at no less 28.5 percent. The revision proposes that countries with the lowest current level of bound tariffs could limit future binding coverage to 70 percent while those with present coverage between 23-30 percent should bind at least 80 percent.

Special flexibilities available to small and vulnerable economies (SVEs) have not changed since the February draft save for a bracketed provision that would allow Bolivia to ‘substantially preserve’ its current bound tariff rates. Countries classified as SVEs cannot account for more than 0.1 percent of world trade in manufactures.

The new text also contains bracketed provisions that would grant South Africa additional flexibility in the application of the sliding scale (see table footnote), as well as allow Venezuela to benefit from tariff treatment akin to that available to SVEs.

ENDNOTE

¹ Cameroon, Congo, Côte d’Ivoire, Cuba, Ghana, Kenya, Macao, Mauritius, Nigeria, Sri Lanka, Suriname and Zimbabwe

Members Call for Changes in Proposed Fisheries Rules

WTO Members disagreed in April on the extent to which future multilateral rules on fisheries subsidies should include exceptions for payments to the small-scale fishing sector, as Canada and some other developed countries sought controversial exemptions for their own industry.

At the centre of the disagreement was a new informal proposal from Canada to allow both developed and developing countries to support small-scale fishing.

The paper called for adding a provision to the general exceptions set out in the draft agreement on fisheries subsidies released by the chair of the rules negotiations, Ambassador Guillermo Valles Galmés, in November 2007 (Bridges Year 11 No.7 page 10). That text would ban a wide-range of fisheries subsidy payments, especially those that boost fishing capacity or create other incentives to fish. It also contained a relatively narrow range of exceptions under which payments would be allowed if linked to effective fisheries management, with some special provisions for developing countries.

Under the Canadian proposal, the exception would be limited to fishing within a Member's territorial waters, and payments would not exceed a to-be-negotiated 'de minimis' percentage of the average value of fish harvested in those waters for the three preceding years for which data is available. This new exception would allow governments to make ordinarily banned payments, such as those to fuel or other operating costs.

Canada noted that while discussions on support for small-scale fishing had focused on developing countries, it was a matter of concern for many developed countries as well. The chair's text provided special and differential treatment for small-scale fishing in developing countries, but was silent on this issue with respect to rich nations, it said.

Japan, Korea, the EU and Taiwan expressed strong support for the Canadian proposal. Hong Kong agreed that support for small-scale fisheries should be allowed for all Members. Norway concurred that small-scale coastal fishing needed support, but was concerned with the scope of the Canadian paper. The US said that the proposal was premature.

New Zealand and Australia cautioned that the proposed exemption would open the door to a large carve-out for small-scale fishing subsidies, with Australia likening it "using a sledgehammer to kill a mouse." In a similar vein, marine conservation group Oceana suggested that the proposal created "a hole that the entire European fishing fleet could drive through."

Developing countries also opposed the Canadian proposal. Many argued that the small-scale fishing sector in developed countries did not perform the crucial subsistence function that it did in poor countries. Thailand, South Africa, Cuba and Turkey said that special and differential treatment for small-scale fisheries should be for developing countries alone.

Differences on Subsidies vs Management Resurge

Old differences resurfaced in discussions on fisheries management systems and the text's requirement for a peer review process for them. While not disputing the importance of fisheries management, Argentina, Brazil, China and some other developing countries cautioned against overly stringent rules (see related article on page 12).

While Japan and Korea reiterated their long-held view that monitoring and management systems would control overfishing more effectively than prohibitions on subsidies, the EU suggested establishing a fisheries division in the WTO Secretariat, and publishing independent reports on Members' fisheries management systems.

Some delegates said that an overemphasis on management instead of effective disciplines on fishing subsidies would be a step back from the chair's text, as well as a departure from the core of Members' pledges to discipline fisheries subsidies, including through the prohibition of certain payments that contribute to overcapacity and overfishing.

In contrast, many Members that had expressed concern about involving external institutions such as the FAO in reviewing their national or regional fisheries management systems said some of their concerns had been eased by the chair's clarification that the reviews would not be carried out by scientific experts, but trade representatives, who could draw from expertise of organisations outside the WTO.

Developing Country Disciplines

India and Indonesia tabled a new proposal (TN/RL/GEN/155) that would remove a number of conditions attached in the current draft to special and differential treatment (STD) for developing countries. India complained as soon as the chair's text was released in November some of that these requirements would render STD unusable. The joint paper proposes, inter alia, that developing country subsidies for infrastructure development, as well as income and price support, should not be linked to an operational fisheries management system. It also calls for raising from 10 to 24 metres the maximum length of boats eligible for subsidies related to capital and operational costs.

Interim Rules Papers Issued

On 28 May, chair Valles Galmés released three 'working documents' describing the state of play in the rules negotiations – whether on fisheries, broader WTO subsidy disciplines, or antidumping. In a cover letter, the chair explained that he did not yet have a sufficient basis to issue a formal revision of his November 2007 draft legal text (Bridges Year 12 No.1 page 7) because he had received "no hints of possible middle ground approaches nor suggestions for possible compromises or tradeoffs." Instead, as 'an interim step forward', the May 2008 working papers consolidate all proposals submitted in the rules negotiations so far, including those not reflected in the November text, as well as describe Members' reactions to the original draft. Consultations will continue in order to find the 'compromises and balance' necessary for a revision that "by nature will have to describe a gradually emerging consensus."

Signalling Conference on Services Planned

Preparations are underway for a high-level conference on services, but the significance of the event remains vague. While some see it as a simple matter of signalling that the negotiations are moving forward, others seek more specific indications of potential future market access commitments.

The main *demandeurs* for the conference are the EU, the US and other mainly developed countries, which seek clearer signals from trading partners, and advanced developing economies in particular, on what concessions they would be prepared to make in the event of a deal in agriculture and industrial market access. The proponents complain that the services offers submitted so far would result in scant new export opportunities, and are generally below the de facto level of openness prevailing in many countries. The concessions they seek focus most heavily on the telecom, banking and financial services sectors.

Many of the countries targeted, however, remain reluctant to table revised liberalisation offers or to consider officially binding current market access concessions at the WTO until there is greater clarity on the overall Doha deal in agriculture and industrial market access.

The Developing Country Agenda

In the run-up to the signalling conference, several developing countries are seeking concessions of their own, particularly concerning the entry of their service providers into foreign markets. Many see this as the only area where they stand to reap tangible benefits from services liberalisation, but major potential destinations have offered little improvement over their present commitments regarding temporary service providers.

One of the issues that have recently gained visibility is the 'operationalisation' of special treatment for least-developed countries (LDCs). WTO Members agreed in 2003 to "give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs."

In March 2006, the LDC group called for developed countries (as well as developing countries declaring themselves able to do so) to accord 'non-reciprocal special priority' to LDCs alone. According to a February 2008 analysis by the WTO secretariat, the type of 'special priority' measures contemplated in the proposal would be incon-

sistent with the WTO's most-favoured-nation (MFN) obligation to treat all trading partners equally. The secretariat suggested that implementing the proposal would either require all Members to agree to a 'waiver' of the MFN obligation, or to adopt some sort of amendment or interpretation of WTO services rules. While the US, for one, has expressed interest in exploring an MFN waiver, others have taken a more cautious approach. The issue is particularly sensitive for those developing countries that are seeking improved access to the same markets for their own service providers, especially with regard to relatively unskilled labour.

Among other developing country priorities, India is also seeking improved commitments in the area of cross-border supply (Mode 1) so as to secure predictability for its outsourcing services, as well as fewer restrictions on commercial establishment in foreign countries (Mode 4).

The Conference

The 'signalling' conference is slated to take place in the sidelines of the ministerial meeting that will be convened in Geneva to finalise the parameters for concluding the Doha Round negotiations on agriculture and industrial market access (see page 1). At the time of writing it was not yet clear how many countries would participate in the services event. The meeting – expected to last no more than a day or two – will be chaired by WTO Director-General Pascal Lamy, who is to report to the broader membership on the depth of market-opening signalled at the conference, albeit without naming specific countries.

Mr Lamy has stressed that the outcome of the exercise would not be equivalent to final offers of specific liberalisation commitments. Nevertheless, at least the EU is seeking to make countries' indications relatively binding when scheduling commitments.

New Text Adds Two Controversial Suggestions

On 26 May, chair de Fernando de Mateo released a draft of the elements required for the completion of the negotiations. While the text essentially repeats the contents of the informal document he issued in February (Bridges Year 12 No.1 page 6), it includes two controversial proposals within brackets. One – reflecting the views of major developed countries – calls for the services negotiations to be "driven by the same level of ambition and political will as reflected in the agriculture and NAMA modalities." It also says that Members should offer new commitments that "substantially reflect current levels market access and national treatment, and provide new market access where market impediments remain."

This addition is likely to be vetoed by developing countries, which have repeatedly stressed that there is no mandate for an equivalent level of ambition in agriculture, NAMA and services.

The other bracketed suggestion is based on a proposal from Argentina, Brazil, China, India, Pakistan and South Africa, and would require Members' next offers to "provide market access in sectors and modes of supply of export interest to developing countries, such as Modes 1 and 4, as indicated in bilateral and plurilateral requests."

Reflecting the earlier draft, the new text merely asks Members to 'strive' to develop appropriate mechanism for according special priority to LDCs before submitting their revised offers.

No dates are proposed for the submission of either revised offers or final schedules of market access commitments. In the report that accompanied the 'elements' draft (TN/S/33), the chair also noted that three countries (i.e. Bolivia, Cuba and Venezuela, *ed.*) had "continued to express disagreement with the drafting of a text in services. In their view, the principles and essential elements to conclude the negotiation had already been agreed, and there was no mandate for any negotiating text, nor a consensus to draft one."

Trade & Environment Talks Need Boost from Other Areas

Progress in the Doha Round negotiations on trade and the environment remains sluggish, with little convergence in any of the key areas of the talks, including the scope of the mandate itself and the definition of products and services slated for deeper liberalisation on environmental grounds.

At an early May session of the Committee on Trade and Environment (CTE), Members remained fundamentally divided over how to fulfil the Doha mandate to “enhance the mutual supportiveness of trade and environment.”

At issue here is the scope and need for negotiations on the relationship between WTO rules and the specific trade obligations set out in multilateral environmental agreements (MEAs), with many preferring to focus on MEA implementation at the domestic level. Outside the WTO, some campaigners for sustainable development, concerned that any constraints on the trade and environment mandate might lead to more harm than good, have called for the WTO-MEA discussions to be abandoned altogether.

Norway Presents Draft Decision

During the CTE discussions, Members provided their initial reactions to a Norwegian proposal (JOB (08)/33) for an eventual Doha Round agreement on trade and environment to include a ministerial decision on potential conflicts between WTO rules and the trade provisions in multilateral environmental accords.

Among other things, the proposal noted that, up until now, specific trade measures that apply to countries that have signed MEAs have not been contested in the WTO. The proposal also recognised should such as case arise, a possibility many deem remote, WTO rules would apply. The proposal further acknowledged that MEAs and WTO rules have equal standing in international law, and stressed that all specific trade obligations should be implemented harmoniously and in good faith.

Canada and Korea expressed their support for the draft decision, but the US and Australia argued that the proposal was not ambitious enough and that it excluded important elements from an earlier submission (TN/TE/W/72/Rev.1), such as references to the key features in the design of specific trade obligations that contribute to mutual supportiveness. The two countries also stressed the need to highlight the importance of national-level co-ordination among domestic agencies and stakeholders that are involved in international agreements. The EU deplored the proposal's lack of reference to the role of the WTO Dispute Settlement Understanding in resolving disputes between MEA and WTO rules.

African Countries Call for New Expert Group

The Africa Group presented an informal proposal (JOB 08/38) outlining its view that the aim of the TWO trade and environment negotiations should be to strengthen the relationship between the multilateral trading system and MEAs, rather than to try to develop mechanisms to deal with hypothetical problems that might arise in the future. The group felt that parallel discussions on information exchange between MEAs and the WTO could further contribute to a successful outcome of the talks.

In particular, the group called for the establishment of a specific and permanent technical assistance and capacity-building instrument to help developing country members meet their MEA obligations without violating WTO rules. This new instrument would complement existing technical assistance provided by the WTO, as well as the UN Environment Programme (UNEP) and the UN Conference on Trade and Development (UNCTAD).

EGS: Brazil Responds to Questions on Request-Offer Approach

Members have persistently disagreed over how to identify the environmental goods and services (EGS) that should be subject to liberalisation following the Doha mandate to negotiate “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”

A group of primarily industrialised countries has proposed that Members create a list of environmental goods to be liberalised. India and Argentina disagree, arguing that products on such a list might be used for non-environmental purposes. Instead, the two countries support tariff cuts for goods used for specific environmental goals such as air pollution control, soil conservation, waste management and renewable energy.

Brazil responded to Members' questions regarding the ‘request-offer’ negotiating method it has proposed. Under this approach, each country would ask its trading partners to slash tariffs on those agricultural and non-agricultural goods it felt would bring environmental benefits. Countries would then determine whether such requests might compromise their own economic development, and indicate the environmental goods on which they are prepared to remove trade barriers. The plan would allow for several rounds of this ‘request-offer’ process.

According to Brazil, this approach would allow Members to preserve their ‘policy space’ with built-in special and differential treatment that allows developing countries to identify their own trade, environmental and developmental priorities.

Brazil also clarified that its ‘request-offer’ proposal would allow for a process that could be synchronised with developments in the agriculture and industrial goods negotiations. Acknowledging the importance of such linkages, some delegates contacted by Bridges noted that they saw greater possibilities for a breakthrough if and when a deal on tariff and subsidy cuts was reached in the industrial goods and agriculture negotiations. Such an agreement would also give delegates a sense of what products to include in the liberalisation agreement, and would provide a more solid idea of the potential extent of any tariff cuts, they said.

The date for the next formal session of the CTE has not yet been set, although it is likely to take place in June.

Will the WTO Mandate Stand up against the Tragedy of the Commons in Fisheries?

Moustapha Kamal Gueye

The Doha negotiations on fisheries provide a significant opportunity to address overcapacity and overfishing. However, to be effective, future subsidy disciplines need to be coupled with stronger fishery management regimes, including in both public and private access agreements.

Overexploitation and risk of stock depletion remain a pressing concern in the fisheries sector. In 2004, the UN Food and Agriculture Organisation (FAO) estimated that about a quarter of global fish stocks were either depleted or overexploited, while more than half were fully exploited (see graph below).

Socio-economic Importance

Overall, more than 2.6 billion people get at least 20 percent of their animal protein intake from fish. The sector is also an important source of employment and income. In 2004, an estimated 41 million people worked as fishers and fish farmers, the great majority of these in developing countries. In addition, trade in fish represents a significant source of foreign currency earnings. Around 38 percent of total fisheries and aquaculture production were exported, amounting to an export value of US\$71.5 billion in 2004. Between 1994 and 2004, developing countries' net fishery exports grew from US\$4.6 billion to US\$20.4 billion. The share of fish trade in both total GDP and agricultural GDP has doubled over the past 25 years.

Curbing Overcapacity

This crucial importance of fisheries resources for livelihoods and food security, the survival of marine ecosystems, employment and development has been undermined by decades of overcapacity and overfishing – driven, to an important ex-

tent, by government payments to support shipbuilding and operating costs, securing access to distant water resources and guaranteeing revenues in the sector.

In 2001, WTO Members agreed in Doha to launch negotiations aimed at clarifying and improving WTO disciplines on fisheries subsidies, taking into account the sector's importance to developing countries. The 2005 Hong Kong ministerial declaration called for a strengthening of disciplines on fisheries subsidies, including through the prohibition of subsidies that contribute to overcapacity and overfishing, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.

These mandates represent a major challenge for the trade community to reassert the central place that the environment and sustainable development occupy in the multilateral trading system. Many see the negotiations on fisheries as the most genuine effort of the WTO to fulfil an environmental objective, upon which lie broader sustainable development stakes.

The first fisheries subsidy draft was released in November 2007. The proposed text would ban a wide range of government payments, especially those that boost fishing capacity and lead to overfishing. It allows certain subsidies, but these must be linked to proper management regimes, including science-based monitoring and assessment according to international standards (Bridges Year 11 No.7 page 10).

An effective deal on disciplining fisheries subsidies would have deep implications for the economic viability of the fisheries industry in many parts of the world, and likely to lead to a restructuring of the industry. There is high probability that excess capacity, especially in industrial countries, will not be completely dismantled, by transferred elsewhere, through various forms that may range from change of flag, adoption of flags of convenience, joint-ventures, etc.

Distant-water Fishing Arrangements

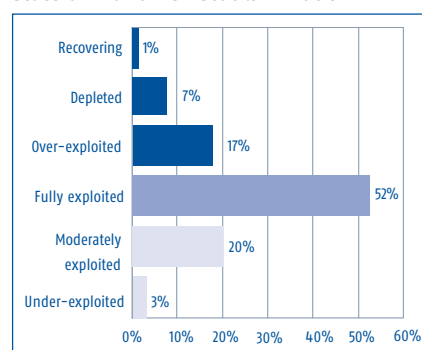
Coastal states gained control over 90 percent of the world's exploitable fish resources when the UN Convention on the Law of the Sea established 200-mile-wide exclusive economic zones (EEZs) around their shorelines in 1982. Since then, 'access agreements' have become an increasingly important part of trade and development relations between developed and developing countries. These arrangements allow distant-water fishing nations to fish in the host country waters in return for 'access fees' paid to the coastal states.

WTO Members, and coastal states parties to fisheries access agreements in particular, have sought to exclude from the disciplines on fisheries subsidies revenues and payments arising from such agreements. Access fees represent a significant portion of government revenue for certain countries. In several Pacific states they account for an estimated 25 percent of total government income; in Guinea Bissau the share is around 40 percent.

While exempting access agreements from the future disciplines on fish subsidies, the draft text on fisheries provides a major opportunity to improve transparency and governance of fisheries exploitation under such arrangements.

Article III.3 of the November 2007 text states that for the exemption to apply, the fishery in question must be within the EEZ of a developing country Member, that the agreement must be made public, and contains provisions designed to prevent overfishing based on internationally recognised best practices for fisheries management and conservation. In addition, the

State of World Fish Stocks in 2004



Source: FAO. *State of World Fisheries and Aquaculture 2006*

text requires support for science-based stock assessment before fishing is undertaken, as well as management and control measures. It also calls for vessel registries, and reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organisations, and any other measures as may be appropriate.

Footnote 143 to Article I.1. (g), which provides for the exemption to access agreements in the draft text, seems to refer only to government-to-government payments for access to marine fisheries. It has been argued that private agreements do not encompass a subsidy element within the meaning of the WTO. From a sustainable development perspective, however, the point is not whether private agreements amount to subsidies, but ensuring that the broad management regimes sought in Article III.3 apply to the entire range of access agreements, whether public or private. This is particularly important given that many coastal states are moving away from bilateral government-to-government agreements towards other forms of arrangements such as joint-ventures or agreements with foreign private operators.

Private Access Agreements on the Increase

The growing unpopularity of fisheries access agreements has rendered their conclusion difficult, leading to delays in the renewal of expired agreements in many countries. In Senegal, for instance, authorities have resorted to direct agreements with commercial European fishing vessels after negotiations for a renewal of the 2002-2006 bilateral agreement with the EU ran into difficulties. Their motivation was to ensure uninterrupted supply of raw tuna to the 3,000 workers employed in the local fishing industry, which has limited tuna-fishing capacity and thus depends largely on landings by EU vessels.

A 2002 European Commission communication on an integrated framework for fisheries partnership agreements with third countries (COM(2002) 637) noted that difficulties facing the EU's distant-water fleet policy could lead to its gradual reduction, but less through scrapping vessels than through changing them to a flag of convenience and/or an increase in private fishing arrangements. The commission further remarked that the experience of the past years had shown that with the departure of the EU fleet from third country fishing grounds, the amount of fishing did not decrease, but stayed the same or even increased, as EU boats were replaced by vessels from third countries or by vessels flying flags of convenience.

Private agreements tend to provide weaker governance regimes than government-to-government agreements. They often are less transparent in their negotiations and weaker in their modalities of enforcement, monitoring and reporting. Yet, there are indications that in the years to come, private agreements, rather than government-to-government agreements, will increasingly govern access to resources in distant nations.

Strengthening Fisheries Management Is Crucial

The existence of a fisheries management system is essential for the sustainable use and conservation of marine resources. Experience – with the Canadian east coast cod fishery, for example – suggests that even when such management regimes are in place, collapse of stocks may occur.

Article V.1 of the draft text on fisheries subsidies indicates that any Member granting or maintaining any of the permitted subsidies shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management systems shall be based on internationally recognised best practices for fisheries management and conservation, and shall include, among other requirements, regular science-based stock assessment, as well as capacity and effort management measures. A number of developing country WTO Members have argued that these requirements are so stringent that they render the exceptions provided to them unusable (see page 9).

Key to the problem of fisheries management is that it has been approached in terms of the burden and costs associated with it rather than the social, environmental and economic benefits of having such systems in place. In fact, not only do management systems contribute to the monitoring of fishing effort and conservation of resources; they can be important tools for generating greater revenues from a country's marine resources.

In Tanzania, for instance, the establishment of a monitoring, control and surveillance programme was instrumental in increasing vessel registration and licensing. While in 2002, twelve foreign tuna boats were licensed to fish in the country's waters, the number increased to 84 when foreign fleets realised that Tanzania was regularly patrolling its EEZ. The registry system in turn resulted in reports from the registered purse-seiner fleet, which revealed that during the peak fishing season the weekly tuna catch in Tanzania's EEZ reached up to 10,000 tons. In the absence of reliable information of the fishing effort and level of catches, which a proper management regime can generate, informed policy decisions can hardly be made.

Where management systems are lacking, revenues are also likely to dwindle due to illegal and unreported fishing. In 2005, the British Marine Resources Assessment Group estimated that illegal, unreported and unregulated fishing in Africa could be valued at approximately US\$1 billion annually.

Conclusion

Reforming subsidies that lead to overcapacity and overfishing is a useful effort. However, countries can do much more to fish in a sustainable manner and conserve resources within their waters, generate meaningful revenues and contribute to real economic growth, food security and poverty reduction.

The 'tragedy of the commons' begins when governments fail to realise the long-term gains of conservation and sustainable use of their resources, and confine themselves to quick and easy financial gains that eventually deprive the fishery resource of its high value in local and world markets.

A failure to seize the opportunity provided by the Doha mandate to reduce overcapacity and overfishing can have disastrous consequences. The collapse of the Canadian East coast cod fishery in the late 1980s left 25,000 fishermen and 10,000 other workers unemployed. Today, over-exploitation of West Africa's fish resources by local, as well as foreign, fleets is forcing artisanal fishers in a desperate search for alternative livelihoods to migrate to some of the very regions that are exploiting their resources.

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The Local Content Paradox at the WTO: A Minor Lapse or Organised Hypocrisy?

Ratnakar Adhikari

Contradictory provisions on the use of local content requirements under WTO rules on investment measures on the one hand, and preferential trade arrangements on the other, raise legitimate questions about developed country adherence to the principle of comparative advantage.

The multilateral trading system is largely founded on the concept of economic efficiency. One example of this is the preference of the drafters of the General Agreement on Tariffs and Trade for tariffs rather than quotas as a means of protection against imports. Even trade measures imposed for health or safety reasons must pass the test of being both ‘necessary’ and the ‘least trade-restrictive’ possible. Among the dozens of WTO treaties, the Agreement on Trade-related Investment Measures (TRIMs) is the most sanguine about economic efficiency as the guiding principle of rules-based international trade.

Local Content Requirements Prohibited under TRIMs

The TRIMs Agreement, introduced during the Uruguay Round, banned the imposition of ‘performance requirements’ – a hallmark of industrial policy between the 1960s and early 1980s, and one extensively used by East Asian countries. Among the prohibited measures on the ‘illustrative list’ annexed to the TRIMs Agreement are so-called ‘local content’ requirements.

The prohibition of local content requirements – despite their potential contribution to industrial development – is based on the notion that they are an ‘economically inefficient’ mechanism to protect or promote domestic industry. This theory holds that investors in any country should be free to source the components of their manufacturing processes abroad if foreign inputs are cheaper and arguably better in terms of quality than local ones. The underlying assumption, of course, is that local inputs are necessarily less cost-effective.

Developing countries reluctantly agreed to this clause (and many other unfavourable conditions, see box on page 15) because they considered such concessions as part of a bigger deal, namely the promise of significant gains in agriculture, as well as in textiles and clothing.

TRIMs and some other WTO agreements, such as that on subsidies and countervailing measures, restrict the ‘policy space’ of developing country governments to use industrial policy as a tool for economic development. This shows that the *demandeurs* of these agreements are opposed to the very idea of an ‘active’ industrial policy – never mind that it played an essential part in their own industrialisation strategies.

Rules of Origin in Preferential Trade Require Local Content

Preferential trading arrangements were incorporated into the GATT through the 1979 Enabling Clause, which allows developed countries to grant ‘more favourable treatment’ to developing countries than to other participants in the multilateral trading system. To put this principle into practice, developed countries set up Generalised Systems of Preferences (GSPs).

While these schemes provide considerable market access advantages to the recipients, they are grounded in the donors’ own priorities and granted on a unilateral and non-reciprocal basis. To ensure that no other countries would take advantage of these opportunities, GSP providers introduced ‘rules of origin’, which, according to the donors, were meant to serve two main purposes. First, they were designed to prevent trade deflection. Second, couched in more altruistic terms, the rules were intended to help developing countries create an industrial base by making use of only ‘local inputs’ in the manufacturing process.

This, it was argued, would allow countries with low levels of industrialisation to develop vertically integrated production structures by building up domestic manufacturers’ supply capacity. There is, however, no evidence to suggest that these rules have helped beneficiary countries achieve this objective.¹

What the rules of origin have done instead is to restrict the utilisation of preferences so that competition from these relatively weaker countries does not displace import-competing sectors in the donor countries. According to studies commissioned by the UN Development Programme, the preference utilisation rates of four Asian least-developed countries (LDCs) under the EU’s Everything but Arms initiative is 60 percent for Bangladesh, 68 percent for Cambodia, 70 percent for Laos and 67 percent for Nepal.²

The cost of complying with the preferential rules of origin is not trivial. Although there is relatively little hard empirical evidence on the issue, Jan Herin has estimated that for firms wishing to take advantage of preferences under the EFTA-EC FTA, the administrative and technical work needed to achieve compliance with the rules of origin added around 5 percent to the cost of production.

Similarly, according to the World Bank, the administrative cost of providing the documentary evidence to support the certificate of origin under the North American Free Trade Area (NAFTA) is in the range of 1.8 percent of the value of exports. The distorting impact of the rules – resulting from the need to use higher cost local (or donor) inputs to qualify – may be equivalent to an average duty of around 4.3 percent. While separate statistics are not available for developing and least-developed countries, it is fair to assume that such figures are much higher for LDCs since their administrative and bureaucratic requirements for trading across the border are notoriously burdensome.

Protectionist interests in developed countries are well-known for their ingenuity in turning such mechanisms to their benefit. For instance, donor country manufacturers of inputs (yarn,

textiles or fabrics) entering into the production of apparel in recipient countries successfully lobbied their governments to incorporate a ‘cumulation’ provision in their GSP schemes. This provision allows apparel to be exported under preferential rates to GSP-granting destinations even if the finished products contain elements manufactured in the donor countries (instead of just local inputs as originally foreseen).

The local content requirement combined with the cumulation exception serves two purposes. First, it prevents exporters to GSP markets from using raw materials from the lowest-cost suppliers, such as China, which directly compete with donor country products. Second, it provides a captive market for GSP provider inputs in the recipient countries’ manufacturing processes.

The famous ‘yarn forward’ requirement – contained in a majority of US preferential arrangements and a similar clause in the EU arrangement – helps protectionist interests achieve both of these objectives.

With regard to limiting third-country input, the US National Council of Textile Organisations warned the government against extending full duty- and quota-free market access to LDCs just prior to the WTO’s 2005 ministerial conference in Hong Kong. The organisation’s president Cass Johnson was quoted as saying: “With duty-free status, Chinese penetration of the US market would increase dramatically as US apparel imports would shift away from Western Hemispheric producers that use US-made components to producers in Bangladesh and Cambodia that would be using Chinese-made components.”³

As to the second objective of safeguarding captive markets, Munir Ahmed pointed out in December 2005 that as of 2004, 77 percent of US fabric and textiles exports went to Mexico and Caribbean/Central American countries, which had preferential trading arrangements with the US. In the same period, 37 percent of European textiles were exported to Bulgaria, Romania, Tunisia, Morocco and Turkey – all which benefited from preferential market access to the EU.⁴

The issue of preferential rules of origin has never been resolved at the WTO, despite a clear-cut end-1999 deadline for its settlement. It has once again gained prominence in the aftermath of WTO Members’ Hong Kong promise to grant duty- and quota-free market access (in principle at least) to least-developed countries. Nevertheless, the ministerial declaration’s call to ensure that preferential rules of origin applied to LDC imports are ‘transparent and simple’ and contribute to ‘facilitating market access’ remains a tall order in view of developed countries’ reluctance to antagonise their protectionist lobbies, which thrive on the complicated rules of origin that clearly favour local or donor inputs.

However, when we look at the TRIMs Agreement, which prohibits governments from requiring firms to use local inputs, we can legitimately question developed countries’ motivations. Under a benign interpretation, we can call the TRIMs restrictions a ‘minor lapse’. Seen from a less benevolent angle, they are nothing more than ‘organised hypocrisy’.

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ENDNOTES

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³ NCTO Press Release, 12 December 2005

⁴ Ahmed, Munir. 2005. *Development in Textiles and Clothing Trade, Post ATC: Modelers Off Mark; EU/US Trade Policy Remains Predominant Influence*. UNDP. Colombo

TRIMs & Local Content

A ‘local content requirement’ under the WTO Agreement on Trade-related Investment Measures (TRIMs) refers to a government obliging enterprises operating in its territory to source all or part of the components of their manufacturing processes from domestic suppliers.

This practice is prohibited under TRIMs Article III:4 – even if it is applied to domestic and foreign enterprises alike – on the grounds that it entails discriminatory treatment of imported products in favour of domestic products. The prohibition is based on the ‘national treatment’ principle embodied in Article III of the General Agreement on Tariffs and Trade (GATT), one of the cornerstones of the multilateral trading system since 1947.

In technical language, TRIMs Article III:4 states that “[t]he products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.”

A WTO backgrounder on the TRIMs Agreement¹ explains that the Uruguay Round negotiations on trade-related investment measures “were marked by strong disagreement among participants over the coverage and nature of possible new disciplines. While some developed countries proposed provisions that would prohibit a wide range of measures in addition to the local content requirements [already condemned by a landmark GATT ruling in 1984, *ed.*] many developing countries opposed this. The compromise that eventually emerged [...] is essentially limited to an interpretation and clarification of the application to trade-related investment measures of GATT provisions on national treatment for imported goods (Article III) and on quantitative restrictions on imports or exports (Article XI).”

¹ http://www.wto.org/english/tratop_e/invest_e/invest_info_e.htm

The Colombia Free Trade Agreement, the Twenty-year Itch and the Doha Round

Craig VanGrasstek

While some see an ill omen for the Doha Round in the tug of war between the US Congress and administration on the Colombia free trade agreement, this confrontation is just the latest outbreak in a twenty-year itch that both sides know how to scratch.

In April, President Bush did something unprecedented, sending to Capitol Hill the implementing legislation for the Colombia free trade agreement (FTA) without first working out its terms with the trade committees in Congress. The House of Representatives then responded by doing something equally unprecedented, enacting a resolution that suspended trade promotion authority (TPA) for the bill. The stand-off between the two branches raised doubts over the future of not only one FTA, but also the Doha Round. The US negotiating mandate had already been called into question by the fact that the most recent TPA grant had expired in mid-2007, and it was not certain whether or when Congress would make a new grant for the round. This latest action casts doubt on the permanence of any new grant that Congress might make.

This impasse fits into a larger pattern of inter-branch conflict. The US Constitution ensures that trade policy is a matter of delicate inter-branch relations, as it specifies that the regulation of trade is a congressional prerogative, but also creates a presumption that the executive takes the lead in foreign policy. Ever since Congress gave up trade policy-making by legislative fiat and agreed to delegate authority to the president, the two branches have had to work out the precise boundaries of their powers in this field. They have generally been successful, but have also had a series of confrontations.

The TPA (a.k.a. 'fast track') and its predecessor authorities are intended to get around the ability of legislative opponents to prevent an agreement from coming to a vote, or to amend the agreement. From 1934 through 1967, that was done through grants of authority that allowed presidents to negotiate and then proclaim tariff agreements. Things got more complicated with the advent of non-tariff agree-

ments. There Congress insists on having a role in the process of translating an agreement's commitments into changes in legislation, and also voting the final package up or down. That's why the fast track replaced the earlier and simpler tariff authority.

TPA rules provide two special protections: an agreement's implementing legislation will not be amended once it has been formally introduced, and the bill will be voted upon within ninety legislative days. Both of the special protections are based on legal fictions. While it is literally true that Congress has never amended any implementing bills for TPA-protected agreements, legislators have found many other ways to influence, interpret, or even modify the results of negotiations. One such opportunity comes before the formal introduction of the bill, when the executive and the congressional trade committees work out its precise terms.

The Colombian FTA is the only agreement that never underwent that process, and it is no coincidence that this is the only agreement to expose the other legal fiction. Congress has always retained the prerogative to undo a fast-track grant at any time and thus undo the ninety-day promise, but did not exercise that authority until now.

This confrontation is just the latest outbreak in a twenty-year itch. The two branches constantly wrangle over trade, and while they usually find ways to accommodate one another they sometimes reach the breaking point. That happened when Congress refused to adopt the Havana Charter of the International Trade Organisation (1948-1950) or non-tariff agreements reached in the Kennedy Round (1967), and when it almost prevented negotiation of the Canada FTA (1986) because the president refused to bargain over a new trade bill. Each of these cases arose out of concerns that the executive was not consulting fully with its partner. We were just about due for another outbreak of that twenty-year itch. The Bush administration had enjoyed the luxury of a compliant Congress for six years, but now must deal with an assertive Democratic leadership. Part of the problem is specific to the Colombia agreement, having more to do with competing priorities in foreign policy and labour rights than with trade *per se*. The confrontation over TPA, however, points to a larger problem. The all-important element in US trade politics is inter-branch comity. It is difficult to define comity precisely, but we know it when we don't see it, and we definitely don't see it now.

The bad news for the multilateral system is that this outbreak coincides with the end-game of the Doha Round. The good news is that each of the past episodes led to some accommodation: The 'temporary' GATT stepped in for the ITO, the failed Kennedy Round agreements inspired the first grant of fast-track authority, and a compromise was reached that allowed both the Canada FTA and a new trade bill to be negotiated and enacted. This is an itch that the two branches know how to scratch.

The question is how long it will take to re-establish comity between the branches, and thus facilitate the approval of whatever comes out of Geneva. The best opportunity will come with the election of a new president. No matter who gets the Democratic nomination, and no matter which party wins, we know that the next president will come directly from the Senate. Let's hope that the president-elect makes the restoration of inter-branch comity on trade policy a top priority for 2009.

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New US Farm Bill Could Complicate WTO Negotiations

The US Congress has approved a new US\$307 billion farm bill with majorities large enough to override President George W. Bush's veto. The legislation largely continues the current system of agricultural subsidies for the next five years.

Admittedly, much of the lavish support in the Food, Conservation and Energy Act is directed to purposes that are not, or only marginally, trade-distorting. Over two-thirds of the bill's total funding has been allocated for food stamps, emergency food assistance, and other domestic nutrition schemes. Conservation programmes that aim to protect environmentally sensitive farmlands will receive US\$27 billion, or roughly 9 percent of the total funding.

Nevertheless, critics claim that the bill misses a key opportunity to lower subsidy levels at a time when farmers are enjoying substantial income increases due to high food prices. Indeed, with wheat prices 87 percent above their five-year average, soybean prices up 70 percent, and corn prices up 90 percent, producers have made windfall profits. Net farm income in the US will reach US\$92.3 billion this year, more than 50 percent above where it was two years ago, according to US government statistics.

The more controversial sections of the bill, and the ones that could cause trouble in WTO negotiations, are those for product-specific farm subsidies, which will receive US\$43 billion in the current bill (14 percent of the total cost). Crop insurance to help shield farmers from losses, will be given US\$23 billion (8 percent of the total).

Implications for the Doha Round

There is no denying that the passage of the subsidy-laden election year bill foreshadows a slimmer margin of manoeuvre than ever for the administration in the WTO negotiations on agriculture.

Democratic presidential contenders Hilary Clinton and Barack Obama hailed the bill's passage, while presumptive Conservative nominee John McCain called it a "bloated piece of legislation that will do more harm than good for most farmers and consumers."

Independently of the presidential election outcome, any deal that emerges – if it ever does – will need congressional approval. Many predict that a post-November 2008 legislature is unlikely to support a Doha agreement that conflicts with the programmes in the farm bill that it has just passed. Indeed, congressional leaders on agriculture largely ignored ongoing WTO negotiations when they drafted the farm bill, arguing that it could always be amended if an acceptable multilateral accord were finalised.

In the Doha Round subsidy discussions, Washington has unofficially hinted that it could accept a new ceiling for overall trade-distorting support around, or perhaps even under US\$13 billion, down from the US\$48 billion spending limit it is currently bound to. However, such a reduction could prove challenging given the subsidy levels written into the farm bill.

These are the among the concerns that fuelled President Bush's opposition to the legislation. Indeed, in his veto message to the House of Representatives, sent on 22 May, the President decried the bill's lack of progress toward cutting farm payments: "At a time of high food prices and record farm income, this bill lacks programme reform and fiscal discipline. It continues subsidies for the wealthy and increases farm bill spending by more than US\$20 billion [over the administration's baseline, *ed.*] It is inconsistent with our objectives in international trade negotiations."

Top US agriculture officials were even harsher in their criticism. "This farm bill heads in the wrong direction in terms of our international obligations," Deputy Agriculture Secretary Chuck Conner said in a press briefing. US trading partners "are going to be incensed, and we would expect them to protest in every way they can," he said. Brazilian authorities have

already evoked a possible WTO challenge over the bill's ethanol provisions. In addition, both Brazil and Canada might now press ahead with their broader WTO dispute on US subsidies, which they had put aside while the new legislation was in the making.

Crawford Falconer, chair of the WTO agriculture negotiations, said that the passage of the farm bill did not have an immediate impact on negotiations at the global trade body, but remarked: "It's another factor which complicates everybody's life, there's no doubt about that politically." Director-General Pascal Lamy concurred that bill was "not sending a great signal that the US is serious about reducing subsidies."

Specific Problem Issues

Some provisions are more vulnerable to potential WTO challenges than others, including revenue guarantees for farmers, disaster recovery aid, and subsidies for sugar and cotton.

One potential problem area is the Average Crop Revenue Election (ACRE) programme, a critical component of the new bill, which represents a significant shift from previous payment structures in that it requires farmers to show a loss in order to qualify for subsidies. The programme provides revenue guarantees for farmers who choose to forgo a proportion of the direct payments to which they would otherwise be entitled. In exchange, they would be given subsidies equal to the difference between their home state's actual revenue from a crop and a calculated average that will be based on both five-year state average yields and the national average price for that crop over the previous two years.

Because the calculated average for 2009 will be based on recent record-high food prices, a sudden drop to regular price levels could cause a substantial rise in payments. Experts disagree over how popular the programme would be, but given that

Continued on page 18

the potential payout could be quite large, it is possible that a very high proportion of farmers could opt into the programme. If enough producers enrol, ACRE could end up doling out billions of dollars in subsidies. If that were the case, the US could run into problems at the WTO, as experts say that ACRE payments would be considered Amber Box subsidies, which the US has pledged to reduce.

A new and permanent agriculture disaster programme, funded at US\$3.85 billion over five years, is also likely to conflict with US reduction commitments at the WTO. The programme, which will be classified as an Amber Box activity, will allow farmers who suffer crop losses due to weather-related production problems to collect payments for both crop insurance and disaster aid.

Changes to sugar subsidies could further affect the US' ability to meet its Amber Box commitments. Under the new farm bill, loan rates for sugar cane marketing assistance will go up by 4.2 percent between 2008 and 2012, while loan rates for sugar beets will rise by 5.2 percent by next year. These loan rate increases, which effectively ensure that the price for sugar in the US will remain above world market prices, will certainly increase the US' total Amber Box payments, albeit by a relatively small amount.

US cotton subsidies, the source of much controversy at the WTO, are also addressed in the farm bill, but with little change in terms of compliance with international trade rules. While the new measure slightly lowers the target price for cotton, it also establishes a payment programme for domestic cotton mills that is very similar to a cotton incentive programme that the WTO recently ruled illegal.

Despite the many subsidies it maintains, the farm bill does make at least some progress toward WTO compliance. Changes to the dairy price supports in the new farm bill will decrease US Amber Box commitments. Specifically, the new measure changes the distribution of dairy price supports in a way that reduces US trade-distorting activities while maintaining support levels for dairy farmers at essentially the same level.

EU Debate Launched on CAP Reform

On 20 May, the European Commission issued a proposal for a modest set of reforms to the Common Agricultural Policy, but many member states oppose any significant changes.

While the current CAP is set to run until 2013, the 'health check' tabled by the commission would convert almost all product-specific subsidies still maintained by member states to 'decoupled' payments that are independent of production ahead of that deadline.

Agriculture Commissioner Mariann Fischer Boel said the move would "allow farmers to follow market signals to the greatest possible extent." The CAP sets the parameters for the EU's Doha Round domestic subsidy concessions, and decoupled support will be exempt of reductions.

The new proposal would also boost European food production through the elimination of a requirement that arable crop farmers can receive subsidies only if they leave 10 percent of their land fallow. The condition was originally designed to tackle the EU's chronic overproduction.

In addition, the commission suggests that all member states be allowed to allot payments based on acreage rather a 'historical' reference period.

The most controversial of the suggestions concerns shifting money from direct aid to rural development. Currently, five percent of the direct aid given to farmers who receive more than €5,000 is transferred into the rural development budget. The commission proposes to increase this rate to 13 percent by 2012. Additional cuts would be made for bigger farms (an extra 3 percent for farms receiving more than €100,000 a year, 6 percent for those receiving more than €200,000 and 9 percent for those receiving more than €300,000). Member states could use the additional funding thus obtained to reinforce climate change, renewable energy, water management and biodiversity programmes, the commission suggested.

This is where many governments part company with the commission. Germany, for instance, has argued that the proposed shift would affect its farming sector disproportionately due the number of large farms in the East of the country. Many of these currently receive direct payments in excess of €300,000. In all, Germany stands to lose €420 million under the proposal, junior agriculture minister Gerd Mueller said. Even the UK, which usually favours a more market-oriented CAP policy, opposes the plan to transfer support to rural development schemes because many British recipients of EU farm payments are large landholders.

Food Crisis Sparks Different Responses

EU governments are also engaged in a more fundamental debate on the kind of farm policy needed in a time of high food prices. Only a few, led by the UK, have bought WTO Director-General Pascal Lamy's argument that the impact of soaring prices could be softened through "substantially lowering barriers to trade in agricultural products and diminishing levels of trade-distorting subsidies, particularly in developed countries that have hampered food production and investment in agriculture in many developing countries."

Not so, counters France's agriculture minister Michel Barnier, who has categorically stated that the solution to the food crisis "is not, first of all, through free trade." Instead, both Mr Barnier and this German counterpart Horst Seehofer maintain that high prices in fact underline the need to keep the CAP intact in order to guarantee the EU's food security. "We have to make sure that we can provide this continent with food sustainably," Mr Seehofer said. "This cannot be done by taking away subsidies from European farmers." Forty percent of the EU's total budget is currently spent on farm support. The budget allocation for 2009 is €42.9 billion (US\$66.4 billion). France will be the greatest beneficiary of this largesse.

While optimists believe that the 'health check' reforms will be agreed by November, although most likely in a much watered-down form, the fight over the next major CAP reform in 2013 promises to be as bitter as those that preceded it, high food prices notwithstanding.

Problems Loom in EU-LatAm Relations

In the margins of the EU-Latin America summit held in May, high officials from the two sides reviewed developments and future challenges in their trade relationship.

While it has been widely expected that long-stagnant talks on a trade and co-operation agreement between the EU and the Mersosur bloc (Argentina, Brazil, Paraguay and Uruguay) would pick up once the Doha Round either concludes or fails, the talks in Lima did little to advance that aim.

European Commission President José Manuel Barroso told Argentine President Cristina Kirchner that while Mercosur countries stood to gain much in agriculture, those gains would not materialise unless the bloc made concessions in industrial market access and services. He added that “without concessions in agriculture, it will not be possible for the EU to lower tariffs or expand quotas either in the Doha Round or in the bilateral relationship.” President Kirchner said her country was prepared to reduce tariffs on manufactures, but not to the extent sought by the EU, because the European demands would lead to increased poverty.

There is also tension between Brazil and the EU over biofuels. The latter is under pressure to develop stronger sustainability criteria for biofuel imports, and may drop its current target of having biofuels account for at least 10 percent of vehicle fuel by 2020 (see page 20). Brazil has already warned of a potential WTO challenge if future European environmental norms turn out to harm its ethanol exports.

The situation is also unclear with regard to the EU-Andean Community (CAN) negotiations. The European Commission's official position remains that any future treaty must be ‘region-to-region’ and encompass all CAN members, i.e. Bolivia, Colombia, Ecuador and Peru. However, many predict that the EU may ultimately follow the US route and sign separate agreements with only Colombia and Peru due to the other two CAN members' resistance to the broad scope of the provisions that the EU is seeking to include in the trade pillar of the association agreement. The next round of negotiations is scheduled for July.

EU-Central America Talks Advance Slowly

In related news, trade negotiations between the EU and six Central American countries made limited progress on the thorniest issues in April.

For Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, the agreement should lock in and improve preferential market access currently granted by the EU (Panama is participating in the talks as an observer). Under its Generalised System of Preferences Plus (GSP-plus) scheme, intended to reward and encourage efforts to combat drug production and trafficking, Brussels provides the Central American countries preferential access for around 7,200 products (200 more than the ‘ordinary’ GSP). Roughly half of these enter the EU duty-free, while the rest are classified as ‘sensitive’ and benefit from tariffs 3.5 percentage points below the standard most-favoured-nation (MFN) rate paid by countries that do not receive preferences.

Although Central America has benefited from this scheme, most of the region's competitive exports, including beef, dairy products and sugar, still face tariffs approaching 100 percent in some cases. Costa Rica's chief negotiator Roberto Echandi said that Central America would push hard for all products that already receive duty-free treatment, as well as those with export potential in the future, to be included in the new agreement.

Negotiations promise to be particularly difficult on products such as sugar and bananas. The positions of the two sides mirror the WTO agriculture talks, which are still deadlocked between Latin American countries calling for steep liberalisation of so-called ‘tropical’ products and the African, Caribbean and Pacific (ACP) group seeking to avoid erosion of their long-standing preferential market access to the EU (see page 6). European and Central American negotiators will meet again in Brussels from 14-18 July.

EU-Korea Update

The seventh round of free trade negotiations between the EU and South Korea ended on 15 May with negotiators aiming to conclude the agreement within the year.

The two sides made progress on various ‘behind the border’ issues, such as standards and certification requirements. Seoul also indicated its willingness to consider the EU's request for enhanced protection of geographical indications for products such as champagne and Parma ham.

On rules of origin, Brussels is expected to propose a compromise in response to Korea's demand that the EU reduce the percentage of a product that must be made in Korea before it can qualify for lower tariffs under the FTA.

Despite the differences remaining on rules of origin and services trade, as well as Korea's tariffs and non-tariff barriers in the automotive and electronics sectors, Europe's chief negotiator, Ignacio Garcia Bercero, said that both sides were “convinced that on the basis of the progress made during this round that it is feasible and desirable to conclude the EU-Korea FTA negotiations during the course of 2008.”

Officials said that the next round would be scheduled only when it was felt that an agreement may be reached. Meanwhile, the EU and South Korea will continue dialogue at other levels. A meeting between the EU Trade Commissioner and chief negotiator Peter Mandelson and the Korean Trade Minister, Kim Jong-hoon is expected soon.

South Korea has previously negotiated free trade deals with Chile, Singapore, the European Free Trade Association and a partial agreement with the Association of Southeast Asian Nations. Approval of an agreement with the United States is yet to be considered by the US Congress. The FTA with the EU would be South Korea's largest so far.

EU Biofuel Target Questioned

The Scientific Committee of the European Environment Agency (EEA) has called for a rethink of the EU-wide target of requiring biofuels to account for at least 10 percent of vehicle fuel by 2020. The target was set only last year in an effort to curb steadily rising green house gas emissions from the road transport sector.

The EEA advisory panel based its recommendation on environmental rather than food security criteria. It noted that biofuel production based on first generation technologies did not optimally use biomass resources, and that “technologies for direct heat and electricity generation should be preferred because they are more economically competitive and more environmentally effective than biofuel production for vehicles.” Using finite biomass resources for fuel production should go hand in hand with energy efficiency improvements, the panel said.

The committee pointed out that the land required to meet the 10 percent target exceeded the area available for sustainable production within Europe and would thus require large amounts of additional biofuel imports. This in turn could accelerate the destruction of rain forests, which play a vital function in climate change mitigation, as farmers clear land to grow more biofuel crops for export.

The panel concluded that the 10 percent biofuel target was an ambitious experiment, whose unintended effects were difficult to predict or to control. It therefore recommended the suspension of the goal pending a ‘new, comprehensive scientific study on the environmental risks and benefits of biofuels’, and setting a “more moderate long-term target, if sustainability cannot be guaranteed.”

These concerns – coupled with the role that biofuel production plays in the rise of food prices worldwide – have induced the UK government to review its support for biofuels. Prime Minister Gordon Brown said that if the review showed that Britain should change its approach, he would also push for a change in the EU’s biofuel targets.

Climate Change: Focus on Technology

Meeting in Bangkok in early April, climate change negotiators started grappling with key trade-related issues, such as intellectual property rights and competitiveness concerns.

Delegates also considered the responsibilities that countries could take on in the post-Kyoto climate regime they hope agree on by 2009. India proposed basing future commitments on per capita emissions, which could potentially – and controversially – lead to differentiation between developing countries. China and Brazil, for instance, would fall into a more demanding emissions-reduction category than India, where emissions per person are still very low.

Intellectual Property Issues Divide Delegates

One of the keys to successfully mitigating climate change will be the rapid global diffusion of climate-friendly technologies – whether aimed at improving energy efficiency, or increasing energy generation from new/renewable sources. Negotiators in Bangkok spent considerable time grappling with issues related to the transfer of technology and financing arrangements in this area.

Intellectual property (IP) has become a controversial topic in this context. Some developing countries, such as India and Pakistan, called for a relaxation of IP standards for all climate-related technology. Saudi Arabia went even further, suggesting that countries should be allowed to issue compulsory licenses for such technologies.

Other countries were sceptical about these approaches. The US, for instance, noted that IP had not been a bottleneck or a barrier to the diffusion of climate technologies. China – a significant importer of environmental technologies, but also a rapidly growing producer and exporter – warned against letting the technology transfer debate become stuck on the sole issue of IP.

How to Deal with Competitiveness Concerns?

While India stressed that there was no legal basis under the UN Framework Convention on Climate Change to deal with competitiveness issues, other delegates stayed clear of this hot political topic, although it remains an important background consideration as countries prepare their positions with regard to the future climate regime. Recently, both European and American legislators have been looking into how to address competitiveness and carbon leakage issues, including through border measures affecting traded goods (see Bridges Year 12 No.1 pages 16 and 17).

Delegates also discussed potential sectoral agreements among energy-intensive industries most heavily impacted by climate mitigation efforts. Sectors such as steel, aluminium, pulp and paper, cement and agro-chemicals belong to this group. The concept, however, remains controversial. Evoking the principle of ‘common but differentiated responsibilities’, Brazil cautioned against the development of international standards that would require developing countries to comply with obligations that would undermine their exports. Overall, negotiators felt that the concept of sectoral agreements needed further elaboration as there was no clear or common understanding among countries.

Major Emitters at Odds over Sectoral Approaches

Sectoral initiatives were also addressed at a workshop held during a mid-April ‘major emitters’ meeting, the third such gathering among the 17 countries that account for 80 percent of global carbon dioxide emissions (for background see Bridges Year 11 No.4, page 11).

The workshop focused on global industrial benchmarks, such as targets for greenhouse gas emissions per tonne in the production of steel, aluminium and cement. Developing-country participants said that sectoral approaches could harm their less efficient industries, adding that the burden of mitigation should fall on the North. India requested the transfer of technology to help developing countries modernise their industrial sectors. France concluded that sectoral approaches should be complementary, rather than an alternative, to national targets.

Considerations for an International Instrument on Limitations and Exceptions to Copyright

P. Bernt Hugenholtz and Ruth L. Okediji

In the last decade, the delineation of the conditions of access to copyrighted works, as well as the integration of viable access mechanisms into the international copyright regulatory framework, have become one of the most controversial topics in international copyright law.

The emergence of technological protection mechanisms, often reinforced by one-sided contractual provisions, has enabled copyright owners to exercise an unprecedented level of control over both the access to, and the utilisation of, creative works worldwide, resulting in what some have labelled as the ‘privatisation’ of copyright law. In effect, while new technologies have spurred an extraordinary increase in creative activity and afforded owners of knowledge goods a myriad of novel opportunities to disseminate their works to the public, it has also facilitated new access-inhibiting mechanisms recognised and protected by the international copyright system. The combined effects have provided copyright owners with near-absolute power over the contents of their works and hindered the welfare ideals recognised in both national and international copyright law.

The task of developing a global approach to limitations and exceptions (L&Es) is one of the major challenges facing the international copyright system today. It is widely recognised that the unlimited grant or exercise of rights by copyright holders without corresponding and appropriate L&Es has serious adverse long-term implications not only for development priorities, but indeed for the creative and innovation process itself.

Most innovation occurs incrementally by building on preceding technologies or existing knowledge, and empirical evidence in some developed countries suggests a strong correlation between the free dissemination of technological developments and know-how to growth and innovation.

Limitations and exceptions to copyrights contribute to the dissemination of knowledge, which in turn is essential for a variety of human activities and values, including liberty, the exercise of political power, and economic, social and personal advancement. Appropriately designed L&Es can respond to the needs of people who still lack access to books and other educational materials, as well as also open up rapid advances in the technologies that are fundamentally transforming the processes of production, dissemination and storage of information.

Why an International Instrument?

As new technologies challenge copyright’s internal balance and the costs of globalisation heighten the vital need for innovation and knowledge dissemination, a multilateral instrument is necessary to effectively harness various national L&E practices and to provide a framework for dynamic evaluation of how global copyright norms can be most effectively translated into a credible system that appropriately values author and user rights. Such an instrument offers a unique opportunity to co-ordinate, harmonise and balance the heightened (and new) standards of protection set forth in the successive Berne Convention revisions, the TRIPS Agreement and the WIPO internet treaties.

International harmonisation of L&Es present in national copyright laws would diminish the reliance on national courts for the interpretation of multilateral accords. For example, a new international instrument on L&Es could help eliminate diverging interpretations

of the Berne/TRIPS three-step test across national jurisdictions and thus provide coherence and predictability in an environment of dynamic innovation. A new international instrument would also offset the TRIPS constricting of the three-step test (see box below), as well as the nascent jurisprudence of WTO dispute panels, which elevates economic benefits of control over economic benefits of diffusion and fails to accommodate the dynamic nature of creative enterprise.

A global approach to L&Es would help to:

- facilitate transborder trade, both online and in traditional media, by eliminating inconsistency and uncertainty and encouraging uniformity of standards of protection and transparency;
- alleviate institutional weakness of states (mostly developing and least-developed countries) that need diffusion most;
- counteract the recent shift to bilateralism and regionalism in international copyright policy-making; and
- constrain unilateral ratcheting up of global standards.

Finally, a new international instrument with a broad membership would offer an opportunity to eliminate anticompetitive effects associated with differing levels of protection across national jurisdictions while consolidating recent gains in integrating public interest goals in the international copyright system – as seen, for instance, in the preamble to the TRIPS Agreement.

Situating an International Instrument

Ideally, a new international instrument on L&Es should be compatible with the standards set by the international copyright *acquis*, while optimally exploiting the flexibilities that exist within the current multilateral framework. In search of these flexibilities, it is important to understand the mechanics of the copyright system.

Continued on page 22

The Three-step Test on Limitations

The TRIPS Agreement requires WTO Members to confine limitations and exceptions to exclusive rights to

- (i) certain special cases, which
- (ii) do not conflict with a normal exploitation of the work, and
- (iii) do not unreasonably prejudice the legitimate interests of the rights holder.

Statutory limitations and exceptions are but one, albeit important, way of creating balance inside copyright. The tool-box of copyright law consists of several other balancing instruments, including, for example, the concept of a ‘work of authorship,’ which features a requirement of ‘originality’; the idea/expression dichotomy, which delineates the border between protected subject matter and the public domain; the delineation of economic rights of the right holder, such as the right of reproduction and the right of communication to the public; general limits to copyright, such as the exhaustion rule (first-sale doctrine) and the term of protection; and, finally, limitations and exceptions proper. In addition, outside the copyright tool-box, certain limits to copyright can be directly sourced in fundamental rights and freedoms, such as freedom of expression and the right to privacy, and others in competition law, such as the use of compulsory licenses.

Despite an unmistakable ratcheting up of levels of copyright protection at the international, regional and bilateral levels, enough ‘wiggle room’ appears to be left to the parties to the main multilateral copyright agreements to make framing an international instrument on L&Es within the confines of the international *acquis* a worthwhile exercise. One could imagine such an instrument as containing a preamble and a number of provisions, divided into several chapters, including headings such as:

- exclusions from protection (excluding, for instance, facts, ideas, laws and government works);
- limits to economic rights (permitting, for instance, exhaustion and various non-public acts of communication), and;
- limitations and exceptions proper.

For an exemplary catalogue of limitations and exceptions that are presumably compliant with the international copyright *acquis*, one need to look no further than the large number of limitations and exceptions enumerated in the EU Information Society Directive of 2001. Like that regulation, an international L&E instrument could provide a list of (mandatory and optional) limitations. A preamble might offer guidance to the contracting parties in implementing these limitations consistent with both national priorities and copyright objectives.

Designing an International Instrument

Among the principal motivations for an international instrument on L&Es is the need to recognise the limitations to copyright as internal to the copyright system and core to its effective functioning. Such an instrument would provide states a coherent framework within which the principle of maximum protection might otherwise constrain unilateral efforts that undermine copyright’s foundational commitment to the public good.

The minimum goals of an international approach to L&Es would include:

- the elimination of barriers to trade, particularly with regard to activities of information service providers;
- facilitation of access to tangible information products;
- promotion of innovation and competition;
- support to mechanisms that promote/reinforce fundamental freedoms, and;
- the provision of consistency and stability in the international copyright framework by the explicit promotion of the normative balance necessary to support knowledge diffusion.

Three other vital attributes should be reflected in an international instrument on L&Es: it must be flexible, judicially manageable and leave ample space for national cultural autonomy.

We believe that to restore balance to the international copyright regime a multilateral solution is called for. While, for example, the strategic utility and relative simplicity of alternative options, such as a moratorium on the further expansion of IP rights, or an agreement by developed countries not to sanction (or threaten to sanction) developing countries who employ existing access mechanisms, are useful, we feel strongly that in the digital age, welfare gains from dynamic competition and diffusion of information goods require positive access norms as integral features of an effective international copyright system.

Multilateralism in the area of L&Es has important functional, facilitative and normative advantages. As a functional matter, multilateralism invariably fosters centralisation which is a key factor in promoting international co-operation, particularly when there is a desire for broad-based membership in the regime. A multilateral accord also offers protection against ‘forum-shopping’ by owners of proprietary rights who may be willing to sacrifice long-term dynamic gains of access for short-term monopoly gains from rent payments. While we underscore the value of multilateralism, regional experimentation during the early stages of the multilateral exercise, such as those underway in Mercosur and ASEAN, may be an important step in beginning the work toward a coherent global framework for L&Es. Regional incubators for harmonised, minimum L&Es offer the advantage of incremental development of L&Es among like-minded countries. A string of regional successes with such experimentation over time could undoubtedly pave the way for a more general multilateral instrument.

Finally, we recommend a global instrument on L&Es to be cast, at least initially, in soft law. Soft law agreements are easier to negotiate and adapt to future circumstances as the need arises. Moreover, the norms of a soft law instrument might in the course of time evolve into a hard law treaty. A joint initiative between WIPO and the WTO could be an ideal expression of a soft-law modality with a real impact for collective action on an international L&E instrument.

Conclusion

Limitations and exceptions to copyright figures prominently on the agenda of international lawmakers today. At issue is the restoration of fundamental elements of the copyright system which were historically designed to require accountability to goals and purposes far beyond individual economic gain. The time is clearly ripe to consider how an international instrument on L&Es might be legally and institutionally conceived to accomplish welfare objectives that benefit human and economic development aspirations of citizens around the world.

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Election Year Trade Politics in the US

The notion of rules-based open trade, which the US did so much to entrench in the international system, faces turbulent times ahead in Washington.

In an election year marked by economic uncertainty and voters worried about falling house prices, inflation and the prospect of job losses, US politicians have not leapt to make nuanced arguments about how mechanised manufacturing has replaced workers, or how inexpensive imports raise Americans' purchasing power.

For Democrats – likely to retain control of Congress even if they fail to capture the White House in November – the unexpectedly long presidential nomination battle took a populist turn. Senators Obama and Clinton both assured primary voters of their mistrust of free trade (although each has top advisers who support it). Presumptive Republican nominee John McCain denounced protectionism, but polls suggest that the party's supporters are more sceptical.

Furthermore, while major trade deals have traditionally required support from both parties in Congress, these are rough times for bipartisanship. While the US free trade accord with Colombia fell prey to this acrimony in April (see page 16), one of the few things that lawmakers from both sides of the aisle were able to agree on recently was a lavish farm subsidy package – hardly helpful for the struggling Doha Round trade talks at the WTO (see page 17).

Meanwhile, trade officials from around the world – including those from the US – are still working towards a Doha compromise, as though the Bush administration had not lost its trade negotiation authority in mid-2007. However, they continue to peer anxiously at Washington, trying to understand how developments there might affect a prospective agreement.

ICTSD's 2008 delegation of developing country WTO ambassadors to Washington turned out to be well-timed to help bridge some of the gaps of understanding that exist between the halls of the WTO and the corridors of power in the US capital. Senior developing country officials were able to exchange views with a wide range of people who make or influence trade policy in Washington, ranging from USTR Susan Schwab to congressional representatives and staff, in addition to business, labour and environmental groups, as well as top trade analysts.

Better understanding, of course, does not put a Doha agreement any closer within reach.

Nevertheless, the ambassadors were able to assure US policy-makers, many of whom were convinced that "Doha was dead," that real progress was being made towards a deal. Progress that would get a boost from signs of interest in Washington, especially indications that Congress would be open to a Doha-specific 'trade promotion authority' grant.

In return, the visitors were told that at least some of the partisan wrangling on trade was election-year bluster, and that there was still interest in international engagement on trade policy.

Prospects for congressional passage of a Doha deal this year remain very slim, however.

Even supposing that WTO Members manage to strike framework 'modalities' accords on agriculture and manufacturing trade by July – far from a sure thing – they would have to finalise commitment schedules by November for a Doha package to be put to a post-election 'lame-duck' session of Congress before Christmas.

If the round slips to the next US administration, other issues are likely to arise. For instance, the new president would probably wish to put his stamp on the new agreement in some way – potentially a difficult pill for trading partners to swallow. While a Democratic Congress just might be inclined to give a President Obama the benefit of the doubt; a President McCain would have to do much to make bipartisan co-operation on trade possible.

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WTO Meetings

- June 9-11 Trade Policy Review Body – United States
- June 16 Council for Trade in Services
- June 17-18 Council for Trade-related Aspects of Intellectual Property Rights (TRIPS)
- June 24 Dispute Settlement Body
- June 25-26 Committee on Sanitary and Phytosanitary Measures
- July 1 Council for Trade in Goods
- July 1-2 Committee on Technical Barriers to Trade
- July 15 Round of Consultations on the Development Aspects of Cotton
- July 22 Dispute Settlement Body
- July 29-30 General Council

Other Meetings

- July 2-3 ECOSOC Annual Ministerial Review of New York Progress towards the UN Millennium Goals
www.un.org/ecosoc/newfunct/
- July 7-9 G-8 Summit Hokkaido
www.do-summit.jp/

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