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Facts and Figures

- New purchasing parity data shows that 26 percent of the population in developing countries lived below the poverty line of US\$1.25 a day in 2005, down from 52 percent of in 1981. However, due to population growth, the actual number of poor people had decreased by only 500 million.
- China was the notable exception: 207 million people lived under the poverty line in 2005, compared to 835 million in 1981. In the developing world outside China, the US\$1.25 poverty rate had fallen from 40 percent to 29 percent, but the number of poor still stood at about 1.2 billion in 2005.
- In South Asia, the poverty rate decreased from 60 to 40 percent, but the total number of poor people in 2005 remained unchanged at about 600 million.
- In Sub-Saharan Africa, the share of people living on less than US\$1.25 a day was unchanged at 50 percent, but their number had almost doubled, from 200 million in 1981 to about 380 million in 2005.
- In middle-income countries, 2.6 billion people lived on less than US\$2 a day in 2005, although the poverty rate had fallen.

Source: Ravallion, Martin and Chen, Shaohua. *The Developing World is Poorer than We Thought but No Less Successful in the Fight against Poverty*. The World Bank, August 2008

The Trade Round That Refuses to Die

Ministers failed to reach agreement on liberalising trade in farm and manufactured goods in July, but never say die: negotiators are gearing up for yet another attempt in September.

Billed as the last chance to save the Doha Round, the Geneva 'mini-ministerial' veered from stalemate to near collapse, and then to a serious chance of breakthrough, before negotiators conceded failure on 29 July. Seven countries – Australia, Brazil, China, the EU, India, Japan and the US (dubbed the G-7) – led the effort, but the conditional almost-agreement reached among them was never approved by all WTO Members.

Exhausted negotiators expressed profound disappointment and even disbelief over the collapse, but most also stressed that a deal was still possible. WTO Director-General Pascal Lamy said no one was ready to give up on the package that had been 'so painfully negotiated' over the nine-day marathon. The EU and the US confirmed that their offers remained on the table if others wished to pick up where they had left off. And it seems they do: instead of the long hiatus predicted by many, senior officials are expected in Geneva as of mid-September to try and solve the obstacles that could not be overcome in July.

How Did It Happen?

The ministerial meeting was rescued from the verge of collapse when Pascal Lamy proposed a compromise on the key sticking points on 25 July (see pages 7 and 9).

The G-7 by and large accepted his 'package' as a basis for further negotiations, except for one crucial element: the special safeguard mechanism (SSM) aimed at protecting developing country farmers against import surges or significant price drops.

The main point of contention among the G-7 was under what circumstances and by how much developing countries would be allowed to raise tariffs on agricultural goods under the mechanism. DG Lamy proposed that a country's current bound tariff – i.e. the ceiling before Doha Round reductions – could be raised by a maximum of 15 percent (or 15 percentage points, if that was higher) when imports surged by 40 percent over a three-year average (see page 8).

This was as far as the US was prepared to go, but the G-33 coalition of developing countries put forward a counter-proposal that would have allowed SSM tariffs to exceed their current bound levels by 30 percent (or 30 percentage points). In some cases, this remedy could have been available as soon as imports increased 15 percent over the baseline. The group also said that developing countries should have the right to impose SSM duties on 7 percent of all agricultural tariff lines in a given year, while Lamy had suggested a limit of 2.5 percent.

Alternatives proposed by Director-General Lamy and the EU failed to bridge the differences between the US and G-33 member India.

Although few had expected the SSM to scuttle the talks, the impasse is not all that surprising. An effective safeguard mechanism is of the highest political importance to the G-33, but despite plenty of acrimonious rhetoric, virtually no real negotiations had taken place prior to the Geneva meeting. EU Trade Commissioner Peter Mandelson aptly likened the result to an irresistible force meeting an immovable object, which led to compromise flying out of the window.

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Bridges

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See inside back cover for information on other ICTSD periodicals.

At the time of writing, senior G-33 negotiators were meeting on the issue, and the SSM was expected to top the agenda when multilateral talks resume in Geneva.

SSM Not the Only Problem

The impasse on the special safeguard mechanism obscured the fact that fundamental differences remained in other areas. A number of countries complained that the G-7-centred negotiating method prevented their full participation in the process, and that their views often seemed to be brushed aside. This was particularly so with regard to non-agricultural market access (NAMA).

Many developing countries outside the G-7 expressed great concerns about the link, suggested by Lamy, between the depth of developing country general tariff cuts and their participation in initiatives aimed at very ambitious liberalisation of certain sectors of industrial activity. They argued that sectoral agreements were supposed to be purely voluntary, and that linking them to the general tariff cut formula would make participation quasi-mandatory in practice.

Argentina explicitly rejected the compromise figures on developing country industrial tariff cuts proposed by Pascal Lamy. They fell short of two key negotiating mandates, senior negotiator Nestor Stancanelli said. First, more ambitious market opening was required in NAMA than in agriculture and, second, the principle of 'less than full reciprocity' was not respected since developing countries would need to make greater percentage cuts to their industrial tariffs than developed WTO Members. South Africa also had serious concerns about the deal on the table (see page 9 for further details).

The Missing Guest: Cotton Subsidies

Some pundits have suggested that the US may not have been entirely unhappy that the talks were called off before they moved on to the politically sensitive subject of cotton subsidies.

Responding to the concerns of four least-developed African countries, WTO Members agreed in 2005 that domestic subsidies for cotton would be reduced faster and 'more ambitiously' than those for other agricultural commodities. The Cotton Four (C-4) subsequently proposed a formula that would have guaranteed a significant reduction in cotton support even if the general subsidy cut turned out to be small (Bridges Year 10 No.2 page 6).

The C-4 formula was all the latest agriculture negotiating text had to offer on cotton, but only because the US – the main target here – has so far refused to make a counter-proposal, arguing that cotton support cannot be discussed until the overall agricultural modalities are agreed. In addition, the US has stressed throughout that a substantial result on cotton would require a substantial result not only in domestic subsidies, but also in market access and export competition. For the C-4, the Geneva ministerial was an opportunity to finally engage the US in serious negotiations on cotton. To their intense disappointment, the talks collapsed before the subject was even addressed. For the US, however, it may have been a lucky escape.

In related news, Brazil has reactivated its request for WTO arbitration of trade sanctions in the cotton dispute (see page 13). It is also seriously considering the launch of a new dispute over US trade barriers on ethanol (see page 20).

The Casualty List

The July collapse means that nothing achieved during nine days of gruelling negotiations is official, although some it could be salvaged when the talks resume in September. Among the major potential casualties is a compromise on the EU's banana tariff, which promised to end a long-standing stalemate on the liberalisation of trade in tropical products (see page 6).

Without a deal on agriculture and NAMA, other difficult issues waiting in wings will not be solved either. These include a controversial new agreement on fisheries subsidies (Bridges Year 12 No.3 page 8), reforms to anti-dumping and dispute settlement rules, and providing duty- and quota free market access to imports from least-developed countries. The chance to achieve long-sought changes to intellectual property rules, particularly to prevent biopiracy, would also diminish greatly (see page 12).

After the Collapse: Rethinking the Special Safeguard Mechanism for Developing Country Agriculture

Alberto Valdés and William Foster

In the current environment of high world prices on important food commodities – the FAO terms the situation a crisis – it is ironic that the latest attempt to keep afloat the good ship Doha Round finally foundered on the shoals of the dreaded Special Safeguard Mechanism.

The fundamental idea of the SSM, an improved substitute for the old Special Safeguard Clause (SSG), is to permit developing countries to raise tariffs beyond bound levels to protect farmers from falling domestic prices arising from import competition. But the question of what should be the exact design of an acceptable SSM stalemated the debate.

On one side of the argument are many developing countries, sensitive to the vulnerability of their numerous and mostly poor farmers; on the other side are agricultural exporting countries, both developed and developing, seeking market access and predictability in trade rules. Much of the debate has focused on the circumstances under which the SSM could be evoked and how high safeguard duties could rise.

Most countries accept the idea of using a surge in import quantities as a trigger for activating the mechanism, but then disagree on exactly how large the surge should be. As WTO head Pascal Lamy noted, “those who feared that the safeguard would lead to a disruption of normal trade wanted this safeguard as high as possible. Those who feared that the safeguard would be not operational if it was too burdensome wanted a lower trigger.” (See page 8 for details on Lamy’s SSM proposal.)

Perhaps there are deeper problems with the Doha Round, but the SSM was certainly the proximate cause of the failure of the negotiations in July. It will have to be addressed if the talks are to be salvaged. While various governments ponder their next SSM positions, we would like to offer some commentary on the basic idea.

It is curious to us that in the latest negotiations ministers focused almost exclusively on an import-volume trigger; even Pascal Lamy left the price-based SSM out of his compromise proposal. For developing country farmers, however, a price-based SSM would seem to be more appropriate to guard against exceptionally low world price episodes. After all, the very idea of a safeguard for low-income countries – where agriculture often employs nearly three-quarters of the labour force and fiscal resources are limited – was proposed in order to limit their exposure to possible steep and ruinous world agricultural price declines that otherwise could ensue through the lowering of high bound tariff levels.

Volume triggers for the SSM are ex-post – regardless of whether the trigger is high or low – and many developing countries lack the resources to monitor import flows or surges in real time. Furthermore, imports can be unrelated to low prices, for instance in case of a domestic harvest shortfall. A trigger based on an increase in imports would be inconsistent with the principle of protecting potentially competitive sectors.

What should worry policy makers is not ‘sticking it’ to consumers, but cushioning potentially severe damage to the revenues of otherwise competitive farmers and to poor farmers in countries without the fiscal resources and institutional capability to offer relief. In a drought, for example, domestic prices could rise while imports also increase. Would this justify the imposition of additional duties on the basis of maintaining a price floor to protect a viable industry? A volume trigger would not reliably indicate the harm to the industry, which is – at least in principle – the ultimate event to be verified. International prices fall in anticipation of greater world supplies that might compete with domestic production, even if imports are ‘manifestly negligible’. Border price declines could lead to domestic price drops even prior to – and, in fact, even without – import surges.

Shift Focus to Price Trigger

A price trigger would seem better to address the question of harm to farmers in developing countries, but it does carry some technical difficulties – especially with regard to the credibility and transparency of a widely-applied SSM – that would have to be hammered out in negotiation. We have discussed the possible design of a price-based SSM in more detail elsewhere,¹ but to summarise: the rules triggering safeguards would have to be specified in terms of well-defined low price events, and should be uniform for all countries and subject to monitoring by the WTO.

Unlike the old SSG, a price-triggered special safeguard mechanism would not be conditional on Uruguay-Round tariffication, and not linked to a reference price at a specific date. Instead, under a price-triggered SSM specific reference prices should be revised periodically by the WTO secretariat to follow long-term changes in world market price conditions. There should be detailed notification to the secretariat indicating the selection of products and the database used in the determination of reference prices.

Where the price trigger would be placed – at 10, 15 or some other percentage below a long-run world price trend reference – would have to be negotiated. As long as the reference price updating mechanism is transparent and faithful to long-term market trends, the exact percentage triggering gap between the reference and border price is less critical.

Nevertheless, the lower this gap, the more frequently would the SSM switch on and off, and the more it would resemble the outlawed ‘variable levy’. In addition, frequent variation would make the SSM more burdensome to administer, both at the country level and by the WTO secretariat.

Continued on page 4

To further increase transparency, the WTO secretariat should assist every country planning to use the safeguard in establishing a system of computing reference prices and surcharges, including the possibility of outsourcing operations to third parties. We have concluded – although there is room for alternatives – that a statistically estimated reference price trend would avoid most of the difficulties associated with moving averages or the use of an arbitrary base period. Nevertheless, of course, an estimated trend retains the problem of all reference prices: it is an inexact predictor of long-term future market conditions.

Product Coverage

Regardless of a volume or price trigger, there would have to be agreement over product coverage. Practically speaking, and in the spirit of freeing trade, the application of the SSM should be restricted to a limited number of products in any period, although the instrument could be available to any product.

While a country could set its own priorities with respect to the definition of ‘sensitive products’, the simultaneous application of the SSM to a large number of products per country would be impractical in terms of WTO monitoring and data management by individual countries.

As a general rule, a limited number of products for which the SSM could be applied simultaneously would help avoid its misuse and keep its focus on politically sensitive products where a lack of protection would otherwise be an obstacle for trade liberalisation. The recent proposal by the G-33 for an unlimited number of products for least-developed countries – and 30 percent for ‘small and vulnerable’ countries – would seem to exceed what appears to us to be a reasonable set of politically sensitive products and would stretch the monitoring capacity of the WTO, as well as undermine the credibility of the whole SSM system.

Reducing the Heat

The price trigger offers an additional advantage in the context of the key divisive issue in the recent negotiations. The intensity of the debate over whether the SSM tariff should be allowed to breach pre-Doha Round tariff limits would likely subside, particularly if a price-based remedy only allows

countries to compensate a portion of the price decline. This was proposed in the 10 July Falconer text. Exporters would have some assurance that they would maintain market opportunities in times of normal and high prices while still protecting import-competing farmers from exceptional price declines.

Safeguard tariff increases could be implemented virtually automatically – and transparently – and, as negotiators have already agreed with respect to any new SSM, without the need to test injury or negotiate compensation (as under the old general safeguard). Some countries might want to insist on adhering to the principle that no tariffs in a post-Doha world should exceed pre-Doha bound rates, and so might still wish to insist on a limit on tariffs hikes triggered by import volumes or border prices. But there is certainly a quantitative, if not qualitative, difference in exceeding pre-Doha bound rates in an exceptionally low world price episode and surpassing those limits during normal market conditions.

And, unlike volume triggers, a restriction on the length of time a price-triggered SSM could apply would also seem contradictory to its purpose. For import volume triggers, a limit on the safeguard’s duration would make sense to assure the transmission of long-run world price trends and to avoid distorting the natural evolution of trade. Time limits would allow normal trade conditions to reveal themselves during transition periods. But for a price trigger, which (credibly) follows world price trends, these problems are minimised. A price trigger, while providing a temporary cushion against low-price episodes, would adjust to long-run trends. So, the right to apply a price-triggered SSM could be unrestricted in duration, maintained as long as world prices are exceptionally low. If a sharp world price decline were really a part of a longer term trend, the evolution of the reference price would eventually reflect this and the SSM would no longer apply.

The current wisdom in Geneva, as we understand it, is that a volume-trigger is preferred. Even in the presentation of a price-triggered SSM, import volumes come into play to block application of the safeguard if their levels are ‘manifestly negligible’ compared to domestic production and consumption.² This seems to us a peculiar restriction if the purpose of the SSM is to protect domestic farmers from exceptionally low prices transmitted from world markets. Domestic prices could follow downward border prices without any contemporaneous change in imports: prices may fall on the potential of imports, whether or not import volumes have ‘manifestly’ increased. To put an observed volume-related condition on a price-triggered SSM is to maintain a type of ex-post injury test, which in our opinion is an invalid restriction on what should be a low-price insurance policy for farmers in poorer countries.

Adjusting the Course of Negotiations

From the perspective of those familiar with dealing with legal evidence, and from the perspective of viewing safeguards as akin to anti-dumping measures, volume-triggers are indeed easier to understand. They are attractive to negotiators. They are, however, only applicable after the fact. Price-triggers aimed at mitigating exceptionally low world price episodes, on the other hand, are better suited both for addressing the underlying purpose of special safeguards for poorer countries and for following world markets. One thing to think about during this hiatus in negotiations is how to present a price-trigger mechanism that, while attractive to economists usually less well-versed in diplomacy, lacks charisma to negotiators. But we believe a good case can be made that puts a price-based SSM in the context of protecting the ‘subsistence and livelihoods’ of developing country farmers – so ardently defended by Minister Kamal Nath from India – and in a manner that ministers might find more convincing.

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ENDNOTE

¹ A. Valdés and W. Foster. July 2005. *The New SSM: A Price Floor Mechanism for Developing Countries*. ICTSD Issue Paper No. 1. Geneva

² WTO Secretariat. 5 August 2008. *An Unofficial Guide to Agricultural Safeguards*. Geneva

Reflections in the Time of Cold Storage

David Vanzetti

The Doha Round negotiations have been put into cold storage, at least for a while. During this hiatus, it may be useful to reflect on the policy choices governments are likely to face if the most likely scenario foreshadowed in agriculture comes to pass.

The collapse of the round has been described as ‘tragic’ by some and welcomed by others. Both these perspectives can be justified. It is useful at this point to analyse the numbers on the table and speculate on the likely impacts in the agricultural sector. Quantitative analysis indicates that:

- Almost all countries are likely to increase their agricultural exports.
- The changes in agricultural trade flows are primarily driven by improvements in market access in the European Union and Japan. Export subsidies, domestic support, special products, safeguards and developing country tariff reductions are of lesser importance.
- The global welfare gains are relatively modest.
- Many, if not most, developing country WTO Members would experience a loss in welfare because of rising import prices, preference erosion, loss of quota rents and the absence of any meaningful reform to their own economies.

Results supporting these conclusions are based on an application of a global partial equilibrium agricultural trade model.¹ In this brief note a likely scenario is described and resulting tariff changes, trade and welfare effects presented. A large number of countries are estimated to experience an increase in exports but a fall in overall welfare.

What's on the Table?

The key parameters of a likely negotiated outcome are shown in Table 1. Agreed are linear tariff cuts within bands with exemptions for sensitive products on up to four percent of tariff lines. Tariff cuts on exempted products may be as low as one third of the formula cuts. To compensate, an expansion of the tariff rate quota to four percent of domestic consumption is required. The major uncertainty here is the selection of sensitive products, which need not be specified until a later stage in the negotiations. Export subsidies would eventually be eliminated and there will be substantial reductions in allowable domestic support expenditure.

For modelling purposes the approach taken here is to assume that the most sensitive industries attract the highest tariffs. In developing countries the percentage difference between applied and bound rates was taken as the criteria, with products having the lowest difference being selected as sensitive.

Not modelled here are special safeguard measures designed to protect against import surges and price falls. This reflects the static nature of the model rather than the lack of consensus on this issue in the negotiations.

Water Wrung from Tariffs

If the specified scenario were to be implemented, average tariffs in the European Union of the 34 products covered in the model would be reduced from 15 to 8 percent, and Japanese tariffs reduced from 50 to 20 percent. There is a substantial cut in developing country bound rates, but the change in applied rates is minimal, from 20 to 17 percent. This reflects the binding overhang and the exemptions. LDCs are not required to reduce their tariffs.

Surge in Trade

Global agricultural trade is estimated to increase by 11 percent once producers and consumers have adjusted to price changes. The Euro-

pean Union and Japan account for nearly 90 percent of the change in global imports. Developing country imports are virtually unchanged because they undertake few reductions in applied tariffs. LDCs would import less in response to rising world prices.

All developing countries are estimated to increase their total agricultural exports, but almost half the increase in imports is supplied by the larger developing countries, Brazil, China, India and Argentina. These countries provide the wheat, beef and sugar required by the European Union and livestock products imported into Japan.

Welfare Gains and Losses

Changes in exports do not reflect the costs of producing the additional exports. A more complete measure is welfare, which is measured here as the change in producer and consumer surplus plus change in government revenue from tariffs and expenditure on export subsidies and domestic support. This is shown in Table 2 (see page 6).

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Table 1: Likely agricultural liberalisation scenario

Countries	Tariffs		Export Subsidies	Domestic Support
Developed countries	Tariff tier	Tariff cut	Reduction	Reduction
	Over 75%	-70%	-100%	EU: -80%
	50-75%	-63%		US & Japan: -70%
	20-50%	-57		
	Up to 20%	-50		Others: -55%
	Tariffs capped at 100%			
	Sensitive products: 4% of ag tariff lines, 1/3 tariff cut ¹ + quota expansion			
Developing countries	Tariff tier	Tariff cut	Exp. subs. red.	Dom. subs. red.
	Over 130%	-47%	-100%	-55%
	80-130%	-42%		
	30-80%	-38%		
	Up to 30%	-33%		
	Tariffs capped at 150%			
	Sensitive products: 5.3% of ag tariff lines, 1/3 tariff cut ¹			
Special products: 12% of ag tariff lines, 11% average tariff cut				
LDCs	No tariff, export subsidy or domestic support reductions required			

¹ The one-third cut refers to what would otherwise be required by the formula

Table 2: Change in Welfare, Selected Countries

Countries	US\$ Million
European Union	6540
United States	789
Japan	3705
Developed	12760
Developing	1234
LDCs	-501
World	16655

Source: ATPSM simulations

Many developing countries are net agricultural importers who currently benefit from preferences and would lose from preference erosion, loss of quota rents, or the general increases in prices of temperate imports. In fact, only 23 out of 91 developing countries, and two of the 45 LDCs are estimated to experience a welfare gain from agricultural liberalisation.

Exports or Welfare

In spite of the projected growth in exports, perhaps it is not surprising the agricultural negotiations have been frozen given the large number of small economies that would potentially experience a welfare loss if the numbers on the table were implemented. The question for policy makers is what weight to place on export growth rather than welfare. Developing countries could capture some allocative efficiency gains if they undertook substantial reforms themselves, but the distribution of gains and losses will inevitably be unequal.

The usual modelling caveats apply, including data quality, the absence of dynamic effects, and whether the scenario modelled here would actually be implemented. In particular, the gains and losses are underestimated because the production and price data are an average of 2002 to 2004. The recent higher prices for some commodities, especially wheat, would inflate the results.

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ENDNOTE

¹ ATPSM is a 150-region, 34-commodity agricultural trade model developed by FAO and UNCTAD. The model covers the major commodities of interest to developing countries but excludes some, such as wool. For documentation, see www.unctad.org/tab

July Fallout: Bananas, Tropical Products

Resolution of the long-running banana dispute between the European Union and Latin American exporters is among the key might-have-beens of the failed Geneva mini-ministerial.

The broader context for the banana discussions was the 2004 mandate that the Doha Round farm negotiations must effectively address “the long-standing commitment to achieve the fullest liberalisation of trade in tropical agricultural products,” including those cultivated in order to shift production away from the growing of illicit narcotic crops. Inextricably linked with this mandate was a recognition that liberalising trade in tropical products would lead to the erosion of the long-standing market access preferences of certain countries, and that this question would also be addressed in the negotiations.

Due to the conflicting interests of preference-receiving states on the one hand and those seeking dramatically lower tariffs on tropical products on the other, negotiations on the twin topics had made scant progress in the run-up to the July mini-ministerial. The main difficulty was bananas, which the African, Caribbean and Pacific (ACP) group wanted excluded from the tropical products list so as preserve the preferential margin their duty-free exports enjoy in the European Union. In contrast, Latin American exporters – which had won countless WTO dispute settlement rulings against the EU’s banana import regime – were seeking more market access either through designating bananas as a tropical product (tentatively slated for an 85-percent tariff cut) or through a separate agreement negotiated with the EU.

The Deal on the Table

After intense negotiations, the EU, Colombia, Costa Rica, Ecuador, Guatemala and Panama reached a deal on 27 July: bananas would not be included in the tropical products list. Instead, the EU would lower its current most-favoured-nation tariff from €176 per tonne to €114/tonne over eight years, with a €28 per tonne downpayment as of January 2009. In exchange, the Latin Americans would drop all outstanding WTO litigation.

The solution paved the way for rapid progress in the tropical products/preference erosion discussions. The large list of products potentially slated for deep cuts was whittled down to 42 items, or even 30 according to some sources. When the talks collapsed, about a dozen of these were still listed as both tropical and erosion products. The chair of the farm talks, Crawford Falconer, predicted that the overlap “would have been resolved on the basis specific understandings” developed over the last days. Members had already agreed not to designate sugar as a tropical product.

ACP Objects to the Compromise

Costa Rica’s trade minister Marco Vinicio Ruiz hailed the banana compromise as a ‘tremendous advance’ in the tropical products negotiations, but several ACP countries complained that they had not been sufficiently consulted. Speaking for the group, Cameroon’s trade minister Luc Magloire Mbarga Atangana said the ACP would block any result of the Geneva meeting if their counter-proposal – a reduction to €117 by 2016 – were not accepted. Latin American negotiators insisted that the deal was final, and that it was up to the EU to bring ACP countries on board. Some of the latter indicated that they might be able to show more flexibility if the EU offered them additional financial assistance during the transition period.

Deal Off the Table, Litigation Set to Continue

It never came to that, however. The broader talks broke down two days later, and the EU made it clear the banana deal was off as well. “This was not a stand-alone agreement and was going to be part of a Doha package, so there is no banana deal as of now,” EU Trade Commissioner Peter Mandelson’s spokesperson Peter Power said. His statement was backed up by the commission’s 27 August announcement of appeals on the latest adverse WTO rulings on the EU’s banana import regime. “It is only through negotiation, not litigation, that we will find a solution that is satisfactory for all sides, be they EU, ACP or Latin American,” the commission said, adding that it remained ‘absolutely committed’ to finding a solution. Without one, the impasse on tropical products looks set to continue as well.

Unpacking Lamy's July 2008 Farm Trade Package

In July, WTO Members came close to accepting a compromise on the most divisive numbers in the farm negotiations proposed by Director-General Pascal Lamy. With the notable exception of the special safeguard mechanism, the 'package' might be resurrected when the talks pick up in September.

It should be pointed out from the start that the figures in the Lamy 'package' concerned only the most contentious points, and would not have altered other provisions of the 10 July agricultural modalities draft that served as the basis for negotiations at the Geneva ministerial meeting.

Domestic Support

The Lamy compromise would have required the United States to lower its maximum permitted overall trade-distorting support (OTDS) by 70 percent and the European Union by 80 percent. While these reductions would not have resulted in 'effective cuts' to actual spending, they would have provided a significant guarantee against future backtracking.

For the US, the proposed deal would have meant a reduction from US\$48.2 billion a year to US\$14.5 billion at the end of the Doha Round implementation period. Although the new ceiling would have represented nearly twice the level of projected (and current) outlays, the US stressed that its OTDS level had exceeded US\$15 billion in seven out of the last ten years.

The EU would have had to cut bound OTDS from €110 billion to €22 billion. ICTSD projections suggest that the bloc's applied OTDS will decrease from €29 billion to €25 billion over the same time period. The EU would thus have needed to shave €3 billion from the amount it would otherwise spend in 2013/14.

Market Access

A number of countries see increased market access as a necessary counterweight to continued high levels of domestic support. However, ICTSD research¹ shows that although developed country tariffs would have decreased under the Lamy proposal, key products of export interest to developing countries would have continued to face significant import duties.

For the US, the average applied trade-weighted import tariff would have fallen from 7.9 to 3.5 percent. Tariffs on products likely to be designated as sensitive would have dropped from 50.4 to 29.3 percent. These products include important developing country export commodities, such as processed dairy, beef, sugar, chocolate, tobacco goods and frozen orange juice.

The overall EU outcomes are largely similar, although the specific figures and products differ. While average trade-weighted agricultural tariffs would have decreased from 23.4 to 9.5 percent, sugar, cereals, meat and dairy would still have faced high import barriers, especially since they are likely to be designated as sensitive.

Tariff Reduction Formula and Tariff Caps

The cut required for developed country import duties in the top tier of the Doha Round tariff reduction formula has been one of the major points of contention in the farm talks. Lamy proposed that tariffs over 75 percent be cut by 70 percent.

Exporters have long sought to constrain unusually high tariffs with a 'tariff cap', a measure opposed by import-sensitive countries. Pascal Lamy suggested capping developed country farm tariffs at 100 percent. This limitation would not have applied to sensitive products, and Iceland, Japan, Norway and Switzerland would have been allowed to exceed the cap for an additional 1 percent of non-sensitive tariff lines.

ICTSD analysis of tariff data from UNCTAD shows that Japan could have exempted all tariff lines facing the 100-percent tariff cap, including the 800-percent duty on rice, which would have been reduced significantly under the proposed 70-percent cut in the highest tariff tier.

Due to their more numerous tariff peaks, the other three countries eligible for the exception could have exempted only a part of their highest tariffs from cuts (see table below).

No increased market access would have been required for non-sensitive products exempted from the tariff cap, although the four countries would have had to expand import quotas to 4.5 percent of domestic consumption for all products designated as sensitive.

Under the 1-percent exemption, no new market access would have been provided for the most protected Japanese tariff lines. The other three countries would also have been able to maintain their current high bound tariffs for the products of greatest interest to them. However, the mandatory quota expansion for all sensitive products associated with the exception would have provided some new export opportunities.

Sensitive Products

All WTO Members may protect a share of their farm products from full formula cuts by designating them as 'sensitive'. Under the Lamy compromise, developed countries would have been able to shield 4 percent of their agricultural tariff lines in this way. The limit would have been increased to 6 percent for those among them with more than 30 percent of tariff lines above 75 percent.

Countries opting for the smallest possible sensitive product tariff cut – one-third of what would otherwise be required by the formula – would have had to provide compensatory market access by expanding the import quota for any product designated as sensitive by at least 4 percent of domestic consumption.

Continued on page 8

Tariff structures of the countries eligible for the 1-percent non-sensitive product exemption

	Japan	Iceland	Switzerland	Norway
Total no. of tariff lines	691	691	691	691
Tariff lines facing cap	7	83	16	132
Avr. non-capped tariff	474.63%	422.02%	676.71%	435.23%

For agricultural exporters, cereals, dairy products, eggs, meats and sweeteners figure prominently in a list of prospective sensitive products compiled for an ICTSD study. Under the Lamy proposal, developing country producers of these goods would not have gained the market access they were seeking.

Brazilian sugar cane, Thai manioc (cassava), and Chinese onions, raw silk and garlic would have been significantly affected because the three countries' exports of these products represent more than 50 percent of the world total. In addition, sensitive product protection is likely to limit market access for developing countries whose exports are concentrated in very few tariff lines, such as groundnuts in Gambia and husked rice in Guyana.

Special Products

Developing countries alone will be able to designate some tariff lines as special products (SPs), exempting them entirely or in part from reductions for food security, livelihood and rural development reasons. The number of SPs has been highly controversial since negotiations began, as has the extent to which they should undertake tariff cuts, if at all.

Lamy proposed allowing developing countries to designate 12 percent of their farm tariff lines as 'special', with an average cut of 11 percent.

Based on findings in fourteen ICTSD country studies, the average number of tariff lines likely to be designated as 'special' is slightly under 11 percent, although the figure varies widely (from 3 to 26 percent) from country to country. Additional flexibilities available to small and vulnerable economies and recently acceded Members could help address at least some of the concerns of those countries that might otherwise need more SP tariff lines than the 12 percent suggested by Lamy.

Only 5 percent of all agricultural tariff lines could have been totally exempt from cuts. In order to achieve the 11-percent average reduction required by the Lamy compromise, a country opting to exempt the full 5 percent would have had to cut tariffs on the remaining 7 percent of agricultural tariff lines designated as 'special' by roughly 18.9 percent.

ICTSD findings on the difference between domestic and international prices suggest that some developing countries, especially those with low bound tariffs, would benefit from exempting certain SPs from any cuts. Although the exact number of products varies a great deal depending on the country's tariff structure, rice, chicken, corn and onions are among those most likely to need a full exemption from cuts since their import duties are most often equal to existing bound tariffs, or even higher.

The Special Safeguard Mechanism

Many blamed the collapse of the July ministerial meeting on an impasse over the extent to which developing countries could temporarily raise import tariffs under the Special Safeguard Mechanism (SSM) – intended to protect farmers against sudden import surges or price drops.

Lamy's compromise proposal was that tariffs could not exceed current bound levels unless imports surged more than 40 percent above the preceding three-year average. In such cases, developing countries would be allowed to surpass their current bound tariffs by 15 percent, or 15 percentage points, whichever would be the greater. The draft modalities text circulated on 10 July by the chair of the agriculture negotiations would also have given least-developed countries and small, vulnerable economies greater flexibility.

Countries such as China, Côte d'Ivoire and the Philippines, which have low bound tariffs and a large number of Special Products, are among those most likely to need to impose safeguard duties that exceed currently bound levels. However, the US reportedly expressed concern that the SSM would allow countries such as China to increase dramatically, in relative terms, their tariffs on some products. For instance, Chinese soybean duties – currently bound at 3 percent – could have increased to 18 percent under Lamy's SSM proposal.

Analysis of bound and applied rates suggests that India might not be a major beneficiary of an SSM provision allowing tariff increases above bound levels, since the difference between many of its applied and bound tariffs is substantial for most products. Exceptions include a few highly sensitive products such as rice, where bound and applied rates are the same.

Under the Lamy proposal, safeguard duties would be allowed to exceed current bound rates for only 2.5 percent of tariff lines in a given year. Based on ICTSD simulations carried out for six countries, import surges exceeding three-year averages by 40 percent occur about 10 percent of the time. The 2.5 percent annual tariff line limitation could diminish the SSM's effectiveness even when the high volume-trigger is surpassed.

For exporters, only a volume-based SSM trigger would actually curtail market access. Price-based triggers and remedies would impose additional duties equivalent to only 85 percent of the price decline. Under such a scenario, imports would still be cheaper than domestic products, and would continue to reflect demand.

The capacity to track and collect data on import volumes in real time is a prerequisite for the effective application of a volume trigger-based SSM. However, most developing countries lack this ability. They might be better served by a system that compensates for price fluctuations rather than increases in import volumes (see page 3).

Cotton: the Missing Piece of the Puzzle

The Lamy 'package' only covered the 'headline' numbers that threatened to block all progress at the Geneva mini-ministerial. Among the issues of vital importance to the poorest WTO Members, the proposal did not address the establishment of product-specific caps for domestic subsidies, or how to respond to the Hong Kong mandate that cotton subsidies be reduced faster and more steeply than those on other agricultural products (see page 2).

ENDNOTE

¹ See ICTSD (2008) studies by Jean et al; Blandford et al; Ibanez et al; Bernabe; and Montemayor at <http://www.ictsd.net/programmes/agriculture>

'Substantial Convergence' but No Consensus on NAMA

Contrary to some expectations, negotiations on industrial market access did not sink the July mini-ministerial, although serious gaps still loomed when the talks broke down. Unfortunately, they may have widened since.

The ministerial meeting was rescued in extremis – temporarily, as it turned out – by a compromise package presented by WTO Director-General Pascal Lamy on 25 July. At the time of writing, however, a controversy had arisen over what exactly was agreed with regard to 'sectoral initiatives' aimed at liberalising trade in industrial goods, a major flash point in the negotiations on non-agricultural market access (NAMA).

For a number of developed countries, the top priority of the July NAMA discussions was to ensure the participation of a 'critical mass' of WTO Members in schemes that would bring about sharp cuts in, or outright elimination of, tariffs in specific sectors of industrial goods. The EU, the US and others consider such initiatives essential for reaping real market access gains in major emerging economies. The proponents argue that the Doha Round will not bite into the import duties on industrial products currently applied by many developing countries, either because of the large difference between their bound and applied rates, or as a result of the exemptions from formula cuts available to them.

Although participation in sectoral initiatives should be voluntary, several developing countries are alarmed over the pressure exerted on them to join. China – the most coveted prize of the talks – is among the many that have strong defensive interests in some of the sectors under consideration, including automobiles, electronics, chemicals and industrial machinery. These WTO Members fear that participation would become quasi-mandatory in practice if developing countries are given the substantial carrot currently on the cards: the right to higher tariffs on other industrial products depending on the number of sectorals they agree to join.

On 25 July, Pascal Lamy suggested the following compromise text: "Recognising the non mandatory nature of sectoral initiatives [...] Members listed in Annex Z have committed to participate in negotiating the terms of at least two sectoral tariff initiatives likely to achieve critical mass. [...] Any developing country Member participating in final sectoral initiatives will be permitted to increase its coefficient [...] commensurate with its level of participation in sectoral initiatives." Negotiations on the size of the increase would conclude at the latest two months after agreement on the agriculture and NAMA modalities. While a number of developing countries thought that the proposed language leaned too far in the direction of developed countries, the US in particular made it clear that the Lamy text was the bottom line.

In a wrap-up report released on 12 August, NAMA Chair Don Stephenson suggested a slightly different version, which he said was the outcome of 'specific, text-based negotiations' among the core negotiating group consisting of Australia, Brazil, China, the EU, India, Japan and the US (dubbed the G-7). The US Trade Representative's spokeswoman Gretchen Hamel claimed two days later that her government had 'neither seen nor agreed to' this text.

The relevant part of chair Stephenson's report reads: "At the time of establishment of modalities the Members listed in Annex 7 [to be developed, *ed.*] have agreed to participate in negotiating the terms of at least two sectoral tariff initiatives of their choosing, with a view to making them *viable*. [...] Participation in the negotiation of the terms of a sectoral initiative *shall not prejudice a Member's decision to participate in that sectoral initiative*" (editor's italics).

What seems to have irritated the US is the reference to participation aimed at making sectoral initiatives 'viable', rather than at achiev-

ing a 'critical mass' for their conclusion. The latter language is stronger as it implies the participation of enough WTO Members to cover the great majority of trade in a given sector. The other point the US took exception to was the caveat that taking part in the negotiations on the terms of potential liberalisation would not "prejudice a Member's decision to participate in that sectoral initiative."

More broadly, USTR spokeswoman Hamel said her country had 'deep concerns' about proposals that would "not only limit market opening by the world's fastest growing economies, but would actually raise new barriers to trade – particularly against other developing countries."

Potential Progress on Tariff Cuts, Flexibilities

Initial reactions from the G-7 were surprisingly muted with regard to the compromise figures proposed by DG Lamy for tariff cuts on industrial products. The depth of the cuts will be determined by a 'coefficient' to be inserted in the tariff reduction formula. The coefficient determines the highest possible post-Doha import duty.

Under the Lamy proposal, industrialised countries would accept a coefficient of 8, while that for developing countries would vary from 20 to 25, depending on how many tariff lines they would exclude, either wholly or in part, from formula cuts (see table below). Consensus on the extent of these flexibilities and the developing country coefficient had eluded negotiators until the ministerial.

Continued on page 10

Coefficients and flexibilities for developing countries proposed by Pascal Lamy on 25 July 2008

Coefficient	Flexibilities	
	EITHER: Apply half formula cuts to the following percentage of all ag tariff lines	OR: Exempt the following percentage of ag tariff lines from any cuts
20	14%, but must not exceed 16% of the total value of non-ag imports	6.5%, but must not exceed 7.5% of the total value of non-ag imports
22	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
25	None	None

India, among others, had rejected any link between coefficients and flexibilities as late as last May (Bridges Year 12 No.3 page 7).

Some Members outside the G-7, however, voiced opposition to the deal on the table. Senior Argentine negotiator Nestor Stancanelli, for instance, noted that developing countries would still be required to make disproportionate cuts to their industrial tariffs compared to what was on offer on rich-country farm reforms. In addition, Mr Stancanelli said that the proposed coefficients ran counter to the principle that ‘less than full reciprocity’ would be required from developing countries in the NAMA negotiations. He pointed out that while a developed country coefficient of 8 would reduce US and EU tariffs by more than 42 percent, a coefficient of 20 – the lowest proposed for developing countries – would entail a 60-percent average reduction to Argentina’s current bound industrial tariffs.

South Africa, which has less ‘water’ between its bound and applied tariffs than most other developing countries, complained that cutting its maximum bound tariff to 25 percent (the highest figure proposed for developing countries) would mean an unacceptable 30-percent cut to applied tariffs. South Africa would therefore need both the highest coefficient and the use of flexibilities, the country’s trade negotiators argued. However, the most Members were willing to concede at the July meeting was according South Africa the right to 11-16 percent of tariff lines eligible for half formula cuts, but only in exchange for a coefficient of 22.

Chair Stephenson admitted that no final convergence had been achieved on how much additional flexibility should be granted to Venezuela, recently acceded Members (RAMs), or small and vulnerable economies. In case of the latter, consensus was close, but lack of progress in the agriculture talks prevented the proponents from ‘closing in’ on the issue. As for the RAMs that must undertake formula cuts – China, Croatia, Oman and Taiwan – delegates’ differences were now ‘a question of fractions’ on whether these countries should have three or four additional years to implement tariff reductions.

Anti-concentration Clause Might Have Been Approved

Among the most intractable issues in the pre-ministerial negotiations was the so-called ‘anti-concentration clause’, through which the EU and the US in particular sought to significantly curtail the number of products on which developing countries could make less than formula cuts.

The original mandate in the July 2004 framework agreement noted only that flexibilities available to developing countries (see table) could not be applied to ‘entire HS chapters’, i.e. the broadest Harmonised System tariff categories, such as ‘vehicles, aircraft, vessels and associated transport equipment’.

A bracketed option included in the May 2008 NAMA draft proposed to drastically narrow this scope by requiring full formula cuts to at least half of the specific tariff lines under a given four-digit heading. (Four-digit headings are still relatively broad, such as ‘tractors’ or ‘motor vehicles for the transport of ten or more people’.) In addition, the proposal would have limited the value of tariff lines excluded from standard reduction to half of the total value of the country’s imports under any four-digit tariff heading.

The NAMA-11 developing country coalition, supported by several other developing countries, successfully fought this late attempt to limit the scope of the flexibilities. Chair Stephenson’s 10 July draft suggested that “full formula tariff reductions shall apply to a minimum of either [] percent of national tariff lines or [] percent of the value of imports of the Member in each HS chapter.” The 25 July Lamy compromise filled in the blanks: full formula cuts should be undertaken on either 20 percent of national tariff lines, or 9 percent of the value of imports under any HS chapter.

Principal anti-concentration proposals in the NAMA negotiations

Proponent	Proposal
Framework Agreement July 2004	Members may not use flexibilities to exclude entire HS chapters ^f from full formula cuts.
EU & US Proposal 19 May 2008	Members must make full formula cuts on at least 50 percent of 6-digit tariff lines under a given 4-digit tariff category. Products exempt of full cuts may not exceed 50 percent of the value of imports under any 4-digit heading.
Lamy Compromise 25 July 2008	Full formula cuts must be applied to at least 20 percent of all national tariff lines, or 9 percent of import value under each HS chapter.

The Lamy figures seemed enough for at least some NAMA-11 members to drop their objections to the very principle of an anti-concentration clause. India, for instance, said it was willing to negotiate on ‘reasonable numbers’ for such a provision despite serious misgivings from domestic industry. However, India sought confirmation that developing countries would have a choice between applying full tariff cuts to either 20 percent of all tariff lines or 9 percent of import value within each HS chapter.

All Progress Remains Conditional, Some Contested

Summing up the nine days of ministerial negotiations, chair Stephenson stressed that whatever tentative progress had been achieved was accepted conditionally as part of a ‘package’, which ultimately did not materialise. Any convergence on NAMA issues therefore remains “just that – substantial convergence, but no consensus.” He also noted that some Members “did not give explicit support to all NAMA elements of the package.” These included, although neither was identified by name, South Africa’s objections to the level of tariff reduction flexibilities available to it, and Argentina’s ‘explicit rejection’ of the proposed developing country coefficients and flexibilities on the grounds that “these did not satisfy the mandate for less-than-full-reciprocity and ambition comparable to the outcome in market access in agriculture.”

Unlike his counterpart Crawford Falconer, who chairs the Doha Round agriculture talks, Ambassador Stephenson declined to give any insights to when and on what basis the NAMA talks could be revived. The matter lay entirely in the ‘hands of Members’, he said.

Ministers Upbeat about Signals of Services Liberalisation

Surprising, encouraging, positive and constructive were among the adjectives used by participants to describe the half-day 'signalling conference' on services held during the Geneva mini-ministerial in July.

The event marked the first time that services liberalisation had been discussed at the ministerial level since the launch of the Doha Round in 2001. Together with agriculture and industrial goods, services form the 'holy trinity' of the round's market access negotiations, but many WTO Members had repeatedly complained that most offers tabled so far did not even reflect current levels of openness, not to speak of creating new export opportunities.

The purpose of the signalling conference, chaired by WTO Director-General Pascal Lamy, was to give countries keen on expanding their access to foreign services markets a sense of what the 30 or so trading partners actively involved in the negotiations could potentially offer. Although the outcome of the meeting is in no way binding, the indications put forward at the meeting seem to have reassured WTO Members such as Australia, the EU, India and the US that more robust market access commitments could be secured in services if an acceptable deal were struck in agriculture and non-agricultural market access.

Most of the participants were developing countries, in whose markets the *demandeurs* of the high-level services meeting are seeking deeper and broader concessions in a large number of sectors. In contrast, the main developing country demands centred on more access for their temporary service providers (movement of natural persons or mode 4 of services supply) and cross-border services, such as business outsourcing (mode 1).

New Commitments Outlined on Market Access

According to Pascal Lamy's wrap-up report, Members signalled potential new market opening concessions across a wide range of sectors, including business and financial services, telecommunications, tourism, distribution and postal services, health, education, transport and construction, as well as energy, environmental and audiovisual services.

Although Mr Lamy's report did not mention individual countries or the exact content of their signals, several press sources reported that India was willing to increase its foreign equity cap in the telecommunications sector from 50 to 74 percent, and to allow 51 percent foreign ownership in its hitherto closed asset management sector. Brazil's chief negotiator Celso Amorim said his country could consider improvements in telecommunications and reinsurance, while China indicated potential new commitments in financial and infrastructure-related services.

These moves were welcomed by the EU and the US, although both said they would like to have seen more on the part of the major emerging economies. Australia's Trade Minister Simon Crean also expressed positive surprise at some of the conditional offers made at the meeting.

Some Flexibility Signalled in Mode 4

The EU and the US were reportedly willing to improve existing offers in cross-border supply of services in a range of sectors; they also signalled more flexibility in granting access to foreign service providers. However, such access is likely to concern skilled professionals rather than the non- or semi-skilled labour that is in most abundant supply in developing countries. The EU said it could eliminate the cumbersome economic needs tests for foreign workers when issuing temporary visas, but limit the number of such service providers through a numeric quota. US Trade Representative Susan Schwab said she was prepared to work with Congress to increase the number of temporary H-1B visas for foreign professionals. Although this does not seem a major concession, the US had previously been reluctant to broach the subject at all, arguing that under US law only immigration services are authorised to deal with visa issues.

While India's Commerce Minister Kamal Nath was encouraged by what he saw as new US willingness to engage on the issue, his colleague Gopal Pillai warned that much would depend on the specific details that the US would include in its revised services offer.

Special Treatment for LDCs

WTO Members agreed in 2003 to give 'special priority' to providing market access in sectors and modes of supply of export interest to least-developed countries (LDCs). First and foremost, these countries seek access for their temporary service providers.

Although this topic was not addressed at the signalling conference, chair Fernando de Mateo's 17 July draft proposal on the 'elements required for concluding the services negotiations' (TN/S/33) was more precise than its predecessor with regard to implementing the LDC mandate.

Since fulfilling the 'special priority' commitment would entail discrimination in favour of LDCs, Members have agreed that the most satisfactory outcome would be a 'waiver' that could be invoked by any country giving greater concessions to LDCs than to other WTO Members. Members 'shall strive', the chair's report said, to conclude negotiations on the 'specific principles and characteristics' of the waiver before the deadline for the submission of revised offers.

It has also been agreed that the waiver negotiations will take into account the mechanism's impacts on other developing countries, many of which have export ambitions very similar to those of LDCs. In addition, Members will give 'due consideration' to the trade-related concerns of small economies, as well as 'take into account' the extensive market access commitments that recently acceded Members agreed to in their accession negotiations.

Next Steps Uncertain

At the time of writing, it was not entirely clear how the services talks will proceed. The 'elements' paper had originally set a 15 October 2008 deadline for revised offers, and a 1 December target date for submitting final schedules of market opening commitments. However, following the collapse of the mini-ministerial those dates will certainly be postponed, and the signals exchanged in July remain "subject to a satisfactory conclusion of the Doha Development Agenda."

TRIPS Update

In the run-up to the July ministerial meeting, an unprecedented coalition of developed and developing countries proposed joint 'draft modalities' on three highly controversial intellectual property issues: a requirement to disclose the origin of any genetic resources involved in an invention in patent applications (disclosure); the extension of stronger protection for geographical indications to all goods (GI extension); and the establishment of a multilateral register for GIs denoting wines and spirits.

The proponents hoped to obtain a ministerial mandate to make 'text-based negotiations' on disclosure and GI extension part of the Doha Round 'single undertaking'. Those negotiations would aim to amend the TRIPS Agreement so it would: (i) protect WTO Members against misappropriation of their genetic resources, and (ii) extend to all products the level of protection that GIs for wines and spirits currently enjoy.

The wines and spirits register is already part of the formal Doha Round negotiations, but the talks are lagging. The coalition called for starting text-based negotiations on this topic as well.

WTO Director-General Pascal Lamy warned repeatedly that the TRIPS issues should be solved before the ministerial lest they turn to a "big clash during the modalities exercise."

That did not happen, if only because ministers never got that far. However, Norway's trade minister Jonas Støre conducted parallel consultations with the protagonists. He suggested that work programmes be established on each topic, with the chairs delivering progress reports by mid-October. Towards the end of the Doha Round, the chairs would issue a common recommendation on how to proceed.

There is serious concern over a dilution of the coalition's joint approach, particularly since years of separate consultations on GI extension, the disclosure of genetic resources in patent applications and the wines and spirits register have not produced any significant results so far.

Russia's Accession: A War Casualty?

Prompted by threats from some WTO Members, Russia announced in late August that it would withdraw certain commitments it had agreed to in the course its 15-year quest for WTO membership.

The decision was made amidst deepening tensions over the Caucasian crisis, although Russian officials did not evoke the situation among the reasons for changing their negotiating position. Instead, Prime Minister Vladimir Putin said that certain, so far unspecified, agreements already reached now conflicted with Russia's interests, and that trading partners would be informed accordingly.

Mr Putin noted that his government no longer saw 'any advantages' from WTO membership, stressing instead the 'heavy burden' it would inflict on the country's agricultural and manufacturing sectors. Prime Minister Putin nevertheless left the door open for future negotiations. "This doesn't mean we should renounce our strategic course towards the WTO but there should be some clarifications on this question.... Elementary fairness should prevail," he said. However, Deputy Prime Minister Igor Shuvalov predicted that there now was little chance of concluding the accession negotiations within this year.

Irritation over Trade Threats

At least part of Russia's change of tack with regard to the WTO can probably be put down to irritation over US Commerce Secretary Carlos Gutierrez's warning that US support for Russia's G-8 membership, as well as its WTO accession, were 'at risk' as a result of its military action in the Caucasus. International tension aggravated further after Russia acknowledged the independence of the breakaway Georgian regions Abkhazia and South Ossetia on 26 August.

The EU has not withdrawn its support for Russia's WTO membership, although it has suspended negotiations on the renewal of its strategic partnership agreement with Russia until the latter withdraws its troops to the positions they held prior to 7 August 2008.

Stalling Accession Might Not Hurt Russia Most

Whatever the motivations, the Russian decision is unquestionably a setback for the multilateral trading system, as most Members see a tremendous advantage in having the world's tenth largest economy bound by WTO disciplines. Many also consider that Russia's joining the organisation would strengthen its integration into international governance structures more generally.

Under WTO accession procedures, a candidacy must be approved by the entire membership. In addition, bilateral market access agreements must be reached with all countries seeking them. While Russia has already concluded such agreements with most WTO Members, including the EU and the US, multilateral negotiations have so far failed to settle questions related to Russia's future agricultural subsidies, intellectual property protection, state-trading enterprises such as Gazprom and export taxes on unprocessed timber (see page 21).

Russia has expressed exasperation about demands made by trading partners in its accession marathon before. In September 2006, it threatened to pull out of the negotiations and to end compliance with WTO obligations it had taken on unilaterally. That time, the threat was not carried out. Although Georgia blocked formal WTO negotiations on Russia's accession in 2006, informal talks took place regularly until mid-July 2008.

Wider Implications

Some analysts see the move as part of broader Russian determination to distance itself from the West. Reacting to criticism over its actions in the Caucasus, the missile defence shield agreements signed between the US, the Czech Republic and Poland, and NATO's eastward expansion, Russia has suspended all military co-operation with the Western defence alliance. Russian Foreign Minister, Sergei Lavrov, has suggested that NATO needs Moscow more than Moscow needs NATO. That could turn out to be true for Russia's WTO membership quest as well.

Cotton Dispute Ends in Comprehensive Victory for Brazil

On 2 June, Brazil obtained a final confirmation that the United States had not eliminated cotton subsidies found to breach WTO rules. After nearly six years of litigation, the door is now open for Brazil to seek the right to apply trade sanctions on US goods, services and intellectual property rights.

The last verdict in the tortuous dispute was delivered by the Appellate Body (AB), which upheld all the main findings of the compliance panel that Brazil had requested to examine whether the current US cotton subsidy regime was consistent with WTO rules (Bridges Year 12 No.1 page 12). The Dispute Settlement Body adopted the AB report on 20 June.

US Export Credit Programme Still Illegal

The Appellate Body concurred with the compliance panel's conclusion that premiums charged under the revised GSM 102 export credit guarantee programme were still too low to cover the programme's long-term operating costs and losses. Export credit schemes that are 'inadequate' to cover their costs are prohibited under the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Agriculture. The AB therefore confirmed the panel's finding that the US had failed to bring its measures into conformity with the Agreement on Agriculture and failed 'to withdraw the subsidy without delay' as required by the SCM Agreement.

Counter-cyclical and Marketing Loan Payments Suppress World Prices

The AB ruling brings greater clarity to the WTO-consistency of 'actionable' subsidies on which jurisprudence is relatively scarce. Unlike government support categorised as 'prohibited' under the SCM Agreement, 'actionable' subsidies must be shown to cause 'adverse effects', such as 'serious prejudice', to the interests of other Members to be found in breach of WTO rules.

The AB agreed with the compliance panel that the effect of marketing loan and counter-cyclical payments provided to US cotton producers under the 2002 farm bill was 'significant price suppression' in the world market for cotton, "constituting 'present' serious prejudice to the interests of Brazil." The compliance panel had found, *inter alia*, that "marketing loan and counter-cyclical payments affected the level of United States upland cotton acreage and production as a result of their mandatory and price-contingent nature, and their revenue-stabilising effect."

By continuing to provide counter-cyclical and marketing loan payments under their current terms, the AB said the US had failed "to take appropriate steps to remove the adverse effects or [...] withdraw the subsidy" as it should have done in order to comply with earlier rulings.

Remedy Disciplines Strengthened

The greatest systemic implication of the Appellate Body ruling concerns the scope of application of the compliance procedure under the Dispute Settlement Understanding.

The US appeal had asserted that Brazil's complaint covered only the period between 1999 and 2002, and therefore any payments since then should be outside the scope of a compliance review. The Appellate Body rejected this line of argument on the grounds that it would lead to an endless cycle of litigation. It argued that

"a complaining Member that has demonstrated that subsidies provided by another Member have resulted in adverse effects would obtain relief only with respect to any lingering effects of the subsidies provided during the period examined by the panel [...] The complaining Member would have to initiate another dispute to obtain relief with respect to payments made after the period examined by the panel, even if those subsidies are recurring payments or otherwise of the same nature as those found to have resulted in adverse effects. Even if the complaining Member were to succeed in its claims a second time, the subsidising Member could provide further subsidies after the second panel's ruling, and the complaining Member would have to initiate yet another dispute, and this cycle could continue."

Few Options for the US

The US expressed deep disappointment in the conclusions of the compliance review at the 20 June Dispute Settlement Body (DSB) meeting. For instance, it claimed that the serious injury finding was 'outdated' since, due to high world prices, the US had "not made any marketing loan payments since September 2007 [and was] making only minimal counter-cyclical payments." Nevertheless, the programmes remain in place under the 2008 farm bill, ready to kick in when world prices slump.

In addition, the US noted that "the time and resources spent on this proceeding by all concerned only highlight that negotiation, and not litigation, is the most effective way to resolve Members' concerns about agricultural trade. We therefore look forward to working with Members to conclude the Doha negotiations as soon as possible."

The lavish new US farm bill, warmly welcomed by both sides of the congressional aisle, is widely perceived as an obstacle in those negotiations. While the Bush administration maintains that legislation in force can be changed if Congress can be persuaded that a Doha deal offers sufficient advantages for the US economy as a whole, many observers concur that a significant revision of the farm bill would be extremely difficult in light of the solid bipartisan political support it commands (Bridges Year 12 No.3 page 17).

Trade Retaliation Looms

On 25 August, Brazil formally requested the WTO to arbitrate the value of the retaliation it would be entitled to in view of the continued US non-compliance with dispute settlement rulings. Arbitration of the level of sanctions had been suspended for the duration of the compliance proceedings.

In 2005, Brazil requested the DSB to authorise counter-measures worth US\$3 billion in compensation for the US' failure to remove prohibited export subsidies, as well as US\$1 billion corresponding to the 'seri-

Continued on page 14

ous injury’ resulting from marketing loan and counter-cyclical payments.

Both requests also warned that Brazil would not limit its countermeasures to the customary practice of raising import tariffs on the non-compliant country’s goods. In addition, it would ‘cross-retaliate’ by suspending concessions in the intellectual property rights and services sectors. Retaliatory action could target copyrights, trademarks, patent and protection of undisclosed information, as well as US business, telecom, transport and financial services.

Cross-retaliation has never been put to practice under the WTO, although Ecuador (in the banana dispute) and Antigua & Barbuda (in the gambling dispute) obtained an authorisation to use the method.

China Auto Parts

China lost its first ever WTO dispute on 18 July, when a panel on the WTO-compliance of its auto part tariffs found in favour of the complainants – Canada, the EU and the US – on all essential points. The main issue in the dispute was the 25-percent import tariff China imposed in 2005 on certain car parts despite having bound its tariffs for such goods at 10 percent at the WTO. The complainants alleged that the tariff hike and some associated administrative regulations violated China’s scheduled tariff commitments, as well as the GATT national treatment principle and the Agreement on Trade-related Investment Measures (Bridges Year 10 No.6 page 6).

China had argued that the new tariff was necessary to prevent tax evasion by companies that import whole cars as spare parts to avoid the higher tariffs applicable to entire automobiles. The complainants, however, maintained that the measures were designed to encourage auto manufacturers in China to use domestic parts in the assembly process, as well as give foreign auto part makers an incentive to relocate production to China.

China has until mid-October to appeal the panel ruling.

All Sides Appeal Beef Hormones Ruling

Both substantive and procedural aspects of the latest WTO verdict in the long-running dispute over the EU’s import ban on hormone-treated beef have been challenged by the parties involved.

At issue is a somewhat confusing panel ruling released in March (Bridges Year 12 No.2 page 8).

On the one hand, the panel found that the EU still had not presented sufficient scientific evidence to justify the import prohibition in force since 1988, and this despite the EU’s 2003 notification to the WTO that new risk assessments showed grave enough potential threats to human health to uphold the ban. However, the panel also faulted the US and Canada for keeping in place trade sanctions imposed a decade ago. The two complainants should first have sought a formal WTO determination on whether the additional EU research did in fact fulfil the requirements for health-related import restrictions under the Agreement on Sanitary and Phytosanitary Measures, the panel ruled.

EU: Panel Erred on Substance

The EU’s appeal, filed on 29 May, asserted that the panel had erred in finding that the 2003 EU hormones directive – on which the ban is based – did not comply with the SPS Agreement. Specifically, the EU maintained that the panel had ignored the ‘the fundamental principle of due process’ when selecting and taking the advice of scientific experts, as well as the uncertainties that prevail over the safety of the growth hormones in question.

The appeal further noted the panel had incorrectly shifted the burden of proof so that it was up to the EU to demonstrate its ban was WTO-consistent rather than for the complainants to prove that it was not. The EU also said that the panel should have instructed Canada and the US to lift the sanctions.

Complainants Say Compliance Finding Unnecessary

On 9 June, the US and Canada called for the Appellate Body to overturn the panel’s finding that they had breached dispute settlement rules in not requesting a compliance panel to determine whether the 2003 modification of the EU’s hormone directive had made the import ban WTO-consistent. The complainants also argued that the continuation of the sanctions after that date did not violate trade rules, and rejected the panel’s recommendation that they seek a new WTO ruling on the matter ‘without delay.’

Procedural Gray Area?

According to Article 23.1(a) of the Dispute Settlement Understanding, retaliatory action must be consistent with the findings of adopted panel/Appellate Body reports and a WTO determination of the level of sanctions. It does not explicitly refer to Article 21.5, which requires any disagreement on the ‘existence or consistency’ of measures taken to comply with rulings to be determined through “recourse to these dispute settlement proceedings, including wherever possible resort to the original panel.”

In the *Beef Hormones* dispute, the US and Canada cannot be faulted under Article 21 as their punitive tariffs are indeed based on adopted reports and a WTO determination of the sanctions (US\$116.5 million for the United States and US\$11.6 million for Canada).

However, it would seem that the intention of the DSU drafters was that parties should seek a formal confirmation of non-compliance if they think that measures taken by a defendant to implement a ruling are not sufficient. Only once a continued violation has been formally established, would the complainant have the right to apply or, in this case, continue to apply trade retaliation.

Nevertheless, it could be argued that unless the Appellate Body modifies the substantive findings of the *Beef Hormones* panel, it would be redundant to request yet another ruling to confirm that the EU’s import ban is still inconsistent with the SPS Agreement.

The Importance of the WHO Global Strategy on Public Health

Ellen 't Hoen

One of the key negotiators in the talks that ultimately led to the newly adopted Global Strategy on Public Health, Innovation and Intellectual Property recently wrote to tell me that his services were no longer required because the job was done. Can we agree on this statement?

Undoubtedly not. True, the negotiators of the intergovernmental working group (IGWG) on this issue left us with a finalised Global Strategy, packed with action points that could fundamentally change how health research and development (R&D) is conducted – both in the way it is prioritised to ensure that it responds to real needs and in the way it is financed so that products that are developed are made accessible to those who need them.

That is considerable progress – historical even. But the job is far from done. Real change, which after all will be the ultimate benchmark of the IGWG's success, will depend on how forcefully the World Health Organisation (WHO) and its member states will implement the strategy and translate it into action.

Of course, the IGWG did not work in a vacuum; its deliberations built on the work of others. The analysis of the current intellectual property (IP) and medical innovation environment made by the blue-ribbon Commission on Intellectual Property Rights, Innovation and Health (CIPRH) showed that something is fundamentally wrong with the way new health care products are developed and brought on to the market. In its 60 recommendations to start addressing both the access problems caused by the current IP environment and the lack of innovation, in particular for diseases that affect people in developing countries, the commission provided a firm basis for the IGWG to do its work.

Some of the forcefulness of the CIPRH's evidence-based work was lost in translation as, inevitably, the action proposed by the working group reflects the compromises needed to keep everyone at the negotiation table. For example, where the Global Strategy states that intellectual property rights (IPRs) are an "important incentive for the development of new health-care products", the prestigious commission preceding it actually found "no evidence that the implementation of the TRIPS Agreement in developing countries will significantly boost R&D in pharmaceuticals" and that 'insufficient market incentives' were the decisive factor. The contrast could not be starker.

Still, the days of uncritical celebration of ever higher levels of IP as the one and only way to ensure innovation seem to be over. Here, the Global Strategy is a forceful call for change. It contains proposals for patent pools for upstream and downstream technologies to increase access and innovation, promotes the use of compulsory licensing to encourage competition in the pharmaceutical generics market, rejects TRIPS-plus measures in trade agreements, and encourages the development of new incentive mechanisms, such as prizes and government involvement setting in R&D priorities.

More ambitiously, the Global Strategy opens the door for fundamental change in two key areas.

Relationship between Cost and Price

First, building on World Health Assembly – the WHO's highest decision-making body – resolution 60.30, it calls for the development of proposals for health-needs-driven R&D, including "addressing the de-linkage of the costs of research and development and the price of health products."

Such a decoupling would break the cycle of financing R&D through high drug prices. As long as research and development depend on the ability to charge high prices, steering the current market-opportunity-driven R&D towards a more health-needs-driven approach will remain wishful thinking. It will also make it impossible to bring drug prices sustainably down, except through painstaking drug-by-drug, country-by-country battles.

Prizes are one way to achieve the delinking cost from price.¹ Barbados and Bolivia made proposals to the IGWG for prizes to reward innovation. They suggested to start exploring multiple prizes: for the development of a low-cost rapid diagnostic test for tuberculosis; for new treatments for Chagas disease; for a priority medicines and vaccines prize fund to reward mechanisms for new cancer treatments in developing countries; and for a licensed products prize fund for donors.² The strategy commits WHO member states to pursuing ideas such as these.

What is crucial is that on such issues, the strategy is likely to act as a catalyst for change by a range of different actors. Although the plan of action detailing how the Global Strategy will be implemented is not finalised, the very existence of the strategy is likely to create a certain momentum, or indeed resonance, to inspire other actors to grasp the thornier issues of access to medicines and IP.

One example is UNITAID, which is contemplating setting up a pharmaceutical patent pool, both to boost access to new antiretroviral (ARV) drugs to treat AIDS in developing countries and to develop fixed-dose combination and pediatric formulations of triple ARV therapy, even when the patents of the individual drugs are held by different entities.

The strategy's call to explore new and alternative incentives for health R&D is also stimulating debate among academics and industry. In particular, the idea of awarding prizes, rather than monopolies, is gaining ground.³ At a recent expert roundtable convened by Médecins sans Frontières, tuberculosis researchers, economists and campaigners showed considerable interest in a proposal for a prize that would encourage the development of an easy-to-use point-of-care TB diagnostic test that would also be effective in diagnosing TB in people living with HIV/AIDS.

Continued on page 16

In sum, the idea of moving away from monopolies to awarding and incentivising innovation differently is gaining ground. This principle of de-linking R&D costs from the price is also practiced by not-for-profit developers such as the Drugs for Neglected Diseases Initiative, which pays for the R&D upfront and has a no patent policy with regard to the products that result from the research. This makes products available as generics from day one of marketing.

Elsewhere, Novartis has proposed to create a global fund for R&D for neglected diseases to support not-for-profit innovation. The proposal includes centralised portfolio and IP management. Beneficiaries of the fund would be required to license their intellectual property exclusively to the funding body for the neglected disease, but would have the right to exploit their IP in more affluent markets, provided that royalties are paid to the fund. If the new compound presents advantages in the treatment of a disease with greater commercial value, the inventor or company would compensate the fund for data developed with financing meant for neglected diseases.⁴

Of course, the Novartis proposal focuses solely on neglected diseases and suggests only limited changes to the global R&D system. Nevertheless, the condition of access to the IP generated by the funded research to enable low-cost production and wide dissemination of the products is a clear recognition of the access problems created by IPRs. This is a new sound coming from the pharmaceutical industry.

TRIPS or Treaty?

The second fundamental change that the strategy may usher in is that it raises the possibility of intergovernmental talks about an essential health and biomedical treaty to change the rules of medical research and development.

Today's predominant global R&D treaty, the WTO's TRIPS Agreement, is based on granting monopolies as the main incentive for innovation; its provisions for technology transfer are limited. If one asks whether the TRIPS Agreement would come into being today, knowing what we know now about access and innovation, even its most ardent proponents would likely say no.

When WTO TRIPS Agreement was negotiated, there was no public debate, the scale of the AIDS epidemic in developing countries was not known, and the understanding of the technical and legal details among health groups was virtually non-existent. In contrast, industrial interests were strongly represented and played a critical role in drafting the text and lobbying for its support.

Conversely, if today the parties to the TRIPS Agreement set out to design an international agreement on essential health R&D, the incentives would add to those in TRIPS and would likely be much more diverse and differ from those found in the TRIPS Agreement.

This concept is at the heart of the proposals by Love and Hubbard for a new trade framework focused on equitable contribution to the cost of R&D through any means – not exclusively through the granting of patent monopoly rights.⁵ As a result, new products would be more widely accessible and not tied up in 20 year patents. There would be a market for R&D, and a separate, competitive market for production and sales in which all products may be generics. An R&D contribution norm established by an international treaty would ensure that the financial resources for R&D would be available, but these funds would no longer depend on high prices and thus rationing of the products.

Moving the debate from IP to R&D would affect countries' ability to shape the dynamics in trade agreements. When the talks are no longer centred on how high IP standards should be but, rather, on how can each country contribute to essential health innovation to benefit all, the discussion will change. In trade talks TRIPS-plus demands will become harder to maintain.

Where Next for the World Health Organisation?

The Global Strategy is, after the 2001 Doha WTO Declaration on TRIPS and Public Health, the most important multilateral attempt to alter IP policies so they respond better to real health needs. This time, the health authorities are leading the negotiations; the process takes place at World Health Organisation, not the World Trade Organisation. The strategy's success will thus depend on the WHO's forcefulness and resolve.

However, the organisation's role in all this remains highly controversial. In addition, countries have yet to fully agree who are the key stakeholders that should implement the different elements of the action plan for the strategy.

That the WHO has so far failed to acknowledge, translate and publish Bolivia and Barbados' prize fund proposals, although they were tabled in direct response to a 2007 World Health Assembly Resolution, does not bode well in this respect. Nor does the haggling seen during the negotiations over the WHO's mandate in the area of IP.

The Global Strategy is about action. The WHO, as the most important public health agency in the world, should take a leading role. Without forceful implementation, the strategy will remain nothing but a declaration of good intentions. Of those, the world has seen enough.

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ENDNOTES

¹ Stiglitz, Joseph. 2007. *Prizes, Not Patents*. 2007. <http://www.project-syndicate.org/commentary/stiglitz81>

² Working document proposed by Barbados and Bolivia. 17 April 2008. <http://www.keionline.org/>

³ See supra note 1.

⁴ Paul Herrling, *R&D and Sustainable, Predictable Financing of R&D for Neglected Diseases*, note presented at the KEI, MSF, Global Forum for Health Research meeting on 28 March 2007 in Geneva.

⁵ Hubbard, T. and Love, J. *A New Trade Framework for Global Healthcare R&D*. PLoS Biol. 2004; 2:E52.

Colombia: Calls for Compulsory Licence

Local civil society organisations, backed by a coalition of international health advocacy groups, have requested the Colombian government to issue a compulsory licence for AIDS drug Kaletra.

Kaletra is a best-selling HIV/AIDS cocktail manufactured by Chicago-based Abbot Laboratories. According to health activists, the treatment currently costs the Colombian public sector approximately US\$1683 per patient annually, while prices for private health organisations reach US\$4449. In contrast, Peru and Bolivia pay less than US\$800 for a year's worth of the drug's generic version lopinavir/ritonavir, and the price could decline further.

Colombia Pays Too High a Price, Activist Say

On 16 July, 2008, an alliance of Colombian civil society groups called for their government to issue a compulsory license for lopinavir/ritonavir following months of Abbott's inaction on their request that the company voluntarily licence its Kaletra patent. The proponents argued that access to a generic version of Kaletra would save taxpayers more than US\$1 million a year, a considerable sum that could be invested in scaling up HIV/AIDS treatment and strengthening Colombia's health system.

On 6 August, more than three dozen international public health and patients' rights advocacy organisations – including Nobel laureate Médecins sans Frontières and Health Action International – endorsed the local groups' request in a letter to the Colombian government. "Issuing a compulsory license in this case will help promote access to medicines for all," they said, adding that the high price charged by Abbott for Kaletra "constituted a barrier to access and hindered efforts to make antiretroviral treatment available in Colombia to all who need it."

All proponents of the compulsory licence stressed that it was in the government's power "to utilise the TRIPS flexibilities available to it." In 2001, the Doha Declaration on TRIPS and Public Health confirmed that flexibilities under the internationally binding intellectual property agreement gave every WTO Member government "the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted."

Nevertheless, Colombian authorities are likely to find it difficult to move on the activists' demand at a time when the country's free trade agreement with the United States remains in a limbo. US Congress has suspended consideration of the pact's ratification until the Bush administration addresses globalisation-related concerns of American workers, as well as Colombian violence towards trade unionists (Bridges Year 12 No.3 page 16). The issuance of a compulsory licence for Kaletra could stiffen US opposition through turning the pharmaceutical lobby from supporter to opponent of the treaty. According to a source contacted by Bridges, the Colombian government is more likely to try and negotiate a price reduction with Abbott, although the source noted that chances of success were slim due to the huge price difference between generic lopinavir/ritonavir and brandname Kaletra (less than US\$0.5 per tablet for the former and at least US\$3.1 for the latter).

Controversies Galore for Kaletra

Abbot is no stranger to criticism regarding affordable access to Kaletra. Thailand, for instance, issued a compulsory licence for the drug last year (see opposite and Bridges Year 11 No.1 page 17). Time after time, Brazil has used a threat to do likewise, and eventually obtained significant price reductions after tough negotiations (Bridges Year 9 No.8 page 20).

The company also faces a slew of antitrust law suits filed in California by competitors, wholesalers and pharmacies. The complainants allege that in 2003 Abbott drastically raised the cost of Norvil – a key ingredient of most AIDS cocktails, including Kaletra – solely to squeeze out the competition. Abbott holds the patent for Norvil, which enhances the effectiveness of many multi-drug AIDS treatments. The price hike – from US\$1.71 to US\$8.57 for a daily dose – puts competing products at a disadvantage compared to Kaletra, which Abbott still sells at the same cost it did before the price of Norvil quintupled for other AIDS cocktail manufacturers.

Thai-US Update

Thai politicians are divided over the effects that a resumption of free trade negotiations with the United States could have on access to essential medicines. President Bush said in August that he intended to rekindle the FTA negotiations on ice since January 2006.

While no date has been set for reviving the talks, opposition politicians have requested the government to take a 'firm stance' to defend Thailand's compulsory licensing policy in order to safeguard the public's right to affordable life-saving medicines. In contrast, current commerce and health ministers, Chaiya Sasomsab and Chavarat Charnveerakul are said to be cool to the policy, under which at least half a dozen compulsory licences have been granted for drugs still under patent.

In July, more than 50 congressional Democrats sent a letter to US Trade Representative Susan Schwab, urging her to keep up the pressure on the Thai government to limit the issuance of compulsory licences. While expressing support for the flexibilities available under the TRIPS Agreement, the signatories said they did not believe that "WTO Members intended those rules to be used to allow compulsory licenses as a matter of standard government policy."

Between November 2006 and January 2007, Thailand issued compulsory licences for cancer drug efavirenz (marketed as Stocrin by patent holder Merck), AIDS cocktail lopinavir/ritonavir (patented as Kaletra by Abbott Laboratories) and blood thinner clopidogrel (Bristol Myers' Plavix). At least efavirenz and lopinavir/ritonavir from are currently imported from India.

In March 2008, the government announced plans to start importing breast cancer medicine docetaxel from Indian generics manufacturer Dabur Pharma at a price 100 times lower than brandname Taxotere patented by Sanofi-Aventis. According to the MCOT news agency, compulsory licences have also been approved for two other cancer drugs: erlotinib (marketed as Tarceva by Roche) and letrozole (Femara, manufactured by Novartis).

US GSP Update

The House of Representatives has approved an extension, without modifications, of the US Generalised System of Preferences (GSP) until end-2009. The Senate is yet to vote on the GSP, which is set to expire at the end of this year. However, Republican Senator Charles Grassley is seeking at least a promise of reforms to the GSP – largely aimed at curtailing benefits for emerging economies such as Brazil and India – before agreeing to an extension.

The House-approved bill would also repeal the so-called ‘abundant supply’ requirement in the African Growth and Opportunity Act (AGOA). Under the provision, African apparel exports must use up a certain quota of fabric made either locally or in the US before garments made of imported material can be shipped to the US duty-free.

The situation remains delicate with regard to trade preferences currently enjoyed by Bolivia, Colombia, Ecuador and Peru. The Andean Trade Promotion and Drug Eradication Act (ATPDEA) runs until end-2008, and a number Republicans in both chambers have linked its extension to a congressional vote on the US-Colombia free trade agreement (the proceedings are currently suspended, see Bridges Year 12 No.3 page 16). Others, including Senator Grassley and the US Chamber of Commerce, are reluctant to grant preferences to Bolivia and Ecuador, which they see as hostile to the interests of US investors. Indeed, oil giant Chevron has petitioned the Bush administration to revoke benefits for Ecuador, whose government is suing the company for environmental damage incurred during oil exploration and production between 1972 and 1992. Chevron claims that it carried out a US\$40 million remediation programme and was consequently released from any further environmental liability.

The Ecuadorian government estimates that the termination of ATPDEA preferences could result in the loss of up to 350,000 jobs.

ASEAN Strengthens Trade Ties

Just a month after the collapse of the Geneva ‘mini-ministerial’, the Association of Southeast Asian Nations concluded new free trade agreements with India, Australia and New Zealand.

The 10-member ASEAN bloc and India announced on 28 August that they had wrapped up six years of negotiations on trade in goods, a first step toward a comprehensive economic partnership agreement both sides hope to finalise by December 2009. ‘Single undertaking’ negotiations on services trade and investment are slated to start ‘as soon as possible’.

Tariffs on 80 percent of all agricultural and industrial products will be eliminated by 2015 (71 percent of tariff lines by end-2012, and another 9 percent three years later). Duties on an additional 8-10 percent of products will be brought down to 5 percent by 2015.

The merchandise deal was bogged down for years over sensitive products. While India initially sought to shield more than 1,400 products from tariff reductions, the parties ultimately agreed that each had the right to a ‘negative list’ of 489 tariff lines exempt of any cuts. More than 200 farm products figure on India’s negative list, including poultry, fish, milk and milk products, as well as many vegetables and cereals such as wheat, maize and rice. Other cut-exempt items include textiles, auto products, chemical and petrochemical products, alcoholic beverages and rubber. In addition, India may limit imports of the negative list products to 5 percent of its total imports from any ASEAN member. ASEAN countries may protect the same number of products from Indian imports.

India did, however, agree to reduce its bound duties on five sensitive products of major export interest to some ASEAN members over a ten-year period. The current 90 percent tariff on crude palm oil will be halved and that on refined palm oil will be reduced from 80 to 37.5 percent. The duty on black tea, coffee and pepper will be brought from 100 to 40 percent. ASEAN countries will also have long timelines for implementing cuts on their most import-sensitive tariff lines that are of export interest to India.

Despite the exceptions, the ASEAN-Indian pact is estimated to cover more than 95 percent of the value of total trade between the parties once it is fully implemented. Indian Commerce Minister Kamal Nath noted that the extensive market access commitments would not have been possible if India had not unilaterally reduced many of its applied tariffs earlier. For instance, the applied duty on palm oil is already zero and that on crude palm oil is 7.5 percent.

The goods deal, together with an agreement on dispute settlement, will be signed at the ASEAN-India summit next December. If all governments involved manage to ratify the treaty this year, tariff reductions will start as of 1 January 2009.

In addition to the goods pact with India, ASEAN has inked a comprehensive free trade agreement (goods, services and investment) with Australia and New Zealand, with ratification by all parties expected over the next few months. Over the past few years, the bloc has also concluded FTAs with China, Japan and South Korea.

Talks launched in May 2007 with the European Union, however, appear stalled. ASEAN Secretary-General Surin Pitsuwan said that the EU-ASEAN trade agreement was among the ‘most challenging’ the 10-member bloc had ever undertaken, adding that the two sides were still “working very, very hard trying to find some common ground to move forward.” Reportedly, one of the problems holding back progress is European reluctance to enter into any agreement with ASEAN member Myanmar without evidence that the country would move toward democratic civilian government.

Meanwhile, negotiations continue on a comprehensive trade agreement between India and the EU. Both sides originally hoped to conclude the deal by end-2008, but that date may slip.

Assessing the Sustainability of Biofuels

New reports have rung alarm bells over the net benefits of biofuels, particularly those produced in the Northern hemisphere from feedstocks that could also serve as food and are grown on agricultural land. Trade-related concerns are also becoming more prominent.

A report by World Bank economist Don Mitchell shocked the world in July by its assertion that the large increase in biofuel production from grains and oilseeds in the US and EU was ‘the most important’ cause of the huge increase in internationally food prices from January 2002 to June 2008.¹ While higher energy prices and related increases in fertiliser prices and transport costs, combined with a weak dollar, explained some 25-30 percent of the total price increase, “most of the remaining 70-75 percent increase in food commodity prices was due to biofuels and the related consequences of low grain stocks, large land use shifts, speculative activity and export bans,” Mr Mitchell concluded.

He also noted that subsidies, mandates and tariffs on imports had supported the increase of biofuel production in the EU and the US, thus contributing to soaring worldwide commodity prices. In contrast, lower-cost sugar cane-based biofuels production in Brazil had not raised sugar prices significantly since production had grown fast enough to meet both the demand for sugar and ethanol. Removing ethanol tariffs in the US and EU would allow “more efficient producers such as Brazil and other developing countries, including many African countries, to produce ethanol profitably for export to meet the mandates in the US and the EU.”

Earlier in the year, the International Monetary Fund estimated that biofuels accounted for 70 percent of the increase in corn prices and 40 percent in soybean prices. However, both the European Commission and the Bush Administration have put the effect of biofuel production on food prices at less than 5 percent.

EU Should Go Slow

Another report, commissioned by the UK government, focused mainly on the effects of land use changes caused by European biofuel production.²

Its author Ed Gallagher concluded that there was “a future for a sustainable biofuels industry, but that feedstock production *must* avoid agricultural land that would otherwise be used for food production. This is because the displacement of existing agricultural production, due to biofuel demand, is accelerating land-use change and, if left unchecked, will reduce biodiversity and may even cause greenhouse gas emissions rather than savings. The introduction of biofuels should be significantly slowed until adequate controls to address displacement effects are implemented and are demonstrated to be effective. A slowdown will also reduce the impact of biofuels on food commodity prices, notably oil seeds, which have a detrimental effect upon the poorest people.”

The report advocated replacing volume- or energy-based targets with comparable greenhouse gas saving targets as soon as practicable to encourage the supply of fuels with a lower carbon intensity. In addition, stronger policies would be needed to “slow rates of deforestation particularly in South America, Africa and parts of South East Asia. This must form part of the next global climate agreement.”

Among the report’s specific recommendations was that the EU postpone to 2013/14 its plan to mandate that biofuels account for 5.75 percent of all transport fuels by 2010. The EU’s aim to increase the mandatory share of biofuels to 10 percent in the transport sector by 2020 should not be implemented unless it could be proved that ‘appropriate land’ was available and only ‘demonstrably sustainable’ feedstock was used. Based on current evidence, the 2020 target is unlikely to be met sustainably, and should therefore be revised downward to between 5 and 8 percent.

The Gallagher review also implies a serious examination of how the EU can reach its broader goal of covering 20 percent of the bloc’s total energy needs from renewable sources by 2020.

Mixed Reactions

In response to the Gallagher report, the UK government announced that it would slow the pace of mandatory biofuel introduction in the transport sector. The country’s current minimum requirement of 2.5 percent was set to double by 2010, but the government is now considering delaying the increase until 2013/14.

On 7 July, the European Parliament’s environment committee voted to drastically lower the proposed EU-wide target of making biofuels account for 10 percent of transport fuel by 2020. The committee revised this goal down to 4 percent – and that only by 2015. It also called for at least 20 percent of this share to be met by the use of electricity or hydrogen from renewable sources, biogas or transport fuels from lignocellulosic biomass and algae.

A European Environment Agency report, due to be published in September, is expected to show that cost-effective and sustainable domestic biofuel production will not cover more than 3.4 of all EU transport fuels by 2020. According to press reports, a number of European ministers are interested in concluding a bilateral ethanol deal with Brazil to make up for the shortfall. However, parliamentarians insist on strong sustainability criteria for both domestic and imported biofuels, and so far EU member states have failed to agree on what such criteria should be.

Despite the criticism, the European Commission appears to be sticking to its guns. Its energy spokesman Ferran Tarradellas insists that the 10-percent transport sector target can be met sustainably. He has also scoffed the notion the EU’s biofuel target has a significant bearing on food prices: “To reach our 10-percent target, we need 4 million tonnes of agricultural commodities. Total production of cereals, though, is 2.2 billion tonnes. I am not an economist, but if you could tell me how 4 million tonnes could have a large impact on cereal prices at all, I’d be happy to listen.”

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European environmental organisations, once staunch advocates of biofuels, are now among those urging the greatest caution. In September 2007, Friends of the Earth biofuels campaigner Ed Matthew called on the EU to “abandon its 10-percent biofuels target or risk further destruction and poverty in developing countries.” Instead, he said, CO₂ emission from the transport sector should be cut through “forcing manufacturers to develop far more fuel-efficient vehicles, abandoning airport expansion, and making it cheaper and easier for people to use public transport, rather than falsely promoting biofuels as a pain-free solution to global warming.”

Green energy defenders pin their hopes on the rapid development of so-called third-generation biofuels, whose feedstocks would neither compete with food production nor involve high energy inputs/greenhouse gas emissions in their production process. At present, it appears difficult to find a source that fulfils all the criteria (see table below).

US Ethanol Tariff Challenged?

Market access for ethanol is among Brazil's key priorities in the Doha Round trade negotiations. After the collapse of the Geneva mini-ministerial, the country's WTO ambassador Roberto Azevedo said there was a ‘strong possibility’ that his government would seek a dispute settlement panel on the 54-cents-a-gallon import tariff the US currently imposes on ethanol. While announcing a resumption of WTO retaliation proceedings on cotton on 22 August (see page 13), Brazil's foreign minister Celso Amorim said consensus was also growing on taking the ethanol tariff to the WTO, but that the government was still ‘checking the law’.

US Senator Dianne Feinstein has requested the United States Trade Representative to determine whether Brazil has a ‘substantive case’ and, if it does, what countermeasures Brazil could take were it to win an eventual WTO dispute. She has also suggested that Brazil's argument could be weakened by the US voluntarily lowering the tariff.

These proposals were blasted by the ranking Republican member of the Senate Finance Committee Charles Grassley. The US was ‘clearly within its WTO rights’ since it had bound the 54-cent tariff in its schedule of agricultural goods as a permitted ‘duty or other charge’, he wrote. Furthermore, Senator Grassley said he opposed lowering the ethanol tariff on policy grounds, since it would make the US ‘yet more dependent’ on imported energy.

EU to Investigate US Biodiesel Subsidy & Dumping Allegations

At the behest of the European Biodiesel Board (EBB), the European Commission on 13 June launched subsidy and anti-dumping investigations against US ethanol imports. The commission said the EBB had provided sufficient evidence that such subsidies existed, including “federal excise and income tax credits, as well as a federal programme of grants to finance increased production capacity.” In addition, the complainant had provided sufficient evidence that US biodiesel was being dumped on the EU market.

Specifically, the EBB alleges that US biodiesel can be subsidised to the level of US\$300 per tonne “only by adding a ‘drop’ of mineral diesel to biodiesel.” The resulting blend “can then be exported to Europe where it is also eligible to European subsidy schemes.” According to the complainant, these practices have disrupted EU biodiesel producers’ margins to the point of putting most of them out of business.

The US National Biodiesel Board called the EBB's allegations of harm to European biodiesel producers ‘baseless’ and vowed it would not only “vigorously defend the interests of the US biodiesel industry, but [would] employ every tool available to challenge existing EU trade barriers that provide preferential treatment to European biodiesel producers.”

While the EBB also claimed that US biodiesel subsidies were ‘clearly breaching’ WTO rules, a WTO dispute is not currently under consideration. The European Commission will present its findings to the member states by 13 March 2009 at the latest. If the findings back the EBB's claims, the EU may impose anti-dumping and/or countervailing duties on ethanol imports from the US.

ENDNOTES

¹ Mitchell, Don. July 2008. *A Note on Rising Food Prices*. Policy Research Working Paper 4682. World Bank. Washington D.C.

² Callagher, ed. July 2008. *The Callagher Review of Indirect Effects of Biofuel Production*. Renewable Fuels Agency. St Leonards-on Sea

How green are biofuels: greenhouse gas emissions, resource use, land use and effect on food supply

CROP	USED TO PRODUCE	GHG EMISSIONS*	USE OF RESOURCES DURING GROWING, HARVESTING AND REFINING FUELS				% OF EXISTING US CROP LAND NEEDED TO MEET 50% OF US TRANSPORTATION FUEL DEMAND	PROS AND CONS
			WATER	FERTILISER	PESTICIDE	ENERGY		
Corn	Ethanol	81–85	high	high	high	high	157–262	Technology ready & relatively cheap, reduces food supply
Sugar cane	Ethanol	4–12	high	high	medium	medium	46–57	Technology ready, limited as to where will grow
Switch grass	Ethanol	–24	med–low	low	low	low	60–108	Will not compete w/ food crops, technology not ready
Wood residue	Ethanol, biodiesel	N/A	medium	low	low	low	150–250	Uses waste & other debris, technology not fully ready
Soybeans	Biodiesel	49	high	med–low	medium	med–low	180–240	Technology ready, reduces food supply
Rapeseed or canola	Biodiesel	37	high	medium	medium	med–low	30	Technology ready, reduces food supply
Algae	Biodiesel	–183	med	low	low	high	1–2	Huge potential for production levels, technology not ready

* Greenhouse gas emissions measured in kilogrammes of CO₂ created per mega joule of energy produced during the growing, harvesting, refining and burning of fuel. GHG emissions over biofuel life cycle should be compared to those for gasoline (94kgCO₂/MJ fuel) for ethanol products, or diesel (83kgCO₂/MJ fuel) for biodiesel products.

Source: Martha Groom, Univ. of Washington; Elizabeth Gray, the Nature Conservancy; Patricia Townsend, Univ. of Washington; as published in Conservation Biology, 2008

Russia and Finland at Loggerheads over Timber Taxation

Finland is counting on the European Commission to use Russia's WTO accession negotiations to avoid an impending timber export tax hike of potentially disastrous consequences to its forestry industry, but chances of success appear slim.

At issue is an export tax levied by Russia on non-processed logs, due to rise to at least €50 per cubic metre by 1 January 2009. This would represent an 80 percent increase since July 2007, when Russia raised its €4/m³ export tax to €10. The duty now stands at €15/m³.

Russia Hopes to Develop Domestic Processing Industry

The timber tax is aimed at enticing foreign, as well as domestic, companies to invest in Russia's processing industry, thus helping the country capture more value from its vast forest resources. Russia currently lacks the capacity to expand its processed forestry exports despite a strong international market. For instance, the average value of Russian wood pulp exports – half of which went to China – increased by 78 percent between 2002 and 2007 (in US\$), but the volume of those exports grew just over 1 percent. Analysts do not expect significant improvement in Russian processing capacity before 2010.

Log Importers Fear Dire Consequences

Finland is the trading partner most affected by Russia's rising export duties as nearly 80 percent of the country's timber imports are sourced in its Eastern neighbour. If the tax increase is carried out as envisioned, imports from Russia are likely to dry up completely in 2009. This could lead to a 20-percent decrease in the forestry industry's production capacity, putting at risk an estimated 25,000 jobs, many in areas that offer few other sources of employment. Other economic sectors are also likely to suffer, including the state-owned railways, which rely on Russian timber for a fifth of their freight traffic. In Sweden, some 6,000 jobs are at stake.

No Legal Constraints at Present

No international agreement prevents Russia from pursuing its timber sector development strategy. The country's bilateral co-operation treaty with the European Union has expired, and it is not a Member of the WTO. Even if it were, the timber duty would not be a problem. Unlike export subsidies, which can give a country an unfair competitive advantage in the international market, export taxes are not covered by existing WTO rules since their effect is to restrain, rather than encourage, exports. The EU has, however, proposed to discipline export taxes in the Doha Round negotiations on non-agricultural market access (TN/MA/W/11/Add.6).

Under the proposal, all WTO Members would be required to include export taxes in their schedules of commitments. With the exception of least-developed countries, and some flexibility for small and vulnerable economies, they would also be obliged to bind the duties, which would prevent increases in the future. However, the only part of the proposal likely to garner significant support is the requirement that Members notify the introduction and any modifications of export taxes to the WTO.

WTO Accession Negotiations Offer Little Leverage

After bilateral efforts failed to solve the timber conflict, Finland and Sweden pinned their hopes on Russia's ongoing WTO accession talks. The Nordic neighbours argued that the EU should insist on Russia cancelling the projected tax hike on the grounds that it had pledged not to raise export taxes earlier in the accession process. That leverage, limited in the first place, diminished further with Prime Minister Putin's 25 August announcement that his country would withdraw some of its earlier concessions, which "currently conflict with the interests of the Russian Federation." Mr Putin added that Russia did not "feel or see any advantages from membership, if they exist at all. But we are carrying the burden. We need to make this clear to our partners." See page 12 for more on Russia's WTO accession.

Finland Plans Retaliation

While waiting for the game to the play out at the WTO (or bilaterally between the EU and Russia), Finland has embarked on a series of countermeasures to protect its pulp and paper industry.

In order to induce local forest owners to sell more logs to domestic processors, the sales tax on timber has been halved until end-2009. After that, the tax relief will be brought to 25 percent.

To recoup the cost of the tax incentive, the government plans to make heavy transport vehicles pay for their use of Finland's road network. Since domestic haulers will be compensated through an equivalent decrease of the general vehicle tax, the measure will mainly affect lorries carrying cars from Germany to Russia. In 2007, about 680,000 cars were transported by road through Finland, up from 240,000 in 2004.

Although the precise amount of the road fee has not yet been decided, the amounts under consideration are significant, reaching possibly €11 for a one-day permit and up to €2200 for an annual 'vignette'. While the Finnish government expects that it will take a couple of years before the fee enters into force, serious doubts persist on the EU-compatibility of a measure that – at least on the face of it – discriminates against all foreign heavy transporters.

Environmental Fallout Possible

Experts warn that local resources are insufficient to make up for the shortfall caused by the Russian export tax in the long term. A number of companies have already started to import logs from much further a field, including fast-growing eucalyptus from Brazil. In some regions, such sourcing practices could lead to a reduction of old-growth forests, which act as carbon sinks and thus help slow the pace of climate change.

In July, economic affairs minister Mauri Pekkarinen also warned that Finland would not be able to reach its EU-mandated renewable energy target – 38 percent of final energy consumption by 2020 – if Russia were to implement the €50/m³ timber export tax. Since Finland relies on the forestry industry for up to 70 percent of its renewable energy supply, the national target would need to be revised downwards through a *force majeure* clause, Mr Pekkarinen said.

The Unspeakable Economics of ABS

Joseph Henry Vogel

Economics is abstract but not unfathomable. The truth of that statement can be seen in the attempt to elaborate a multilateral regime for 'access and benefit sharing' – ABS for short – at the ninth conference of the parties to the Convention on Biological Diversity held in May.

'Access' refers to a piece of the action in biotechnology for the country of origin. The requirement of ABS is both fair and pragmatic. For example, some 78 percent of anti-cancer drugs derive from genetic resources which are often found in threatened habitats. Benefit-sharing could promote their conservation.

Because ABS is an economic issue, one would think that the multilateral regime would be guided by economic theory. But such is not the case. Most of the delegates to the conferences of the parties (COPs) are lawyers or diplomats who have long since forgotten whatever introductory economics they once studied. Nevertheless, it is not too late to inject some economic thinking into ABS. The next COP will convene in 2010 in Nagoya, Japan and vote on whatever multilateral regime emerges over the next two years of negotiations.

Where to begin? Harvard naturalist E.O. Wilson loves to cite the Chinese wisdom of getting things by their right name. The wisdom can also apply to economic classification. Are genetic resources tangible or intangible goods? Correct classification is of paramount importance. The classification 'tangible' militates against any monopoly right while 'intangible' can justify it! Because the delegates of COP IX were negotiating as if genetic resources were a tangible, they embarked on the wrong road toward a multilateral regime. I hasten to add that the classification of genetic resources as intangibles is not controversial or even news. In 1958, just five years after discovering the helical structure of DNA, Francis H.C. Crick published the 'central dogma' of molecular biology which conceptualises genes as information, i.e., an intangible.

If this sounds abstract, a simple analogy can make the economics fathomable. Consider a blank CD. It is a tangible and sells for about 30 cents. One can easily imagine the same CD selling for \$5.00 if the government were to grant a monopoly over its manufacture. Such a monopoly would ex-

clude many consumers and inhibit efficiency as the manufacturer grows comfortable with a profit margin of \$4.70. Monopolies over tangibles are both inequitable and inefficient. Let's now look at that same CD but burnt with information, an intangible. In a competitive market, the price would be 30 cents plus the costs of recording, marketing and a normal return on investment. Judging from the black market in recorded CDs, that price would be about \$1.00. Note that the cost of creating the information recorded is never recouped in the \$1.00 price tag. Therein lies the economic justification for copyrights over books, music and software.

The difference between the price of a copyrighted recorded CD and its black market equivalent is what economists call 'rent'. For digitised books, the rent is typically \$10, for music, \$14, and for software, hundreds of dollars. Without the possibility of capturing rents through a monopoly intellectual property right, much innovation is not financially viable.

Now consider genetic resources. The cost of accessing natural information is extremely low while the opportunity cost of protecting habitats is extremely high. For as little as \$50, one can collect enough dry leaves for research and development even though the habitat may cost millions of dollars to conserve.

Can the Convention on Biological Diversity (CBD) enable a country of origin to capture an economic 'rent' and make conservation viable? The answer is a resounding 'no' because my analogy breaks down on one crucial point. Whereas intellectual property law grants a monopoly over the intangible, the CBD extends sovereignty to many countries over the same genetic resource. Each has a strong incentive to undercut its neighbour and conclude a 'material transfer agreement' with industry. This is what ECON 101 predicts and indeed what we have seen over 15 years of bilateral negotiations on ABS. Royalties are typically 1 percent or less.

In light of the fathomable economics of ABS, COP IX was rife with ironies. Industry maintains that the price of its products owes to the extraordinarily high costs of R&D and the long haul to bring an invention to market. Karl Marx would be proud. The Marxist labour theory of value denies worth to natural resources. To quell protests over the laughably low royalties remitted to the countries of origin, industry also insists on the secrecy of the transfer agreements. Joseph Stalin would be no less proud.

Make no mistake. Providing countries are not the hapless victims of rapacious transnationals. Old fashioned pride has deluded many delegates into believing that their country can 'negotiate' a better monetary benefit than that which others have 'negotiated' in the past. Again, they should dust off their ECON 101 textbooks. Providing countries are price-takers and negotiate very little or nothing at all. The royalty rate reflects the competitive process of the market. Only if the megadiverse countries act as a cartel will they ever obtain anything above the market 1 percent. Parenthetically, the delegates should also refrain from entertaining the 'non-monetary benefits' touted by industry. Through the lens of economics, such benefits are a form of earmarking, which is anathema to public finance and an invitation for corruption.

Despite the uneconomic thinking of conferences of the parties so far, the economics of ABS may no longer be unspeakable. At COP IX, the Informal Consultative Group recommended study of three vital questions: should economic rents be charged for genetic resources; what is the justification for or against such a rent; and what should be the basis of valuation? ? Immediately following the plenary, Jeffrey Sachs, arguably the world's leading development economist, gave a riveting (and *pro bono*) address. The audience was rapt.

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Climate Technology and Trade

ICTSD has recently launched an initiative aimed at filling some of the knowledge gaps that currently hamper progress in enhancing access to climate change mitigation technologies.

Technological solutions are imperative to meet the challenges of climate change mitigation and adaptation. A critical factor in reducing greenhouse gas (GHG) emissions, technology is also fundamental to enhancing existing abilities and lowering the costs of reducing these emissions.

Broad diffusion of current technologies and the development of new ones will be essential to achieve a transition to a low-carbon economy. In this context, the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol require parties to promote and co-operate in the development and diffusion – including the transfer – of technologies that control, reduce or prevent GHG emissions. Recognition of the need for enhanced action on development and transfer of technology is a key pillar of the Bali Action Plan. Developing countries have also stressed that their capacity to undertake mitigation efforts depends greatly on the access they will have to clean technologies. Nevertheless, discussions on this complex issue have so far been rather divisive in the climate change talks (Bridges Year 12 No.3 page 20).

There is significant uncertainty as to the manner in which to provide effective incentives for the development and effective transfer of clean technologies. More fundamentally, there appears to be an incomplete understanding of the kinds of barriers that can, and should, be addressed at the global level through international regulatory frameworks such as those related to trade policy, intellectual property, investment and financing.

As a contribution to analytical thinking in the search for global solutions, ICTSD launched in June the *Initiative on Climate Technology and Trade*, an informal platform composed of prominent experts on the development and transfer of technology from across the world. Taking a resolutely multidisciplinary approach, the initiative seeks to complement and reinforce existing mechanisms, such as the UN Climate Convention's Expert Group on Technology Transfer, by analytical perspectives on key technology-related stumbling blocks in the climate change negotiations. Its principal aims are to identify knowledge gaps in global regulatory frameworks relevant to the development and transfer of technology; to provide a conceptual framework for analysis; and to generate solutions-oriented proposals.

The initiative will address specific questions that have been recurrent in the negotiations on development and transfer of technology, including the following:

- What are the implications of intellectual property protection for access to climate-friendly technologies?
- How can an appropriate balance be achieved between the need for rapid diffusion of climate-friendly technologies and the protection of innovation and provision of incentives for it?
- How relevant are the flexibilities that exist within the intellectual property regime, including the potential use of compulsory licensing in the climate change context?
- What lessons could be derived for the climate regime from the experience accumulated on the phasing out of substances that deplete the ozone layer under the Montreal Protocol?
- How could proposals on patent pooling, public-private partnerships and other alternative models be effectively applied so as to promote innovation, development and transfer of climate technologies?
- What is the potential for trade and trade policies to enhance global diffusion of low carbon goods and technologies, and how could such potential be harnessed in the crafting of trade policies at the multilateral level?

Through research and analysis undertaken by a multidisciplinary group of experts, ICTSD expects to generate solutions-focused and policy-oriented proposals that can be fed into, and inform the work of, the bodies dealing with the development and transfer of technology within the UNFCCC process on the road to Copenhagen 2009.

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

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WTO Meetings

- Sept. 17-18 Committee on Agriculture – regular session
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- Sept. 24-25 WTO Public Forum: Trading into the Future
- Oct. 14-15 General Council

ICTSD Events during the WTO Public Forum

- Sept. 25 Climate Change, Competitiveness and Trade Policy: Opportunities and Challenges for the Multilateral Trading System
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- Sept. 25 World Food Crisis: Are Trade Rules a Problem or a Way Forward?
Organised by the World Trade Institute and ICTSD

New from ICTSD Agriculture

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