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## Trade Pales Next to Financial Turmoil

International trade appears to be on a political back burner as WTO Members grapple with a worsening economic climate, but some still hope for a breakthrough in December.

Although governments continue to profess their commitment to completing the Doha Round, their focus in recent weeks has been almost exclusively on propping up the global financial and banking systems and, to the extent possible, staving off a deep and lasting recession. Yet another summit, involving the leaders of the world's 20 largest economies, will take place in mid-November to co-ordinate a comprehensive response to the crisis. The Doha Round is also on the agenda.

However, recent negotiations in Geneva have not produced significant results, and the chairs of the agriculture and industrial tariff negotiations have said that prospects for a breakthrough before next year are not encouraging (see articles on pages 9 and 10).

Some countries nevertheless still believe that a December 'modalities' or framework agreement in these two areas is not only possible but necessary to counter the effects of the financial crisis, as well as to ensure that multilateral trade negotiations do not disappear into cold storage when President-elect Barack Obama takes over the White House in January. Speaking to Reuters after the historic US election, Brazil's trade minister Celso Amorim argued that it would "facilitate things for President-elect Obama if we were able to finalise the modalities by the end of this year. It would relieve him of very difficult choices at the start of his government." With the modalities agreed, "it would be only fair to complete the job," he said.

Minister Amorim and his Australian counterpart Simon Crean hope that the 15 November summit will issue a ringing call for concluding the round, including specific negotiating instructions and deadlines. Such a high-level political push could pave the way for a ministerial meeting some time in early December, they argue.

This view is not widely shared in Geneva, partly because none of the many exhortations issued by leaders outside the WTO has ever been heeded. A number of Members, including China, have cautioned that the Director-General should call a ministerial meeting only if he strongly believes that it has a real chance of success. Alternatives being considered informally include an agreement on a period of 'standstill' and 'maximum restraint' – intended to preserve at least the status quo – until time is ripe to restart serious negotiations.

### Major Economies Teeter on the Brink of Recession

In the real world, politicians' reactions to growing fears of a wide-spread recession are likely to have a significant impact on the outcome of Doha Round.

The US economy contracted by 0.3 percent between July and September, the biggest drop in GDP since 2001. For the first time in 16 years, the UK's gross domestic product sank by 0.5 percent during the same period. The 15 euro-zone countries and Japan are thought to be already in recession.

Consumer spending in major economies is down sharply, while unemployment is up. The US shed 760,000 jobs in the first nine months of the year, while 164,000 people lost their

*Continued on page 2*

## Facts and Figures

- Countries whose economies most depend on farming, spend the least public funds on agriculture.

Table 1: Share of agriculture in total GDP

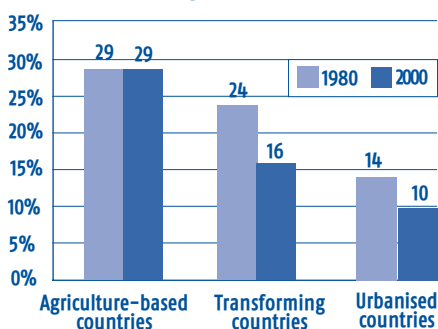
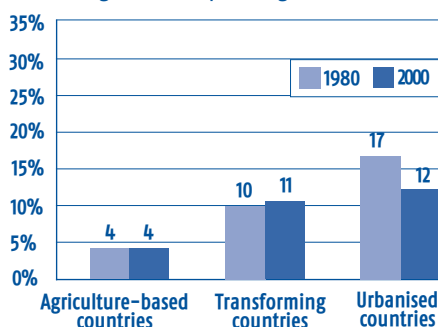


Table 2: Agricultural spending as share of GDP



Source: World Development Report 2008: Agriculture for Development. The World Bank, October 2008

# Bridges

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See inside back cover for information on other ICTSD periodicals.

jobs in the UK between June and August. These figures are expected to rise, and many other OECD countries are also bracing for significant job losses.

China's phenomenal growth rate declined for the first time in two and a half years. India has also experienced a slowdown, although both countries continue to grow at a healthy pace of 9 and 7.5 percent respectively. However, some of their export sectors are expected to suffer as main markets contract. Indian call centres and business services providers are preparing to cut a quarter of their workforce, and half of China's toy exporters have gone out of business.

### Lamy Calls for Resisting Protectionism

With the need to keep jobs (and tax revenue) at home uppermost in politicians' minds, do governments still have the political courage to cut subsidies to farmers or fishermen, reduce protective tariffs, or open their services sectors to more global competition?

WTO Director-General Pascal Lamy, who recently announced his candidacy for a second term at helm of the institution, certainly thinks they should. In a recent lecture at University of California, Berkeley, he argued that "in bad times, trade has had a stabilising impact on the global economy." He also suggested that the 'ruinous beggar-thy-neighbour trade policies' adopted by the industrialised world in wake of the 1929 crash had contributed to the great depression through "a domino effect of retaliation and counter-retaliation among trading partners, which provoked a severe contraction of international trade." Rather than safeguarding domestic jobs, these policies had led to a marked increase in unemployment, he said, adding that "with major economies seemingly on the cusp of recession, the additional growth generated from removing trade barriers would be a welcome shot in the arm."

Mr Lamy acknowledged that world leaders now faced greater challenges than at any time since World War II, but he also insisted that "compared with negotiations regulating international finance and climate change measures, the Doha Round is low-hanging fruit and a failure to pluck this fruit will send reverberations through other geopolitical forums."

### Trade Financing Initiatives

A number of developing countries are already facing difficulties in financing their exports as commercial credit has dried up for insurance, shipping and guarantees. Pascal Lamy has convened major providers of trade finance to a meeting on 12 November to "examine the issue and find ways to alleviate the situation if it were to deteriorate." Brazil has called for the WTO working group on trade, debt and finance to look into ways to mitigate the effects of the banking crisis (see page 9).

In response to these concerns, the World Bank increased its trade finance programme from one to one-and-a-half billion dollars in October, and the IMF created a short-term loan programme to help emerging markets with healthy track records surmount temporary liquidity problems caused by the credit crunch and investor flight.

### Spillover Effects

UN Secretary-General Ban Ki-moon has raised concern that donor countries might backslide on their development assistance commitments, including the US\$16 billion they have pledged for the achievement of the UN's Millennium Development Goals. The Financing for Development conference scheduled for late November will provide an opportunity to review the situation, including the role of trade in lifting countries out of poverty (see page 15).

Efforts to tackle climate change could be affected by the economic downturn as well. For instance, EU member states are increasingly divided over upholding the bloc's greenhouse gas reduction targets due to competitiveness concerns (see page 18). Any lowering of the unilateral goals could have a disastrous effect on the December climate conference in Poznań that is to start preparing a successor agreement to the Kyoto Protocol. Yvo de Boer, who heads the UN climate convention secretariat, has expressed concern that the talks could slide "into a WTO-like process that goes on without a clearly agreed deadline" or – even worse – that they would result in a highly fragmented approach to climate change.

# WTO Legal Status and Evolving Practice of Export Taxes

Daniel Crosby

Recent US and EU sabre-rattling over the WTO-consistency of certain Chinese export taxes has raised the question of whether multilateral trade rules allow countries to impose taxes upon the export of raw materials, essentially in order to ensure a price advantage to domestic industries.

This article seeks to shed light on the question by reviewing the relevant rules and Member practice on export taxes. For present purposes, ‘export tax’ and ‘export duty’ can be used interchangeably. The article addresses only the WTO legal framework relevant to export duties and does not evaluate their economic implications.

The bottom line is: although *general* WTO rules do *not* discipline Members’ application of export taxes, Members can agree – and several recently acceded countries, including China, have agreed – to legally binding commitments in this regard. Some Members have proposed the establishment of a new multilateral WTO Agreement on Export Taxes as part of the Doha Development Agenda, so far with little traction. Although there is some talk of challenging export taxes as *de facto* export prohibitions or as indirect subsidies, most observers seem to agree that export taxes remain one of the last significant aspects of multilateral trade policy that lies beyond the scope of current rules.

## (Lack of) WTO Rules on Export Duties

For all the wisdom and foresight framed into the GATT and then WTO Agreements, the drafters appear to have either missed the issue of export taxes, underestimated future concerns, or perhaps intentionally reserved this area to the Contracting Parties as ‘policy space.’ While the binding of tariff lines is a cornerstone of the multilateral trading system, GATT Article II on *Schedules of Concessions* only concerns *import* duties and charges in connection with *importation*. No mention is made of *export* duties, and therefore no formal GATT legal framework even exists for Members to schedule commitments with respect to exports. That said, as discussed below, nothing prevents the establishment of such frameworks.

The drafters of the GATT clearly considered the potential for discrimination and trade distortion with respect to imports as well as to exports. For example, *General Most-Favoured-Nation Treatment* under GATT Article I:1 applies “[w]ith respect to customs duties and charges of any kind imposed on or in connection with importation or exportation. . . .” Likewise, GATT Article XI, on *General Elimination of Quantitative Restrictions*, specifically references export taxes and duties as means by which Members may legally prohibit or restrict imports and exports. With a few narrow exceptions, Article XI:1 forbids Members from instituting or maintaining “prohibitions or restrictions *other than duties, taxes or other charges*, whether made effective through quotas, import or export licences or other measures. . . .” with respect to both imports and exports. Article XI:1 can therefore be read positively to allow Members to institute or maintain prohibitions or restrictions by applying duties, taxes or other charges.

GATT Article XI:2 provides a “safe harbour” for Members to apply export prohibitions and restrictions for certain public policy purposes that would otherwise violate Article XI:1. For example, governments may apply export quotas or outright prohibitions in order to ‘prevent or relieve critical shortages of foodstuffs or other products essential to the exporting [Member]’. (Article XI:2(a).) This provides legal cover for measures taken by certain governments during the recent global food crisis aimed at ensuring the availability of affordable food to their citizens. Although such restrictions have been condemned from economic and systemic trade policy perspectives, GATT rules clearly provide Members ‘space’ to choose to feed their own people before supplying export markets.

## Economic Development Toolbox

Given the evident lack of rules on export taxes, WTO Members, especially developing and least-developed countries, apply export taxes in order to raise revenue in a transparent manner and to advance development objectives of economic diversification and industrialisation. In a

comprehensive 2004 WTO Discussion Paper on *The Role of Export Taxes in the Field of Primary Commodities*, Roberta Piermartini argued that “[e]xport taxes on primary commodities (especially unprocessed) work as an indirect subsidy to higher value-added manufacturing or processing industries. Export taxes on primary commodities can be used to reduce the domestic price of primary products in order to guarantee supply of intermediate inputs at below world market prices for domestic processing industries. In this way, export taxes provide an incentive for the development of domestic manufacturing or processing industries with higher value-added exports.”

Although the paper discusses potential negative economic implications of export taxes, including inefficient transfers of wealth within markets and among markets, the legal situation is clear: “export taxes are not prohibited by the WTO. About one third of WTO Members impose export duties.” Even if the negative economic analysis is justified, developing and least-developed countries appear loath to forego the ‘policy space’ for using what is in their view a WTO-consistent economic development tool.

Concerning the use of tariffs to support industrial policies, developing countries have noted developed countries’ application tariffs peaks and tariff escalation to restrict or prevent importation of ‘sensitive’, usually processed and value-added, products mostly from developing and least-developed countries. Although the non-agricultural market access (NAMA) negotiations under the Doha Development Agenda aim to address the problems of tariff peaks and escalation, it is difficult to imagine developing and least-developed countries ‘disarming’ on export duties without obtaining bound market access for their value-added products.

## Toward New Rules?

Some developed countries with established processing industries have reacted against

*Continued on page 4*

commodity-producing countries' efforts to 'transfer wealth' and add value in their local economies.

### WTO Accession Negotiations

Several recently acceded WTO members, including China, Mongolia, Saudi Arabia, Ukraine and Vietnam, have committed in their accession negotiations to eliminate at least some export taxes, with varying scope and economic effect of commitments. Existing Members can apply significant pressure on acceding countries to undertake commitments beyond general WTO rules, and undertakings to eliminate export taxes are prime examples of such 'WTO-plus' commitments.

When it became clear that Mongolia's domestic cashmere processing industry was disappearing due to the unrestricted export of raw cashmere, the government requested from WTO Members and received a temporary waiver of its accession commitment to phase out export duties. Russia also seems to have realised that its WTO accession commitment to the Europeans to eliminate export duties on timber would inhibit the development of its domestic processing industries. Prime Minister Putin has recently suggested that the Russian government is reconsidering this commitment. In fact, Russian export duties on timber are set to increase dramatically as of January 2009 (Bridges Year 12 No.4 page 21).

China's WTO Accession Protocol includes a commitment to eliminate all taxes applied to exports, with the exception of 84 listed tariff lines. WTO accession commitments to eliminate export taxes are undoubtedly enforceable under the Dispute Settlement Understanding just as any other rule or commitment. Any doubts on this point were settled by the recent *Auto Parts* WTO case against China where all parties agreed that the protocol was an 'integral part' of the WTO Agreement (WT/DS/339-340-342/R, para. 7.740).

### Regional Trade Agreements

Outside the WTO context, some countries have included the elimination of export taxes in their regional and bilateral trade agendas. For example, EU Association Agreements and Free Trade Agreements generally seek to eliminate such taxes between and among the parties. The North American Free Trade

Agreement includes disciplines on export duties, as do bilateral trade agreements negotiated, for example, by Canada, Japan and others.

### The Doha Development Agenda

The EU has been the principal *demandeur* under the Doha Development Agenda for substantive commitments by all WTO Members to bind and eliminate or reduce export taxes. With its negotiating proposal, the EU seeks to confirm that GATT rules and disciplines will prevent Members from using export taxes for industrial or trade policy purposes. The EU has presented its proposal in the context of current NAMA negotiations on non-tariff barriers (NTBs) to trade, and therefore styles the issue as a 'tax' matter. This is a creative approach, particularly since export *tariffs* can hardly be discussed as in the context on *non-tariff* barriers.... Some Members have also questioned whether the Doha mandate covers this topic at all. Reflecting Members' apparent failure to achieve consensus on this issue, the most recent draft modalities for NAMA does not reference the EU proposal as 'meriting particular attention in text-based negotiations in order to achieve substantive NTB results' (para. 24).

### WTO Dispute Settlement

The application of export taxes has never been found to violate GATT Article XI. On the contrary, in recent WTO panel report on *India - Quantitative Restrictions* recognized that "the text of Article XI:1 is very broad in scope, providing for a general ban on import or export restrictions or prohibitions *"other than duties, taxes or other charges"*. As was noted by the panel in *Japan - Trade in Semi-conductors*, the wording of Article XI:1 is comprehensive: it applies 'to all measures instituted or maintained by a [Member] prohibiting or restricting the importation, exportation, or sale for export of products *other than measures that take the form of duties, taxes or other charges*.'" (WT/DS90/R, para. 5.128, emphasis supplied.)

Some observers have questioned, however, whether the lower prices for the domestic industry that inevitably result from the application of export taxes could be considered a 'financial contribution' under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). The Panel in *United States - Measures Treating Export Restraints as Subsidies* directly addressed this question, and found that an export restraint, defined as including export taxes, 'cannot constitute government-entrusted or government-directed provision of goods... and hence does not constitute a financial contribution' under the SCM Agreement. (WT/DS/194/R, para. 8.75-76.) It should be noted that this case was not reviewed by the Appellate Body, so there remains a chance that some Members will mount a new challenge.

The question has also been raised as to whether a WTO complaint might be brought against export duties that are so high as to effectively prohibit exports. Although 'the disciplines of Article XI:1 extend to restrictions of a *de facto* nature' (*Argentina - Hides and Leather*, WT/DS155/R, para. 11.17), such extension would not appear to reach the positive allowance of prohibitions or restrictions through the application of 'duties, taxes or other charges'. In any case, high *import* duties would probably be the more likely test case for this *de facto* legal challenge. Many WTO Members, including developing countries, that maintain trade-restrictive or trade-prohibitive tariff peaks on sensitive products might not be keen to have a precedent set in this area.

### The China Challenge

In light of the above discussion, on what basis could the United States or the European Union bring a WTO claim against Chinese export restrictions? Recent reports have referred to problems with China's export quotas and taxes: export *quotas* can be challenged as inconsistent with GATT Article XI, and export *taxes* can be challenged when applied to products not inscribed on China's list of exceptions to its accession commitment to eliminate export taxes (Annex 6 to China's Accession Protocol). Export taxes applied to products *not* on China's list appear to be consistent with general WTO rules.

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## EU, US Mull Case on Industrial Inputs

Concerned about access to raw materials, the EU and the US are contemplating a WTO case against restrictions imposed by China on key industrial inputs, mainly used in the steel sector.

Although neither trading power has yet formally requested dispute settlement consultations, both are looking into how to structure a potential case against Chinese export quotas and taxes on steel industry inputs such as metallurgical coke, molybdenum and fluorspar.

Unlike export subsidies, duties or other restrictions on exports do not currently fall under WTO disciplines. In most cases, a complainant would therefore need convince a dispute settlement panel that export taxes in fact act as a subsidy to the defendant's own processing industry by allowing domestic manufacturers cheaper access to raw materials than that enjoyed by competitors abroad. In light of precedents set by previous WTO rulings on export restrictions, the argument would be unlikely to stick (see page 3).

A case against China, however, would be different since the country agreed in its WTO accession protocol to eliminate 'all taxes and charges applied to exports' (apart from customs-related fees) on all but 84 specific products. Most of those exceptions, listed in an annex, concern metallurgical industry, providing for export levies of 20 to 40 percent on products ranging from lead and zinc ores to scrap iron. As the raw materials that the US would be targeting are not among those on the list, a case built on China's violation of its accession commitments might well succeed.

### EU Vows to Combat 'Resource Nationalism'

Shortly before resigning his position as EU Trade Commissioner, Peter Mandelson made a much broader case against what he called 'resource nationalism'. Speaking at a conference on trade and raw materials in late September, he said there were at least 450 export restrictions on raw materials across the global economy ranging from metals to wood, leather, ceramics and chemicals to textiles and energy.

Mr Mandelson argued that the "costs to EU companies that rely on these raw materials *and compete with producers in [countries that restrict their export]* is obvious. If it costs more just to export, say, phosphorus, from China than it costs a Chinese company to buy it domestically *and transform it*, then European industry can't compete – in Europe, in China, or anywhere else in the global market. The export duty acts like an indirect subsidy" (original emphasis).

He acknowledged that governments impose export restrictions for a range of reasons – including trying to shield domestic consumers from high international commodity prices and price inflation, or capturing raw materials for their own producers – but maintained that "in a globalised economy export restrictions can also pose a systemic risk. When they drive up world prices and cut off supplies of raw materials, beggar-thy-neighbour export restrictions invite a cycle of retaliation that is as economically counterproductive as it is politically hard to resist. Because the pressure on global resources is only going to grow, policymakers cannot afford to ignore the knock-on effects of closing down or politicising markets for supply."

Mr Mandelson predicted that the next phase of globalisation would be defined by pressure for access to basic resources, and that "one of the biggest challenges we face at the global level is managing that race to mutual benefit."

The EU would try to counter the threat to its producers on several fronts, he said. Among those were negotiating prohibitions on raw materials restrictions in all its free trade agreements and bilateral WTO accession agreements; willingness to use WTO litigation to enforce commitments on export restrictions for raw materials made by China during its WTO accession; seeking to build support globally for more open trade in raw materials, and; using "trade defence measures such as anti-dumping duties on countries that used export restrictions to subsidise local producers and then dumped subsidised goods on European markets."

## Disputes in Brief

- China has requested dispute settlement consultations on anti-dumping and countervailing duties imposed by the United States on its exports of several types of steel products, off-road tyres and woven sacks. One of the aspects challenged by China was that US authorities had used the controversial method of 'zeroing' in the calculation subsidy benefits and had failed to ensure a fair comparison between the export price and normal value when determining dumping margins. It also said the US had failed to make a determination that China 'entrusts or directs' state-owned enterprises to provide WTO-illegal subsidies to producers of these goods. If the case cannot be resolved through consultations, China will have the right to request a dispute settlement panel in the latter half of November.

According to the WTO, Members initiated 37 new anti-dumping investigations on Chinese exports in the first six months of 2008. In the same period, thirteen new anti-dumping measures were imposed on Chinese goods. The figures represent about half of all anti-dumping actions taken by WTO Members between January and June 2008.

- As expected, China has appealed the 18 July panel ruling, which found that the application of higher import duties (25 instead of 10 percent) on auto parts if they account for more than 60 percent of a vehicle assembled in China was inconsistent with the country's scheduled tariff commitments. Complainants EU and US had charged that the differentiated tariff was designed to bolster the defendant's domestic auto part industry and to encourage foreign manufacturers to relocate production in China. Chinese authorities, however, claimed the measure was aimed at preventing tax avoidance by auto dealers who import cars in parts rather than fully assembled in order to pay a lower import duty. The Appellate Body should issue its verdict within three months of appointing the three judges who will hear the case.

## New Case Urged to Examine Science in Hormones Dispute

In an important ruling on the long-running beef hormones dispute, the Appellate Body has clarified procedural issues with regard to trade retaliation, as well as the standard of review that panels must apply when hearing cases that involve health risk assessments.

The dispute pertains to the European Union's import prohibition on beef treated with growth hormones. In 1998, the WTO ruled that the EU had not proved that the six hormones at issue caused ill-effects to human health due to the consumption of hormone-treated meat as required by the Agreement on Sanitary and Phytosanitary (SPS) Measures. After the EU failed to either repeal the ban or to present fresh evidence justifying it, the WTO in July 1999 authorised complainants United States and Canada to apply trade retaliation worth US\$177 million and US\$9.5 million respectively. The sanctions are still in place.

In 2003, however, the EU notified to the WTO that it had conducted new risk assessments showing that the disputed hormones presented enough potential threats to human health to uphold the ban. Its Directive 2003/74/EC reflected this conclusion and, the EU said, put it in full compliance with the requirements of the SPS Agreement. All retaliatory measures should thus be lifted. Instead of asking the WTO to examine the new scientific evidence, the complainants dismissed the EU's claim of compliance and continued to apply punitive duties on European exports.

A dispute settlement panel on the legitimacy of the sanctions requested by the EU issued a mixed verdict in March 2008. On the one hand, it faulted the complainants for maintaining retaliation without having sought a formal WTO determination on whether Directive 2003/74/EC did in fact conform with the requirements of the SPS Agreement. On the other, however, the panel said that the EU's additional research did not satisfy the SPS Agreement's definition of a risk assessment, and concluded that scientific evidence did not support the EU's contention that the consumption of hormone-treated meat led to an increased cancer risk (Bridges Year 12 No.2 page 8).

Both sides appealed this rather confusing and contradictory ruling (Bridges Year 12 No.4 page 14).

### Sanctions Legal for Now

At the core of the dispute, the Appellate Body (AB) said, was a disagreement on whether the measure taken by the EU (i.e. Directive 2003/74/EC) had achieved 'substantive compliance' with the findings of previous WTO dispute settlement rulings. Only a compliance panel could establish whether that was the case, it suggested.

The AB acknowledged that the parties applying trade sanctions were under no obligation to undertake compliance proceedings. It noted, however, that under Article 22.8 of the Dispute Settlement Understanding (DSU) retaliatory measures could "only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed," and if a "disagreement arises as to whether substantive compliance is achieved, the fulfilment of [this provision] cannot be confirmed unless the disagreement is resolved through multilateral dispute settlement." *In fine*, the AB ruled that "the suspension of concessions [i.e. retaliatory action] continues to apply pending the outcome of the dispute settlement proceedings concerning the first resolute condition in Article 22.8."

The US and Canada welcomed this conclusion, which allows them to continue to apply sanctions until a compliance panel has ruled on the matter.

### The Burden of Proof

The Appellate Body then turned to the EU's contention that only a complainant could initiate compliance proceedings. It established that the avenue was available to either side, and that both shared the "responsibility to ensure that the suspension of concessions [was] not applied indefinitely." The question was "which party [bore] the burden of proof in respect of the issues of substantive compliance." The main reason that the countries involved in the beef hormones dispute had been reluctant to seek a compliance determination stemmed from their apprehension that the initiator would bare 'the full burden of proof', the AB suggested.

To solve the conundrum, the Appellate Body said that the original defendant should have the responsibility of proving that it had 'cured the defects' identified. This, however, would only entail "a clear description of its implementing measure, and an adequate explanation regarding how this measure rectifies the inconsistencies found in the original proceedings." With respect to all other issues, including the measure's consistency with WTO rules, the burden of proof would rest upon the original complainant.

### Handling of Scientific Evidence Seriously Flawed

The AB reserved its harshest criticism to the panel's handling of scientific testimony. It castigated the panel for its decision to consult two experts who had a personal stake in finding fault with the EU's new studies on the adverse effects of the incriminated growth hormones. While the Appellate Body acknowledged that both scientists were eminent specialists in their field, it agreed with the EU's argument that they should not have been called to provide advice to the panel due to their affiliation – as chairman, vice-chairman and joint rapporteur – with the Joint FAO/WHO Expert Committee on Food Additives (JECFA), which had evaluated some of the hormones at issue in the dispute.

The panel not just seek the advice of these experts about JECFA's work and risk assessments; it also asked to them to "evaluate the EU's risk assessment and they did so using JECFA's evaluations as a benchmark. This is problematic [...] because the EU's risk assessment called into question the validity of JECFA's evaluations and explicitly stated that it would not follow them. In the light of this, it was improper for the panel to consult with [scientists], who were directly involved in JECFA's evaluations."

The appointment and consultations with the two scientists “compromised the adjudicative independence and impartiality of the panel” and in so doing infringed the EU’s right to due process, the Appellate Body wrote.

The AB also faulted the panel for not taking into account all scientific opinions regarding the harmful effects of the hormones. Instead, it found that the panel seemed to have “conducted a survey of the advice presented by the scientific experts and *based its decisions on whether the majority of the experts, or the opinion that was most thoroughly reasoned or specific to the question at issue, agreed with the conclusion drawn in the EU’s risk assessment*” [editor’s italics]. Ultimately, the panel reviewed the scientific experts’ opinions and “somewhat peremptorily decided what it considered to be the best science,” thus failing to respect the applicable standard of review under the SPS Agreement. The panel’s flawed approach was particularly evident in its analysis of the genotoxicity of oestradiol 17 $\alpha$ , one of the central issues in the EU’s risk assessment, the AB asserted.

These and other procedural failings led the Appellate Body to decide that the panel had “failed to conduct an objective assessment of the facts of the case [...] in determining whether the EU’s risk assessment satisfied the requirements” of the SPS Agreement. Accordingly, the AB reversed most of the panel’s key substantive findings, including that the EU had not satisfied the risk assessment requirements under Article 5.1 of the SPS Agreement, and the determination that Directive 2003/74/EC was not based on a risk assessment.

#### Way Forward: New Case

The Appellate Body declined, however, to judge the crux of the matter, i.e. the science underlying the EU’s implementing measures. Instead, it emphasised that given of the ‘nu-

merous flaws’ it had found in the panel’s analysis, it was not in a position to make any findings with regard to the WTO consistency or inconsistency of the EU’s import ban relating to oestradiol-17 $\alpha$  or the provisional prohibition it maintains on the other five hormones (the two elements that make up Directive 2003/74/EC).

Because the Appellate Body was unable to complete the analysis as to whether the directive had brought the EU into ‘substantive compliance’, it took the highly unusual step of recommending the launch of a new case. The Dispute Settlement Body should request the protagonists to initiate Article 21.5 (i.e. compliance) proceedings “without delay in order to resolve their disagreement as to whether the EU has removed the measure found to be inconsistent in *EC – Hormones* and whether the application of the suspension of concessions by the United States remains legally valid,” the AB said. A compliance panel should in principle issue its report within 90 days.

## Deadlines Loom for Tyres Compliance, Cotton Retaliation

Brazil must bring its import restrictions on retreaded tyres into compliance with global trade rules by mid-December, a WTO-appointed arbitrator has ruled. Around the same time, the country will learn the value of trade sanctions it may impose to compensate for the economic damage resulting from US cotton subsidies found to contravene WTO disciplines.

The Appellate Body (AB) found on 3 December 2007 that Brazil’s import ban on retreaded tyres was in principle justified under Members’ right to protect human, animal or plant life or health, but discriminatory in its application (Bridges Year 12 No.1 page 13).

In 2000, Brazil prohibited the importation of retreaded tyres, arguing that they had a shorter life span than new ones and therefore contributed to a faster accumulation of waste tyres, which in turn provide fertile breeding grounds for disease-carrying mosquitoes. The EU challenged the ban at the WTO, alleging that it was motivated by a desire to protect local tyre manufacturers from import competition, rather than by the pursuit of genuine public health objectives. Importantly, the AB agreed with Brazil’s argument that the restrictions were based on legitimate health and environmental reasons. However, it faulted Brazil for continuing to import large quantities of used, at least equally harmful, tyres under injunctions from lower courts secured by the local tyre industry. The AB also found discrimination in the ban’s application since Brazil was allowing in retreaded tyres from its fellow Mercosur members Argentina, Paraguay and Uruguay.

Brasilia said it would need 21 months to complete domestic legal action to prevent courts from granting injunctions and to negotiate an agreement on tyre trade with other Mercosur countries. The EU argued that simplest way to comply would be to repeal ban, which could be done without delay, and requested WTO arbitration on the implementation period.

The arbitrator, Yasuhei Taniguchi, refrained from commenting on which means of implementation might be better. However, he found that past practice suggested that Brasilia could take the necessary action much faster, and set the ‘reasonable period’ at 12 months from the AB report’s adoption, i.e. 17 December 2008.

In related news, an arbitration panel was established on 15 October to determine the level of trade retaliation Brazil may impose on the US following the AB’s June ruling that the US had not brought its cotton subsidies in line with WTO rules (Bridges Year 12 No.4 page 13). Brazil estimated in 2005 that the harm caused to its economy by the illegal subsidies amounted to US\$4 billion a year. It also warned that in addition to raising tariffs on US goods, retaliatory measures would include the suspension of certain obligations with regard to intellectual property rights and services. The arbitration panel should deliver its verdict within 60 days.

## Tuna-Dolphin Bis?

On 24 October, Mexico requested WTO dispute settlement consultations with the US on the eligibility criteria for the dolphin-safe logo granted by the Department of Commerce (DoC).

The two countries have a long history of litigation over yellowfin tuna. The crux of the issue is Mexican fishermen's use of purse seine nets to capture the valuable fish. As dolphins swim above the shoals of tuna, they often get caught in the huge nets and drown. In 1990, the US prohibited the importation of tuna caught with purse seine nets. In a verdict roundly denounced by environmental organisations, the GATT ruled in 1991 that the ban was illegal, but the decision was never formally adopted.

In 1997, the US replaced the ban by the International Dolphin Conservation Programme Act, which allowed pure-seine-captured tuna imports provided that on-ship monitors certify that only a marginal number of dolphins were killed in the fishing operation. However, when the DoC proposed to modify the dolphin-safe label criteria accordingly, US conservation groups launched a series of law suits against the government agency. Those culminated in an April 2007 California appeals court ruling that purse-seine nets did have an adverse effect on dolphin populations, and that tuna caught using that method did not fulfil the criteria for dolphin-safe designation.

Mexico argues that its fishing practices are consistent with an international agreement reached under the auspices of the Inter-American Tropical Tuna Commission of which the US is also a member. According to the Mexican government, the country has lost a third of its tuna fleet due to the 'unjustified restrictions' maintained by the US. In its consultation request, Mexico alleged that the US discriminates against its tuna exports since tuna products from other countries are eligible for the logo. Although use of the label is voluntary, tuna marketed without it sells poorly in the US.

## WTO to Tackle Private Sector Standards

After years of hesitation, WTO Members have decided to look into private sector product standards, which developing countries in particular blame for penalising their exports.

The decision was taken at an October meeting of the Committee on Sanitary and Phytosanitary Measures (the SPS committee), which has grappled with the issue since 2005.

The WTO's SPS agreement seeks to ensure that Members' food safety and other health-related measures are based on science and do not unduly restrict trade. The agreement's Article 13 requires governments to "take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories [...] comply with the relevant provisions of this Agreement." A number of developing countries argue that this clause obliges governments to ensure that product certification and labelling schemes run by commercial or other private entities are consistent with WTO rules. Others, especially developed countries, say that the Article 13 text quoted above is not legally binding, and that they have no authority over private certification schemes that go beyond the SPS framework.

Despite the ongoing debate, delegates decided in October to move forward on the issue. With input from relevant international organisations, the WTO secretariat will prepare a report, which will compile and analyse information provided by Member countries on specific export products that they have identified as being affected by private standards.

The main reason for developing countries' concern is the proliferation of non-governmental standards, which are often arbitrary and work against their exporters, who lack the capacity to fulfil the criteria. For instance, many developing country suppliers have difficulties in complying with the requirements of supermarket chains with regard to how a given good is produced rather than just delivering a finished product that fulfils government-mandated norms.

Private sector standards are only part of the picture, however.

### Gypsy Moth, Novel Foods Regulations Spark Controversy

China, Japan, Korea and Indonesia objected to a new plant protection standard proposed by the North American Plant Protection Agency that would require that all ships be inspected for the Asian gypsy moth before entering territorial waters of Canada, Mexico and the US. The complainants argued that the proposed standard is not based on science or current international standards and that it was too broad since it covers all of temperate Asia and would subject entire shiploads, instead of just products, to inspection.

The proponents countered that the measure was based on proper risk assessment showing that the Asian gypsy moth could threaten 600 North American plant species if introduced. Furthermore, Canada, Mexico and the US said that they had taken their trading partners' concerns into account by allowing regions to be declared pest free, and that ships entering and moving throughout any of the three countries waters would only need to be inspected once.

Peru, with the support of the Philippines and several Latin American countries, raised concerns over the EU's proposed 'novel food' regulations, which they said were too burdensome on suppliers who must prove that consumption of traditional or ethnic products is safe by producing historical evidence covering a large region. They also complained that the EU had not notified the new regulations to the WTO. In response, the EU said that revision of the regulation was under discussion in the European Parliament and that the main concern was with extracts or food supplements, rather than with entire fruits or vegetables.

A number of delegates suggested that donor countries should allocate development assistance funds to help developing countries overcome SPS hurdles that impact on their trade performance.

The next meeting of the SPS Committee is scheduled for 25-26 February 2009.



## Industrial Tariff Talks Resume

Small group consultations have restarted on non-agricultural market access, but the most divisive issues will not be addressed in the near term.

The new chair of the NAMA negotiations, Swiss Ambassador Luzius Wasescha, briefed the membership on 22 October on the consultations he had held with 47 WTO Members and announced a programme of more intensive meetings of with individual countries and groupings on issues of particular concern to them.

Ambassador Wasescha said it was clear that Members wished to use the 10 July draft modalities text (TN/MA/103/Rev.2) as a 'starting point' for further negotiations, rather than the 12 August report, in which the previous NAMA chair Don Stephenson outlined his vision of the state of play after the collapse of the 'mini-ministerial'. An earlier compromise proposal put forward by Director-General Pascal Lamy will also be put aside, at least for the time being. During the ministerial, several developing countries emphatically rejected the notion – present in both texts – that developing countries that agree to participate in steep sector-specific liberalisation initiatives would be allowed to maintain higher tariffs on other industrial products (Bridges Year 12 No.4 page 9).

The sectoral approach has been pushed particularly strongly by the EU and the US, which consider that the tariff cuts envisaged in Doha Round are not sufficient to create significant new market access opportunities in major developing countries. The latter, however, eye such initiatives with profound suspicion, not least because many of them they have important defensive interests in the very sectors proposed for deep tariff cuts, including chemicals, electronics and industrial machinery.

### Sectorals, Core Issues Set Aside

Chair Wasescha noted that neither the proponents nor the opponents were keen to engage in multilateral discussions on sectorals at this stage. Instead, interested Members would meet one-on-one or in small groups, a process that could lead to different outcomes for different sectors, he said. Should talks on any individual sector be successful, negotiators could adapt the modalities language accordingly.

The tariff reduction formula and flexibilities available to developing countries are at the heart of the negotiations and remain a major subject of contention. Ambassador Wasescha said he would address this issue when he had a clearer view of Members' positions, possibly not before late November. He also noted that Argentina had not joined the 'growing consensus' around the numbers in the July draft. Argentina has argued throughout the negotiations that the NAMA modalities would let developed countries make smaller percentage cuts than developing countries, contrary to the principle that less-than-full reciprocity would be required from the latter. Argentina also contends that there is an unacceptable imbalance between rich country concessions in the farm talks and what is asked from developing countries in NAMA.

### The Way Ahead

Over the first week of November, the chair intended to conclude his consultations with individual countries (Oman, South Africa and Venezuela) and groups that are seeking special treatment, including recently acceded Members, small and vulnerable economies, and countries worried about the erosion of their trade preferences that would result from a general lowering of tariffs on manufactured products. A 'transparency session' involving the entire membership is tentatively planned around mid-November, followed by informal sessions to run through all issue areas.

Ambassador Wasescha may issue a revised modalities draft before December. However, he has warned Members that a chair is only a facilitator, not a deal-maker, and urged them to engage in direct dialogue with each other. The lack of such engagement has plagued the NAMA talks from the onset, and only started to emerge in the immediate run-up to the July ministerial.

## Trade Finance

Brazil has suggested that the WTO Working Group on Trade, Debt and Finance look into ways to mitigate the impacts of the global credit crunch on trade financing.

Brazil argued that "vagaries and lack of or insufficient regulation in other regimes, in particular the monetary and financial systems, unequivocally affect trade." Developing country exporters seeking short-term financing to cover shipping costs and risks are already feeling the knock-on effects of the credit crisis as commercial banks have tightened lending criteria, or have simply run out of funds. At the same time, trade finance facilitation programmes established by some regional development banks are not large enough to cover exporters' needs.

The main role of trade financing is to ensure that the exporter gets paid in full once the goods have been delivered and accepted although the buyer does not pay the bill immediately. In a 2007 WTO working paper, Marc Auboin noted that "more than 90 percent of trade transactions involve some form of credit, insurance or guarantee. [...] Producers and traders in developing or least-developed countries need to have access to affordable flows of trade financing and insurance to be able to import and export, and hence integrate in world trade."

Brazil also raised concern about the potential impacts of the current financial instability on the implementation of the revised Basel Capital Accord, which sets out minimum capital and risk management requirements for the use of banking regulators. According to Brazil, the new accord removes an inherent bias in favour of entities from OECD countries, but its application may be delayed due to the financial crisis.

Brazil suggested that the working group discuss these questions, and invited the WTO secretariat to contact "relevant stakeholders, including private banks, in order to assess the real impact of the credit crunch on trade finance and look for alternatives to mitigate the problem."

## Members Focus on Technical Issues in Farm Negotiations

Despite some indications of increased flexibility, the first cycle of informal farm talks since July did not produce any tangible results.

The chair of the agriculture negotiations, New Zealand's Ambassador Crawford Falconer, reported to the WTO membership in mid-October on the 'walks in the woods' consultations he had held with various countries in recent weeks on six specific topics: tariff quota creation, tariff simplification, the special safeguard mechanism (SSM), sensitive products, Green Box domestic support and cotton.

### Tariff Quota Creation

Positions remain polarised on whether Members should be allowed to create new tariff rate quotas (TRQs). Such quotas offer market access for a limited quantity of imports of a given good at a lower duty rate than the most-favoured-nation tariff bound in a Member's schedule of concessions. TRQs typically apply to the most import-sensitive products, and the difference between in-quota and out-of-quota tariffs is often substantial.

In the Doha Round farm talks, tariff quota creation is linked to market access for sensitive products. Tariffs on such products will be cut less than the general formula would require, but new market access must be provided through the expansion of import quotas. If no new quotas can be established, only products currently subject to TRQs would be eligible to sensitive product designation. This is what strong exporters, such as Brazil, believe should be the case.

At the other end of the spectrum are importing countries, which would like more latitude in the selection sensitive products. Among cases where new quotas could be envisaged, they have cited products that have experienced strong recent trade growth, such as ethanol, and products that can be substitutes for goods currently subject to TRQs. There is no consensus on any of the proposals related to quota creation.

Members have, however, hypothetically explored criteria for new TRQs, such as limiting quota creation to only a small number of products, providing larger-than-standard tariff quotas, and having very low or zero in-quota duties.

### Tariff Simplification

Exporters, led by the G-20 developing country coalition and the Cairns Group, are seeking to simplify tariff structures through the uniform application of only *ad valorem* duties (expressed as a percentage of a good's value). Other types of tariffs currently used include 'specific' duties (€100 per tonne, say) and complex tariffs, where a product is subject to both *ad valorem* and specific duties.

Importers, such as the EU, have argued that 85 percent of tariff lines should be converted to *ad valorem* duties. In what Ambassador Falconer described a 'sea-change', some exporting countries now appear willing to give up their insistence on a total conversion of all tariffs to *ad valorem* duties. This shift is partly due to current high prices and the difficulty of recalculating the conversion method, which took WTO Members months to negotiate.

According to sources close to the talks, a Canadian study showed that complete tariff simplification may not be in the interest of exporters. Since the base period for specific tariffs and their conversion to *ad valorem* tariffs was set during a time of low prices, their conversion to percentage figures under current conditions may result in higher tariffs for products that have been buoyed by this year's spike in commodity prices. But some of the premises of the study may no longer be valid, as prices for many key agricultural commodities have dropped precipitously in recent weeks.

Countries now need some time to carry out new calculations and consider their best options before moving on with the negotiations, Ambassador Falconer said.

### The Special Safeguard Mechanism

The collapse of the July 'mini-ministerial' has been widely blamed on an impasse on the special safeguard mechanism (SSM) that would allow developing countries to raise tariffs to protect domestic producers from price drops or import surges. The main bone of contention was, and remains, under what circumstances (if at all) tariffs could be raised above their pre-Doha levels. Recent discussions have not brought Members any closer to agreement. Ambassador Falconer admitted that the paragraphs dealing with this issue in the July draft modalities text had been rejected in the walk in the woods discussions.

Speaking on behalf of the G-33 developing country group, Indonesia discarded outright the notion of an SSM 'holiday,' a provision that would make the mechanism periodically inaccessible. The G-33 also rejected the idea of a mandatory price-based crosscheck and a two-tiered trigger to ensure that exporters were not being unduly penalised. Costa Rica, Paraguay and Uruguay said that an SSM along the lines proposed by the G-33 would prevent poor developing country farmers from exporting to other developing countries.

### Green Box and Cotton Subsidies

Developing countries are seeking to ensure that future disciplines on the Green Box (non-trade-distorting subsidies) will not affect governments' right to purchase food from poor farmers for stock holding and food aid purposes. Chair Falconer said a solution could probably be found. In contrast, discussions on the faster and deeper reduction of cotton subsidies have not produced any results.

A number of trade officials hope that Ambassador Falconer will release a new modalities draft that would capture 'what has been agreed so far' before he returns to Wellington at the end of the year. Mr Falconer has not ruled out the possibility, but insists that significant progress would need to be made before issuing a new text. More 'walks in the woods' will take place over the next few weeks, followed by either a meeting of a representative group of some 36 delegations or a meeting of the full membership.

# How Useful Is the Proposed Cap for Agricultural Tariffs?

María Marta Rebizo

On 25 July, WTO Director-General Pascal Lamy suggested compromise figures for the key stumbling blocks that threatened to derail the Geneva mini-ministerial. The document raises a number of questions with regard to market access for sensitive agricultural products.

Specifically, the third ‘paragraph’ of the Lamy proposal provided that “developed country tariff lines above 100 percent only for sensitive products + 1 percent allowance with payments as per text.” In other words, developed countries should cap their ‘non-sensitive’ product tariffs at 100 percent, but could maintain tariffs above this limit for products designated as ‘sensitive’. In addition, certain developed countries could keep import duties above 100 percent for 1 percent of their ‘non-sensitive’ tariff lines. In all cases where developed country farm tariffs exceed 100 percent, increased market access must be offered, as provided in the draft agricultural modalities released by chair Crawford Falconer on 10 July.

According to that document, sensitive product tariffs above 100 percent must be compensated through a 0.5-percent quota expansion for the products in question (this is additional to the requirement that new market access opportunities, equivalent to 4 percent of domestic consumption, must be provided for all products designated as sensitive). Moreover, developed country Members entitled to maintain duties above 100 percent for some of their *non-sensitive* tariff lines (Iceland, Japan, Norway and Switzerland) must either:

- expand quotas for *all sensitive products* (instead of just those that exceed the tariff cap) by an extra 0.5 percent of domestic consumption, or
- reduce pre-Doha tariffs for the non-sensitive products concerned within three instead of five years, or
- cut pre-Doha tariffs for those products by five additional percentage points, i.e. by 75 instead of 70 percent.

It is safe to bet that the countries entitled to the 1-percent non-sensitive product exception will choose either option b) or c) rather than a), which would require a quota expansion for all sensitive products.

An analysis of the tariff structures of Canada, the European Union, Japan and the United States<sup>1</sup> leads us to conclude that the great majority products with post-Doha import duties above 100 percent will be designated as ‘sensitive’, and thus subject to the requirement of an additional 0.5 percent quota enlargement.

## Who Needs the Non-sensitive Exception?

If Canada applied the smallest possible tariff cut to its agricultural tariff lines (one-third of what would be required by the general formula), around 87 products would be left with tariffs above 100 percent. Some 90 percent of these would probably be designated as sensitive. None of the remaining 10 percent of ‘non-sensitive’ tariff lines would exceed 100 percent after the application of the 70-percent general formula cut required for pre-Doha tariffs in excess of 75 percent. Among the sensitive products with post-Doha tariffs above 100 percent would be: bovine meat, pork meat, poultry meat, buttermilk, cheeses, condensed and liquid milk, milk powder, ice cream, yoghurt, other dairy products, and whole and processed eggs. While the table overleaf shows additional quota expansion for some of these products, in most cases this would be small since the ‘partial designation’ calculation methodology for domestic consumption is narrow, and the 0.5 percent additional quota could turn out to be irrelevant.

For the United States, only 18 tariff lines would surpass 100 percent after the application of the smallest possible cut for sensitive products. All of these could be designated as sensitive, and pertain to the categories of peanut products, buttermilk and tobacco. Although the US has not presented its domestic consumption data for peanuts or tobacco (which could mean it does not consider these as sensitive), it is most likely that they will be so designated based on the high levels of protection these products have enjoyed historically. Should that not be the

case, the 12 tobacco tariff lines would be subject to the 70-percent general formula reduction and the 100-percent tariff cap would apply. The five peanut tariff lines, however, would be brought to below 100 percent after the 70-percent general formula cut. At six thousand metric tonnes, a 0.5 percent quota expansion for buttermilk would not present a significant advantage.

Forty-three EU tariff lines would remain above 100 percent after application of the greatest possible deviation from the general formula. Twenty-seven of these are likely to be designated as sensitive, and would belong to the following categories: beef, meat offal, lard, yoghurt, other milk products, preserved or conserved agaricus (‘button’) mushrooms, glucose and sugar. Only one ‘non-sensitive’ tariff line – in the meat offal category – would exceed 100 percent after the mandatory 70-percent general formula cut, and in this case the 100-percent tariff cap would apply. For sensitive products, such as beef and sugar, increasing the import quota by 0.5 percent of domestic consumption could prove of interest. For butter, however, it might be irrelevant.

Out of the four countries examined, Japan seems to be the most in need of the 1-percent exception. Applying the greatest possible deviation from the general tariff cut formula would leave 120 products with tariffs above 100 percent. Some 73 of these would very probably be designated as sensitive.

Seven of the remaining products would still have tariffs above 100 percent after the application of the general formula. These would be entirely covered by the 1-percent ‘non-sensitive’ exception, which for Japan amounts to 13 tariff lines. More than 100 percent post-Doha tariffs would be maintained on several types of dried beans, lard, buttermilk, condensed and liquid milk and milk powder, ice cream, yoghurt, other dairy products, peanuts, meat offal, pork, wheat, rice, starch and silk.

*Continued on page 12*

Potential additional quota expansion for sensitive products with tariffs above 100 percent (in metric tonnes)

	Quota 4% DC*	Additional 0.5% DC*	Total
<b>Canada</b>			
Cheeses	15.173	1.896	17.069
Codensed milk	1.677	210	1.887
Liquid milk	104.191	13.024	117.214
Butter	2.918	365	3.284
Eggs with shells	19.132	1.287	20.419
Poultry meat	41.425	3.553	44.978
<b>United States</b>			
Buttermilk	1.022	6	1.028
<b>Japan</b>			
Barley	91.987	10.349	102.335
Rice	347.683	41.772	389.445
Wheat	250.595	31.324	281.920
Peanuts	5.516	69	5.585
<b>European Union</b>			
Frozen beef	163.297	17.613	180.910
Raw sugar	391.152	51.015	442.167
Processed sugar	235.988	30.778	266.766
Mushrooms	7.715	964	8.680
Butter	75.135	2	75.137

\* DC refers to domestic consumption  
Source: INAI estimates

## Conclusion

It is highly likely that the immense majority of all products with post-Doha tariffs above 100 percent will be designated as sensitive, and most of those that are not will be covered by the 1-percent exception for non-sensitive tariff lines in major export destinations. The proposed tariff cap would thus result in little new market access in the four economies examined in our survey.

Nevertheless, further product-by-product analysis will be necessary to determine whether Latin American and other strong farm goods exporting countries should give up on their insistence on a tariff cap. At first glance it seems that a cap could be of interest for a limited number of products, but effective market access gains would be slight – to say the least – for most tariff lines of export interest.

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## ENDNOTE

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# Russia's WTO Accession Still Uncertain

Russia's on-again, off-again, bid to join the WTO will be discussed again in November, but expectations are low for a quick solution.

In the wake of wide-spread Western criticism of its actions in the Caucasian crisis, Russia announced in August that it would withdraw some commitments it had undertaken during its 15-year quest for WTO membership (Bridges Year 12 No.4 page 12).

After informal talks held with key trading partners in September, Russia's chief negotiator Maxim Medvekov said his government would not backtrack on agreements already submitted to the WTO secretariat. It could, however, stop honouring certain bilateral concessions made in the course of the accession negotiations, mainly in the area of market access for agricultural products, including chicken and beef. Mr Medvekov proposed to start consultations with trading partners on the changes Russia was seeking. He characterised the response as 'diplomatic', but gave no further details.

Few countries spoke at the brief informal meeting of the working party on Russia's WTO accession held on 18 September, and no one brought up the Georgian conflict. Members tentatively scheduled another meeting for early November to advance negotiations on unriveted topics, such as export duties, state trading enterprises and domestic support in agriculture.

## US, EU Weigh Course of Action

US Ambassador to Moscow John Beyrle told the Interfax news agency on 22 October that his country still considered Russia's WTO membership very important as a 'strategic matter', but added that it would take "concerted action by the Russian government to overcome the last obstacles." Specifically, he said the US was hoping that WTO Members would not have to "go back and renegotiate understandings we thought were settled already." A month earlier, Secretary of State Condoleezza Rice had warned in a speech to the German Marshall Fund that "Russia's bid to join the World Trade Organisation is now in jeopardy. And so too is its attempt to join the Organisation for Economic Co-operation and Development."

EU member states have requested the European Commission to provide a comprehensive review of EU-Russia relations, including the bloc's support for Russia's WTO accession. The commission will deliver the review ahead of a 10 November foreign ministers' meeting, which is expected to decide whether the EU should 'defreeze' negotiations suspended in August on a wide-ranging bilateral partnership and co-operation agreement. A summit between the two sides is scheduled for 14 November.

Securing a commitment that Russia will not impose new export taxes or raise the level of existing duties has been one of the EU's objectives in the WTO accession talks. That avenue now appears closed, and only a last-minute bilateral compromise can avert a massive export tax hike on unprocessed timber on 1 January 2009 (see related story on page XX).

Ongoing differences notwithstanding, former EU Trade Commissioner Peter Mandelson told a Reuters correspondent in September that it would not be in "anyone's interests to keep Russia out of the WTO for a day longer than is avoidable." Such a course of action would not only weaken Russia, but also represent a lost opportunity for European and other countries seeking new exports and investments, he argued. A number of EU countries share this view, but some recently acceded Eastern European members have reservations.

Both the EU and the US have held out a possibility of launching free trade negotiations with Georgia, although neither has explicitly committed to doing so. Meanwhile, the US is looking into expanding Georgia's access to its Generalised System of Preferences and the EU is preparing for negotiations on easing visa requirements. The two trading powers also accounted for the lion's share of the US\$4.5 billion aid package for the Caucasian country pledged by a donor conference in October.



# Welcome to the WTO Club! Where Do We Go from Here?

Heike Baumüller, Ratnakar Adhikari and Navin Dahal

The experiences of Nepal and Cambodia since their WTO accession give a glimpse of the challenges other least-developed countries could face upon joining the multilateral trading system. Much will depend on their commitment to domestic reform and effective external technical assistance.

On 23 July 2008, the WTO welcomed Cape Verde as its 153<sup>rd</sup> Member after eight years of negotiations. Director-General Pascal Lamy hailed the accession as an opportunity for the country to participate ‘more fully in the global economy’, providing Cape Verde ‘with a predictable and stable basis for growth and development’ shortly after the small African state managed to graduate from least-developed to developing country status in 2007.

The accession of Nepal and Cambodia in 2003 was greeted with similar enthusiasm. Five years on, how have these two least-developed countries (LDCs) fared in taking advantage of their WTO membership? While it is still too early to assess long-term socio-economic impacts, the countries’ experiences in the first years of membership provide an interesting insight to the challenges that other LDCs are likely to face after joining the WTO club.

Nepal’s and Cambodia’s membership bids were part of a broader strategy aimed at increasing and diversifying trade as a means of promoting economic growth and reducing poverty. Accession was also motivated by a desire to ensure predictable market access, become eligible for special concessions available to LDCs under WTO rules and receive technical assistance for trade development. However, in the short term at least, WTO membership seems to have had limited direct impacts on trade expansion or diversification. One reason is that both countries already had a liberal trade regime at the time of accession and enjoyed preferential access to many of their key markets. Nevertheless, WTO membership did increase predictability of non-preferential tariffs and other border measures, including assurance that no quotas would be imposed on their garment exports following the phase-out of the Textiles and Clothing Agreement in 2005. In addition, Nepal and Cambodia have joined other LDCs in the ongoing WTO negotiations in pushing for putting into practice Members’ commitment to provide duty- and quota-free market access for least-developed countries.

Compared to tariffs, non-tariff measures present a more significant obstacle to trade expansion for the two countries, in particular certain rules of origin requirements and safety and quality standards, which have prevented Nepalese and Cambodian exporters from taking full advantage of preferential market access. In addition, supply-side constraints (such as limited access to credit, poor infrastructure, the high costs of doing business and underdeveloped technological and human resource capacities) have limited their ability to increase and assure reliable supplies of their exports. The countries had hoped that WTO membership, where it acts as a lever for technical assistance and domestic reform, could help address some of these issues. In both regards, however, membership – at least in the first five years – has not lived up to expectations.

While multilateral and bilateral technical assistance activities have increased following the countries’ accession, they have not been sufficiently comprehensive and effective. Coordination among the various donors has been a particular challenge. Bilateral donors have tended to fund activities based on their national interests, such as the development of specific laws, often drafted by foreign experts based on model laws from the donor countries. Moreover, technical assistance has been unevenly distributed among beneficiaries, much of it channelled to ministries of trade and finance. Recently, efforts have been made in Cambodia to improve technical assistance provision through the Enhanced Integrated Framework for Trade-related Technical Assistance to LDCs, although the co-ordination process has been slow to get off the ground.

The impetus that WTO accession can provide for accelerating domestic economic, legal and institutional reforms to create a stable business environment and attract foreign direct investment is often seen as perhaps the most important benefit that LDCs can gain from WTO membership. In their accession packages, Nepal and Cambodia signed up to ambitious legis-

lative reform agendas, agreeing to pass numerous new laws and amending existing ones over the following three years. However, both countries fell far short of fulfilling their promises. By the end of 2007, Cambodia had adopted just 24 of the 47 laws/regulations while Nepal had enacted 3 of the 10 new laws and adopted 8 of the 25 amendments.<sup>1</sup> In the absence of an international monitoring and enforcement mechanism for the (rather unrealistic) deadlines, the momentum for reform quickly faded, compounded by limited capacities to draft, implement and enforce the laws/regulations and set up and manage the necessary institutions.

Nevertheless, WTO membership has served to put Cambodia back on the world and, importantly, investors’ map, which has likely contributed to the almost six-fold increase in foreign direct investment since the approval of the country’s membership in 2003.

The experience of Nepal, however, shows that WTO membership alone does not guarantee increased foreign investment (still stagnant five years later), let alone ‘growth and development’. Rather, it is just one of the many steps necessary to help poor countries integrate into the global economy. Accession needs to be followed up with effective technical assistance and commitment to domestic reform. It is the responsibility of the international community to hold both donors and newly acceded countries accountable for their promises.

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## ENDNOTE

<sup>1</sup>See <http://www.tradeknowledgenetwork.net> for full-length studies on Nepal’s accession by the Trade Knowledge Network.

# Aid for Trade Flows Largely on Target in 2006

Frans Lammersen

The fundamental aim of aid for trade is to help low-income countries overcome the structural barriers and weak capacities that limit their ability to benefit from emerging trade and investment opportunities. Donors have substantially increased such contributions since 2005.

The WTO Aid for Trade Initiative provides a framework to connect a gamut of assistance activities (from training negotiators to building roads) within a coherent trade and development strategy that is shared between development partners. When it concluded its work in 2006 the WTO Task Force on Aid for Trade recommended that “projects and programmes should be considered as aid for trade if these activities have been identified as trade-related development priorities in the recipient country’s national development strategies. [...] At the same time, clear ... benchmarks are necessary for reliable global monitoring of aid for trade efforts and ... to assess additionality.”

## Aid for Trade Flows Increasing

In 2006, total aid for trade commitments from bilateral and multilateral donors rose to US\$23 billion in real terms, compared to an average annual flow of US\$20.8 billion during the 2002-2005 baseline period. This constitutes a real growth of 10 percent, which is four times higher than the increase of total ODA minus debt relief. These figures only relate to official development assistance (ODA) and exclude non-concessional loans from the international financing institutions, which amounted to an annual average flow of US\$10 billion.

## Hong Kong Pledges Are Materialising

The average increase in aid for trade commitments from bilateral donors alone was 16 percent in 2006. Several donors, including Germany, the Netherlands, Spain and Sweden, increased their aid for trade programmes by more than 50 percent. Others, such as the EU, France, Ireland, Norway and the US expanded their programmes by more than one-third. Many of these significant increases in donor funding are in line with the aid for trade pledges some of these countries made during the 2005 Hong Kong WTO Ministerial Conference.

In the context of aid for trade, additionality means an increase in ODA that is not redirected from social programmes, such as health or education. In 2006, both aid for trade and aid to social sector programmes increased in volume. Assuming that the scaling up of total ODA will materialise, calculations by the OECD indicate that aid for trade could reach US\$30 billion in 2010 (based on stable relative aid for trade share in total ODA), while a doubling of ODA volume could result in an increase of US\$20 billion.

## Asia and Africa Biggest Recipients, Infrastructure Outlays Dominate

Asia and Africa continue to receive the largest volumes of aid for trade (respectively US\$10.5 billion and US\$7.5 billion). This comes as no surprise, as these continents are home to the highest global concentrations of poor people. Asia’s share in total aid for trade flows fell from 51 percent to 45.5 percent in 2006, although in volume the decline was only marginal. This was because flows to all other regions increased, most notably to Africa, where they grew by US\$1.3 billion; this raised Africa’s share in total aid for trade to 32.7 percent.

A remarkable development in 2006 was the doubling of outlays for regional programmes, from US\$2 billion during the baseline period to US\$4.2 billion. This doubling was spread more or less equally over all regions. On a global scale, this means that over 18 percent of all aid for trade is being disbursed through regional programmes. Commitments for global programmes also expanded in 2006, but at a more modest rate, i.e. 15 percent in real terms, reaching US\$1.6 billion.

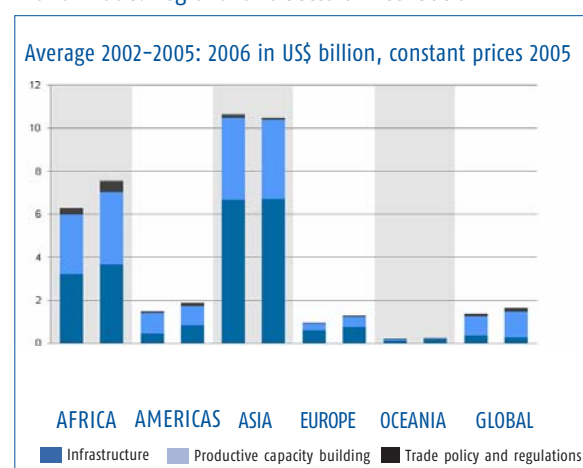
In terms of relative shares, aid for trade categories are fairly balanced between regions and income groups. Given the typically large size of economic infrastructure projects, aid to support these programmes naturally dominates overall aid for trade flows, particularly in Asia. In 2006, aid to economic infrastructure reached US\$12.2 billion, representing an 8.6 percent growth in real terms. Activities to enhance productive capacity, including trade development, reached US\$9.7 billion – an increase of almost US\$1 billion. Aid to finance technical assistance programmes aimed at deepening understanding of trade policy and trade policy regulations increased almost 60 percent, i.e. almost US\$1 billion. Most of this growth took place in the least developed countries of sub-Saharan Africa.

## Is Aid for Trade Working?

Despite initial scepticism and calls for the establishment of a dedicated financial facility, the initiative has so far been a success. More and additional aid for trade is being provided and most donors are on track to meet their Hong Kong pledges. However, maintaining this momentum requires explicit prioritisation of trade-related needs in the dialogue between donors and partners about national development strategies.

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## Aid for Trade: Regional and Sectoral Distribution



Source: OECD CRS

# FFD Review: Making Trade an Engine for Development?

Aldo Caliaari

In late November, member states of the United Nations will have an important opportunity to rethink how to fulfil the promise they made six years ago to place the needs and interests of developing countries at the heart of the multilateral trading system.

The Review Conference on Financing for Development, scheduled for November 29-December 2 of this year in Doha (Qatar), comes at a critical moment for the multilateral trade system. Six years ago in Monterrey, governments committed to the implementation of “the decisions of the World Trade Organisation to place the needs and interests of developing countries at the heart of its work programme.” Since then, however, the Doha Round, launched in 2001, has stalled several times, including a recent breakdown last July, and experts are rather pessimistic about its prospects. The current direction and scope of negotiations give reason to doubt the extent to which the ‘needs and interests of developing countries’ will ultimately be ‘at the heart’ of the round’s outcome.

## The Doha Round and the FFD Review

In the almost seven years since the Doha WTO Ministerial that launched the new round, global trade has grown a startling 70 percent. This contradicts the assertion that market access negotiations in the WTO are essential to global trade growth and, certainly, we no longer hear references to the ‘bicycle theory’, so in vogue in the late 1990s. Clearly, achieving the larger global trade volumes that market access commitments usually enable, is not an issue. On the other hand, with soaring export volumes it has become clearer that harnessing trade for development and poverty reduction is what is proving elusive for developing countries. Against this backdrop, the FFD Review has much more potential to deliver progress on developing countries’ trade interests than a conclusion to the Doha Round.

Indeed, the mandate of the WTO as an organisation fundamentally centred on market access exchanges sets inherent limitations to what it can do to address fundamental issues developing countries face in trying to cash in on the developmental benefits of trade. In contrast, the Financing for Development process has endeavoured, from the very beginning, to place all sources of finance—including trade—in a framework of development.

Moreover, the Monterrey Consensus recognised that the question of making trade work for development was not one that could be solved by trade measures alone. The overarching mandate of the process it set up was to achieve coherence and consistency among the trade, financial and monetary systems, an approach that fora with purely trade competences, such as the WTO, are not equipped to take. The comprehensive agenda of the conference, suitable to addressing the linkages among different sources of finance, and its multi-stakeholder nature, provide the right framework for facing trade issues in a holistic manner.

## The Trade – Finance Linkage

In assessing implementation of the trade and other chapters, the FFD Review should give central attention to the linkages between trade and other policy areas. This is where its policy insights can make a big difference in multilateral (but also regional and bilateral) negotiations on trade and investment. Some of these are:

- To maximise trade’s contribution to building domestic capital in the long term it is crucial to inquire about the quality of exports (value-added, technology and skills content) that can generate revenue for development. Likewise, the nature of the investment regime in which export revenues are generated is critical. As shown by UNCTAD, the bulk of the windfall gains from higher commodity prices is being drained by increased profit remittances, rather than going to use by the commodity-producing countries.
- High levels of exchange rate volatility in the world economy continue to disproportionately affect the trade performance of developing countries as compared to developed ones. Preventing the negative impacts of such volatility on domestic investment processes and access

to external finance for export-oriented projects, is a precondition for countries to build and profit from trading capacity.

- Foreign direct investment is highly sought by developing countries as a way to overcome debt problems and chronic balance of payments deficits. But the more ‘successful’ the foreign direct investment, the more liabilities it will generate, thereby increasing the pressure on the balance of payments. The growing number of investment provisions in both trade and investment agreements are not guided by a proper assessment of the policy tools needed to manage such outflows and to ensure that FDI supports, instead of undermines, a healthy balance of payments.
- No country can succeed in the trading system without an infrastructure level that makes its production competitive. Rightly, developing countries have been claiming the need to enjoy more ‘fiscal space’ to accommodate infrastructure financing needs. But, in far too many countries, a large debt overhang bears witness to the dangers of governments jumping into trade-related infrastructure ventures without a proper assessment of the real trade gains that can be expected. The situation is compounded when the risks are borne by public sector resources that could have otherwise supported pressing social needs, while the revenues accrue to private providers as return on riskless investment.
- Aid for Trade can play an important role in helping developing countries that choose to develop through trade overcome some of the obstacles to do so. But Aid for Trade cannot be approached as a mere add-on to a flawed trading system in the hope it will fix its imbalances. While it would be undesirable to link aid to trade negotiations in any way, it would be equally mistaken to leave aid and trade policy-making run their separate ways. Only a realistic and joint assessment of what both aid and trade can achieve will provide a sound basis for approaching the

*Continued on page 16*

design of both trade and aid policies, but this joint assessment has so far been missing. Trade negotiations far too often overestimate the impact aid can make, while aid commitments are, in many cases, based on flawed assessments of what trade's income-generating potential for developing countries really is.

- Recently, it has become common practice to insert clauses in bilateral trade agreements that limit the ability of the parties to adopt exactly the type of measures that, in the light of the lessons learned from the East Asian financial crisis, are necessary for the prevention and resolution of financial crises. The newest US free trade agreements, for example, contain provisions limiting the ability of sovereign parties to restructure their debt, magnifying the uncertainties should a sovereign default occur.
- Multilateral and bilateral financing agencies continue to exert enormous influence on the trade and investment negotiating space of countries that receive their financing, a constraint obviously spared for countries not in need of such assistance. For instance, the OECD-led Aid Effectiveness agenda is seeking to condition assistance on countries opening up their government procurement. This would represent a unilateral concession that developing countries have been unwilling to make in open multilateral negotiations. How could this inherent asymmetry be recognised and factored in trade negotiations? What are their implications for the trade-related activities of institutions such as the World Bank and the IMF, or the conditionality frameworks guiding aid harmonisation processes? Should creditor-controlled institutions such as these be allowed to interfere in the domestic policy space in areas that are under negotiation as trade?

The FFD Review is in a privileged position to make recommendations so, as stated in the Monterrey Consensus, "trade plays its full part in promoting economic growth, employment and development for all." For the sake of the multilateral trading system, it is imperative that it does. But this will only happen if the conference chooses to tackle the right issues.

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## Costa Rica's Long Road to CAFTA

Costa Rica's accession to the free trade deal it concluded with the US in 2004 has hit another delay, this time over the constitutionality of its implementing legislation.

With the exception of Costa Rica, the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA) has already entered into force for all other parties to the treaty, i.e. the Dominican Republic, Guatemala, El Salvador, Honduras, Nicaragua and the US. In Costa Rica, however, large-scale opposition led the government to delay the congressional ratification process until the agreement was approved by popular referendum in October 2007 (Bridges Year 11 No.6 page 17).

Since then, the Costa Rican Congress has approved twelve pieces of implementing legislation. However, the thirteenth and last bill – on the implementation of DR-CAFTA intellectual property provisions – has run into strong opposition. On 11 September, the country's constitutional court ruled that the draft legislation was unconstitutional because the government had not consulted indigenous people about an amendment that would have allowed patenting of traditional knowledge under certain circumstances.

Article 78 of Costa Rica's Biodiversity Law explicitly states that intellectual property protection obligations do not apply to inventions "essentially derived from knowledge which is associated with traditional or cultural biological practices in the public domain." Article 66 of the same treaty recognises the right of local communities and indigenous peoples "to oppose any access to their resources and associated knowledge, be it for cultural, spiritual, social, economic or other motives." In addition, ILO Convention 169 Article 6.1 (a) requires governments to hold such consultations "whenever consideration is being given to legislative or administrative measures which may affect them directly."

After the Constitutional Court's September verdict, the government removed the amendment from the CAFTA implementing legislation. Although the Costa Rican Congress approved the revised law, the opposition Citizen's Action Party (PAC) sent it back to the judiciary for another opinion on its constitutionality. In particular, the PAC claims that the government had ignored the court's previous recommendation to consult with indigenous people, and should still do so before finalising legislation. According to most estimates, indigenous people account for about 1 percent – or some 35,000 individuals – of Costa Rica's total population of 3 million.

If the Constitutional Court agrees with the opposition, the accession process could be held up for several weeks if not months, partly because the law would need to be translated into native languages. The court should issue decision before 20 November.

The US and other CAFTA partners have agreed to give Costa Rica until 1 January 2009 to pass implementing legislation. As the original deadline of 1 March 2008 had already been extended once to 1 October, there are some doubts about a further prolongation.

Even if the legislation is approved by the year's end, Costa Rica may face a long wait before CAFTA enters into force, as Peru has learned to its cost.

### US Wants More from Peru on Pharmaceuticals, Logging

Although the Peruvian Congress overwhelmingly ratified its free trade agreement with the US in June 2007 and US legislators approved it in December 2007, the Bush administration has yet to certify that Peru's implementing legislation fulfils the treaty's obligations. Problems have arisen with regard to Peru's pharmaceutical patent regulations, including protection for clinical test data and procedures to solve conflicts regarding patent infringements before a generic version of a brandname drug is released to the market. US officials also say that the Peruvian Congress has failed to amend the penal code so that it requires stiffer prison sentences for individuals found guilty of illegal logging.



## Trouble in the Andes

The Andean Community is struggling to maintain at least a semblance of unity in the face of fundamental differences regarding foreign trade.

The rift deepened further in September when Colombia and Peru formally requested the European Commission to negotiate bilateral free trade agreements with them. Last June, The EU suspended talks on region-to-region Association Agreement launched in September 2007 due to growing internal dissension within the Andean Community of Nations (CAN), which consists of Bolivia, Ecuador, Colombia and Peru.

Wary of trade liberalisation in general, Bolivia and Ecuador object in particular to the EU's insistence that the trade 'pillar' of the agreement cover intellectual property, investment and public procurement. They also maintain that the EU must take into account CAN members' different levels of development in market access negotiations, i.e. give the two poorer members of the bloc more flexibility in terms of the scope, depth and timeframe of tariff cuts.

Frustrated by the deadlock, Colombia and Peru argued that the EU should abandon the 'bloc-to-bloc' approach it had hitherto insisted on the grounds that it would reinforce Andean integration. The two countries noted that the bilateral avenue had already been 'successfully tested' in the separate free trade pacts they had concluded with the US, which also originally tried negotiate an agreement with the CAN as a whole.

Bolivia blasted Colombia and Peru for putting external free trade ahead of Andean integration, charging that their negotiating teams had never really believed in the regional approach, and had provoked its fall in order to force the EU to negotiate bilaterally.

### Summit Reaches Thin Compromise

At an emergency summit held in Guayaquil on 14 October, CAN members papered over the widening cracks in the Andean edifice. The meeting adjourned after just three hours with a decision that the four countries would try to persuade the European Union to negotiate with all four countries as a bloc on the political and development assistance pillars of the future Association Agreement, while only Colombia and Peru would participate in talks on the trade liberalisation component of the pact.

CAN heads of state hope to put the two-track solution, which preserves at least an appearance of Andean unity, to European Commission president José Manuel Barroso in late October. While it is not yet known whether the EU is willing to include Bolivia and Ecuador in the talks without addressing the trade pillar, the commission has already indicated its readiness to resume negotiations with Colombia and Peru with a view to concluding 'ambitious, comprehensive, WTO-compatible' agreements in the first half of 2009. The negotiations would remain open to all Andean countries that share this goal, Mr Barroso said.

### Community Remains Shaky

Despite the show of common purpose in Guayaquil, a source from the region told Bridges that with respect to trade the Andean Community was already 'virtually nonexistent'. Chile withdrew from the bloc in 1976 and Venezuela followed suit in 2006. Ecuador severed diplomatic relations with Colombia in March, and Colombian president Alvaro Uribe boycotted the October summit held on Ecuadorian soil (the country was represented by a delegation headed by the vice minister of foreign trade).

Although the Andean Community is a customs union on paper, the application of common external tariff (CET) has been postponed countless times since the decision to adopt one was made in 2002. In a communiqué to the Guayaquil summit, industry associations from the four countries noted that after nearly 40 years of integration, a true customs union seemed 'unworkable', and recommended replacing the policy with more flexible tariff mechanisms that permit safeguards in 'exceptional cases'.

## ATPDEA Update

President Bush has signed into law a one-year extension of the Andean Trade Promotion and Drug Eradication Act (ATPDEA) for Colombia and Peru, both of which have concluded free trade agreements with the US. The Colombian agreement is currently stalled in US Congress, while Peru is still waiting for US certification of its implementation measures before the FTA can enter into force.

Trade benefits for Bolivia and Ecuador, however, were only renewed until end-June 2009. A number of influential Republicans, including Senator Charles Grassley, had favoured terminating preferences for the two countries, which they see as hostile to US economic and political interests (Bridges Year 12 No.4 page 18).

In practice, Bolivia is unlikely to draw any benefits from the ATPDEA prolongation. On 31 October or soon after President Bush is expected to formally suspend the Bolivia's designation as an ATPDEA beneficiary country "based on the Bolivian government's failure to meet the programmes' counter-narcotics co-operation criteria."

The Bush administration has denied that the move is motivated by Bolivia's left-leaning politics. Secretary of State Condoleezza Rice told journalists on 23 October that there was "no ideological test for co-operation and friendship with the United States." Instead, she said that the decision was based on Bolivia's lack of action in curbing coca production despite repeated warnings that this could jeopardise its ATPDEA benefits.

In mid-September, President Bush designated Bolivia as a country that had 'failed demonstrably' to live up to its obligations under international counter-narcotics agreements. For instance, cocaine production had increased markedly and the government had publicly vowed to increase government-sanctioned coca cultivation. On 11 September, Bolivia expelled US Ambassador Philip Goldberg, accusing him of fomenting civil unrest.

## European Governments Differ on Climate Change Action

The European Union is in danger of losing its self-assigned role as the champion of climate change mitigation with member states increasingly worried about the economic implications of taking on far-reaching commitments.

European heads of state agreed in October to maintain the EU's current greenhouse gas reduction targets and timelines. They resolved to adopt new legislation in December 2008, spelling out the obligations and incentives through which countries and industries would reach the goal of bringing CO<sub>2</sub> emissions 20 percent below their 1990 level by 2020. By that date, renewable energy should account for 20 percent of the EU's overall energy mix and energy efficiency should be improved by 20 percent.

However, commitment to these targets, and ways to achieve them, remains tenuous. Going into the October summit, coal-dependent Poland – backed by seven other recently acceded Eastern and Central European countries – threatened to veto the initiative. The coalition signed on to it only reluctantly once European leaders agreed that the final legislative package would 'have regard' to each member state's specific situation. Polish Prime Minister Donald Tusk told a news conference that EU leaders had agreed to adopt the final climate package by consensus rather than the qualified majority that is usually required.

Concerned about the competitiveness of their energy-intensive industries in an economic downturn, Germany and Italy also called for reconsidering the targets. "We do not think that now is the time to be playing the role of Don Quixote, when the big producers of CO<sub>2</sub>, such as the United States or China, are totally against adherence to our targets", Italian premier Silvio Berlusconi said.

Both the European Commission and Parliament are still working on the legislation. Its central pillar is an emissions trading system (ETS), through which polluting industries will be required to buy carbon allowances. The legislation will detail which industries will be concerned, when they will be required to purchase emission rights, the extent to which they could offset emissions through financing greenhouse gas reduction or forest conservation projects in de-

veloping countries, how the revenues of the ETS would be spent and a myriad of other details.

Just a week before the EU summit, the European Parliament's environment committee voted in favour of three reports on the main elements of the future climate package: emissions trading, greenhouse gas reduction 'effort' sharing and CO<sub>2</sub> capture and storage.

### Banking on an International Agreement

The texts are heavily predicated on countries reaching a new international agreement covering greenhouse gas reductions after the Kyoto Protocol expires in 2012. For instance, the committee said that half of the money amassed through the auctioning of EU emissions rights should be earmarked for an international fund to assist those developing countries that have ratified the post-Kyoto instrument in reducing their greenhouse emissions and adapting to climate change. If such a treaty is in place, European companies could offset 5 percent of their emissions through investing in forest preservation in developing countries. In addition, the EU should increase its 2020 greenhouse gas reduction target from 20 to 30 percent if an international climate change deal is reached in Copenhagen in 2010 (see page 22).

In the absence of a new international treaty and binding sectoral agreements, the European Commission should examine the feasibility of including importers of energy-intensive goods in the emissions trading scheme, or setting up a border adjustment mechanism, the committee said. This, of course, is what developing countries fear will happen. Border measures taken unilaterally to protect domestic industries (import duties, obligation to buy emissions allowances and the like) are among those where multilateral trade rules are most likely to clash with WTO Members' efforts to tackle climate change.

### Power Sector Targeted

With regard to internal measures, the environment committee proposed that power-generation plants should buy permits for all their emissions as of 2013. The committee also backed a controversial proposal to finance 12 large-scale demonstration plants on carbon capture and storage (CCS). A proposed new limit for power sector emissions would in practice oblige coal-fired power plants in particular to equip themselves with CCS technology after 2015. Critics claim the technology is too expensive (around €1 billion per installation) and that the output of CCS-equipped plants is significantly smaller than that of conventional producers.

Energy-intensive industries – such as steel, cement and chemical producers – would have until 2020 before needing to pay for the totality of their emissions. The longer transition period would allow a degree of protection to companies most vulnerable to competition from manufacturers in countries with less stringent climate change policies.

### Beware of Carbon Leakage

Industry lobbies slammed the committee's draft legislation. Hammering on the theme of 'carbon leakage', they maintained that the proposed measures were too costly and would put EU producers at a disadvantage vis-à-vis those in Asia and elsewhere, causing companies to either go bust or relocate to countries with laxer environmental standards. Summing up the lobby groups' position, Patrick de Schrynmakers of the European Aluminium Association said: "Europe will export jobs and import energy intensive products, with no environmental gain."

Many now fear that accommodating the 'specific concerns' of member states in the climate change package would create dozens of exceptions for sectors such as coal-based power generation, steel, aluminium or chemicals and thus weaken the EU's emissions trading scheme, as well as the likelihood of achieving the 20 percent reduction target.

# EU, Former Colonies Sign First New Generation Trade Pact

After nearly seven years of negotiations, the Caribbean has become the first region to sign a comprehensive economic partnership agreement (EPA) with the European Union.

The EU and thirteen of the fifteen Caribbean Community (Caricom) member states<sup>1</sup> formally signed the agreement on 15 October. The EPA covers trade in goods and services, as well as commitments in areas such as intellectual property protection, investment, government procurement, and protection of labour rights and the environment.

With regard to trade in goods, the EU will immediately remove all tariffs and quotas on all Caribbean exports, except for sugar and rice, which will get full duty- and quota-free access by October 2009 and December 2009 respectively. The Caribbean will offer duty-free access to 61.1 percent of EU goods within ten years. The percentage will rise to 82.7 percent after 15 years and to 90 percent in 2033. The remaining 10 percent of Caribbean tariff lines – mostly, but not exclusively, agricultural products – will not be liberalised at all.

While services markets will be opened more gradually by both sides, the European Commission has pointed out that the EU's commitments under the Caribbean partnership treaty go "far beyond anything offered by Europe in any other trade agreement."

Caricom countries will be able to draw €165 million from the EU's Development Fund between 2008 and 2013, and a development co-operation declaration commits the EU to using its Aid for Trade financial support to help Caribbean countries implement the EPA.

## Unease over MFN Clause

One controversial element in the new agreement is the so-called most-favoured-nation (MFN) clause, which requires all parties to extend to each other any EPA-plus market access terms that they negotiate with other significant economies in the future. The application of this principle will apply to agreements with all 'major trading economies', i.e. those whose exports account for more than 1 percent of the world total individually, or 1.5-percent collectively if the free trade agreement is signed with a group of countries. While the MFN clause is a standard requirement of all comprehensive EPAs, parties may waive the obligation by mutual consent.

In February 2008, Brazil drew the WTO General Council's attention to this provision, which it said could seriously impact South-South trade as ACP countries would not have "any incentive to negotiate agreements with other developing countries containing market access conditions that are more favourable than those the EU might enjoy." Likewise, the MFN obligation would discourage non-ACP developing countries from entering into free trade agreements with ACP states if the preferential market access they offer would automatically be extended to the EU (Bridges Year 12 No.1 page 8). In practice, the MFN clause is likely to have an impact on potential future ACP trade agreements with developing countries such as Brazil, China, Mexico, Malaysia, India and Indonesia.

## Guyana Obtains Mandatory EPA Reviews

Guyana, which had held out due to fundamental reservations about certain aspects of the treaty, signed on a week later. Among the country's main concerns were the inclusion in the EPA of such issues as services, investment, government procurement and competition policy, as well as the MFN clause. In addition, Guyana had expressed unease about "the absence of provisions to address supply side deficiencies [including] its anti-developmental character and its propensity to be inimical to Caribbean integration."

Guyana's President Bharrat Jagdeo said his country had decided to join the pact "in the spirit of compromise and given our strong commitment to regional integration and solidarity" after the EU agreed to a mandatory review of the agreement every five years, and committed to making changes if it was found to have adverse impacts. This, Mr Jagdeo stressed, was a 'huge development' that would benefit the entire region.

President Jagdeo was less successful in obtaining the EU's commitment to giving precedence to the revised Chaguaramas Treaty, which establishes a Caricom single market and economy. The EU promised only to take the treaty 'into account' in reviewing the EPA.

Haiti is also likely to join the Caribbean EPA in the near future even if, as a least-developed country, it can keep its duty- and quota-free market access to the EU without signing on to the region-wide pact.

## Other EPAs: Not Until 2009

Roughly half of the ACP's 79 members countries initialled (but did not formally sign) 'interim' agreements covering only trade in goods at the end of last year. Had they not done so, they would have lost long-standing preferential market access to the European Union since the WTO waiver that allowed the EU to treat ACP states more favourably than other developing country WTO Members expired on 1 January 2008.

The EU's original intention was to conclude negotiations on 'comprehensive' EPAs – such as that now signed by the Caricom bloc – with five other regional ACP groupings by end-2008. However, EU Development Commissioner Louis Michel admitted in September that it would take at least an extra year before the deals could be wrapped up.

Some WTO Members, including Brazil, have noted that the interim agreements are in a 'legal limbo', since they have not been signed, ratified or notified to the WTO. The EU stressed that the signing of the full Caribbean EPA made trade relations between the two blocs "safe against legal challenge by other developing countries."

## ENDNOTE

<sup>1</sup> Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Suriname, and Trinidad and Tobago.



## IGC Update

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) failed yet again to agree on the way forward in October.

While a number of countries saw the establishment of the IGC nearly eight years ago as a developed country ploy to deflect growing pressure at the WTO to address concerns about the misappropriation of genetic resources and traditional knowledge, others pinned their hopes on this alternative forum for breaking a long-standing deadlock. Whatever their objectives, most delegates to the committee's 13<sup>th</sup> session left the meeting with an acute sense of frustration.

All parties to the October meeting professed their commitment to protecting traditional knowledge and folklore/traditional cultural expressions, as well as addressing the misappropriation of genetic resources, but familiar faultlines quickly emerged: most developing countries favoured international legally binding measures, while developed countries emphasised the need for further analysis and expressed a preference for non-binding measures, particularly at the national level.

Members of the African Group were particularly disheartened by the outcome in view of the efforts and substantive proposals they had made.

Despite the setback, IGC chair Rigoberto Gauto Vielman expressed confidence that differences on how to advance the committee's work would be overcome. He promised to undertake informal consultations in the coming weeks with WIPO member states and observers, including representatives of indigenous and local communities in the process.

Much of the IGC's latest session focused on procedural issues for its next meeting in March 2009. The committee's current mandate runs out in September 2009, when the WIPO general assembly will decide whether it should be extended.

## Concern Grows over New IP Agreement

*A new international treaty on the enforcement of intellectual property rights may see the light of day before the year is out despite serious misgivings from the public.*

Negotiations on the Anti-counterfeiting Trade Agreement (ACTA) between Australia, Canada, the EU, Japan, Mexico, New Zealand, South Korea and Switzerland and the US started in October 2007 with the goal of curbing counterfeiting and piracy of copyrighted and trademarked goods through stronger laws, closer cross-border co-operation in law enforcement and the adoption of practices that make IPR protection "real and effective, such as encouraging consultations with right-holders and specialisation in the IP law enforcement system" (Bridges Year 11 No.7 page 22). The pact is being negotiated independently of any international frameworks, such as the World Intellectual Property Organisation (WIPO), but will be open to other countries wishing to participate.

While the talks have reportedly progressed on schedule, little is known of the contents of the treaty, which has strong backing from the movie, music, software and fashion industries. There is widespread concern over potential infringements of ordinary citizens' privacy, including border searches of laptops and music players, or turning internet service providers into 'copyright police' instead of making it the business of copyright owners to track abuses.

On 17 September, two US-based citizens' organisations sued the Office of the US Trade Representative under the Freedom of Information Act for not granting them access to ACTA-related agency records. The Electronic Frontier Foundation and Public Knowledge alleged that USTR was withholding information on the participants, meeting agendas, memoranda and other relevant documents. Together with some 100 public interest groups they have called on ACTA negotiators to immediately publish the draft text of the agreement.

The signatories argue that "secrecy around the treaty negotiation has fuelled concerns that its terms will undermine vital consumer interests." Among such concerns, they cite potential ACTA provisions that could require Internet service providers to monitor all consumers' Internet communications; interfere with fair use of copyrighted materials; criminalise peer-to-peer electronic file sharing; and undermine access to low-cost generic medicines.

With regard to access to medicines, the groups say they fear ACTA provisions could:

- interfere with legitimate parallel trade in goods, including the resale of brand-name drugs;
- impose liability on manufacturers of active pharmaceutical ingredients if they are used to make counterfeits, which could make manufacturers reluctant to sell to legal generic drug makers;
- improperly criminalise acts not done for commercial purpose and with no public health consequences; and
- improperly divert public resources into enforcement of private rights.

"Because the text of the treaty and relevant discussion documents remain secret, the public has no way of assessing whether and to what extent these and related concerns are merited," the groups said in a press release. They also maintained that the situation was made worse by "the perception that lobbyists from the music, film, software, video games, luxury goods and pharmaceutical industries have had ready access to the ACTA text and pre-text discussion documents through long-standing communication channels."

Some US politicians have also raised concern over the agreement. In October, Senators Patrick Leahy and Arlen Specter of the Committee of the Judiciary wrote to Trade Representative Susan Schwab that they feared the treaty could "limit Congress's ability to make appropriate refinements to intellectual property law in the future" if it was not drafted with sufficient flexibility. Their worries were compounded by the lack of transparency of the negotiations and the speed with which the process was moving, the authors said. They also urged USTR "not to permit the agreement to address issues of liability for service providers or technological protections measures," which are being debated in US courts and Congress.



# Foreign Trade Regulation and Russia's Forestry Industry

Roman Romashkin

Measures taken in recent years to strengthen and modernise the Russian forestry sector have produced some positive results, but they have also aggravated the already precarious situation of the timber cutting industry and complicated relations between the Russian Federation and the EU.

Russia accounts for 22 percent of the world's timber resources, and more than a half of these are exploitable. The annual natural growth of timber resources reaches more than 900 million cubic metres. Mature and over-mature forest stands are estimated at 570 million cubic metres, but less than 33 percent of such forests are harvested annually.

The output of the forestry sector (including logging, pulp and paper and timber processing industries) represents a little over 3 percent of Russia's total industrial production. Output figures are still well below their 1990 levels. In 2006, production of raw timber was down by more than 60 percent and that of processed logs by 70 percent. Pulp output decreased by 30 percent, while paper production declined by more than 20 percent. The situation is most difficult in the logging sector – the source of raw materials for timber processing and paper and pulp industries.

## Foreign Trade in Timber

Russia is a net exporter of forestry products, with the value of exports more than twice that of imports. Raw unprocessed logs (round timber) and cheap processed timber products account for roughly 60 percent of export value. In terms of volume, Russia exports about 30 percent of its timber production as unprocessed raw timber, while export of finished timber items represents only 5 percent.

Finland, China, Japan and Sweden are the main importers of Russian round timber. Eighty percent of the country's cellulose production output is exported, with more than a third destined to China. The export-orientation of the paper and pulp sector is associated with the low capacity of Russian paper and cardboard producers.

Its huge forest resources notwithstanding, Russia imports fairly substantial amounts of pulp and paper products. This is due to both economic considerations (it is often cheaper to use imported inputs at facilities located far away from domestic suppliers) and to the lack of Russian inputs of sufficient quality. For instance, Russia does not produce certain types of high quality paper, which represent a major share of imports. The main suppliers of inputs are Germany, Finland and Italy, whose share of total imports reaches about 40 percent.

## State Forestry Development Policy

The low level of vertical integration of production facilities, lack of necessary technologies and equipment, low production capacity, lack of investment resources and implemented customs policy are among the factors that to a large extent explain the low competitiveness of Russian processed timber products in the world market. In response to these concerns, the government passed decrees in March 2006 aimed at restricting the export of raw timber and developing domestic processing capacity.

On 31 May 2006, the export tax on raw coniferous timber was raised to 6.5 percent, but no less than €4/m<sup>3</sup> (earlier, the rate was set at no less than €2.5/m<sup>3</sup>). In July 2007, the duty rose to 20 percent of declared value (but not less than €10/m<sup>3</sup>). Since April 2008, the minimum export tax has stood at €15/m<sup>3</sup>, and as of January 2009 it will reach 80 percent of declared value of round timber or at least €50/m<sup>3</sup>.

These policies are expected to reduce export of raw timber substantially and promote export of products with a higher added value. Indeed, foreign trade statistics show that the volume of exported round timber decreased (by 3.6 percent) for the first time in several years in 2007, while processed timber exports grew by 10 percent compared to 2006. The value of exports also

increased in almost all categories of timber, pulp and paper products.

In parallel with the round timber export restrictions, import duties have been eliminated on forestry-related technological equipment and export taxes have been brought to zero on processed timber, pulp and paper. These measures facilitate modernisation and improve the competitiveness of the domestic industry. According to government estimates, development of the forestry sector would require investments worth at least US\$44 billion over the next 12 years. Companies have already been given incentives to invest in deep timber processing.

In addition, a law in force since 2007 introduced new rules on forest use and stricter provisions to combat illegal logging.

While these measures are aimed at improving the situation of the Russian forestry sector, they have had some political consequences. In particular, the round timber export restrictions have complicated economic relations between the Russian Federation and several EU members.

## EU Economic Interests

The EU has repeatedly raised concerns over the export tax hikes for raw timber. Although it acknowledges Russia's right to impose such duties, the European Commission has emphasised the negative impact of these measures on the economic interests of Nordic pulp and paper producers, which buy a substantial share of their raw materials in Russia (Bridges Year 12 No.4 page 21). While Finland and Sweden insist that the increase of export duties should be cancelled, the EU has proposed that Russia establish specific duties for all types of timber at negotiated rates.

It is worth noting that China – another major importer of Russian round timber – has taken a radically different approach to

*Continued on page 22*

the export duties increases. Unlike the EU, it is ready to expand economic co-operation and implement joint timber-processing projects within Russia.

In light of their firmly held positions, finding a compromise between the Russian Federation and EU will not be easy despite the Russian concession to postpone the export duty increase for birch and aspen pulpwood until 2011.

### Problems Remain

Russian businesses have given mixed responses to the measures taken to promote deep timber processing. There are some grounds for concern.

First, the export restrictions may result in sharp price declines for the products of Russian logging companies, which in turn may cause a reduction in timber output. As a result, Russian suppliers may lose their foreign markets and substantially reduce supply of timber products to the domestic market. Export losses would immediately aggravate the already shaky financial situation of logging facilities and organisations. Small producers, which account for about 90 percent of round and processed timber products, might be particularly strongly affected. Should their financial situation worsen, the consequences will not be limited to economic problems; social conflicts are likely as well.

Second, in addition to timber processing, it is imperative to prioritise the development of logging operations. Road infrastructure must be improved to allow the exploration of new forest areas, expand logging operations and improve their efficiency. Some estimates suggest that it would require up to 18 billion roubles (about US\$664 million) to carry out the work. Logging companies cannot address the problem alone, they need state support.

Third, it is unlikely that national production capacity for deep processing can be developed in a few years. Russian processing facilities cannot currently consume the amount of round timber equivalent to the volume exported earlier. At the same time, the development of modern pulp and paper plants will require investments in excess of US\$1 billion, long construction

periods (about five years) and payback periods of more than 10 years. In addition, the risks associated with establishment and development of companies must be taken account, and such risks are fairly high in contemporary Russia.

In conclusion, the measures taken to develop the forestry sector have sparked mixed reactions both nationally and internationally. The state policy poses a certain risk of further decline of forestry facilities. Moreover, it does not take into account regional specifics, as there are shortages of timber processing capacity in some regions while other regions face a short supply of raw materials. It is clear that under such circumstances solving the economic problems of the forestry sector will take several decades, not a few years. Little improvement can be expected without a well-designed long-term development strategy.

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## Three African Trade Blocs to Merge

Africa's three largest regional economic communities agreed in October to work toward establishing a free trade area that would span the length of the continent. The ultimate aim is to convert the arrangement into a single customs union.

The decision was made at summit of heads of state representing the members of the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). When realised, the free trade area and customs union envisaged by the leaders would stretch from South Africa to Egypt and from the Democratic Republic of Congo to Kenya, encompassing a population of over 527 million and a combined GDP of US\$624 billion.

Work on the matter will begin immediately. The leaders have given a special taskforce six months to develop a roadmap for the creation of the free trade area and the merger of the regional economic communities. A memorandum of understanding on the establishment of the FTA is to be developed within six months, and council of ministers will be convened within 12 months to determine the timeframe for the establishment of a single regional economic community. In addition, the leaders gave the three regional communities a year to co-ordinate their energy and transport plans.

Among reasons for creating the new free trade area, the leaders cited problems arising from the fact that most countries belong to more than one of the three economic blocs, which are at different stages of integration themselves. On average, every African nation belongs to about four of the continent's 30 regional trade arrangements,

Twenty-six African nations will be included in the merged COMESA/EAC/SADC free trade zone: Angola, Botswana, Burundi, the Comoros, the DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

The new free area is seen as an important stepping stone towards an all-encompassing African Economic Community, which was first envisaged in the Treaty of Abuja in 1991. It is hoped that the merger of the three main trade groupings will boost inter-Africa trade by creating larger markets and more opportunities for economies of scale, as well as strengthen Africa's voice in international negotiations, such as the WTO's Doha Round and the economic partnership agreements that most countries on the continent are currently negotiating with European Union (see related article on page 19).

# The Real Cost of Market Access

As trade integration has intensified over the past decade, market access has ceased to be solely about tariff liberalisation. Non-tariff barriers now pose at least as serious costs to exporters.

The reference in the Doha Work Programme to the need to address non-tariff barriers in the non-agricultural market access negotiations – pushed by developed countries steeped in the exportation of industrial products – is certainly a recognition of this fact. In the same vein, developing countries have argued firmly for reductions and stricter disciplines in domestic support in the agriculture negotiations.

As tariffs continue to decrease incrementally worldwide – either as a result of autonomous liberalisation or of international trade agreements – qualitative standards and regulations have significantly increased the cost of exporting to many destinations. Although often well-intended and legitimate, government-mandated technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures that are supposed to be consistent with the relevant WTO agreements have proved quite a challenge for small and medium-sized enterprises from developing countries in particular.

Privately set standards, mostly beyond reproach or dispute by governments, frequently pose even greater hurdles to developing country exporters. Such standards may be established, for instance, by retailers' or distributors' associations, or as part of a set of requirements to be able to participate in a vertically integrated, production-to-market chain. Measures such as these can spell the difference between an exporter's ability to compete in a trading partner's market or to gain any access to that market at all. The cost of compliance with both government-mandated SPS and TBT measures, as well as private standards, has over time become significant compared to tariffs (see related article on page 8).

The situation is compounded by the continuing domestic support that producers, particularly in the agricultural sector, receive from their governments. These programmes distort the conditions for competition faced by exporters in such markets. Although subsidies do not change the terms of market access as such, they do influence the nature of the competition, including the price which markets will tolerate. Exporters need to factor in the additional cost of specific subsidies when pricing their products for a particular market.

There appears to be value in a more accurate determination of the real cost of market access by consolidating the costs – tariffs, non-tariff barriers (SPS/TBT/private standards), the equivalent cost of competing against domestic support – faced by exporters. ICTSD has started an initiative that examines the possibility of establishing a 'composite index of market access' (CIMA) as a measure of the real cost of entry for a particular product in a country's domestic market. Initially, the exercise intends to develop a model for determining such an index for tropical products, with a view to exploring its applicability to other products in the future.

The seeds of this project were planted in December 2007 in Bahia during an ICTSD-ICONE dialogue on tropical products, where a primary outcome was a consensus to seek a more comprehensive tool for measuring the actual liberalisation in these products. For instance, what would be the actual cost to exporters of rice to Japan, if the cost of compliance with the country's SPS measures and its private sector-set standards for this product were duly taken into account alongside standard import duties? What if the cost to exporters competing against Japan's subsidies to its farm sector were factored in as part of the equation? Would the CIMA indicate the real extent – or lack thereof – of access? The approach of an appropriately refined CIMA model could be applied for other countries, such as the full cost of exporting rice to the US or bananas to Australia. One could very well extrapolate and see the value of a CIMA for a host of other products, including canned sardines and fish products to the EU.

Indeed, the time may yet come when a comprehensive measure for market access, such as the CIMA, will become the preferred currency for trade negotiations.

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

Nov. 7	Consultations on the Development Assistance Aspects of Cotton
Nov. 12	Meeting of Trade Finance Providers
Nov. 21	Dispute Settlement Body
Nov. 26-27	Committee on Agriculture - regular session
Nov. 27-28	Committee on Regional Trade Agreements
Nov. 28	Working Group on Trade and Transfer of Technology
Dec. 4	Committee on Agriculture - regular session
Dec. 5-8	Council for Trade in Services
Dec. 18-19	General Council

### Other Meetings

Nov. 29 to Dec. 2	Review Conference on Financing for Development
Doha	<a href="http://www.un.org/esa/ffd/doha/">http://www.un.org/esa/ffd/doha/</a>
Dec. 1-12 Poznań	Fourteenth Conference of the Parties to the UN Framework Convention on Climate Change <a href="http://unfccc.int/2860.php">http://unfccc.int/2860.php</a>

### New from ICTSD

[www.ictsd.net](http://www.ictsd.net)

Frederick M. Abbot. August 2008. Post-mortem for the Geneva Mini-ministerial: Where Does TRIPS Go From Here? ICTSD Information Note No.7

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Yamashita, Kazuhiro. September 2008. Implications for Japan of the July 2008 Draft Agricultural Modalities. ICTSD Programme on Agricultural Trade and Sustainable Development

### Forthcoming

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Dispute Settlement. 4 September 2008. Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities. Report of the Panel (WT/DS342/R)

Dispute Settlement. 22 September 2008. United States – Definitive Anti-dumping and Countervailing Duties on Certain Products from China. Request for Consultations by China (WT/DS379/1)

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Dispute Settlement. 16 October 2008. United States – Continued Suspension of Obligations in the EC-Hormones Dispute. Report of the Appellate Body (WT/DS320/AB/R)

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