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Facts and Figures

A World Bank report released in December examined the impact of the financial crisis on GDP growth across the world. Here are some of the key projections for 2009:

- Global GDP growth will slip from 2.5 percent in 2008 to 0.9 percent. Developing country growth is expected to fall from 7.9 percent in 2007 to 4.5 percent in 2009.
- For the first time since 1982, world trade will contract by 2.1 percent.
- Investment growth in the developing world is projected to fall from 13 percent in 2007 to 3.5 percent in 2009.
- Compared to 2008, GDP growth in 2009 is expected to drop from 8.4 percent to 6.7 percent in East Asia and the Pacific; from 5.3 percent to 2.7 percent in Europe and Central Asia; from 4.4 percent to 2.1 percent in Latin America and the Caribbean; from 5.8 percent to 3.9 percent in the Middle East and North Africa; from 6.3 percent to in South Asia; and from 5.4 percent to 4.6 percent in Sub-Saharan Africa.

Source: *Global Economic Prospects 2009: Commodities at the Crossroads*. The World Bank, 9 December 2008

So, What Next?

Yet another do-or-die moment passed in the Doha Round when a highly anticipated ministerial gathering was abandoned in December, leaving all actors perplexed about where to go next.

New negotiating texts released in early December failed to inspire confidence among WTO Members that ministers would succeed in clinching a framework deal on agriculture and industrial market access (see pages 5 and 7). Bowing to the inevitable, WTO Director General Pascal Lamy told the membership on 12 December that his consultations with capitals had not revealed “a readiness to spend the political capital” needed to reach an agreement. The US had particularly little room to manoeuvre after its main farming and manufacturing lobbies, as well as a bi-partisan group of senators, advised against a ministerial meeting. Indian officials also expressed serious doubts over the likelihood of achieving convergence. Traditional grumblings from mercantilist perspectives were promptly heard from many corners on the terms of the market access texts on the table.

Where to Now?

DG Pascal Lamy, in for a new term in office as the sole candidate, believes that the WTO’s main goal for 2009 should remain advancing the Doha Round, although he has also suggested stepping up work in monitoring trade measures taken in the wake of the financial crisis, trade finance and Aid for Trade (see page 4).

Many, however, think that the WTO has suffered from its near-exclusive focus on the perpetually faltering talks. Writing in the January issue of *Foreign Affairs*, trade researchers Aaditya Mattoo and Arvind Subramaniam argued that the issues now at stake in the round were marginal and distracted attention from “other matters of greater significance, such as the consequences for trade of misaligned exchange rates and environmental protection.” It was time, they suggested, “to start working on a new agenda that really matters instead of trying to resuscitate an inconsequential enterprise.”

Few would disagree that it would be a mistake to abandon the round altogether. Although the economic gains resulting from its conclusion now appear far smaller than what seemed possible when the round was launched seven years ago, a new multilateral trade deal still potentially offers the best bulwark against rising protectionism around the world (see page 2). Talks should continue to keep that possibility alive. Early implementation of available outcomes, such as trade facilitation, and of duty- and quota-free access for least-developed countries and would help keep the WTO relevant and bolster confidence in its ability to deliver development benefits.

Meanwhile, there is an urgent need to devote greater energy to finding responses to new challenges facing the international trading system – ranging from trade-finance linkages to food security to energy policy and, above all, climate change. Any serious move to curb greenhouse gas emissions through domestic regulations will most likely be accompanied by demands to offset the perceived harm to the international competitiveness of domestic industry. Setting up a viable global regulatory framework that makes international co-operation effective, such as the agreements envisaged to emerge from the Copenhagen climate summit next December, will require complementary and well-informed action from the WTO. In this context, it could be helpful to set up a working group, including all interests, to look both into the trade ramifications of climate change policies, and the challenges that climate change itself poses on trade.

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Bridges

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Institutional evolution, both within and beyond the WTO, has been relegated to the backburner for too long. The inequities of the dispute settlement system also require greater attention. It may well be time to convene a full Ministerial Conference, the WTO's governing body, to ambitiously re-engage in the review of these and other, broader, issues, as well as to take note of developments on the Doha front (see related comment on page 3).

Suspension, Standstill and Monitoring

Some have proposed suspending formal negotiations for a year to allow time for reflection while new administrations in the US, the EU and India define their positions on international trade. So far, such proposals have not garnered any government endorsements, although outgoing US Trade Representative Susan Schwab suggested in January that Members might "take a step back, review where we are in the Doha Round and to take some time to move it forward."

Most proponents of suspension have also called for a 'standstill', or a commitment to freeze current market access conditions for 12 months in order to avoid a slide to protectionism. India's WTO Ambassador Ujal Singh Bhatia, however, argued in a letter to the Financial Times that "a standstill on tariffs poses no pain for developed countries but demands significant restraint from developing countries" since the latter apply much lower tariffs than they are allowed to do while developed countries' applied and bound tariffs are close or equal to the their WTO commitments. To be meaningful, he said, any standstill should address all measures that have impacts on trade flows, including anti-dumping duties and subsidies doled out in industrial rescue packages.

Academics Richard Baldwin and Simon Evenett have suggested that WTO Members agree to report weekly on all increases in trade and investment protection, and pledge to wind them down within two years. The main problem of this approach is how to collect the data. WTO Members routinely flout existing notification obligations on controversial policies. Could they accept to monitor such measures through data submitted by exporting governments or companies?

Protectionism on the Rise

Leaders of the world's 20 largest economies gathered in Washington in November to co-ordinate responses to the financial crisis. They underscored the "critical importance of rejecting protectionism and not turning inward in times of financial uncertainty," and pledged to "refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing WTO-inconsistent measures to stimulate exports" for the next 12 months.

Pious words. While participants may not have WTO-inconsistent measures, they certainly have raised new barriers to trade in goods. In January, the EU reinstated export refunds for dairy products after having scrapped them in 2007. Many have taken action to ward off imports. India, for instance, has raised tariffs on steel, iron and soybeans. Indonesia now requires import licenses to control the influx of clothing, footwear and electronics. All of these measures are perfectly legal under current WTO rules. Meanwhile, there is strong pressure on the US Congress to include Buy American clauses in industry bailouts and the forthcoming massive stimulus package. Other countries could follow suit.

Use Coming Months to Rethink Trade

Political and business leaders will gather in Davos in late January under the theme of Shaping the Post-crisis World. The G-20, this time including President Obama, will meet again in London in April to assess how the pledges made in November have been kept and consider further action. These, and no doubt other, events will provide platforms for thoughtful discussion on the role of trade in the 21st century.

Although trade is not among the first preoccupations of the new Obama administration (see page 21), US engagement will be vital to efforts to ensure that the rules-based trading system continues to function and fulfils the development promises that featured so highly in the rhetoric surrounding the launch of the Doha Round. A WTO ministerial conference, held perhaps in early summer, could give President Obama's economic team an incentive to set multilateral trade policy objectives and reassume US leadership in international co-operation.

WTO Leadership Challenges in 2009

Carolyn Deere

When the WTO starts its work for 2009, three items must be at the top of the agenda: debating the role and mandate of the agency's Director-General, setting a date for a full Ministerial Conference this year in Geneva and forging a forward-looking agenda for that meeting.

In the absence of political direction – and consumed by the task of closing the Doha Round – the WTO secretariat and the Geneva-based negotiators who do much of the day-to-day work of the organisation have effectively been 'playing dead' with regard to how the WTO could respond to the challenges of climate change, the food crisis and ongoing financial mayhem. What should be the role of the Director-General in addressing these challenges? How can the WTO membership support that role? After over ten years of existence, what institutional changes are needed? What is the fall back strategy if the round fails? A ministerial meeting this year must address questions regarding a long-term vision for the multilateral trading system, including the WTO's role in global economic governance, the values it should protect and support, and the need for institutional reforms.

Ensure Debate on Mandate of the Director-General

On 31 December 2008, the deadline for the WTO's 153 Members to present nominations for the next Director-General of the organisation expired. The incumbent, Pascal Lamy, was the only nominee. The decision by WTO Members not to propose contenders to Lamy's quest for re-election signals, at best, their confidence in Lamy's continued leadership and, at worst, the perceived lack of viable alternatives. For many Members, there are also concerns about rocking the leadership boat given the uncertain political environment and the tenuous future of the Doha Round.

Were there to have been contenders for the WTO's top post, the formal process for the selection would have required each of the nominees to set out a clear agenda for their prospective tenure and to engage in several months of discussion with WTO Members until the end of March. The Members would then have embarked on a two month selection process, ending with the election of the agency's new head from a pool of candidates by the end of May 2009.

In the last two hotly-contested Director-General elections, such deliberative processes served as a vehicle for WTO Members and organised stakeholders – including business communities and NGOs across the world, as well as academics – to reflect on the performance of the organisation and debate how the multilateral trading system should address the myriad social, development and environmental challenges and expectations it confronts. This in turn helped build public understanding of the institution, boost public accountability and bolster the legitimacy of the multilateral trading system.

This year, with only one nominee at hand, WTO Members should nonetheless use the appointment process to vigorously debate the challenges facing the organisation and the changes the agency's head should pursue. They must then provide a clear mandate to the Director-General. Here, even in the absence of contenders, Lamy himself needs to demonstrate that he can be an agent for change by catalysing debate. He should seize the opportunity to explicitly and publicly present a forward-looking vision for the multilateral trading system, the WTO system and its secretariat, and propose a comprehensive action plan for his second term for Members to consider.

Commit to Ministerial Leadership

WTO Members must also commit to a full ministerial meeting early in 2009. Regular ministerial-level meetings are vital to the good governance, credibility and strength of any international organisation, most of which, like the World Health Organisation or the World Intellectual Property Organisation, have boards that meet at least annually. The boards of the World Bank and International Monetary Fund meet bi-annually. Such meetings provide the oppor-

tunity for ministers to set strategic direction, provide budgetary oversight, approve work programmes and address emerging political challenges or crises.

At the WTO, the Ministerial Conference of the full membership is the organisation's supreme governing body and equivalent to its board. Ministers are thus responsible for the regular oversight of the institution and evolution of the multilateral trading system, the functioning of its permanent contractual arrangements between its Members, and they are the highest authority when it comes to agenda-setting. The ministerial meeting is the only formal forum the WTO system currently has for high-level policy discussion engaging all Members. The Agreement Establishing the WTO stipulates it should meet every two years.

The WTO has not, however, had a broad-ranging ministerial since the launch of the Doha Round. Indeed, over the past decade, such meetings have been dominated by efforts to push ahead with the Doha Round or, as happened in July, bypassed in favour of an ill-defined informal mini-ministerial, sometimes hosted not-so-informally by the WTO secretariat, and exclusively focused on limited aspects of the negotiations. Since the 2005 Hong Kong ministerial, the scheduling of a full ministerial has been ducked altogether.

Whether the lack of formal, regularised, systematic ministerial engagement by the WTO's full membership has been good for the Doha Round remains an open question. What is clear is that restraining the scope of ministerial meetings or postponing them weakens the institutionality of the multilateral trading system and undermines its spearhead position in global governance. The Doha Round must, of course, be on the agenda of a ministerial meeting – even if only to take stock of progress – but the global community is rightly demanding an agenda that is far broader.

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Focus on Vision and Values... and the Reforms that Follow

In late 2008, Lamy foreshadowed the question of timing for the next mandated Ministerial Conference. He rightly called for progress this year on a 'more global portfolio of WTO activities' alongside the Doha Round, highlighting the importance of work on trade finance, Aid for Trade, and monitoring trade measures taken in relation to the financial crisis (see box below). But the vision for a Ministerial Conference will need to be still broader.

In 2009, ministers should also discuss the integrity of the multilateral trade system in light of the Doha impasse and the proliferation of preferential trading schemes; engage in agenda-setting discussion on economically and politically difficult issues; reconsider the WTO's strategic direction and review its mandate; reflect on the performance of the secretariat; and debate what is needed by way of institutional reforms to ensure the agency is fit for purpose

Amidst global debates on financial instability, climate, energy, the massive explosion of private standards, technology transfer and food security, as well as on development and the reduction of poverty, the WTO should not and cannot claim all global problems as its turf or demand to be the forum for their discussion. It should, however, seek to ensure that trade policies and laws do not thwart solutions but support them; governments do need to decide where and how to discuss inevitable linkages. This will demand a clearer vision on the place and role of the WTO among the family of international organisations.

The ongoing financial crisis reinforces the urgency of this task. As governments critically review the performance of key global financial regulators and the Bretton Woods Institutions, trade ministers need to ensure that the multilateral trading system is not neglected in discussions on how to improve global economic governance, particularly as many governments face domestic pressures to retreat from the rules-based system they have designed.

This task will demand high-level political commitment from ministers. It will require them to think harder about and clarify the

values needed to govern global trade for sustainable development and the reforms this demands.

Momentum in any future trade negotiations will necessitate clearer articulation of how the WTO can deliver on the needs of developing countries. While coalition-building has helped the poorest countries increase their participation in the negotiations, they remain left out of key decision-making at critical moments. The major trade powers – the US, the EU, but also Brazil, India and China – will need to persuade the weakest WTO Members that continuing to engage is worth it and that they will have a greater say. After seven years of Doha negotiations under the Bush administration, the Obama administration has a particular responsibility to take leadership on vision, values and delivering on development promises to developing countries.

Following greater clarity on vision, institutional reform should also be high on the agenda of the Ministerial Conference. Here, Lamy should deliver on his first-term promises to lead Members in discussion of internal reforms that would better equip the agency for the future and to execute its existing responsibilities. Remember here that the WTO is entrusted with a set of standing international treaties, most of them designed to operate irrespective of the negotiating function of the organisation. Top items for discussion should be overhauling the WTO's trade policy review mechanism (its main instrument for monitoring the regulatory environment within Members) and the secretariat's role in trade-related technical assistance, alongside immediate efforts to tackle the constraints to developing countries' use of the WTO's dispute settlement system.

Some will caution that ministerial attention to these broader issues may detract from the round, or that ministers should only gather to seal a final Doha deal. Here, we should recall that ministers are not just trade negotiators: they are quite capable of wearing multiple hats (that is what they do by default almost daily). As the board of the WTO, trade ministers have a critical responsibility for the organisation's evolution and should be vital players in debate on reform of global economic governance. It is time for them to show up for this work.

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Lamy Sets Out Agenda for 2009

Looking forward to 2009 in his end-of-the-year speech to the WTO membership, Director-General Pascal Lamy agreed that it could be a 'useful exercise' to brainstorm over "issues which are beyond the scope of the negotiations but which relate to areas interfacing the WTO," as some Members had expressed the desire to do, but cautioned that this should not "distract us from our main objective of advancing the round."

Beyond the Doha Round, he proposed that Members focus on three broad areas of work

- following up on the trade measures – i.e. tariff increases or other barriers imposed by Members – in the wake of the financial crisis;
- reviewing developments in trade finance; and
- developing a 'clear roadmap' for work on Aid for Trade, culminating with a second Global Review before the summer break.

Members should also discuss the next regular mandated WTO Ministerial Conference, which in Mr Lamy's sense need not be "the big jamboree we have seen in the past, but rather a venue where Members take a strategic look at the future and steps to advance the goals of the organisation."

Revised Ag Text Shows Progress, but Final Deal Still Elusive

The 6 December text and accompanying working documents reflect progress in a number of areas since the last such draft in July. In particular, it incorporates concessions made on subsidy and top-level tariff cuts that negotiators discussed during the mini-ministerial at that time.

These would have the US cut its overall trade-distorting subsidies by 70 percent, to roughly US\$ 14.4 billion, with the EU making cuts of 80 percent, to around €22 billion. However, along with other WTO Members, both would be allowed to maintain billions of dollars of 'green box' subsidies which ostensibly cause not more than minimal trade distortion, with no cap or reduction commitments on this category of payments.

Developed countries' top-level tariffs (those above 75 percent) would be subject to a 70-percent cut, while developing countries would have to reduce import duties exceeding 130 percent by 46.7 percent. Despite the seemingly high level of cuts, numerous opt-out clauses – including those for developed and developing countries' 'sensitive products' – are expected to result in relatively modest tariff reductions for key products such as beef, dairy or sugar.

The number of 'special products' that developing countries would be allowed to slate for gentler tariff cuts on the basis of food security, livelihood security and rural development criteria also reflects the figures discussed in July. Developing countries would be allowed to select 12 percent of tariff lines as 'special'. Up to 5 percent of tariff lines could be exempt from any cuts and the overall reduction for a country's special products should be 11 percent.

Special Safeguard Mechanism: Signs of Progress

WTO Members decided in 2004 to establish a 'special safeguard mechanism' (SSM) that would allow developing countries to protect their farmers from import surges and sudden price drops in a liberalised trading environment. Chair Crawford Falconer's working document on the SSM includes new options that might allow exporters and developing country importers to move towards agreement. The former generally oppose a far-reaching safeguard mechanism, while the latter insist it is a vital component of an eventual Doha deal.

Disagreement between the US and India on when safeguards might be allowed to exceed pre-Doha ceilings, i.e. the maximum permitted 'bound tariffs' that currently apply, has been widely cited as the direct cause of the failure of the July mini-ministerial. Building on an informal proposal circulated by the EU at that time, chair Falconer's latest text would allow developing countries to impose heavier safeguard duties when import surges are more than 40 percent greater than average levels in the three years beforehand, and slightly lighter safeguard duties when import volumes are more than 20 percent greater.

Surges exceeding 40 percent could be countered with safeguard duties that are half of current bound tariffs, while surges over 20 percent could be addressed by using safeguards that are one-third of current bound tariffs. Countries would alternatively be allowed to impose safeguard duties that are 12 percentage points above existing bound tariffs in the event of a large surge that is 40 percent above average levels, or 8 percentage points more in the event of a smaller surge that is 20 percent above the average.

Evolution of SSM thresholds and remedies since July 2008

Text/Proposal	Safeguard volume trigger	Remedy 1 as % of pre-Doha tariff	Remedy 2 Pre-Doha tariff + percentage points
Falconer rev3 July 2008	> 135%	+15%	+15 percentage points
Lamy 'package' 25 July 2008	> 140%	+15%	+15 percentage points
G-33 proposal 27 July 2008	> 135%	+30%	+30 percentage points
Falconer rev4 6 December 2008	120-140% > 140%	+33.3% (one-third) +50%	+8 percentage points +12 percentage points

Compared to previous texts, the safeguard options expressed as a percentage of bound tariffs are more generous than those expressed in percentage point terms, suggesting that the revised draft would provide relatively more flexibility to developing countries with high tariff barriers such as India, and relatively less flexibility to countries with low tariff bindings such as China.

The chair's working document also proposes that calculations of average import levels in the three-year base period should exclude past months in which the safeguard was applied, unless import levels were in fact above average during these months – a key exporter demand.

In another new development, the text proposes various options for addressing perishable seasonable products. Countries such as Uruguay have reportedly expressed concern that safeguards could unfairly block exports of products such as fruit and vegetables. For safeguards that breach pre-Doha bindings, it also sets out various ways to limit consecutive application of the safeguard in a given time period, and to restrict the products on which safeguards are applied to 2.5 percent of tariff lines per year.

Concern over Sensitive Products

Rumblings of discontent over sensitive products could still sink the talks. While the draft text proposes that countries be allowed to designate 4 percent of farm tariff lines as sensitive, hence slating these for gentler tariff cuts in exchange for expanded import quotas, it also notes that Canada and Japan have demanded 6 and 8 percent respectively. Negotiators have suggested that exporters could perhaps accommodate the Canadian demand if appropriate compensation is provided, but the more far-reaching Japanese request has met with less sympathy.

Falconer proposes two options for accommodating the Canadian concerns, which would both involve compensating for the larger number of sensitive products by expanding import quotas on various sensitive

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product tariff lines in different ways. He notes that neither option would seem to be acceptable to Japan, however, nor have his consultations suggested “any other approach that might generate convergence.”

While a special exception for Iceland, Japan, Norway and Switzerland would allow these countries to maintain tariffs at above 100 percent for products that are not designated as sensitive, Falconer’s new text would limit this to 1 percent of such tariff lines.

Exporters have expressed concern that their market access gains from the Doha Round could be severely curtailed if importing Members were allowed substantial flexibility on sensitive products. Expanded import quotas would not provide the same level of dependable access to markets as formula tariff cuts, they warn.

Divisions on Bananas and Sugar

While Latin American countries seek faster and deeper liberalisation for bananas and sugar, as well as other tropical products, African, Caribbean and Pacific (ACP) group countries seek the opposite in a bid to preserve the traditional benefits they have received through trade preferences in importing countries (primarily the EU and US).

In an introductory note to the text, chair Falconer admitted that he was ‘not privy’ to all the understandings between parties in this area, and therefore the text might not fully reflect the actual state of negotiations.

Latin American exporters have warned that the provisional banana deal they struck with the EU in July cannot be reopened, and that it must be agreed as a stand-alone deal, rather than as part of the Doha Round. The deal would have the EU cut its MFN tariff on bananas to €114 per tonne by the start of 2016, with a €28 per tonne reduction in the first year (Bridges Year 12 No.4 page 6). Exporters have reportedly rejected the EU’s request for a longer timetable for implementing tariff cuts.

The Latin American group also opposes allowing sugar to benefit from additional flexibility as both a sensitive product and a product on the list of commodities that would be affected by preference erosion. A recent informal paper by Guatemala and Colombia opposes granting ‘double dip

flexibility’ to products in this way. The ACP group remains opposed to the proposed approach. However, one delegate suggested that EU aid to address adjustment challenges for these products would also be important as part of an overall Doha package.

TRQ Creation and Tariff Simplification

Exporters have vehemently opposed allowing importers to create new quotas for sensitive products – something that importers say they need in order to be able to accept the broader deal. The new text would limit the number of new quotas to 1 percent of tariff lines for any Member (except Norway, which is accorded special treatment); include expanded import quotas, beyond what would otherwise be required for sensitive products; allow zero in-quota tariff rates; and provide that the amount of increased access will be clearly specified at the tariff-line level when Members agree on the parameters for concluding the Doha Round.

Exporters and importers have also fought over the extent to which specific tariffs – expressed as a unit value rather than a percentage – should be converted into *ad valorem* equivalents, with the former group of countries seeking rapid and complete conversion of all tariff lines to simplified forms. While a methodology for tariff simplification has been agreed, high prices for farm goods have subsequently diminished the potential gains from simplification.

Drawing on compromise proposals recently tabled by exporters, Falconer’s revised text sets out a timetable for simplification with the possibility of some tariffs being left in their more complex form at the end. It also includes an opt-out clause that could allow the EU to convert only 85 percent of tariffs to *ad valorem* equivalents, compared with 90 percent for all other Members.

Simpler, Clearer Text on In-quota Tariffs

Developed countries would have to reduce in-quota tariffs by 50 percent, or to a 10-percent threshold. A new requirement stipulates that the maximum in-quota tariff on day one of the implementation period would be 17.5 percent. Tariffs below 5 percent should be reduced to zero by the end of the first year of the implementation period – although Switzerland is granted a special exception to this rule for four particular tariff lines. Developing countries, and those classed as small vulnerable economies or recently acceded Members, would benefit from special treatment, with gentler cuts on in-quota tariffs and additional flexibilities for special products.

The current Special Agricultural Safeguard (SSG), which has been used primarily by developed countries since the end of the Uruguay Round, would be phased out after seven years. The text proposes that the SSG apply only to 1 percent of tariff lines during the implementation period, with particular requirements for sensitive products and in-quota tariffs.

Cotton: The Great Unknown

WTO Director-General Pascal Lamy wrote to delegates underscoring that progress on cotton was a prerequisite for the planned (and subsequently cancelled) mini-ministerial meeting. As things stand, delegates remain in the dark about possible US concessions on cotton subsidies – still the missing piece in the jigsaw. In the absence of counter-proposals, the revised text still reflects the cuts put forward by the ‘cotton 4’ African producers (Benin, Burkina Faso, Chad and Mali). Some analysts have speculated that the Obama administration might have more room to manoeuvre on this issue since US cotton-growing states are mostly Republican.

Special and Differential Treatment for Developed Countries?

In addition to the proposed exceptions described above for the EU, Japan, Switzerland and Norway, the draft also includes a country-specific base period for calculating reductions for US Blue Box subsidies, leading one Member to query whether it effectively provides special and differential treatment for developed countries.

However, the draft also foresees country-specific exclusions for a number of developing countries, including Cuba, Suriname and Venezuela, among others. The exception for Venezuela, which would be allowed to undertake lower tariff cuts if the overall average would otherwise exceed 30 percent, has reportedly provoked concern among neighbouring Paraguay and Uruguay, which fear that they might lose market access opportunities as a result.

Revised NAMA Text Fails to Bridge Gaps on Key Issues

The latest negotiating text, released on 6 December, shows that WTO Members remain far apart on participation in sectoral liberalisation initiatives on industrial goods, as well as preference erosion and exemptions from general tariff cut disciplines.

Unlike previous drafts, which contained ranges of numbers, the new text includes specific formulae and figures for determining countries' future tariff levels (TN/MA/W/303/Rev.3). The chair of the non-agricultural market access (NAMA) negotiations, Ambassador Lucius Wasescha, said in his foreword that convergence on many issues had allowed him to present an 'almost complete' text, but stressed that the entire text remained subject to negotiation.

Sectorals Still a Major Sticking Point

Participation in so-called sectoral trade liberalisation initiatives is probably the most divisive issue in the NAMA negotiations. So far, fourteen specific sectors of industrial products have been proposed for total tariff elimination, or at least far steeper cuts than would result from the application of the general tariff reduction formula (see table below). The proponents consider sectorals as the only way they could reap tangible market access gains for industrial goods in the Doha Round negotiations.

While the NAMA mandate clearly states that participation in these schemes is voluntary, industrialised nations (the US, Canada and Japan) have sought to secure the participation of the three major emerging markets – China, Brazil and India – in at least two such initiatives. To ensure that no significant economy would benefit from the dramatically lowered tariffs without cutting its own import duties, the US in particular has insisted that any sectoral must cover a 'critical mass' of world trade.

Developing countries are adamant that participation in sectorals is non-mandatory. They are willing to commit to no more than a discussion of how a sectoral might work in terms of product coverage, exceptions and future tariff levels for developed and developing countries.

Just before the new NAMA text was released, the US tried to get around this opposition by suggesting that the G-7 group, which spearheaded the failed ministerial talks in July, show leadership in the Doha Round through committing to participating in deep liberalisation of

at least the chemicals sector, as well as one other sector of interest to US exporters. The G-7 includes Australia, Brazil, China, the EU, India, Japan and the US. None of the three developing countries expressed any interest in the proposal.

The 6 December NAMA text contained a long paragraph – placed within square brackets to indicate the absence of agreement – that noted the conflicting objectives. The paragraph would have countries volunteer to "negotiate the terms of sectoral tariff initiatives, with a view to making them viable." It specified, however, that "participation in the negotiation of the terms of a sectoral initiative shall not prejudice a Member's decision to participate in that sectoral initiative."

'Self-identified' countries would be listed in an annex, for which the draft text contained two options: one, favoured by sectoral proponents, would indicate "Members having announced their readiness to participate" in any of the various initiatives; the second would have a single list of "Members that agree to participate in negotiating the terms" of sectoral initiatives, without linking countries to any individual sector.

These provisions did not satisfy the US National Association of Manufacturers. John Engler, president of the influential lobby group, said that "Brazil, China and India must participate in major sectoral agreements to eliminate tariffs in sectors such as industrial machinery, chemicals, and electrical/electronics. Unfortunately, the latest text shows they are not yet willing to do this."

Preference Erosion Remains Complicated

To soften the blow of the erosion of trade preferences that the EU and the US have long granted to some of the world's poorest countries, recent draft NAMA texts included provisions allowing each of the two economic giants to take ten years instead of five to phase in Doha Round tariff cuts on some tariff lines, primarily textiles and clothing (and also some fish products for the EU). The purpose of these provisions was to slow the rate at which preference beneficiaries would have to confront potential displacement by more competitive exporters of the same products.

Arguing that they would be 'disproportionately affected', Pakistan and Sri Lanka managed to secure an exception requiring the US and the EU to phase in tariff cuts at the regular pace on their exports of some of those products. This spurred complaints from Asian least-developed countries like Bangladesh, Cambodia and Nepal, which do not receive tariff-free access to the US market – and thus stood to face higher tariffs than non-LDCs Pakistan and Sri Lanka for the products covered by the exception.

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Proposed Sectors, Lead Countries & Critical Mass

Sector	Lead country	End tariff	Critical mass
Automobiles Car parts	Japan	0	99% for cars 98% for car parts
Bicycles and related parts	Taiwan	0	at least 90%
Chemicals	US	0	not specified
Electronics & electrical products	Japan	0	not specified
Fish and fish products	Norway	0	90%
Forest products	Canada	0	90%
Gems and jewellery	Thailand	0	90%
Raw materials	UAE	0	90%
Sports equipment	Taiwan	0	at least 90%
Healthcare products	US	0	not specified
Hand tools	Taiwan	0	at least 90%
Toys	Hong Kong	0	at least 90%
Textiles	EU	close to 0	not specified
Industrial machinery	Canada	not specified	not specified

Source: Reuters 11 December 2008

The compromise in Wasescha's text, following from his predecessor Don Stephenson's August report to Members, identified five tariff lines each for Bangladesh, Cambodia and Nepal, for which the US would phase in tariff cuts over five years instead of ten (alongside the benefits for Pakistan and Sri Lanka). Vietnam was unsuccessful in its attempt to be included in this exception-to-an-exception.

The December revision also specified that the products slated to receive special treatment for preference erosion would be temporarily carved out of any sectoral liberalisation initiative for the ten-year period, after which sectoral participants would have to negotiate additional tariff cuts with preference-receiving countries. China has unfavourably contrasted the US and the EU's obtainment of protection for certain textiles and clothing products with the demands it is facing for sectoral liberalisation.

Firm Figures Suggested for Formula and Flexibilities

The latest NAMA text was the first to include specific figures, rather than ranges, for the 'coefficients' linked to the formula that will determine the future tariff levels of most major economies, and the figures governing the extent of 'flexibilities' for developing nations to shield some products from full duty cuts. The figures corresponded to those suggested by Lamy during the July mini-ministerial, which had in turn been drawn from the ranges in the earlier draft agreements put together by the previous NAMA chair.

The depth of industrial tariff cuts will be determined by a 'coefficient' to be inserted in the 'Swiss' tariff reduction formula. When fed through the formula, all of a country's tariffs are slashed to below the value of its 'coefficient', with lower tariffs cut less sharply across the board. Thus, the higher the coefficient, the higher will be the final post-Doha tariff.

The December text proposed a coefficient of 8 for industrialised countries. For the 30-odd developing countries that would have to apply the tariff reduction formula, there is a three-option 'sliding scale': the higher the coefficient they choose, the less freedom they have to shelter products from tariff reduction (see table above).

Coefficients and flexibilities for developing countries proposed in the December NAMA text

Coefficient	Flexibilities	
	EITHER: Apply half formula cuts to the following percentage of all non-ag tariff lines	OR: Exempt the following percentage of non-ag tariff lines from any cuts
20	14%, but must not exceed 16% of the total value of non-ag imports	6.5%, but must not exceed 7.5% of the total value of non-ag imports
22	10%, but must not exceed 10% of the total value of non-ag imports ¹	5%, but must not exceed 5% of the total value of non-ag imports
25	None	None

An 'anti-concentration' clause, designed to constrain developing countries from focusing their tariff-reduction 'flexibilities' on a limited number of industrial sectors, would require them to apply full tariff cuts to either 20 percent of tariff lines or 9 percent of import value within each chapter of the HS harmonised system used to classify products for customs purposes.

Progress on SVEs, 'Paragraph 6'

Delegates said that the new text indicated the near-consensus that had been achieved on gentler tariff treatment for two de facto sub-groups of developing countries, that is, small and vulnerable economies (SVEs) and the non-LDC developing countries with binding caps on fewer than 35 percent of their industrial tariff lines (dubbed 'Paragraph 6' countries, after the relevant portion of the negotiating mandate).

Chair Wasescha's text set out four tiers of treatment for SVEs, depending on their existing tariff levels.

Countries accounting for less than 0.1 percent of world manufacturing trade, with a current average bound maximum allowable NAMA tariff of 50 percent or more, would be required to bind all of their non-agricultural tariff lines at an average of no more than 30 percent. SVEs with an average bound rate between 30 and 50 percent would have to bind them at an average of not more than 27 percent; those with an average between 20 to 30 percent, at no more than 18 percent. SVEs with a bound average industrial tariff of less than 20 percent would have to make 5 percent reductions to 95 percent of tariff lines (or bind NAMA tariffs at the average that would have resulted from those reductions).

SVEs include countries such as Antigua and Barbuda, Jamaica, Mongolia, and Papua New Guinea. Binding tariffs at a certain average instead of applying the standard 'Swiss' tariff reduction formula is supposed to give SVEs greater freedom to preserve protections for sectors in which they have defensive trade interests, since they can concentrate deeper tariff cuts on other products.

As for the Paragraph 6 countries, which include Cameroon, Cote d'Ivoire, Ghana, Kenya, Mauritius and Nigeria, those with binding caps on fewer than 15 percent of industrial tariff lines would have to bind 75 percent of them at an average of 30 percent. Those with binding caps on more than 15 percent of tariff lines (but less than 35 percent), would be asked to bind 80 percent of them at the same level.

Recently acceded Members would get three extra years to implement Doha Round tariff reductions (for instance, China would have to phase in tariff cuts over thirteen years instead of ten). Wasescha's text, unlike the July 2008 revision, does not include a footnote saying that RAMS' proposals for additional flexibilities could be discussed later.

The text also noted that negotiations were not finalised on flexibilities requested by the South African Customs Union, Argentina and Venezuela. Argentina said in late November that it could accept a coefficient of 35 provided that it could apply half-formula cuts to 16 percent of tariff lines without a trade volume limitation, or a coefficient between 25 and 35, plus half-formula cuts to 16 percent of tariff lines and 8 percent of tariff lines exempt of cuts altogether.

Cautious New Rules Text Reflects Persistent Divisions

On 19 December, the chair of the Negotiating Group on Rules released a long-awaited revision of his first draft on changes to WTO disciplines on anti-dumping and non-agricultural subsidies. On all contentious points, the new text discards previously proposed amendments to existing provisions.

The rules negotiations have been characterised from the start by a stark divide in Members' objectives. The US, often supported by Egypt, has focused on the need for stronger provisions to ensure that countries do not circumvent anti-dumping measures, while most other Members active in the negotiations have concentrated on amendments that would impose new limits to the frequency and duration of anti-dumping investigations and duties.

Similar fault lines exist on changes to subsidy and countervailing disciplines between major exporters and importers, including new provisions aimed at eliminating/limiting subsidies that contribute to fleet overcapacity and overfishing.

The first rules draft (TN/RL/W/213), released by Ambassador Guillermo Valles Galmés in November 2007, gave rise to serious criticism from many WTO Members, who maintained that it did not accurately reflect views expressed in the negotiations. In particular, the majority of the membership objected to proposed text that would have allowed the use of 'zeroing' in calculating dumping margins. Divisions were also clear on a number of other trade remedy provisions and the provisions proposed by the chair for disciplining fisheries subsidies (Bridges Year 11 No.1 page 7).

The second paper (TN/RL/W/236) takes a much more cautious tack. In his introduction, chair Valles noted that he had received a 'clear message' from delegations that new texts should reflect a new, bottom-up approach. Ambassador Valles acknowledged that he lacked an 'adequate basis' to propose a new balance, and had therefore provided draft legal language "only in those areas where some degree of convergence appears to exist." He added that "not only are there large gaps where on issues of great importance to delegations no solutions are proposed; but few, if any, of the textual proposals that can be found in these new texts can be considered to attract consensus support."

On fisheries subsidies, the chair did not even try to present an amended version of the November text's Annex VIII, opting instead for a 'roadmap' of questions that should guide further discussions.

Zeroing

A product is considered to be dumped if it is exported at less than the average price charged for a similar product in the exporting company's home market. Zeroing occurs when anti-dumping investigators only take into account in their calculations those instances where the home market price is lower than the export market price, but assign the value of zero to cases where the home market price is higher. The method thus inflates the amount of dumping found. The United States is the main WTO Member still using this controversial method in some of its anti-dumping investigations (see related article on page 11).

As it currently stands, the Anti-dumping Agreement (ADA) does not forbid zeroing as such. A myriad of dispute settlement rulings have, however, condemned the method's use in specific instances. These findings have been hotly contested by the US, which has made the explicit acceptance of zeroing in the ADA text one of its key priorities in the rules negotiations. On the other side of the divide, a large number of both developed and developing countries want all forms of zeroing clearly outlawed.

Faced with an impasse, the chair removed from his second draft the provision that would have allowed the use of zeroing in sunset and administrative reviews, as well as original investigations under certain conditions. While the anti-zeroing camp drew some comfort from the deletion, many regretted that the chair had reverted to the original ADA language instead of reflecting their demand for an explicit prohibition of zeroing.

The Office of the US Trade Representative expressed 'deep disappointment' that the chair had "eliminated the limited language on zeroing contained in the November 2007 text. As we have said repeatedly, the United States cannot envision an outcome in the rules negotiations that fails to adequately address this critical issue." David Hartquist, executive director of the Committee to Support US Trade Laws, said the new paper showed "how far removed the negotiations are from anything acceptable to Congress or to those who must rely on US trade remedy laws."

Other Trade Remedy Concerns

The chair also refrained from suggesting new provisions on other controversial issues. Among these was the automatic termination of anti-dumping measures after a given period of time. The chair explained within brackets that there was 'sharp disagreement' on this issue, ranging from delegations that favour automatic termination after five years without any possibility of extension and those that reject the principle of automatic termination altogether.

Similarly, the paper made no attempt to propose compromise language on whether anti-dumping authorities should take into account the views of domestic interested parties – such as importers and retailers – who would be affected by the imposition of an anti-dumping duty (favoured by many countries frequently targeted by anti-dumping investigations but opposed by the US), or the inclusion of stronger anti-circumvention disciplines (one of the main US priorities with strong opposition from China and Hong Kong in particular).

On the latter issue, the chair noted that Members continued to disagree on whether specific rules on anti-circumvention were necessary in the first place and, if so, "whether numerical thresholds are desirable, whether findings of dumping, injury and causation should be required and whether anti-circumvention measures should be company-specific or country-wide."

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In addition, the chair noted that further discussions were necessary on developing country proposals on enhancing special and differential treatment, including technical assistance to help them implement anti-dumping and subsidy disciplines.

Subsidy Issues

One of the major points of contention with the regard to the Agreement on Subsidies and Countervailing Measures (SCM Agreement) concerns the establishment of a benchmark to determine the benefit accruing to loss-making, non-creditworthy state-owned enterprises through government loans and guarantees. China firmly opposes such a provision, while the US is among its warmest backers. The revised text only notes within brackets that while the proponents would like to “clarify the agreement’s treatment of an important form of trade-distortive financing, some delegations are concerned over how the key concepts could be defined, and others are categorically opposed, including because they see such a provision as discriminating against state-owned enterprises.”

No changes are proposed to the SCM Agreement’s Article 27.6 on when a developing country is deemed to have reached export competitiveness in a given product and must therefore phase out any export subsidies granted to the product. Views continue to differ on this issue, including on whether and/or under what circumstances a developing country could be allowed to reintroduce export subsidies for products that have lost their competitiveness.

Consensus is also lacking on a whether the benchmark for determining the value of a subsidy granted by government agencies through export credits, export credit guarantees and export insurance programmes should be changed from cost-to-government to benefit-to-recipient. In its submission to the retaliation arbitrator in the cotton dispute, the US has strongly argued that cost-to-government is (and should remain) the only correct standard to use (see page 13), but the chair noted that “those favouring such changes [presumably including Brazil, *ed.*] consider that the current provisions work to the disadvantage of developing Members and are inconsistent with the agreement’s general definition of ‘subsidy’.”

Fisheries Disciplines

The Hong Kong ministerial declaration called on the Negotiating Group on Rules to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing.” It also instructed delegates to make ‘appropriate and effective’ special and differential treatment for developing and least-developed countries an integral part of the negotiations, “taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.”

The November 2007 draft provided a detailed legal text – Annex VIII of the SCM Agreement – for a new agreement on fisheries subsidies. That text would have prohibited government support to the construction, operating and fuel costs of vessels, and port infrastructure ‘exclusively or predominantly for activities related to marine wild capture’ fishing, including storage and processing facilities. Some subsidies would have been permissible for all countries, provided that they maintain an international-standard fisheries management system. These included payments aimed at boosting fishing vessel safety without increasing fishing capacity, reducing the environmental impact of fishing, or re-training fisheries sector workers.

The text would have exempted least-developed countries (LDCs) from the disciplines altogether, and allowed non-LDC developing countries to provide otherwise-banned subsidies, including those that boost capacity, to small-scale fisheries in territorial waters characterised by non-mechanised fishing, family- or association-based fishing operations, catches consumed largely by fishing families, and the absence of a ‘major employer-employee relationship’.

However, it soon became clear that many governments considered the proposed disciplines too strict. Canada, the EU, Japan and Norway said Members should be allowed to subsidise bait, fuel, insurance and port infrastructure in certain cases, as well as offer assistance to small-scale fishermen affected by high oil prices. India objected to the conditions attached developing country subsidies to small-scale fishing, such as limiting boat length to 10 metres, the requirement that the boats’ fishing activities must be targeted at ‘particular, identified stocks’ that have been “subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level.”

In his introduction to the 19 December 2008 text, the chair noted that “differences among delegations [went] to the very concepts and structure of the rules” put forward in Annex VIII a year earlier. Instead of revising that text, he proposed a ‘roadmap for discussion’, consisting of fundamental questions that must be clarified for the negotiations to move forward. These included general considerations, such as *why*, in view of the Hong Kong mandate, a particular kind of subsidy should or should not be prohibited, and reflection on how to ensure that exemptions from disciplines do not compromise the integrity of the mandate, i.e. that any permitted subsidies would not in practice contribute to overcapacity or overfishing.

The chair proposed to start off discussions in February on which subsidies should be prohibited, based on a ‘common understanding’ that they contribute to overcapacity and overfishing. Among specific questions, he proposed that participants reflect on whether any conditionalities should be attached to prohibited subsidies, and whether otherwise permitted subsidies should be prohibited in ‘unequivocally overfished’ fisheries.

Later in the process, delegates are slated to address questions related to exceptions from the general subsidy disciplines that are conditional to the existence of fisheries management systems (including whether such a conditionality should apply in the first place); the need (or not) for specific provisions on scientific expertise in disputes involving fisheries subsidies; and special and differential treatment, including whether it would be appropriate that SDT exceptions for non-LDC developing countries be “broadest and subject to the fewest conditions for subsidies to the smallest-scale, closest to shore, and least-commercial fishing operations, with exceptions becoming progressively narrower and subject to more conditions as the subsidised operations become larger-scale, further from shore, and more commercial.”

Time to End Zeroing in Trade Dumping Calculations

Daniella Markheim

Even though the WTO has ruled that zeroing is not compliant with international trade rules, America refuses to change the way it calculates dumping margins. With the new year should come a new commitment to cleaning up US dumping practices.

Historically, the US has aggressively applied anti-dumping and countervailing duties, or trade remedy laws, against foreign firms and countries that engage in allegedly unfair trade practices. Anti-dumping duties may be imposed on imports sold in the US market at a price lower than in the producer's home market or below the foreign firm's cost of production. Countervailing duties may also be imposed on imported products receiving government subsidies. In both cases, the key factor is that the import causes material injury to the competing domestic industry.

While trade remedies afford a layer of protection for firms facing stiff foreign competition and allow the government some additional revenue, households and businesses have to pay higher prices for those imports. Moreover, consumers may not be able to purchase the imports at all if duties are high enough to prohibit trade. This tax on America's households and import-consuming firms reduces economic activity and lowers living standards. Furthermore, the incentives to efficiently use resources and find innovative ways to produce diminish as competition is reduced by the trade barriers.

In general, members of the WTO are required to bind their tariffs and not discriminate between trading partners by charging different tariffs. However, Article 6 of the General Agreement on Tariffs and Trade (GATT), in conjunction with the WTO Anti-dumping Agreement, allows countries to retaliate against dumping by assessing additional duties on dumped products from specific countries if the dumping is causing material damage to the importing country's respective industry. Countries investigating alleged incidents of dumping must evaluate all relevant economic factors affecting the industry in question. If a determination is made that injurious dumping is occurring, then the exporting company has the option to raise its price to an agreed level in order to avoid an anti-dumping import duty. Anti-dumping measures must expire five years after the date of imposition, unless subsequent investigations show that ending the measure would lead to injury.

Zeroing in US Anti-dumping Investigations

'Zeroing' is used by the US Department of Commerce (DOC) in its calculation of dumping margins. The DOC first determines a product's 'normal value', which can be based on the product's price in the exporter's home market, the price charged by the exporter in another country, or on the exporter's production costs. The DOC then compares the normal price of the good to the price charged in the US for each sale and calculates the dumping margin – the average of the differences between the two prices. When the normal value of the good is more than the price charged in the US, the difference contributes to the dumping margin.

However, when the normal value is less than the price charged in the US, the DOC assigns a zero value to the transaction rather than deduct the difference from the final dumping margin. This practice of 'zeroing' artificially inflates dumping margins, increasing both the likelihood that the DOC will find injury and the value of punitive duties that can be assessed on 'dumped' products.

In cases brought against the US by the EU, Japan, Canada, Ecuador, Brazil, Thailand and others, the WTO has ruled that zeroing is contrary to anti-dumping rules because it distorts the prices of certain export transactions by not considering all comparisons of normal value and export price. By disregarding certain comparison results, the United States has acted inconsistently with the 'fair comparison' requirement set out in Article 2.4.2 of the Agreement on Anti-dumping.

This unfair trade practice erodes US credibility and influence in multilateral trade negotiations and leaves America open to retaliation from affected trade partners. And yet the US refuses to accept WTO recommendations that its anti-dumping methodology be brought into compliance with international trade rules. The longer America defies or ignores these recommendations, the more likely complainants are to be allowed to impose retaliatory duties or other punitive measures against US products. The US insists that the law is being misinterpreted and plans to use the WTO Doha Round of multilateral trade negotiations to permit zeroing in WTO rules. Fortunately, for the cause of free and fair trade, the effort has met with strong opposition (see page 9).

The US Should Practice What It Preaches

When the WTO finds in favour of a US position in a trade dispute, all is fair and good. Yet when it rules against the US – as it has time and time again with regard to zeroing – Congress cries foul, insisting that the WTO has overstepped its bounds and is violating US sovereignty. America is as assiduous in rooting out the unfair trade practices of the world and demanding their elimination as it is protecting its own.

It is time to end the hypocrisy. America's use of zeroing has been found in violation of WTO trade remedy rules and imposes costly distortions on the US economy. At the same time, America's refusal to comply with WTO rulings to eliminate the unfair trade practice erodes the United States' credibility as a champion of free and fair trade and weakens America's influence in multilateral trade negotiations. It is time for America to live up to the same high standards it demands from the rest of the world and end the practice of zeroing in anti-dumping investigations.

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Lessons from the Cotton Dispute: A View from Brazilian Industry

Hélio Tollini

The cotton case made history at the WTO and opened the way to possible disputes in the future. This article discusses the potential gains for Brazil from such litigation, as well as outstanding issues surrounding retaliation.

Brazilian cotton producers have competed against US cotton for decades. The US government has subsidised its cotton production since 1933, and eliminating such practices is difficult, particularly when the beneficiaries are large agribusiness corporations. The damage caused by this support to the competitiveness of Brazilian cotton in the international market was one of the reasons behind Brazil's decision to launch a dispute against the US in the WTO.

When dispute settlement consultations began in 2002, few believed in a Brazilian victory. Even after a favourable panel ruling, upheld on appeal, many doubt that the US will in fact eliminate the subsidies found to be inconsistent with its WTO obligations.

Farm Trade Liberalisation

When the case was brought, it was widely expected that budgetary problems would lead to a reduction in US farm subsidies. It quickly transpired, however, that agricultural support represents such a small fraction of industrialised countries' budgets that taxpayers do not feel the impact in their pockets and therefore do not press for reform. The dispute thus became a vehicle to pressure the US to carry out the cuts originally expected in the new farm bill.

Market liberalisation will only benefit Brazilian and other developing country cotton growers if they are able access international markets now occupied by subsidised US exports. In addition, the effort to open markets for cotton was seen as the first step of a push to increase market access for all agricultural products, similar to the way average industrial tariffs fell from 40 to 4 percent during the Uruguay Round negotiations.

The financial crisis has rekindled expectations that the next US administration will cut spending, including farm support.

That, however, is by no means certain, and trade retaliation through the WTO once again looks like the most effective tool to access international markets.

Lessons from the Cotton Case

Optimistically, the Brazilian cotton industry expected that a favourable verdict would prompt the US to at least remove WTO-inconsistent subsidies to their cotton producers. While it now seems that those hopes will be frustrated, some benefits from the WTO dispute can already be observed.

First and foremost, it has bolstered developing countries' confidence that they can win a case against a strong developed economy. Although it is not easy to bring a dispute in the WTO, it is no longer thought to be impossible. Indeed, in collaboration with other countries, Brazil is currently considering the initiation of a new case against unfair competition from a number of other US agricultural exports.

Second, the cotton dispute strengthened Brazil's negotiating position in the Doha Round. It served not only as an example, but as an element of pressure.

Third, the dispute opened new frontiers for co-operation between the public and private sectors. Collaboration between Ministry of Foreign Affairs and the cotton producers' association ABRAPA was a key element in the successful outcome of the litigation. ABRAPA, however, is an exception in the Brazilian agricultural sector, which is generally characterised by a lack of adequately mobilised producer associations. As a result, the bargaining power of Brazilian producer associations seldom matches that of the companies they must deal with.

The Difficulties of Retaliation

Now that litigation is over, Brazil faces the difficulty of finding a form of retaliation that does not upset domestic consumers. Nevertheless, having come this far in the dispute and negotiations – without full US compliance with WTO rulings – it does not make sense to miss the opportunity. Brazil should apply retaliatory measures and, if possible, find a way to benefit its cotton sector in the process. While this is an issue that the government should discuss internally as part of a state strategy, authorities should not lose sight of the various interests involved.

In its arbitration request, Brazil initially requested authorisation of trade sanctions worth US\$4 billion, three-quarters of which would be in compensation for violations of export subsidy disciplines and the remaining one billion corresponding to WTO-inconsistent domestic support. Brazil also indicated that it would be necessary to have recourse to 'cross-retaliation' involving economic sectors beyond agricultural and industrial goods. A WTO panel will determine in the near future the amount of trade sanctions and the manner in which it is carried out (see page 13). The areas of intellectual property and services, proposed for cross-retaliation by Brazil, are most sensitive to the US and could harm Brazilian consumers less than punitive tariff hikes on goods.

In order to avoid damage to important export sectors and its international image, the US could propose to negotiate compensation, most likely in the form of increased import quotas for one or more other products. In any case, Brazil should continue until the end in this dispute.

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US, Brazil Clash on Cotton Sanctions

Brazil and the US have submitted wildly different estimates to WTO arbitrators with regard to the damage inflicted on the Brazilian economy by US cotton subsidies. The two sides also disagree on whether Brazil should be allowed cross-retaliate in the intellectual property and services sectors.

The Appellate Body ruled in June that the US had failed to comply with previous dispute settlement rulings on cotton subsidies (Bridges Year 12 No.4 page 13). At the request of Brazil, an arbitration panel was established in October to determine the level of trade retaliation it would be authorised to undertake as a consequence of US non-compliance. Both countries have now made their initial submissions to the arbitrators, who have already over-shot the 60-day period foreseen for the authorisation of trade retaliation in the Dispute Settlement Understanding.

Prohibited Subsidies: US\$1.3 billion vs Zero

Brazil is seeking the right to impose sanctions worth US\$1.294 billion annually to counter the effects of the prohibited subsidies the US was found to provide under three export guarantee programmes, plus a one-off payment of US\$350 million to compensate for the Step 2 programme, which compensated US millers and exporters for using domestically grown cotton. The US counters that it stopped providing export guarantees under two of the programmes in 2005 and repealed Step 2 in 2006. No countermeasures should be awarded for any of these, no longer existing, measures, the US argues.

The US further maintains that since 2005 the remaining export guarantee programme has operated at no long-term net cost to government, and that no countermeasures are thus appropriate for this programme either. The US strongly emphasises that the determination of the existence and value of a subsidy must be based on a programme's cost to government, not on its benefit to recipients, as it alleges Brazil is doing. The US also claims that Brazil wrongly included in its calculation of adverse effects caused by the prohibited subsidies the impacts Brazil had found them to cause throughout the world instead of in Brazil alone.

Although the US does provide an estimate of US\$9.5 million as the average amount of export loan guarantees provided by the government between 2005 and 2007, it asks the arbitrators to dismiss all claims related to prohibited subsidies since there had been no defaults on the guaranteed loans and therefore no net cost to government.

Actionable Subsidies: A Difference Exceeding US\$1 Billion

Some subsidies are 'actionable', i.e. deemed to violate the Agreement on Subsidies and Countervailing Measures, only if the complainant can prove that they cause 'adverse effects', such as price suppression. Brazil asks the panel to award countermeasures worth US\$1.037 billion annually for such actionable subsidies, but the US again claims that not only do Brazil's calculations include programmes no longer in existence (Step 2 and market loss assistance payments), but also adverse effects not limited to Brazil alone. According to US calculations, the total effects of US counter-cyclical and marketing loan payments on Brazil amounted US\$30.4 million on average between 2005 and 2007. The US also argues that the 'serious prejudice to the interests of Brazil' caused by these subsidies was less than their total effects, and that the countermeasures awarded should therefore be somewhere between zero and US\$30.4 million.

All in all, the difference between the two countries' estimates of the appropriate level of annual countermeasures for both prohibited and actionable subsidies amounts to a staggering US\$2,300,600,000.

Cross-retaliation

As a rule, trade retaliation should happen within the sector where the violation was found, which in this case would essentially mean punitive tariffs on US goods. Brazil, however, has argued that limiting retaliation to the goods sector alone would not be 'practicable or effective'

because additional import duties would have a much greater negative impact on Brazil than on the US due to the asymmetries between the two economies. For instance, higher duties would negatively affect the cost of inputs and capital goods to Brazilian industry, as well as have a 'significant negative impact' on efforts to control inflation.

Brazil has therefore requested authorisation to suspend certain obligations under the intellectual property rights and services agreements as well. These potentially include the protection of copyrights, trademarks, industrial designs, patents and undisclosed information, as well as withdrawal of concessions in services sectors related to communication, construction, distribution, finance, tourism and transport.

The US strongly objects to this request. Cross-retaliation rights have been awarded only twice in WTO history so far, but the US contends that those were exceptional cases involving small and undiversified economies – Ecuador and Antigua, neither of which has exercised the right.

The US argues that Brazil, unlike Ecuador or Antigua, is a 'large and diverse' economy that will have no trouble in retaliating 'effectively and practicably' in the good sector alone, and thus does not qualify for the cross-retaliation exception available to Members under Article 22.3(c) of the Dispute Settlement Understanding. According to the US, Brazilian imports of US goods were worth between US \$15.3 billion and US \$24.6 billion annually from 2005 to 2007.

The US also rejects Brazil's claim that cross-retaliation would be justified because such countermeasures would 'maximise the likelihood of compliance' on the part of the United States. The authorisation of countermeasures is tied to the effects of the 'nullification or impairment' of the complainant's benefits, not the level of sanctioning that would motivate a Member to comply with a ruling, the US stated in its submission to the arbitrators.

EU Takes First Step to Clarify Beef Hormones Science

The EU has opened yet another chapter in one of the WTO's longest running disputes by requesting an investigation into the science behind its ban on hormone-treated beef. It is the first time a country has asked the WTO to determine its own compliance with international trade rules.

The use of six growth-promoting hormones in beef production was prohibited across Europe in the 1980s on the grounds that they posed a significant risk to human health. Imports of meat treated with these hormones were also banned. Canada and the US successfully challenged the import embargo as not being based on an adequate risk assessment as required by the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). Both countries subsequently imposed retaliatory tariffs on a range of European agricultural exports worth US\$116.8 million for the US and C\$11.3 million for Canada.

In 2003, the European Commission notified to the WTO a new regulation (Directive 2003/74/EC), which it claimed brought EU hormones legislation into full compliance with its WTO obligations. The directive is based on 17 further studies, which according to the commission provide a solid scientific basis for a permanent prohibition of one of the hormones and the continuation of precautionary bans on the other five. The complainants dismissed the EU's additional scientific studies as inadequate, but refused to either formally challenge the new directive at the WTO or to lift the sanctions. Faced with a deadlock, the EU initiated a new case in which it sought a ruling confirming that the trade retaliation had been illegal since 2003.

In October 2008, the Appellate Body issued a mixed verdict on the matter. On the one hand, it said that only a compliance panel could determine whether the EU had brought its beef import regime into 'substantive compliance' with the SPS Agreement and, as a corollary, whether the trade sanctions applied by the US and Canada since 1999 remained legally valid. On the other hand, the AB acknowledged that the parties applying the sanctions were under no obligation to initiate a substantive compliance review, and that the trade retaliation was consistent with WTO rules until a panel had ruled that the EU's import restrictions were based on a valid risk assessment.

As a way out of this conundrum, the Appellate Body recommended that all sides in the dispute initiate compliance proceedings 'without delay' in order to clarify both the scientific basis for Directive 2003/74/EC and the status of the sanctions (Bridges Year 12 No.4 page 6).

US: AB Engaged in Rule-making, Exceeding Mandate

The US blasted the Appellate Body report in an eight-page communication (WT/DS320/16) to the Dispute Settlement Body (DSB), accusing it of 'rule-making' in the admittedly ambiguous sequencing of compliance findings and the award/application of sanctions. The role of clarifying and improving the Dispute Settlement Understanding belonged exclusively to WTO Members, not to panels or the Appellate Body, the US thundered. The US also took exception to the AB's conclusion that the choice of two scientific experts, who had provided expert advice to the panel, had compromised its 'adjudicative independence' due to their prior involvement in evaluating the safety of the disputed hormones.

At the 14 November DSB meeting, which adopted the latest *Beef–Hormones* rulings, the US also strongly objected to the AB's recommendation that all parties engage in compliance proceedings. Since the dispute had only covered the WTO-consistence of the sanctions, and the AB had found them legal, there was nothing to add, the US stated. In particular, it argued that there was no basis in the Dispute Settlement Understanding for the Appellate Body to address a recommendation to the complainant. The US further contended that the AB only had the authority to recommend that a respondent – in this case, the US or Canada – bring itself into conformity with the agreement(s) it was found to breach (DSU Article 19). As neither was found to have contravened WTO rules, no recommendations should have been issued at all.

EU Requests Consultations

On 22 December, the EU requested consultations with Canada and the US on engaging in "compliance proceedings to verify the WTO-compatibility of the current EU legislation and the legality of the sanctions imposed by US and Canada on EU exports." European Commission spokesman Peter Power said that the EU remained convinced that its hormone legislation was now 'fully in line' with WTO law.

Despite the frosty welcome the complainants had given to the AB report, Mr Power said the EU hoped that the US and Canada would "engage constructively in these consultations." Should they not do so, the commission is likely to find itself in the paradoxical position of defending its own legislation at a tribunal the EU has itself requested. This would involve shouldering the entire burden of proving to the panel that the studies that underpin Directive 2003/74/EC are risk assessments within the meaning of the SPS Agreement and, ultimately, that they present sufficient new scientific evidence to justify the import restrictions on hormone-treated beef.

It is widely thought that fear of bearing the full burden of proof in a scientifically complex and politically sensitive dispute – like all those involving public health – has been the main factor impeding the initiation of substantive compliance proceedings by any party thus far.

Potentially indicating the atmosphere of such proceedings in the future, at the time of this writing the US Trade Representative was on the point of revealing the results of its consultations with domestic stakeholders on a possible revision of the list items it now charges punitive tariffs. Arguing that a 'carousel' approach would inflict greater damage on European exporters, USTR has long advocated periodic changes to the list despite EU allegations that such action would breach WTO rules.

China Ever More Implicated in Dispute Settlement

China has lost its first ever WTO dispute on auto parts and faces a new challenge on alleged export subsidies to a broad range of consumer goods. On the offensive side, Beijing has initiated a case against US countervailing duties on steel and other products.

The Appellate Body upheld on 15 December practically all panel findings in the auto parts dispute, which opposed China to Canada, the EU and the US. Most importantly, the AB agreed that China had violated GATT Article III.2 by imposing an ‘internal charge’ of 15 percent on imported car parts that constitute more than 60 percent of a vehicle (or a vehicle’s value) assembled in China. The charge is additional to the ordinary 10 percent customs duty on auto parts, and is levied only after the vehicle has been completed and the share of its imported components is known.

Together, the 10-percent import tariff and the additional 15-percent internal charge equal the 25-percent customs duty imposed on entire vehicles. The complainants had charged that this practice was designed to discourage the use of foreign components in vehicles made in China and to encourage foreign manufacturers to relocate more of their production chain into China.

The Appellate Body agreed with the panel that “the security and predictability of tariff concessions would be undermined if ordinary customs duties could be applied based on factors and events that occur internally, rather than at the moment and by virtue of importation, and that this, in turn, would upset the carefully negotiated and balanced structure of key GATT rights and obligations, including the different disciplines imposed on ordinary customs duties and internal charges.” The AB further found that the 15-percent internal charge was discriminatory since it only applied to imported car components.

The complainants had also challenged China’s imposition of the charge on so-called ‘completely knocked down’ (CKD) kits and ‘semi knocked down’ (SKD) auto part kits, and the panel had supported this view. The Appellate Body, however, sided with China’s argument that the internal charge did not apply to such kits if importers declared them and paid duties at the border. The ordinary import tariff for CKD and SKD kits is 25 percent.

The Appellate Body report should be adopted before the end of January, and China will then be given a ‘reasonable period of time’ – usually about 15 months – to bring its treatment of imported car parts in compliance with WTO rules. A number of Chinese analysts, including Changjiang Securities’ Yi Jungfen, have suggested that the elimination of the 15-percent internal charge may not make that much of a difference to domestic industry since most foreign manufacturers in China are already sourcing up to 80 percent of their components locally in order cut costs.

US, Mexico Challenge ‘Famous Brands’

The ink was barely dry on the auto part report when the US and Mexico requested dispute settlement consultations with China, this time over alleged wide-spread subsidisation of so-called ‘famous brand’ products. The US charged that “China, as part of its industrial policy aimed at promoting the sale of Chinese products abroad and encouraging worldwide recognition of Chinese brand names, apparently provides numerous subsidies at multiple levels of government. The subsidies appear to include cash grant rewards for exporting, preferential loans for exporters, research and development funding to develop new products for export, and payments to lower the cost of export credit insurance.” The famous brands cover a wide range of agricultural and industrial products, including appliances, textiles, chemicals and medicines.

The US further noted that all of the challenged support programmes appeared to be export-contingent and thus in breach of WTO rules. The US said it had identified “more than 70 separate official measures, issued and applied by various levels of government in China, providing what appears to be WTO-inconsistent financial support.”

A factsheet prepared by the Office of the US Trade Representative said that a single famous brand company could receive cash grants up to US\$400,000 from a single level of government, and that companies could simultaneously collect payments from central, provincial and city authorities.

If the parties cannot settle the dispute within two months of the 19 December consultation requests, the complainants can ask for the establishment of a panel to investigate the alleged WTO violations.

China Denies Charges

“China gives no subsidies to help the export of famous brands,” Hui Boyang, deputy director of the quality management department of the General Administration of Quality Supervision, Inspection and Quarantine, told the Xinhua news agency on 23 December.

According to Mr Hui, ‘famous brand’ is just an ‘honorary title’ meant to encourage Chinese enterprises to “produce better goods, improve product quality and raise brand value.” He conceded that some local governments did give rewards to famous brand enterprises, but maintained that such rewards were “small, symbolic and one-off, not a long-term preferential policy.” Mr Hui also denied that famous brands enjoyed better export tax rebates than other products.

US CV Duties Challenged

On 12 December 2008, China made its first individual panel request at the WTO. At issue were US countervailing duties on several kinds of Chinese steel products, off-road tyres and sacks (WT/DS379/2). China challenged the US determination that its state-owned enterprises or banks provided prohibited subsidies to manufacturers of these goods, as well as alleged that US authorities had used ‘zeroing’ in their subsidy benefit calculations and levied countervailing duties in excess of the amount of the subsidy found to exist. The US blocked China’s first request in December, but a panel is likely to be established at the Dispute Settlement Body’s 20 January meeting.

The Bush-Schwab Policy on the Colombia FTA Has Failed Miserably

Steve Charnovitz

The recent adjournment of the 110th Congress provides the final verdict on the Bush Administration's strategy for securing the enactment of the Colombia-US Free Trade Agreement. The verdict is that the non-cooperative strategy of President Bush and US Trade Representative Susan Schwab failed miserably.

By way of background, recall that on 7 April 2008, the Bush Administration sent implementing legislation for the FTA to Congress without having first obtained a go-ahead from House and Senate leaders. Although the President has a right to do this under the law (19 USCS §3805(a)(1)), the informal understanding going back to 1979 was that the President would send the legislation to the Congress only after the House and Senate committees had marked up the bill in so-called 'non-markup' sessions.

As with many established legislative-executive traditions during the Bush Administration, this one was not followed. Instead, the bill written solely by the Administration was sent to Congress on a take-it-or-leave-it basis. Ambassador Schwab explained the Administration's reasoning in a press release that day which said: "Because only so many legislative work days remain between now and Congress' targeted adjournment date in September, the Administration was compelled to send the legislation at this time to Congress to ensure a vote this year." Perhaps if the Administration had had better intelligence about when the Congress was likely to adjourn for the year, the unilateral action on 7 April might have been avoided.

It is hard to see the Colombia episode as anything other than a major miscalculation by the Bush Administration. The costs of the strategy are high: the good-for-one-ride fast track procedure for Colombia has now been used up and it will be harder for future Administrations to negotiate new trade agreements.

The Congressional reaction to the Administration's maneuver was harsh and a response came quickly. On 10 April, the House voted to strip the Colombia free trade bill of fast track status. In response, Ambassador Schwab issued a press release on that day, she criticised the House for changing the rules "in the middle of the game."

For the rest of 2008, advocates of the free trade agreement with Colombia discussed the possibility that the House might change course and take up the bill. That, sadly, never happened. A key reason may have been that Presidential candidate Barack Obama opposes the trade agreement.

It is hard to see the Colombia episode as anything other than a major miscalculation by the Bush Administration. Apparently, the Administration thought that the agreement could be rammed down the throats of the Congress. Ambassador Schwab, with her many years of experience as a Senate staffer, should have known better and if she did she was unable to dissuade the Administration against this reckless strategy.

The costs of the Bush strategy are high. First, the good-for-one-ride fast track procedure for Colombia has now been used up, as Ambassador Schwab herself acknowledged in a speech to the Club for Growth on 17 November. Second, by forcing the hand of the Speaker, the Administration has taken the fig leaf off of the 30-year old fast track process. By fig leaf, I mean that it was always understood that the procedural requirement for a guaranteed up or down vote in the House and Senate was something that each of those bodies could undo, but until this year, both chambers acted as though each had a legal obligation to honor the fast track rules. Unfortunately, this fig leaf is now gone and any future fast track will have less credibility domestically and internationally. This will make it harder for future Administrations to negotiate new trade agreements and thus open overseas markets and level the playing field for our workers and families. Third, by sending the Colombia FTA bill to Capitol Hill without support, the Administration has embarrassed our close ally Colombia and put vital US interests in Latin America at risk.

In criticising the self-defeating actions of the Bush Administration on trade with Colombia, I do not excuse the vapid actions of the Congress. It was wrong for Speaker Pelosi to take fast track away from the implementing bill. It was also wrong for the Democratic House and Senate leadership to refuse to work with the Administration to firm up the language of the implementing bill. And while I am assigning blame, it was also wrong back in the spring for the pro-trade business groups and institutes around Washington to goad the Administration into "calling the Congress's bluff" on the Colombia FTA.

Looking ahead, I think the Colombia FTA is in for a bumpy road but I doubt it is dead. As I pointed out in remarks several months ago at the Inter-American Dialogue, it would be possible for the next Administration to use the fast track for the Panama FTA to also enact the Colombia FTA. It would also be possible to approve the FTA without fast track (as was done with Jordan) but that requires a well-disciplined Congress. Of course, in the immediate future, the Obama Administration will need to start by deciding whether it is for greater international trade or against it. In governing, it is hard to be both at the same time.

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The EU Should Put Its Money Where Its Mouth Is on Free Trade

Eduardo Ledesma

As the world moves from credit crunch to economic crisis to wide-scale recession, world leaders have warned that protectionism is a path to global economic ruin.

They have committed themselves to stopping protectionism that would further erode confidence in the global economy and worsen the current crisis. The European Union has been more forceful than most in renouncing the specter of mounting protectionism.

Yet, by failing to dismantle illegal trade barriers to Latin American banana imports, its actions belie its fine words and threaten the very commitment it professes to promote. By espousing lofty ideals devoid of tangible action, it risks irreparably undermining its credibility and aspiration to global leadership.

A breakthrough agreement between the EU and the Latin countries during lengthy and ill-fated Doha trade talks in July promised to end the long-standing banana dispute once and for all. The settlement was a stand-alone agreement by its express terms. Our government signed it in good faith and departed Geneva. With no explanation other than pressure from banana-producing European Member States, the EU walked away, insisting that the settlement was dependent on the broader global trade deal that had imploded yet again.

On 26 November, the World Trade Organisation's Appellate Body issued the latest in a long series of rulings condemning the EU's banana import regime as illegal. This is the 13th condemnation in 15 years. Ecuador's developing economy, which exports €670 million a year to the EU and contributes €210 million a year to EU coffers to help subsidise EU growers, is the biggest casualty of these repeat offenses.

By again throwing away the rule of law and its own promises in July, the EU threw away another opportunity to end this long-standing dispute and salvage something from the wreckage of the Geneva summit. And by now claiming that any banana redress must be tied to a Doha deal that has nothing to do with its condemned illegalities, it is trying to escape its compliance responsibilities, opting for protectionism, and laying the blame elsewhere.

It is little wonder that bananas have come to be seen as a symbol of EU transgression and evasion of commitments, undermining any credibility to global leadership in promoting trade and development, and poisoning the relationship between the EU and the two Americas.

European Trade Commissioner Catherine Ashton has declared that she will "strive to conclude a deal which prevents any return to protectionism." But EU actions are not following those lines. It claims leadership on world trade matters, while undermining the credibility of the trading system needed to prevent protectionism. In the current economic crisis, if the EU wants to show authentic leadership by upholding the rule of law, it should start with the case that has the longest record of illegal protectionism and non-compliance in the history of the WTO, bananas.

And so we call on the EU to prove that it is serious about leadership, openness, and the need to avoid protectionism. The current crisis is an opportunity to break the status quo and allow a new, better, more open equilibrium. Whether the global trade talks progress or not, the implementation of the July 27 Agreement on bananas would send a strong signal to the rest of the world that the EU is ready to reverse 15 years of banana illegalities, and do its part to deter protectionism and restore confidence in the trading system.

Eduardo Ledesma is Executive Director of the Association of Ecuadorean Banana Exporters in Guayaquil, Ecuador.

Banana Update

On 6 January, the Dispute Settlement Body adopted the latest Appellate Body report in the WTO's longest running dispute. The AB backed a WTO panel's December 2007 determination that Brussels had failed to comply with earlier WTO rulings (Bridges Year 12 No.1 page 10).

Complainants Ecuador and the US had challenged both the €176/mt most-favoured-nation (MFN) tariff the EU has applied since January 2006, and the 775,000 tonne duty-free import quota it granted to bananas from African, Caribbean and Pacific (ACP) countries in 2006 and 2007. As the ACP quota no longer exists, the Appellate Body made no recommendation on the latter claim.

With regard to the tariff, however, the Appellate Body found the EU in breach of its scheduled tariff bindings under GATT Article II:1(b). Specifically, the AB said that until the EU has negotiated and consolidated a new tariff in its Schedule of Commitments, the application of the MFN €176/mt tariff remains illegal.

In 2006, the EU eliminated an import quota it had granted to MFN suppliers and bound in its Uruguay Round schedule of commitments. The Appellate Body ruled that this quota (for 2.2 million tonnes of bananas at €75/tonne) is in fact still in force. The new €176/mt tariff was set 'without consideration of this commitment', the AB said, and resulted in less favourable treatment for bananas from non-ACP WTO Members than that provided in the EU's tariff schedule.

Ecuador wants the EU to honour a deal reached during the July 2008 mini-ministerial, under which the EU was to cut its MFN banana tariff to €114/mt by the start of 2016. The EU, however, said that the agreement was part of an overall Doha package that failed to materialise and was therefore off the table (Bridges Year 12 No.4 page 6). The EU still wants settle the matter 'once and for all' in the Doha Round negotiations, but with the talks yet again in limbo, there is little hope of a negotiated solution emerging any time soon (see article opposite).

Verified Sustainable Brazilian Ethanol in Swedish Pumps

While exporting and importing governments are often at loggerheads over the legitimacy of sustainability criteria for biofuels, private companies have agreed on a certification scheme that allows verifiably sustainable ethanol to be imported from Brazil to Sweden.

Over the past year, Sekab – a leading European supplier of renewable fuels in Sweden – and four Brazilian sugarcane ethanol producers have developed the Verified Sustainable Ethanol Initiative. Under the scheme, Cosan, Guarani, NovAmerica and Alcoeste agreed to sell to Sekab 115 million litres of anhydrous ethanol that meets certain social and environmental criteria. The trade associations BioAlcohol Fuel Foundation (BAFF), which represents the ethanol market in Sweden, and the Brazilian Sugarcane Industry Association (UNICA), are jointly driving the process to move the Brazilian ethanol industry toward a more sustainable production.

The aims of this initiative are to provide a guarantee to Swedish consumers that they are filling up with certified sustainable ethanol, to increase the offer of verified biofuels in close collaboration with the Brazilian sugar industry, to persuade other countries in Europe to develop systems for quality and sustainability assurance, and to expedite the development of international regulations for sustainable biofuels.

Sustainability Requirements

The certification requires at least an 85-percent reduction in fossil carbon dioxide compared with petrol, from a field-to-wheel perspective. CO₂ emissions are calculated using a methodology from the UK Renewable Transport Fuel Obligation (RTFO) principles, which cover all significant sources of greenhouse gas emissions, including cultivation, production and transportation. Certified ethanol must also be consistent with UNICA's provisions on the protection of forests close to water areas and resources, water management, soil conservation and the reduction of production-related environmental impacts. In addition, all harvesting must be mechanised by 2014 – up from 30 percent required today – as mandated by the 2007 Green Protocol between UNICA and the state government of São Paulo. Mechanisation eliminates the need to burn sugarcane leaves, thereby reducing local pollution, improving working conditions and energy balance. With re-

spect to social criteria, the certification scheme has zero tolerance for child labour and non-organised working conditions (slave labour). It also calls for producers to put in place health, safety and minimum wage policies in accordance with United Nations guidelines.

Sekab's selection of partners in the certification scheme was based on a shared view of what was important from a sustainability perspective. The producers understood and supported Sekab's sustainability concerns and agreed to be audited by a neutral third party. According to Mark Lyra, Ethanol Commercial Director at Cosan, the world's largest ethanol exporter, the sustainability requirements were already in line with the company's practices. The only challenge was to clearly define the criteria and to establish a methodology to measure them. Even the extensive documentation confirming they met the standards was available in Cosan's data management system since this data is used for everyday operations, such as employee management, crop monitoring and purchasing. Mr Lyra said he hoped that the verified ethanol would help curb criticism of the sugarcane industry, as well as dispel doubts about Brazilian ethanol's climate-related, environmental and social impacts.

The international quality assurance company SGS performs on-site checks to ensure that the producers meet the system's requirements. Only minor instances of non-compliance have been identified so far, such as low quality equipment for employees, Anders Fredriksson, vice president of Sekab BioFuels & Chemicals, said. Procedures are in place to ensure that non-compliance is corrected and does not reoccur.

While Sekab covers the costs of the verification process, the additional expenses associated with the certification scheme are borne by the producers. This may prevent small producers from participating in the initiative as they often lack the funds to comply with certification, especially when price premiums cannot be charged or are insignificant. They see costly certification requirements as non-tariff barriers to international trade.

Swedish Use of Ethanol

Sweden is far ahead of most EU countries in the use of biofuels. The country consumes about 800 million litres of ethanol a year, at least half which is supplied by Brazil. Ethanol use in Sweden has grown steadily since 2000 mainly due to increased use of E85. In 2007, 11.5 percent of all cars sold in Sweden could run on ethanol (E85). The national targets for the use of biofuels and other renewable fuels were set at 3 percent for 2005 and 5.75 percent for 2010, calculated on the basis of energy content.

Verified sustainable E85 (for flexifuel cars) and ED95 (for heavy vehicles with ethanol engines) have been available at Swedish pumps since August 2008. Last year, Sekab provided more than 95 percent of the Brazilian ethanol that went into E85 and ED95.

EU Context

The European Union is currently in the process of drawing up core sustainability criteria for biofuels. However, consensus among member states has so far proved elusive and it is unclear when the proposed directive on the promotion of the use of renewable energies will come into force. Despite the delay, Magnus Nillson, a transport analyst at the Swedish Society for Nature Conservation, thinks that the initiative on verified sustainable ethanol will eventually be superseded by EU-wide standards, which are likely to cover many of the criteria included in the private certification programme.

Sekab sees the certification scheme as a way of bridging the gap between the production of sustainable and non-sustainable ethanol until EU legislation is in place. "The criteria will gradually be developed over the coming years and synchronised with international regulations

when these are in place,” Sekab’s Anders Fredriksson said. “The EU is developing regulations with requirements for sustainable biofuels, but it will take time before these are ready, so we are taking the lead.”

Private vs Governmental Initiatives

In parallel with the industry initiative, the governments of Sweden and Brazil signed a bilateral agreement on bioenergy co-operation, including biofuels, in September 2007. The agreement includes provisions on policy dialogue, research and development, co-operation in third countries and trade and investment promotion. Both parties will collaborate to promote the deployment of bioenergy technologies and the creation of a world market for biofuels.

They will also seek to promote harmonised global standards and codes for biofuels in relevant fora, as well as intensify collaboration between their research and development organisations and institutions with the aim of improving technical performance, increasing cost-efficiency and promoting sustainable development. In addition, Sweden and Brazil are set to investigate the possibility of assisting developing countries set up a regulatory framework to promote renewable energy, including biofuels production and use. Although Brazil has not yet ratified the agreement, both countries are due to meet by the end of the year to discuss concrete steps to prepare its implementation.

While certification programmes mandated by governments must be consistent with WTO provisions, private initiatives, such as that on verified sustainable ethanol, are not bound by multilateral trade rules on non-discrimination, abstention from creating unnecessary obstacles to trade, proportionality and transparency. However, private standards can be captured under the General Agreement on Tariffs and Trade as governmental measures if there is a strong linkage between the private action and the governments in question, as in the case where a country decides to grant incentives to certified biofuels and in doing so relies on the certification scheme developed by a private body (UNCTAD, 2008). It remains to be seen whether Sekab’s certified sustainable ethanol could fall within this category.

Europe Adopts Climate Change Package

Both EU member states and the European Parliament agreed in December upon legislation to combat climate change, but critics claim that the compromise deal contains too many loopholes.

The package upholds the 20-20-20 targets proposed by the European Commission for 2020: a 20-percent reduction in greenhouse gas emissions from 1990 levels; increasing the share of renewables in the EU’s energy mix to 20 percent from 8.5 percent today; and a 20-percent cut in energy use through improved energy efficiency.

The European Emissions Trading Scheme (ETS) will serve as a key tool for achieving the greenhouse gas reduction target. Under the system, emission allowances will be auctioned to polluting industries. The original plan was to require them to pay for the totality of their emission rights by 2020, but this goal was watered down to 70 percent, with full auctioning now envisaged for 2027. The interim target for 2013 is just 20 percent.

Power-generation plants were slated to buy all their permits by 2013. That still holds in principle, but special ‘transitional free allowances’ are now available to power companies in Eastern European countries heavily dependent on coal, such as Poland, which had threatened to veto the deal.

Pressure from Western countries concerned by potential job losses due to the financial downturn, especially Germany and Italy, also contributed to a less ambitious agreement than some had hoped for. The most energy-intensive industries – such as steel, cement and chemical producers – will continue to get the lion’s share of their emissions permits for free if they invest in the ‘best available’ technology. The rationale for this lenience is that companies in these sectors are subject to ‘carbon leakage’, i.e. they may relocate production if competition from manufacturers in countries with less stringent climate change policies gets too tough.

By 2020, at least 10 percent of transport fuel in all member states must come from renewables, such as biofuels, hydrogen, ‘green’ electricity and the like. Biofuels should achieve at least a 35-percent cut in carbon emissions compared to fossil fuels by 2011, although producers already in operation will have until 1 April 2013 to comply.

Instead of being required to earmark half of their auction revenue to an international fund to assist developing countries that participate in a post-Kyoto agreement in reducing greenhouse emissions and adapting to climate change (as the parliament’s environment committee had proposed), governments should now use half the money on ‘measures to combat climate change’ more generally. In addition, the revamped ETS will allow companies to use offset credits from outside Europe.

While EU officials and politicians rejoiced over a ‘historic’ agreement that would put Europe on a path to a low carbon economy and serve as an example to others, green euro-parliamentarian Caroline Lucas wrote in *The Guardian* that a 20-percent emissions reduction target by 2020 was “far too little too late and, scandalously, around two-thirds of the emissions reduction could be outsourced to developing countries.” This would allow the EU to “cherry-pick the cheapest climate mitigation potential in developing countries” while turning the ETS “into a windfall profit machine for Europe’s most polluting industries.”

Poznan Climate Meeting Matched Low Expectations

Global climate talks held in Poznan in December made unexpected progress on a UN Adaptation Fund and marginal movement towards an agreement on technology transfer. Nevertheless, many observers criticised the meeting for yielding exactly what was expected: very little.

The 14th Conference of the Parties to the United Nations Framework Convention on Climate Change, or COP-14, was expected to provide delegates with a venue to reflect on 2008 and make solid commitments for the next 12 months leading up to COP-15 in Copenhagen next year. With a less-than-expected presence from US President-elect Barack Obama's delegation and global economic uncertainty casting a shadow over the negotiations, the significant progress that environmentalists had hoped for remained elusive.

Deal on Adaptation Fund

Delegates finally agreed to give the UN Adaptation Fund board the authority to grant developing countries access to funds earmarked for climate change adaptation. The fund is, essentially, an approximately US\$80 million pot of money meant to protect developing countries against the potential impacts of climate change. The funds have been accumulated from voluntary contributions and a two-percent allocation from the Clean Development Mechanism (CDM) – a market mechanism under the Kyoto Protocol that allows industrialised countries to receive credit through investing in emissions reduction projects in developing countries.

According to the UN, adaptation to climate change in developing countries requires US\$86 billion in funding each year. Further funding streams for adaptation are expected to be decided in Copenhagen in 2009.

Technology Transfer

Technology transfer, which was widely expected to monopolise the COP-14 agenda, saw some progress when parties endorsed the Global Environment Facility's Poznan Strategic Programme on Technology Transfer. The programme seeks to scale up the level of investment in technology transfer in order to help developing countries address their needs for environmentally sound technologies to mitigate and adapt to climate change.

Despite this progress, some green groups expressed concern that developed countries made no specific proposals detailing how much finance they would provide for technology transfer. A major coalition of developing countries – the G-77 and China – has called on the industrialised nations to divert as much as 1 percent of their gross national product to help finance emissions reducing technology projects in the developing world. Many observers say finding this still-elusive magic formula will be key to reaching consensus in Copenhagen.

On a related issue, long-standing divergence between developed and developing countries remained on issues related to intellectual property rights (IPRs). The contact group on 'Delivering on Technology and Financing, Including Consideration of Institutional Arrangements' discussed the matter in depth, but failed to come to any meaningful convergence: developing countries stressed the need to depart from a business-as-usual approach in the treatment of IPRs in addressing the climate change emergency, while developed countries emphasised the importance of IPRs in promoting innovation for technology development and deployment.

Shared Vision Remains Elusive

Establishing a 'shared vision' has been stressed as an essential foundation for moving toward consensus. A ministerial roundtable was convened in Poznan to address this topic, but despite an expression of commitment to advance the process by both developed and developing countries, there was little forward movement.

Developed countries stressed the importance of medium- and long-term targets for 2020 and 2050. Meanwhile, developing countries insisted on the need for developed countries to meet existing targets under the Kyoto Protocol and give a strong sense of future commitment by agreeing to reduce their emissions by a minimum of 40 percent by 2050. Referring to a recent report by the Intergovernmental Panel on Climate Change, several developed countries called for developing countries to undertake a 'substantial deviation from business as usual' in the path of their emissions growth. There now appears to be some convergence that developing countries' future mitigation efforts will be discussed in a way that recognises a substantial shift away from current practice, although probably not in terms of capping of their emissions.

Mitigation Agreement in Principle, Disappointment on Deforestation

Under the Kyoto Protocol's Ad Hoc Working Group on further commitments, parties agreed that industrialised countries' commitments post-2012 should principally take the form of quantified emissions limitations and reduction objectives, in line with the type of emissions reduction targets they have assumed for the first commitment period of the protocol.

Hopes that some movement would be made on deforestation issues, such as the UN Reduced Emissions from Deforestation and Forest Degradation Programme, were frustrated in Poznan as no agreement was reached on whether to include forests in a proposed carbon market scheme.

Moving Forward

Although parties agreed to step up their efforts in 2009 to create the necessary momentum for consensus in Copenhagen, critics were concerned that the lack of progress seen in Poznan indicated a lack of commitment, particularly from developed countries. "The climate talks fizzled out with no progress on the big decisions," said Andy Atkins, executive director of Friends of the Earth. "There's now a plan to make decisions in 2009, but a radical quickening in pace is urgently required."

In related news, European Union leaders meeting at a concurrent conference unanimously agreed a deal on tackling climate change (see page 19).

How Is President Obama Likely to Deal with Trade?

Trineesh Biswas

The new president of the United States has sent clear signals about how he intends to change American foreign policy on issues ranging from the wars in Iraq and Afghanistan to climate change and the pursuit of co-operative diplomacy in general. On trade, however, the picture is more blurry.

In their otherwise hearty endorsements of Obama's candidacy, the Financial Times and The Economist both expressed qualms about his commitment to free trade and his willingness to stand up to protectionists in his own party.

Trade emerged as a controversial issue during the unusually long US election campaign, and will remain fraught amidst fears of more job losses as a result of a severe economic recession.

As the Obama administration takes power in January, its first priority will be to right the domestic economy. A massive economic stimulus package, along with tax and healthcare reforms will be at the top of the agenda. Devoting serious time, attention and political capital to controversial trade initiatives will not.

This was underlined by the man reported to have been Obama's preferred candidate for US Trade Representative, Xavier Becerra. Explaining his decision not to join the new administration, the California representative – criticised as a 'dyed-in-the-wool protectionist' by the Los Angeles Times – told a Spanish-language newspaper that the trade job "would not be priority No. 1, and perhaps, not even priority No. 2 or 3" for the White House.

President Obama subsequently nominated former Dallas mayor Ron Kirk – who lacks Washington credentials, but is considered 'pro-trade' – to the top job in US trade policy. Mr Kirk is known to be sensitive to labour and environmental concerns, but Calvin Jillson, professor of political science at Southern Methodist University in Dallas, described his mayoral overseas trade missions, mainly to the Far East and Latin America, as "about the extent of his trade background" in an interview with the Washington-based Bureau of National Affairs. Other pundits have cast doubts over how forcefully he is likely to support the multilateral trading regime.

Is Protectionism in the Ascendancy?

Countries reliant on exports to the United States are particularly anxious to see clear signs about the direction Washington will take on trade policy.

All indications suggest that Obama and his economic advisers are by temperament supporters of open trade. In his personal writings, Obama has questioned whether effective protectionism is even possible in a US economy that is deeply integrated with the rest of the world.

Obama the candidate, however, struck very different notes on trade, vowing to either renegotiate the environmental and labour standards in the North American Free Trade Agreement or to pull the US out of the accord altogether. Obama the senator voted for a subsidy-laden farm bill, and promised to maintain tariff protection and billions of dollars of support for corn-based ethanol, a biofuel of questionable environmental merit at best.

Some of this was political positioning, particularly with an eye to securing the support of anti-trade labour unions in a tight race against Hillary Clinton in the Democratic Party primaries. Once he had secured the Democratic party nomination, Obama stepped down his rhetoric on trade, even more so once the scope of the global financial crisis became apparent, and an errant remark could have roiled financial markets.

But it would be wrong to dismiss trade scepticism as a mere election-time phenomenon.

Polling data suggests that Americans' support for open trade is cooling across the political spectrum. Even in April, when economic anxiety was far below current levels, the Pew Re-

search Center found that nearly half of US citizens (48 percent) believed that free trade agreements were 'a bad thing' for the country. A decade ago, only 30 percent said such deals were harmful to the US economy.

It is not surprising, then, that anti-trade messages featured in many congressional election campaigns – more than ever before, according to a new study from Public Citizen, a consumer advocacy group. President Obama will have to deal with a Congress in which many from his own party were elected on platforms that included promises to protect American jobs by taking a hard line on trade.

While these views are somewhat ill-founded, they are understandable.

Fear of Losing Social Security Benefits a Factor in Mistrust

The relatively weak social safety net in the US means that workers are particularly vulnerable to losing their jobs – losing one's job might mean losing health insurance and pension benefits as well.

And while many economists say that the primary factors behind US job losses are structural trends such as mechanisation, specialisation and declining international transport and communication costs, trade and foreigners make for easier targets.

Strengthening the social safety net, particularly for health insurance, will be a key goal of the Obama administration. If successful, this effort may, over the longer term, go some way to blunt workers' suspicion of trade.

Suspicion aside, what little growth the US has enjoyed as of late owed much to exports, despite the recent rise in the dollar. Government economic data shows that US exports boosted GDP by 1.1 percent in the third quarter of 2008, a period when the country's gross domestic product shrank by 0.3 percent.

Continued on page 22

New Congress May Ease Political Tension

The Democrats' victory in November will erase a reason for the US's recent political contortions over trade agreements that is quite separate from genuine anxiety about economic globalisation: the Bush administration's toxic relationship with congressional Democrats.

During the years when Republicans controlled Congress, Democratic lawmakers seethed about the White House's seeming disdain for bipartisan co-operation. Congressional Republicans were content to pass accords like the Central American Free Trade Agreement by narrow majorities drawn almost exclusively from their own ranks – alienating even Democrats who might have been inclined to support the agreements.

After taking control of Congress in 2006, the Democrats signalled that they would be open to cooperation on trade, but on their terms. These terms included greater consultation, more protections for labour and the environment, as well as access to medicine and, most notably, more enforcement of existing trade agreements, especially with China. This worked for the Peru deal, which was renegotiated and approved. The Colombia FTA however, became a pawn in a partisan political showdown (Bridges Year 12 No.3, page 16).

With his healthy majority in the popular vote, and Democrats safely in control of both the House and the Senate, Obama will be dealing with a friendly Congress, at least at first. And given that some in his own party would oppose any and all trade deals, he would presumably have to reach across the aisle if he chose to try to secure passage for pending deals with Colombia and South Korea.

Apart from the fact that trade will be low on its priority list, little is certain about how the new administration will conduct trade policy.

The Democratic Party platform for the November election called for co-operation with other countries to successfully conclude the Doha Round in a manner “that would increase US exports, support good jobs in America, protect worker rights and

the environment, benefit our businesses and our farms, strengthen the rules-based multilateral system, and advance development of the world's poorest countries.” It also privileged the multilateral trading system over bilateral agreements.

But election platforms are often sacrificed to the demands of circumstance once parties take power. A Democratic Party that supports bailing out Detroit automakers may well lose some of its enthusiasm for greater WTO scrutiny of industrial subsidies, another plank in its trade platform.

Reading the Tea Leaves of the Obama Team

Trade observers have been searching for signs of a future policy direction in the track records of Obama's senior economic appointees. From adviser Larry Summers to future Treasury Secretary Timothy Geithner, they are adherents to the centrist economics favoured by Bill Clinton's administration in the 1990s, which backed both NAFTA and the Uruguay Round accords. However, some of the core principles of what was dubbed Rubinomics, after Clinton's treasury secretary, will face a tougher ride now. Obama faces the prospect of trillion-dollar deficits, not balanced budgets. Financial deregulation lies discredited. And free trade is more contentious than ever.

Those looking for farm policy reform will find mixed cause for comfort in Obama's choice for agriculture secretary, Tom Vilsack. The former Iowa governor is a biofuels enthusiast with long-standing ties to agribusiness and established farm spending patterns, but also a proponent of stronger action on climate change. He supports wind power and ‘second-generation’ biofuels that do not rely on food crops, has supported conservation programmes, and is open to the idea of cutting the US' tariff on ethanol.

The Los Angeles Times called California lawmaker Xavier Becerra, whom Obama had hoped to have as his US Trade Representative “a leader of the Democratic Party's protectionist wing,” and editorialised that the rumoured presidential choice suggested that Obama's campaign rhetoric had been ‘disastrously serious’. Becerra's voting record, however, is much more complex than this would suggest. He voted for NAFTA (a vote he now claims to regret) and to normalise trade relations with China. Even after leading Democratic opposition to CAFTA, he voted for the renegotiated trade deal with Peru.

While Ron Kirk, chosen to head the Office of the US Trade Representative after Becerra declined the offer, is something of an unknown quantity, he too supported NAFTA. In early January, Obama's erstwhile nominee for Secretary of Commerce – former congressman, Energy Secretary and now governor of New Mexico Bill Richardson – stepped aside pending the outcome of an investigation into allegations that state contracts were improperly awarded to a political backer. At the time of writing, his replacement had not been announced.

Business lobbies have expressed some concern over the implications of Obama's choice of the widely respected four-term congresswoman Hilda Solis as Secretary of Labour due to her strong ties to trade-averse unions.

Nevertheless, Jeffrey Schott, a senior fellow at the Peterson Institute for International Economics, believes that fears of US retrenchment on trade are exaggerated.

He thinks it possible that Congress could grant Obama's White House short-term negotiating authority if necessary to conclude the Doha Round negotiations.

The administration will have to decide how to pursue trade policy more broadly, he suggested, motivated in part by diplomatic and security interests abroad, and fears of rising protectionism. Trade policy, however, “is not the Number 1 thing Obama was elected to do,” he noted.

Trineesh Biswas is Advisor to ICTSD's Chief Executive. He wishes to thank Paige McClanahan, Editor of Bridges Weekly Trade News Digest, for her input.

Trade in Climate-friendly Technologies

Trade can assist in the diffusion of climate-friendly technologies, but WTO talks have stalled on the definition of environmental goods that should be slated for quick liberalisation.

As a contribution to the debate, ICTSD in collaboration with UNEP, the Energy Research Centre (ECN) of the Netherlands and the Energy and Resources Institute (TERI) in India, convened a side event during the Poznan climate conference aimed at identifying goods and technologies that provide clear climate change benefits, as well as the barriers and patterns of global commerce that impede trade in the sectors concerned.

One of the reports discussed at the meeting dealt with the results of a trade analysis conducted by ECN on technologies and goods in the energy supply sector. The other presented the findings of TERI's mapping study for residential and commercial buildings. Both sectors were identified in the fourth assessment of the Intergovernmental Panel on Climate Change as providing the greatest potential for climate change mitigation.

While the ECN analysis covered only commercially available goods, TERI's mapping study also identified goods now under development that had strong prospects for commercialisation within five to ten years.

The latter study made clear that policy and legislation played an important role in the development and adoption of clean energy technologies and the promotion of energy efficiency in the buildings sector (in particular renewable energies). Common measures included production targets, labelling, standards, awareness-raising, tax and market incentives and the like.

The analysis of 84 energy supply products found that developing countries' applied tariffs (at the six-digit level of the harmonised system customs code) were generally low – fluctuating between zero and ten percent. In some cases, however, applied rates may attain 40 percent, and bound tariffs for the products concerned are even higher. In developed countries, the average tariff varies between 5 and 8 percent, but in the developing countries that dominate the top ten importers and exporters (especially China), it can reach up to 25 percent. The analysis also revealed that only 30 percent of the 84 products were sensitive to tariff elimination, suggesting that to boost trade, action may be needed beyond tariff removal alone.

China, Mexico and Korea are the only developing countries among the top ten exporters for some of these technologies. The study found that, in most developing countries, the two most important factors affecting imports of climate-relevant technologies are technical assistance projects and environmental performance (based on countries' ranking under the Environmental Performance Index). This suggests that donors have an important role to play in the diffusion of these technologies.

During the discussions, several participants stressed the importance of including climate change in the consideration of trade policy. They noted that non-trade-related barriers would also need to be addressed for an effective diffusion of technology to take place. The lack of technical capacity in developing countries was identified as one of the most important barriers.

An analysis limited to trade flows can give a distorted impression of technology development and ownership. For instance, although China exports a number of clean energy technologies, these mainly come from joint-ventures where the technologies are owned by foreign firms. Participants also highlighted a number of behind-the-border measures that would require careful consideration in order to enhance the deployment and diffusion of climate-friendly technologies through trade and trade liberalisation.

The final versions of these studies, together with their trade flow and trade-barrier analyses, will be published by ICTSD in the first quarter of 2009.

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

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Other Meetings

Jan. 20-22	Knowledge Share Fair for Agricultural Development and Food Security http://www.sharefair.net
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