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Facts and Figures

- Due to climate change, many low-income countries heavily dependent on agriculture are likely to experience a sharp drop in export revenue as a share of agricultural output by the 2080s.

Country	Ag exports 2003	Exports as % of total ag output 2003	Estimate of exports as % of total ag output by 2080s ¹
Malawi	US\$439 mn	67.5	-20.9 to -14.2
Zimbabwe	US\$855 mn	28.3	-10.7 to -8.1
Senegal	US\$185 mn	16.8	-8.7 to -7.5
Mali	US\$403 mn	24.5	-8.7 to -6.3
Burkina Faso	US\$286 mn	22.0	-5.4
Zambia	US\$149 mn	15.0	-5.9 to -4.6
Ethiopia	US\$451 mn	16.1	-5.0 to -3.4

¹The lower figure includes 'carbon fertilisation' effects where an increased concentration of CO₂ in the atmosphere acts as a stimulus to crop productivity.

- They also stand to lose between -1.9 and -60.1 percent of their total agricultural output by the 2080s.

Vulnerability to climate change		
Country	Estimates by the 2080s in % of agricultural output	
	Without carbon fertilisation	With carbon fertilisation
Central Afr. Rep.	-60.1	-54.1
India	-31.1	-28.8
Afghanistan	-24.7	-13.4

Source: Keane, Jodie; Page, Sheila; Kergna, Alpha and Kennan, Jane. Climate Change, Agriculture and Aid for Trade. ICTSD and IFAD, October 2009

Trade and Climate: Joined at the Hip?

Two events of importance to sustainable development advocates took place at the close of the year 2009: the long-delayed WTO ministerial conference and the Copenhagen climate summit.

The overarching theme of the seventh WTO ministerial conference was 'no surprises'. It was agreed months in advance that there would be no negotiations, that ministers would make brief statements at a plenary and review the gamut of the WTO's activities, as well as its contribution to recovery, growth and development. Only items on which the entire membership had agreed in advance would be on the agenda, and the discussions would be reflected in a 'balanced and factual' chair's summary. The promise of no surprises was kept to the letter.

What Happened...

Well-known positions and priorities got a re-airing as minister upon minister made three-minute statements in an often empty plenary hall. Parallel sessions provided some latitude for an exchange of views, but no ministerial guidance emerged on the issues debated. True to the script, Chile's Trade Minister Andrés Velasco, who chaired the conference, summed up the discussions in very general terms and less than a thousand words (see page 4 for excerpts).

According to the summary, "ministers reaffirmed the need to conclude the round in 2010 and for a stock-taking exercise to take place in the first quarter of next year." The stock-taking, scheduled for the last week of March, will focus on whether concluding the Doha Round in 2010 remains doable (see page 5 for further details).

Despite the non-event nature of the ministerial conference, WTO Director-General Pascal Lamy said the event had "sent a strong signal of convergence on the importance of trade and the Doha Round to economic recovery and poverty alleviation in developing countries."

The convergence did not extend to the substance of the negotiations, however. US Trade Representative Ron Kirk never wavered from the key message that his country was looking for a substantial increase in market access, and needed to know what was on offer before engaging further. In order to conclude the round, "advanced developing economies must step up," he said, adding that it was more important to get the right result than a quick one. This does not point to a revitalisation of negotiations in Geneva, where many have blamed the lack of US engagement as the main factor holding up the talks. Off the record, however, many delegates admit that other governments also have reservations about trade liberalisation that could affect jobs at a time of fragile recovery from the worst recession since World War II.

The only (pre-agreed) formal decisions of the ministerial meeting were an extension of a moratorium on so-called 'non-violation' disputes in the field of intellectual property rights, and the maintenance of the practice of not imposing customs duties on e-commerce. Both issues have been under consideration at the WTO for years, and the moratoria have been prolonged from one ministerial to the next.

...and What Did Not

Least-developed countries (LDCs) had proposed an 'early harvest' package of actions in their favour, including duty- and quota-free access to developed country markets, a waiver covering preferential treatment for their service providers, a solution to cotton subsidies and improving

Continued on page 2

Bridges

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the accession process for LDCs (see page 6). However, this proposal was not on the formal agenda and thus none of the measures were adopted. The chair's summary noted briefly that "LDC-specific issues were underlined as needing particular attention."

Eighteen developed and developing countries had proposed that the outcome document include a request from ministers for the WTO's General Council to "establish an appropriate deliberative process to review the organisation's functioning, efficiency and transparency and consider possible improvements." This proposal, aimed at strengthening the WTO as an institution, did not make it to the official agenda either, and ministers did not request a review. Instead, the chair reported 'broad convergence' on the need to improve notifications, data collection, analysis and dissemination. He also noted that enhancing the WTO's effectiveness "should not compromise the principle of transparency and inclusiveness."

These, and a host of other issues and challenges faced by the multilateral trading system, such as climate change, were subject of substantive debates at the Geneva Trade and Development Symposium, which ran parallel to the official conference (see page 23).

Climate Change Summit Dashes Hopes

If the WTO ministerial conference was a deliberate non-event, the Copenhagen climate summit held a week later was anything but. Eleventh-hour negotiations between heads of state, protesting activists and delegate walkouts captured the attention of the media, as well as the public.

Ambitions had been scaled down before the conference, and no one expected agreement on binding new commitments to reduce greenhouse gas emissions. Many, however, still hoped for progress toward that goal. Those hopes were dashed when the only outcome of the two-week gathering turned out to be a non-binding political statement with no quantified targets and no deadlines for achieving future cuts. The Copenhagen Accord was signed by 20 countries, and supported by many more, but not officially adopted (see page 17).

The Trade and Climate Nexus

How the world responds to climate change has significant implications for international trade. The Copenhagen Accord does not even mention two of the most contentious issues at stake here, i.e. border tax adjustments on carbon-intensive imports (strongly opposed by developing countries) and the role intellectual property rights in keeping climate-friendly technologies out of reach of poor nations (a no-go zone for many developed countries). Both were subject to fierce debate in the negotiations throughout last year, and remain unresolved.

Some, including WTO Director-General Lamy, view the Copenhagen Accord as a step forward since, unlike the Kyoto Protocol, it could eventually encompass the majority of world emissions. The ever-optimistic WTO chief noted that although the memberships of both the WTO and the UN were divided on the use of border adjustment measures, "the more we move toward a multilateral framework on climate change, the more unilateral trade measures will be difficult to explain." But what if a multilateral framework cannot be agreed? Will the WTO be called to arbitrate whether unilateral trade measures imposed in the name of fighting climate change are consistent with international trade rules? Pitting the trade and climate regimes against each other would be the worst possible outcome for sustainable development.

Next Stop Mexico

The Executive Secretary of the Climate Change Convention admitted that the Copenhagen Accord was short on ambition, but also said it was a 'letter of intent' that was "not precise about what needs to be done in legal terms. So the challenge is now to turn what we have agreed politically in Copenhagen into something real, measurable and verifiable."

Negotiations will continue, but momentum has undoubtedly been lost. Many fear that the Copenhagen Accord's lack of a commitment to reaching a binding treaty at the next conference of the parties – to be held in Mexico City late in 2010 – will make postponing action easier. Just one negotiating session is scheduled before Mexico, during the first two weeks of June in Bonn.

Multilateralism and Diversity: Rethinking the Structure of WTO Agreements

Robert Howse

Despite the efforts of Director-General Lamy and his lieutenants to keep a brave face, a sense of frustration and failure clearly pervades the Doha Round negotiations. Meanwhile, the world has moved on and issues not on the Doha agenda, such as the climate change– trade nexus have taken on a greater urgency.

The round was born in Qatar in the wake of two collapsed WTO ministerial meetings (Seattle and Cancun). It has absorbed the energies of many capable and public-spirited officials and diplomats, and considerable resources of the WTO secretariat, but has produced little in the way of results. The idea that it will all come together in some last minute high-pressure negotiating session, with enough pressure being put on the leaders of the major powers, is nothing but a fantasy.

Political capital is invested elsewhere, dealing with the immediate demands of the financial and economic crisis – the restabilisation of national economies and the normalisation of domestic and international financial systems. The Doha talks have stalled, but preferential trade arrangements have proliferated. Even countries that had traditionally opted for multilateralism have now begun aggressively to pursue regional trade liberalisation. While the Doha agenda remains dominated by issues left over from the Uruguay Round, the world has moved on and issues not on the Doha agenda (except indirectly and peripherally), such as the relation of climate change to trade, have taken on a greater urgency and significance than many of those that are being discussed pursuant to the Doha Declaration.¹

But it is not only subject matter of WTO negotiations that needs to be reconsidered; the structure of negotiations and of WTO agreements also needs to be rethought. In particular, we must reflect on the extent to which the current impasse is a product of what might be called the ‘single undertaking’ mentality: the notion that the WTO must move forward through comprehensive rounds of negotiations, resulting in a package of agreements to all of which most WTO must adhere more or less on the same terms. Even in the Uruguay Round itself, this rigidity was not fully followed – the Government Procurement Agreement is plurilateral and the GATS permits individual WTO Members to tailor many of their obligations, based on what they are prepared to commit. Today more than ever the WTO membership exhibits enormous diversity in levels and trajectories of economic development, political systems and capacities. In these circumstances we need to re-imagine the round in more flexible terms.

Re-examining Some Key Assumption

First of all, why not simply admit that some elements of the Doha package are much harder to obtain agreement to than others? It is quite feasible to re-conceive the ‘conclusion’ of the round as an on-going process, rather than a grand finale where everything is agreed at once. An assessment needs to be done of which areas are close to agreement and which areas represent a greater challenge to achieve common ground. Moving forward to agreement on the former, while simply admitting that the latter are not ripe, will give the Doha exercise a sense of greater momentum on the one hand, and greater realism, on the other. In defining these different areas, and taking stock of where things really stand, the Director-General with his senior counsellors and officials, has the opportunity to exercise real leadership.

Second, a similarly hard-headed assessment needs to be done of whether in certain areas it is simply not realistic to expect all WTO Members to agree. It might be the case that a wide range of agreement already exists among a considerable number of Members, but certain others are simply not ready to proceed (one possible example is liberalisation of trade in environmental goods and services). In such cases, it may make sense to imagine a plurilateral outcome: an agreement among the Members who are ready to agree, while leaving it open for

others to join. This is what happened with basic telecommunications and financial services in the Uruguay Round, although official WTO theology does not admit that these arrangements are genuinely plurilateral.

Third, a careful examination needs to be undertaken of the way in which various kinds of flexibilities can be built into new accords to address the needs and concerns of particular Members, whether for policy space or capacity-building, for example. The existing flexibilities in WTO agreements needs to be inventoried and examined for their effectiveness in managing diversity within a multilateral framework. These include safeguards, exceptions and limitations provisions, phase-in periods, obligations to provide technical assistance, and so forth. In the heat of the negotiations themselves, there is little opportunity to consider carefully these structural possibilities, or to think about basic design choices: for instance, which flexibilities need to be offered on a general basis, and which can be tailored to particular Members or groups of Members?

Fourth, one dimension of the current negotiations that limits the range of options for achieving agreement is resistance among a number of key players and supported by what appears to be the overall outlook of the WTO as an institution to adjusting or amending the Uruguay Round Agreements – as if they were some kind of divine, or super-constitutional law set in stone. On the one hand, the Doha Round has been billed as a development round. On the other hand, it is not supposed to be possible to use this round to open up aspects of the Uruguay Round settlement that have been sources of considerable grievance and grief for a range of developing countries.

The instruments on access to medicines are an illustration that there is nothing actually

Continued on page 4

impossible about adjusting the Uruguay Round bargain, where there is sufficient political will. Moreover, there are options in between a formal amendment of Uruguay Round provisions and complete inaction, for example through interpretative understandings, where the clauses in question are open-ended or ambiguous, or capable of more flexible readings than would seem to be currently the case.

This could be used to fix some of the difficulties of the Dispute Settlement Understanding, particularly in the relationship between compliance panel actions and the imposition of countermeasures. It would even be possible to have interpretative understandings that would apply as between a sub-set of WTO Members, provided these do not diminish the rights of Members who do not subscribe to the understanding in question. Such *inter se* agreements between some of the states parties to a multilateral accord are explicitly contemplated in the Vienna Convention on the Law of Treaties. Even if not in the form of treaties, understandings along such lines

would constitute relevant practice to guide the Appellate Body in disputes to which adherents of the understandings in question are parties.

If the legitimacy of the dispute settlement organs is not to be stretched to the limit, there must be some way of addressing gaps and ambiguities in the existing law other than through judicial activism or comprehensive renegotiation. Here, one immediate step would be to attempt to identify those issues and areas where more rapid and satisfying progress can be made through interpretative understandings or similar devices that fall short of formal legal amendments. Fixing some of the concerns about the existing law in this way could build confidence and momentum for new accords, and might be considered in some instances as an intermediate step.

None of these proposals will guarantee a successful Doha result, obviously; good timing and an appropriate investment of political capital both by developed and developing countries remain crucial. But in world of enormous and increasing diversity, where new issues and challenges demand more rapid cooperation among states and other global actors, it is important to keep multilateralism alive and relevant. The tangled web of regional and other preferential accords already poses formidable challenges to global governance, in areas such as investment for instance. A more flexible WTO architecture can still draw on the organisation's strengths as an open forum for deliberation and exchange of ideas and views, as well as a rule-of-law based system for settling disputes, with an elaborate jurisprudence and a final court of appeal.

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ENDNOTE

¹ See Susan Esserman and Robert Howse, *Rethinking the WTO*, Forbes.com, September 4, 2008. A number of the ideas that follow have been developed in my collaboration with Esserman; but I alone am responsible for the views expressed in this article.

WTO Ministerial: Excerpts from the Chair's Summary

There was strong convergence on the importance of trade and the Doha Round to economic recovery and poverty alleviation in developing countries. The development dimension should remain central and particular attention should be paid to issues of importance to developing countries.

Ministers reaffirmed the need to conclude the Round in 2010 and for a stock-taking exercise to take place in the first quarter of next year. [...] Gaps remain on substance and there was wide acknowledgment of the need for leadership and engagement on the remaining specific issues over the coming weeks.

There was wide support for building on progress made to date [and] for not attempting to reopen stabilised texts. While priority is being given to agriculture and NAMA, it is important to advance on other areas on the agenda, including services, rules and trade facilitation.

LDC-specific issues were underlined as needing particular attention, including duty-free quota-free market access, cotton, and the LDC waiver for services.

There was broad agreement that the growing number of bilateral and regional trade agreements is an issue for the multilateral trading system, and that there is a need to ensure that the two approaches to trade opening continue to complement each other.

There was wide recognition that providing market access to developing countries and LDCs is not enough on its own. Capacity-building was seen as vital to addressing supply-side constraints. The importance of keeping up the momentum of Aid for Trade, including the Enhanced Integrated Framework, was stressed.

Ministers had a wide-ranging discussion on enhancing the institutional effectiveness of the WTO. Its monitoring and analytical work was widely seen to have been of particular value in helping to stave off protectionist responses to the crisis. There was substantial convergence on the need to improve notifications as well as data collection, analysis and dissemination.

High value continues to be placed by members on transparency and inclusiveness in the WTO. Improving the institution's effectiveness should not compromise this principle.

Numerous comments were made on other current and future issues facing the WTO. Climate change was raised by many. The contribution the WTO can make through removing barriers to trade in environmental goods and services was widely endorsed. There were also warnings against 'green protectionism'. Food security and energy security were also highlighted.

Doha Round Stock-taking Looms in March

In late March, WTO Members are set to decide whether the Doha Round can be wrapped up this year. Given the stalemate on substantive differences in agriculture and industrial market access, the answer is likely to be no. What will happen in that case is uncertain.

At the time of writing, information on what the ‘stock-taking exercise’ would entail was extremely sketchy. WTO Director-General Pascal Lamy told the General Council on 17 December that his sense was to “keep open the format and exact content of the stock-taking while keeping in mind that, at this stage, the aim of such an exercise is to assess whether 2010 remains doable.”

Several options are reportedly under consideration. The most ambitious one, a ministerial gathering in Geneva, has been all but discarded. A postponement of the stock-taking has also been evoked, but the chance of that happening appears remote.

Another, more realistic, option is that the chairs of the negotiating groups on agriculture and industrial market access will produce overviews of the state of play, or perhaps some partial texts to supplement the draft modalities released in December 2008. However, no revisions of the entire negotiating drafts are expected.

Whatever comes out of the exercise will feed into the G-20 meeting in Toronto next June (the group requested in September that trade ministers take stock of progress early in 2010; see page 20).

The question is what will happen once the stock-taking is done. If there is a sense of insufficient progress, senior officials, or the WTO membership as a whole, could just acknowledge that the talks will not conclude this year. A new ‘deadline’ could be set, possibly for mid-2011.

Some, including the head of the American Farm Bureau Federation Bob Stallman, have suggested that the negotiations be suspended for a while, but sources say this is unlikely even if many delegates are increasingly frustrated about spending so much time on slow technical work while nothing happens on the substantive issues that divide the membership. This is particularly true for the capital-based senior officials who have come to Geneva once a month and departed with no concrete results.

As has been case at previous times of crisis, the idea has resurfaced of requesting Mr Lamy himself to draw up a comprehensive negotiating draft that would clearly show trade-offs across different sectors. The WTO chief has rejected the similar suggestions in the past, and sources close to the negotiations said it was highly unlikely that he would agree to take on the task at this point.

Agriculture Update

WTO negotiations on agriculture made scant progress in 2009 despite the involvement of capital-based officials in the talks. Much time was spent on the preparation of ‘templates’ that Members would use to calculate their new tariffs and subsidy cuts once a modalities agreement has been reached on the overall shape of the deal. The main focus of this highly technical work in 2009 was on what base data would be needed and how it should be presented. In early 2010, delegations are expected to start designing the actual templates that will be used for scheduling commitments.

Technical work advanced on the special safeguard mechanism (SSM), under which developing countries will be able to temporarily raise tariffs in order to protect farmers in the event of import surges or price declines. Exporters Australia, Brazil, the US and Uruguay, which tend to view the SSM with suspicion, presented simulations on how the mechanism would affect trade in specific products. While welcoming the studies, the SSM’s proponents emphasised that the mechanism would need to be simple and easy to use. Chair David Walker said the

presentations highlighted the need for further ‘analytical contributions’ from Members.

In early February and March, Ambassador Walker will hold two weeks of consultations on substantive outstanding issues in the December 2008 modalities draft in preparation for the stocktaking exercise. Among major points of contention are ‘sensitive’ products, the SSM and tariff quota creation.

If Members decide to push ahead with the Doha Round, future negotiations on tropical products and preference erosion may be less contentious following the agreement reached between the European Union, Latin American banana exporters and ACP countries, which have preferential access to the EU (see page 7).

NAMA Update

Work on non-agricultural market access (NAMA) proceeded on two tracks. In formal and informal sessions of the negotiating group, delegates inched forward in considering proposals on reducing/eliminating non-tariff barriers submitted by Members. This process is continues. According the DG Lamy, ‘one, or even a few’ of the NTB proposals are “almost ripe for a text-based discussion.” In contrast, no progress was made on the most divisive issues, including the size developing country tariff cuts and linking the depth of those cuts to the use of flexibilities.

The other track consisted of bilateral and plurilateral discussions among Members on tariff elimination (or deep cuts) in certain sectors, including chemicals, electrical appliances and industrial machinery. Participation in such initiatives is voluntary, but developing countries are under great pressure to join as many developed countries consider that standard formula cuts, and the flexibilities associated with them, will not result in enough new market access. None of the 14 sectoral liberalisation proposals is anywhere near to garnering the support of a ‘critical mass’ of WTO Members.

No Early Harvest for LDCs' Top WTO Priorities

In October, least-developed countries outlined an 'early harvest' WTO ministerial decision that would grant them duty- and quota-free market access as of next year, but it was not adopted and such benefits now depend on the conclusion of the Doha Round.

The Dar es Salaam Declaration, adopted by trade ministers of least-developed countries (LDCs) in October, calls for 'quick results' on three core priorities: duty- and quota-free market access, preferential treatment for LDC services requests, and an 'ambitious and rapid' elimination of cotton subsidies.

WTO Director-General Pascal Lamy, who attended the meeting, said that there was no 'early harvest' mandate for the Doha Round and predicted that LDCs would have to have to wait until the entire round concludes before they can reap any benefits.

The Early Harvest Proposal

• [Duty-free and quota-free market access](#) The 2005 Hong Kong Ministerial Declaration committed developed countries to providing duty-free and quota-free market access (DFQF) for all LDC products no later than the start of the Doha Round implementation period. Countries that face difficulties in granting full DFQF at that time must offer it to at least 97 percent of tariff lines and gradually increase coverage thereafter.

LDCs called upon developed countries to grant DFQF to at least 97 percent of their exports by 2010, and to broaden the coverage to all products at the start of the Doha Round implementation period. Developed countries should promptly inform them of the specific tariff lines that would be eligible, as well as establish a product-by-product timeline for granting DFQF to the 3 remaining percent.

The issue remains divisive, however, even among LDCs. For instance, Sub-Saharan beneficiaries of the African Growth and Opportunity Act – most are LDCs – are actively lobbying against proposed legislation that would give all least-developed countries full duty- and quota-free access to the US (Bridges Year 13 No.3 page 13). Some other developing countries also fear that DFQF access to all rich country market for all LDC products would have a negative impact on their exports.

• [Services](#) WTO Members have already agreed on 'modalities' for special treatment of LDCs with regard to services trade (WT/S/13), but these lack firm timelines and specific commitments. In Dar es Salaam, LDCs asked for an immediate waiver of the GATS most-favoured-nation provision so that trading partners may offer least-developed countries' services industries and service providers better market access than they do to those from other WTO Members.

Despite the modalities, some disagreement remains among the membership over preferential treatment for LDC service workers, as this is the key gain that many other developing countries are hoping to secure in the services negotiations.

• [Cotton](#) This is on the Doha agenda due to four African LDCs' efforts to highlight the devastating consequences that rich country subsidies are having on the world price of cotton. They have claimed that heavily subsidised cotton, particularly from the US, is displacing their exports despite low production costs.

In July 2004, WTO Members agreed that cotton would be addressed 'ambitiously, expeditiously and specifically' within the agriculture negotiations. Since then, virtually nothing has happened. The 'cotton four' – Benin, Burkina Faso, Chad and Mali – have proposed a formula that would phase out domestic support for cotton faster and more ambitiously than subsidies for other agricultural products. The US, which is the main country targeted here, has so far refused to enter into negotiations on numbers and timelines, insisting instead that the issue cannot be settled until a deal has been struck on agriculture as a whole, including on market access.

The Dar es Salaam Declaration requests that an 'ambitious, expeditious and specific' solution to the problem be included in an 'early harvest' agreement, together with a 'safety net' that would assist LDC cotton farmers faced with declining international prices in the wake of the global economic and financial crisis.

• [Accession](#) In addition, the ministers requested that LDCs' accession to the WTO be placed on the agenda of the forthcoming ministerial conference.

Other Issues

The Dar es Salaam Declaration also stated that the Special Safeguard Mechanism (SSM) that will allow developing countries to raise tariffs to ward off import surges of farm products should be more flexible for LDCs, notably by letting them increase import duties beyond their current bound levels. The extent to which SSM tariffs may be raised is among the most controversial elements in the Doha Round agriculture negotiations.

As for the erosion of long-standing trade preferences, LDCs stressed that agreements on agriculture and industrial market access must not affect their export interests. They called for an 'efficient mechanism' that would minimise any negative effects that the 'fullest liberalisation' of trade in tropical products might have on LDC exports. The two main products concerned by the preference erosion versus tropical products debate are bananas and sugar (see related article on page 7).

LDC ministers also said that their countries should be completely exempt of any commitments to reduce or eliminate tariffs on environmental goods and services, and should be given a 10-year grace period before having to grant patents in this area. Environment-related technology and equipment should be provided to LDCs in grant form, the ministers said.

Agreement Takes Bananas out of Tropical Products Debate

On 15 December, the European Union announced that agreement had at long last been reached with Latin American banana exporters on tariff cuts, thus signalling an end to the WTO's most protracted dispute. A broader deal on the treatment of tropical products, however, remains controversial.

Since the early 1990s, a number of Latin American countries have successfully challenged different aspects of the EU's banana import regime, including import quotas and licensing procedures, the level of the bloc's 'most-favoured-nation' (MFN) tariff, and trade preferences granted by the EU to its former colonies in Africa, the Caribbean and the Pacific (ACP countries). While the latter have limitless duty-free access to the lucrative European market, Latin American bananas were subject to an MFN duty of €176 per tonne until the deal was struck in December 2009.

In response to adverse rulings, the EU had already tweaked the regime several times. Quotas were eliminated and import licensing procedures were reformed. That left the level of the import duty and related procedural issues. The latest verdict in 2008 found that the €176/t MFN tariff, set unilaterally by the EU, was still inconsistent with its WTO obligations.

Outline of the Agreement

The Geneva Agreement on Trade in Bananas (WT/L/784) settles a host of issues bitterly fought over for nearly two decades. First, it sets out a schedule for annual tariff reductions until the EU's MFN duty stands at €114 per tonne (see table below). The initial cut, worth €28/t, went into effect on 15 December 2009.

If a 'modalities' agreement is reached in the Doha Round agriculture and industrial market access negotiations before end-2013, the final €114 tariff will apply as of 2017. If there is no agreement by that deadline, the duty will be frozen at its 2013 level (€132/t) for two years at most. Cuts will resume earlier if an overall modalities deal is struck in the Doha negotiations.

Second, the EU will bind the tariff cuts in its schedule of market access commitments. Although trading partners may contest the proposed changes until mid-March, the Latin American signatories of the agreement – Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela – have agreed not to raise objections.

Third, upon certification of the EU's modified schedule, Latin American complainants will formally terminate all pending disputes. However, since formal certification could take several months, all dispute settlement actions will be suspended in the meanwhile on condition that the EU sticks to its tariff reduction timeline.

Fourth, Latin American MFN banana suppliers accept the agreement as the EU's final market access commitment for bananas in the Doha Round farm negotiations.

US, EU to Drop Dispute

The EU and the United States also initialled a separate agreement on 15 December, under which both committed to taking no further action on their pending dispute on the EU's

banana import regime. Immediately after all other parties to the dispute have submitted to the Dispute Settlement Body a notification that they have reached a mutually agreed solution, the EU and the US will do so as well. The EU also promised not to apply any measures that discriminate between suppliers of banana distribution services based on the ownership or control of the service supplier or the origin of the bananas distributed. Although the US does not export bananas to the EU, it had joined the dispute to defend the interests that its transnational marketing companies, such as Chiquita, hold in banana plantations in Latin America.

EU tariff cut timetable

Date	Tariff per tonne
15 Dec. 2009	€148
1 Jan. 2011	€143
1 Jan. 2012	€136
1 Jan. 2013*	€132
1 Jan. 2014	€127
1 Jan. 2015	€122
1 Jan. 2016	€117
1 Jan. 2017	€114

* The tariff could be frozen at this level until 1 January 2016, in which case the €114 duty would apply as of 1 Jan. 2019.

Preference Erosion and Tropical Products

The dispute was complicated by two intrinsically linked issues. The first was ACP exporters' strong opposition to further liberalisation of the EU's banana market, sparked by fears that without a significant preferential margin they would be unable to compete with the more efficient Latin American producers. The second complication arose from the Doha Round negotiating mandates, which provide for the 'fullest liberalisation' of trade in tropical products, but also recognise that action should be taken to guard against the erosion of long-standing preferences.

The problem is that many of the products that could be considered 'tropical' are among those for which ACP countries have preferential access to the EU. Tensions have run high in WTO negotiations on the products that will be classified as tropical (and therefore subject to deeper and faster tariff cuts), and those that will fall into the 'preference erosion' category (subject to standard tariff reductions over a longer implementation period).

If other WTO Members accept the proposed changes to the EU's market access schedule, the stand-alone agreement effectively removes treatment for bananas – the most controversial issue – from the tropical products vs preference erosion debate.

New Tariff Compromise Proposed

As part of a broader package linked to the banana agreement, the EU, the ACP and Latin American countries have also agreed on tariff cuts on a number of other tropical/preference erosion products that will be undertaken after the conclusion of the Doha Round. The parties will 'jointly promote' this approach in the negotiations, but at least India and Pakistan have already expressed some reservations with regard to the proposed extent of tropical product tariff reductions and the length of the implemen-

Continued on page 8

tation period for cutting duties on sensitive products on the preference erosion list.

The tri-partite deal provides for 'tropical treatment' for 65 percent of developing countries' bound agricultural tariff lines contained in the lists of tropical products in Annex G of the 6 December 2008 draft modalities for agriculture (TN/AG/W/4/Rev.4). Developed countries would reduce duties higher than 20 percent by 80 percent, and the tariff lines involved would be negotiated with the exporting developing country concerned. Duties lower than 20 percent would be eliminated.

It would appear from the text that developed countries could include products already bound at zero within the 65 percent of Annex G tariff lines to which they would apply 'tropical treatment'.

The proposed 'preference erosion modality' contains two lists of preference erosion products – a long one (62 items) for the EU and a shorter one (18 items) for the US. These countries would make standard formula tariff cuts on the listed products over eight to ten years, but no reductions would occur in the first two years. Importantly for ACP exporters, sugar, rum, cut flowers, ground-nut oil, tobacco and orange juice figure on both the EU and the US lists of preference erosion products.

More controversially, the modality also proposes an exception for those preference erosion products that either of the preference-giving countries has designated as 'sensitive'. If the imports of such products are higher than 10 percent of domestic consumption in 2003-2005, the preference-giving country would have seven years to phase in new quotas and to reduce out-of-quota tariffs. The December 2008 modalities draft had set a five-year implementation period for sensitive product tariff reductions.

The tariff package was presented to the General Council on 17 December in a letter addressed to WTO Director-General Pascal Lamy and the chair of the agriculture negotiations, New Zealand's Ambassador David Walker. Although the United States did not sign the letter, it has not raised any objections so far. Negotiations will continue at the WTO.

Aid for ACPs

The EU committed to providing ACP banana exporters financial assistance worth €200 million over the next three years to help them adjust to the new tariff. The so-called 'banana accompanying measures' (BAM) will be additional to regular development aid, and will be "country-specific, build on past support and help tackle the deal's broader consequences."

Market Implications

In 2008, the 27-member European Union imported bananas worth €2.9 billion (US\$4.2 billion), more than half of the world total. Latin American MFN exporters supplied 72.5 percent of the 5.4 million tonnes of the fruit bought by European consumers, while 17 percent came from ACP countries. The rest were grown in EU territories.

Ecuador, Colombia, Costa Rica and Panama are the largest Latin American suppliers, leaving just over 3.5 percent of the EU's total MFN imports to be shared between other Latin and Asian exporters. The big four are likely to reap the most benefits under the deal.

Cameroon, Côte d'Ivoire, the Dominican Republic and Belize dominate within the ACP group, and their banana industries are likely to survive, although they are expected to lose market share to MFN suppliers. Many Caribbean countries are preparing to see their banana exports dwindle or cease altogether.

Amidst Rejoicing, 'Historic Accord' Bitter Pill for ACP Countries

Latin American MFN exporters expressed satisfaction that a deal had finally been reached. César Montaña of the Ecuadorian mission called it "an historic accord because it puts an end to a misunderstanding among developing countries." Panama's Commerce and Industry Minister Roberto Henríquez said his country was feeling "very optimistic regarding the end of these difficult negotiations, where we can say with pride that the Panamanian negotiation team has played a fundamental role."

Costa Rica's Ambassador Ronald Saborío Soto noted that the agreement represented "a good equilibrium for the Latin American countries, who will enter into the European market more easily, and because it allows the ACP countries to continue exporting their products." He also stressed that the deal was a success for "an important number of developing countries that want to have market access as a result of this round. This shows they can obtain the results they seek."

European Commission president Jose Manuel Barroso professed to be "delighted that we have finally found a way to solve the bananas dispute with a compromise that works for all sides. This is an important boost for the multilateral (trading) system." The sentiment was echoed by WTO Director-General Pascal Lamy, who applauded the 'good will and a spirit of compromise' shown by the protagonists, adding that he hoped "the same pragmatism, creativity and diplomacy will help move forward the Doha Round negotiations."

ACP countries have been less enthusiastic. Reflecting wide-spread feeling across the bloc, and the Caribbean in particular, a disillusioned editorialist wrote in the Jamaica Observer on 30 December that the real beneficiaries of the deal were "the multinational corporations which dominate the world market. The small farmers of the Caribbean will be worse off and the workers in Latin and Central America will certainly be no better off. The affluent consumers in Europe will get cheaper bananas. No wonder there are so many who question the fairness of the rules of the WTO and there is so much angst about the implications of globalisation for small developing countries."

At the WTO's year-end General Council meeting, Côte d'Ivoire cautioned that the package – including bananas, tropical products and preference erosion – was 'indivisible', and that unbalancing any of the three pillars must entail a reopening of all parts of the global solution. He also said that further development of African countries' banana sectors was compromised, and that they would have great difficulty in avoiding decline.

The General Council 'took note' of the banana agreement, but did not formally adopt it.

Common Ground Remains Elusive in TRIPS Council

Discussions on a number of intellectual property issues in October showed that deep divisions remain on how to counter biopiracy and on whether so-called non-violation complaints should be allowed under the TRIPS Agreement.

The Council for Trade-related Aspects of Intellectual Property Rights (TRIPS) again heard arguments for and against amending the TRIPS Agreement so that it would require patent applicants to disclose the origin of genetic material and any associated traditional knowledge involved in their inventions. The topic has been discussed in the council for years, but there is no sign of the two camps moving closer.

A large group of developing countries continues to push for a mandatory disclosure requirement, which they see as necessary to prevent biopiracy, or the granting of patents on erroneous grounds of novelty. India, for instance, had to spend millions of dollars on legal fights to get the European and US patent offices to revoke patents on anti-fungal neem tree derivatives and wound-healing turmeric. Both plants have been known for similar (and other) uses in India for centuries.

At the October TRIPS Council meeting, several other countries, including Japan and the US, maintained their position that a disclosure requirement would be ineffective in preventing biopiracy or inappropriate patenting.

In July 2008, more than 100 countries – including the ACP and African Groups, as well as Brazil, China, India, Indonesia, the EU, Switzerland and others – co-sponsored a draft ‘modalities’ decision on three TRIPS-related issues. The proposal requested the start of formal negotiations, as part of the Doha Round, on a mandatory disclosure requirement and stronger protection for geographical indications (GIs, or product names associated with a particular location or tradition). It also called for an intensification of ongoing negotiations for a register for GIs denoting wines and spirits.

Many of the sponsors argued in favour of this proposal in October, while Argentina, Australia, Japan, the US and others said that linking the three issues would complicate the discussions.

Non-violation Complaints

WTO Members agreed to seek a decision at the upcoming ministerial conference on whether ‘non-violation complaints’ – i.e. disputes alleging the nullification of benefits that could reasonably be expected rather than a breach of any specific provision – should be allowed under the TRIPS Agreement.

A moratorium on such complaints – extended by trade ministers several times in the past – is currently in place, and most countries would like to see it prolonged again in December. However, the US told the TRIPS Council that it could not agree to another extension. The conflict was subsequently resolved, and ministers prolonged the moratorium.

Generic Drug Seizures

India complained that two more unlawful seizure of legitimate generic drugs in transit through European airports had taken place this year, one in Frankfurt and the other in Paris. The first shipment – about three million tablets of Amoxillin – was destined for Vanuatu, and the second – 1.74 million doses of the blood thinner Clopidogrel – was heading for Venezuela.

India told the council that, by permitting such seizures, the EU’s Customs Regulation 1383/2003 violated GATT Article V on the freedom of transit, as well as the TRIPS Agreement and the Doha Declaration on TRIPS and Public Health.

India also expressed concern about a deliberate effort by developed countries to amalgamate the issue of sub-standard drugs (a regulatory concern) with intellectual property protection as part of an ‘orchestrated campaign’ to impose TRIPS-plus enforcement norms on other Members.

In response, the EU stressed the importance of preventing exports of dangerous fake medicines, and said that the ‘detention’ – rather than ‘seizure’ – of medicines (even in transit) at the border was ‘legitimate and necessary’ to allow right holders to verify products. It also suggested that attention to the issue was maintained artificially for political reasons.

WTO Dispute Looms

In related news, the WTO ambassadors of India and Brazil confirmed in October that their governments intended to file formal WTO complaints on the detention of generic medicines in transit through the EU, but did not say when the requests would be submitted.

The two countries have contemplated a WTO challenge ever since a shipment of the generic anti-hypertension drug Losartan, en route from India to Brazil, was detained by Dutch customs officials in December 2008 (Bridges Year 13 No.1 pages 12 and 13).

Deadline Extended for TRIPS Public Health Amendment

In a rare show of consensus, Members agreed to extend until end-2011 the deadline for accepting an amendment to the TRIPS Agreement that would allow countries lacking the capacity to produce generic drugs to import them under compulsory licence from abroad. The decision is of minor importance, however, as a provisional waiver will cover the arrangement until two-thirds of the membership have approved the permanent amendment. At the time of writing, fifty-two of the WTO’s 153 member countries had done so.

Representatives of the African and LDC Groups argued that the system was inefficient. Since the adoption of the waiver in August 2003, the procedure has been used only once, by Rwanda, which has imported a generic HIV/AIDS drug from Canada. The chair of the TRIPS Council will hold consultations on whether the system is too cumbersome.

Seal Update

In November, Canada and Norway requested dispute settlement consultations with the European Union over the latter's import ban on all seal products except those that "result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence." The ban will enter into force on 20 August 2010.

On 16 September, the European Commission published Regulation 1007/2009, which prohibits the import and sale of seal furs, meat and blubber in all 27 member countries. As some EU countries already have national-level sales and import bans in place, while others do not, the regulation states that in order to "eliminate the present fragmentation of the internal market, it is necessary to provide for harmonised rules while taking into account animal welfare considerations [...] Since the concerns of citizens and consumers extend to the killing and skinning of seals as such, it is also necessary to take action to reduce the demand leading to the marketing of seal products and, hence, the economic demand driving the commercial hunting of seals."

Canada and Norway said in July that they would challenge the import ban at the WTO unless exemptions were made for countries that have strict guidelines for 'humane and sustainable' sealing practices (Bridges Year 13 No.2 page 10).

Announcing the decision to initiate dispute settlement proceedings, Canada's trade minister, Stockwell Day, said that his country's seal hunt was "a legitimate economic pursuit, and the EU's decision on the importation seal products is based neither on science nor on facts."

The complainants claimed, *inter alia*, that the EU's new regime was inconsistent with the TBT Agreement's requirement that technical regulations be 'no more trade-restrictive than necessary'. The case could hinge on whether the EU can show that the embargo is necessary to protect animal life and health, and thus qualifies as one of the exceptions available under GATT Article XX(b) and TBT Article 2.2.

Brazil Ponders Cotton Retaliation

In a final victory in its long-running dispute against US cotton subsidies, Brazil has been awarded the right to impose trade sanctions, including in the form of cross-retaliation.

In August, WTO arbitrators awarded Brazil the right to slap trade sanctions worth US\$294.7 million due to the United States' continued use of cotton subsidies that have been repeatedly found illegal under WTO rules. Half of the award is a fixed annual amount (US\$147.3 million) for actionable subsidies, such as marketing loans and counter-cyclical payments. The other half corresponds to harm caused by prohibited subsidies under the GSM-102 programme, which provides export credit guarantees. The arbitrator based the award on 2006 subsidy data, but said the level of sanctions on prohibited subsidies could vary according to the amount of US government support actually granted in a given year. The Dispute Settlement Body (DSB) authorised Brazil to undertake countermeasures on this basis in November.

Although the award is the second largest ever granted by the WTO, it is far less than the US\$2.6 billion sought by Brazil. The main reason is that the arbitrator did not accept Brazil's argument that the level of retaliation should reflect the global impact of the US subsidies on cotton prices, production and the market share of other exporters. On the other hand, the award is nearly ten-fold the US estimate of US\$30.4 million.

Brazil: Sanctions Could Exceed US\$800 million

In December, Brazil told the DSB that, based on complete data for the year 2008, the total amount of authorised countermeasures would amount to US\$829.3 million. This means that, according to Brazil's calculations, the United States spent US\$682 million on prohibited subsidies in 2008, or more than four and a half times the amount estimated by the arbitrator on the basis of 2006 figures. Brazil also said that, based on 2008 data, US\$561 million of the US\$829.3 million total would fall under the threshold established by the arbitrator for retaliation in the goods sector, i.e. tariffs or other countermeasures on imports from the US (see below). The remaining US\$268.3 million could be applied to other sectors.

Cross-retaliation Will Depend on Annual Amount

Brazil had argued before the arbitrator that it needed the latitude to extend countermeasures beyond raising tariffs on goods due to the asymmetries in the two countries' economies. It therefore proposed to suspend some of its WTO commitments on intellectual property rights and services as well. Measures could include the suspension of protection for some copyrights, patents and trademarks, as well as suspending market access commitments in services sectors of particular interest to the US, such as communication, distribution and financial services.

The arbitrator followed this argument in principle, but set a relatively high threshold for taking such action. It estimated that if the United States' share of Brazil's imports of a given consumer good was less than 20 percent, Brazil would be likely to find alternative sources of supply. Applying trade sanctions to those goods would not harm the domestic economy, the panel said, and should therefore be the first course of action. Only if the annual amount of prohibited subsidies – calculated on the basis of GSM-102 disbursements – exceeded the 20-percent threshold, could retaliation be extended to IPRs and services, the arbitrator concluded. Based on 2006 figures, the arbitrator had estimated that Brazil had US\$409.7 million worth of US goods to choose from.

Negotiated Solution Unlikely, Sanctions Decision Expected in February

When the award was made public, both sides said they were open to a negotiated solution. It was widely speculated that Brazil would seek the elimination of US ethanol duties, as well as better market access for some other key exports, such as orange juice. However, at the time of writing this possibility appeared to have stalled, and there were no indications that the US was ready to eliminate its WTO-illegal support for cotton. Brasilia was yet to decide whether it would resort to trade retaliation, but if it does, the list of countermeasures, their starting date and the definitive amount of the sanctions will be announced in February.

New Disputes Shine Spotlight on Non-Tariff Barriers

Two recent dispute settlement developments illustrate the growing role of non-tariff barriers in keeping out imports. The cases will require panels to take on the delicate task of assessing whether such measures are legitimate or whether they amount to disguised restriction of trade.

Both disputes concern regulations that affect food trade. Canada and Mexico separately requested a WTO panel on the United States' mandatory country-of-origin labelling law, while the US has challenged the EU's prohibition of certain methods of cleaning chicken carcasses.

On 19 November, the Dispute Settlement Body established panels on both complaints. A single panel will hear the Canadian and Mexican challenges. In principle, panels should issue their reports within six months, but this deadline is rarely kept.

How Cool is COOL?

As of 16 March 2009, the US country-of-origin labelling (COOL) law requires companies in the United States to notify to their customers the country of origin of a number of food commodities, including beef, lamb and pork, as well as fish, shellfish, perishable farm products, ginseng, and peanuts, pecans and macadamia nuts. Such notifications must be made at every stage of transaction, starting from the first import and ending in a label at retail stores.

Canada and Mexico consider that the labelling law is designed to tilt US meat processors toward favouring goods of domestic origin. The two complainants are particularly concerned about the legislation's impact on their exports of live animals (beef and hogs).

Under COOL, beef, pork, lamb, chicken and goats can qualify for a US origin label only if they are "derived from animals exclusively born, raised and slaughtered in the United States." Since the law's entry into force, the complainants have experienced significant export losses, which they put down to US processors and packers' reluctance to face the cost of segregating operations for US and foreign origin meat. Their panel requests also noted that COOL requirements had reduced the price of their livestock exports, as well as increased costs for exporters, importers and processors.

Canada and Mexico maintain that COOL results in their exports being treated less favourably than products of US origin (violation of the national treatment principle). Specifically, they claim that the legislation violates the Agreement on Technical Barriers to Trade (TBT Agreement), because it is more trade restrictive than necessary to fulfil a legitimate objective, should such an objective exist. They also allege that the legislation breaches the WTO Agreement on Rules of Origin, which prohibits the use of such rules as 'instruments to pursue trade objectives directly or indirectly'.

In addition, Mexico claims that, in the preparation and application of the legislation, the US did not take into account Mexico's special development, financial and trade needs as a developing country, as mandated in Articles 12.2 and 12.3 of the Agreement on Rules of Origin.

Both countries also warned that they would invoke violations of the Agreement on Sanitary and Phytosanitary Measures if the US chose to defend the law as a public health measure.

The US delegate told the Dispute Settlement Panel in October that WTO Members had "long recognised that country-of-origin labelling is a legitimate policy. Indeed, that recognition predates the entry into force of the WTO Agreement. It is common for WTO Members to require that goods be labelled as to their origin." He also emphasised that the US was "confident that our measures provide information to consumers in a manner consistent with our WTO commitments." Danni Beer of the US National Cattlemen's Beef Association defended COOL in an op-ed not so much as a consumer information tool, but as measure necessary to "improve our market arenas. Without COOL, US ranchers are forced to participate in an international commodity market where [...] the global market goes to the lowest-cost producer."

How to Wash Chicken?

The US objects to the European Union's ban on poultry imports processed with chemical washes, or so-called 'pathogen reduction treatments'. These involve cleaning chicken carcasses with mostly chlorine-based washes to reduce the level of microbes. The dispute has been simmering since 1997, when the EU began prohibiting such treatments domestically, as well as in imported poultry.

Under EU rules, slaughterhouses may use only water or other 'approved substances' to rinse meat products. The four substances most commonly used by US chicken processors are not on the EU's approved list.

The US argues that the prohibition of these treatments has ground its poultry exports to the EU to a virtual halt, and maintains that the methods used by US processors are safe. It cites two reports by the EU Scientific Committee on Veterinary Measures Relating to Public Health that did not find 'any scientific basis' for prohibiting the use of the treatments.

The US alleges that the EU ban on imports so treated is not based on a risk assessment as required by Articles 2 and 7 of the Agreement on Sanitary and Phytosanitary Measures, and also violates the national treatment principle under the GATT.

The EU expressed regret over the panel request. Litigation, a European Commission spokesperson said, was "not the most appropriate way to deal with complex issues such as this one. However, since the US has chosen this path, we will defend our food safety legislation, which does not discriminate against imported products."

Last year, the commission floated a proposal to lift the import ban, but requiring chlorine-washed chicken to be labelled as 'treated with antimicrobial substances' or 'decontaminated by chemicals'. This was rejected by EU member states, as well as US farmers, who said it would stigmatise their products and could lead to consumer boycotts.

Disputes in Brief

At the request of the EU, Mexico and the United States a single dispute settlement panel was established on 21 December on China's export restrictions on nine chemical compounds commonly used by the steel, chemicals and aluminium industries worldwide.

WTO disciplines on export bans and duties are weak, and a case built on such grounds alone would probably fail. However, the complainants' main point is that the restrictions violate China's WTO accession protocol, under which Beijing committed to eliminating export taxes on all but 84 products. As the compounds targeted by the plaintiffs are not among them, the complaints may prove successful (Bridges Year 13 No.3 page 8).

The core claim of the complainants is that China's export duties, quotas and administrative measures on raw material exports distort the international market and confer an unfair advantage to domestic industries, which have a cheap and unlimited supply at their disposal.

The Chinese ministry of commerce said the purpose of the restrictions was to protect the environment by raising the cost of resource extraction. "The overseas demand for those products has been shrinking, so it is an exaggeration to say that China's measure would affect the EU or US steel industry's recovery from the financial crisis," it added.

The case raises the broader question of 'resource nationalism', i.e. limiting foreign firms' access to key raw materials in order to encourage domestic processing and exports of higher value-added goods. Many developing countries consider this an essential industrial development tool, but resource-poor EU, for one, has vowed to combat the practice, including through WTO litigation and by prohibiting the use of export restrictions in its bilateral/regional trade agreements.

Reflecting the systemic interest of the case, twelve countries (excluding the complainants) have reserved third party rights in the dispute.

China Contests US Poultry Ban

China has challenged the United States' embargo on its chicken exports, but a change in US import rules may make the case moot or harder to argue.

The three members of a WTO dispute settlement panel on China's complaint on US restrictions on its processed poultry exports were appointed on 25 September, setting the clock ticking for a ruling within six months. China contends that US measures to prevent imports of Chinese poultry are inconsistent with several provisions of the Agreement on Sanitary and Phytosanitary Measures (SPS), as well as the Agreement on Agriculture.

The origin of the dispute dates back to 2004, when both countries banned each other's chicken exports due to health concerns arising from avian flu. China subsequently revoked the embargo, but the US kept it in place, notably by prohibiting the US Department of Agriculture (USDA) from using government funds to implement measures that would result in resumed Chinese poultry imports. The US also decreed a moratorium on the consideration, granting and implementation of approvals for Chinese poultry imports.

China alleged that, inconsistent with the SPS Agreement's Article 2, these administrative measures were not based on scientific principles and constituted a disguised restriction on international trade. In addition, they were not based on a risk assessment within the meaning of SPS Article 5, and failed to conform to the control, inspection and approval processes established under SPS Article 8, China maintained.

On 1 October, the US requested the panel to issue a preliminary ruling on the admissibility of China's SPS claims, which the defendant said were not properly covered in the initial consultation request. While this could have meant a considerable delay in the proceedings, US Congress may have defused the dispute by approving a new USDA spending bill, which allows the import of Chinese poultry under stringent health and quality controls.

US Changes Law, But Requires Equivalent Safety Standard

The US Senate approved the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2010 on 8 October. Under the legislation, poultry products may be imported from China if the department of agriculture takes a number of steps that allow the agriculture secretary to determine that China's poultry inspection system, and its enforcement, achieve a 'level of sanitary protection equivalent to that achieved under US standards'. Those steps include inspection system audits, as well as on-site reviews of Chinese slaughterhouses, laboratories and other control operations before USDA certifies that a facility is eligible to export poultry products to the US. Port-of-entry re-inspections must also be reinforced. USDA must report to Congress twice a year on actions taken toward certification and the determination of equivalence.

These provisions – contained in Section 743 of the 2010 appropriations act – will replace those challenged by China at the WTO once President Obama signs the bill into law. At the time of writing, China had not withdrawn its complaint, possibly because it could take years before USDA has completed its investigations, and the outcome is uncertain.

On the other hand, the US might have a stronger hand in defending the new import regime since it is clearly premised on public health grounds. The inspection system audits and on-site reviews of facilities could be used as elements of a risk assessment under the SPS Agreement, which provides that relevant processes and production methods, as well as inspection, sampling and testing methods, are among the factors to be taken into account in the assessment of risk.

In related news, China announced in mid-September that it was launching anti-dumping and anti-subsidy investigations into some US chicken and auto imports. The move came in the wake of hefty tariffs imposed by the Obama administration on Chinese tyres (see opposite), but Beijing said the trade remedy probes were a response to complaints from domestic industries.

Combative China Protests Trade Defence Measures

Beijing has initiated WTO proceedings against safeguard and anti-dumping actions taken by the US and the EU to curb imports of Chinese tyres and screws. According to Global Trade Alert, at least 112 trade relief investigations were launched on Chinese products in 2009 alone.

Just three days after President Obama's 11 September announcement of a 35-percent safeguard duty on tyre imports from China, Beijing requested WTO consultations on the move. The duties entered into force on 26 September and will last for three years. They will be reduced to 30 percent in the second year and to 25 percent in the third.

Although China alleges violations of WTO rules on emergency action under GATT Article XIX and the Agreement on Safeguards, the case will hinge on whether the duties can be justified under the 'transitional product-specific safeguard mechanism' that China agreed to in its WTO accession protocol. A dispute settlement panel was established on 19 January.

US Safeguard Requires Lower Standard of Proof

The United States implements the mechanism through Section 421 of the US Trade Act. Under the statute, the US International Trade Commission (ITC) may recommend safeguard action if it finds that imports of a product from China are causing 'market disruption', defined to exist whenever imports that compete directly with domestically produced goods are "increasing rapidly [...] so as to be a significant cause of material injury, or threat of material injury, to the domestic industry." In turn, 'significant cause' is loosely defined as "a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause."

The commission must consider the volume imports, the imports' effects on US prices of directly competitive articles, and the effects of the imports on US industry producing directly competitive articles. However, the presence or absence of any of these three factors "is not necessarily dispositive of whether market disruption exists."

Despite dissenting opinions of some of its members, the commission determined that the conditions for safeguard action were met. It noted that Section 421 "does not require a weighing of causes, but only that we find that rapidly increasing imports, in and of themselves, are a significant cause of material injury of the threat thereof." The ITC recommended a 55-percent duty over three years, to be decreased by 10 percent in the second and third years, but President Obama decided that an initial duty of 35 percent would suffice.

China Responds

In its WTO challenge, China asserted that the US definition of 'significant cause' was 'impermissibly narrow'. The consultation request went on to refute the ITC's claims that Chinese imports were rising rapidly, or were a significant cause of material injury to US producers. China also argued that the duties were 'not necessary at all' and were being imposed 'beyond the extent necessary to prevent any alleged market disruption'.

China has also launched an anti-dumping and countervailing investigation on cars made by Chrysler, General Motors and Ford, which could lead to tariff hikes on vehicles manufactured by the Big Three if price-distorting subsidisation is found. The first two have received nearly US\$65 billion in public bailout money and bankruptcy financing. Ford has benefited from government loans worth US\$5.9 billion for the development of more fuel efficient cars.

Reactions

United Steel Workers, the labour union that petitioned for the duties, praised President Obama's courage in enforcing US trade law and accused those worrying about potential retaliation of 'shameless fear-mongering'. The group claimed that imports of Chinese tyres more than tripled between 2004 and 2008 and that US tyre production declined by 25 percent over the same period, triggering plant closures and the loss of more than 4,400 jobs. President Bush had rejected four previous ITC recommendations for safeguard action.

In contrast, China's Commerce Minister Chen Deming called the decision a 'grave act of protectionism' and a 'misuse' of the special safeguard mechanism. China claims that its tyre exports to the US dropped by 16 percent in the first half of this year compared to 2008 levels, and had only increased by 2.2 percent in 2007.

Chinese officials, as well as many trade analysts, have noted that a number of US producers no longer manufacture the lower-priced goods that form the bulk of China's tyre exports. While the ITC reasoned that this was due to the surge in Chinese imports, many predict that the new duties will lead to an increase in imports from other developing countries rather than induce US companies to re-establish terminated production lines. Some view the safeguard tariffs more as a reward for the union's political support than a measure that is necessary to help US manufacturers.

Friction Grows with EU

On 23 October, Beijing obtained a WTO dispute settlement panel on the European Union's anti-dumping duties on imports of Chinese screws and bolts. The duties – imposed for five years in January 2009 – reach up to 85 percent.

China's lengthy panel request alleges, inter alia, several errors in the calculation of the duties, and failure to comply with provisions pertaining to the determination of individual dumping margins for specific exporters. The request also claims that the EU based its injury determination on a sample of only 17.5 percent of domestic producers.

Although the European Commission has called China's allegations 'unfounded', it agreed to China's first panel request as it had "no reason to be hopeful that a mutually agreed solution can still be found." Nevertheless, the EU remains confident that the decision to impose the duties "was taken on the basis of clear evidence that dumping of Chinese products has taken place and that this dumping is harming otherwise competitive EU industry."

Ecuador Decrees New Access to Health Policy

The Andean country has joined a growing number of developing nations in taking advantage of flexibilities in the WTO's intellectual property rights agreement in order to secure access to life-saving medicines.

On 23 October, Ecuador's President Rafael Correa signed a decree that allows the country's intellectual property institute (IEPI) to grant compulsory licences for the treatment of illnesses considered to be public health priorities.

The authorisation will be considered on a case-by-case basis in collaboration with the Ecuadorian health ministry, and royalties based on the price of the generic will be paid to patent holders. IEPI is currently designing a mathematical formula to calculate royalties, which may vary from case to case, the institution's director, Andrés Ycaza, told Bridges. Other sources speculated that royalties might range from 0.3 to 5 percent.

Drug registration for imported or domestically produced generic copies must be granted within 30 days of the request provided that all legal requirements have been fulfilled, and quality, safety and efficacy controls have been completed.

Earlier in October, some 20 civil society organisations from around the world wrote to President Correa to "congratulate Ecuador on its courageous plans to grant compulsory licenses for medical patents." They noted, *inter alia*, that over the past decade competition between generic and branded medicines had fuelled a revolution in HIV/AIDS treatment, reducing the cost of first-line antiretroviral therapy by over 98 percent, from US\$10,000 per person annually to near US\$100 today.

Among the most expensive medicines sold in Ecuador today are patented cancer drugs and second-line antiretroviral treatments for HIV/AIDS. According to Essential Action, a Washington-based advocacy organisation, the latter currently cost more than twice the price of competing generics, and some cancer treatments exceed US\$35,000 a year per person, far more than many hospitals can afford.

The research firm Intercontinental Marketing Services estimates that foreign compa-

nies control about 82 percent of the Ecuadorian pharmaceutical market valued at some US\$720 millions annually. Only 66 of the 243 pharmaceutical firms established in the country are in local hands.

Hundreds of Compulsory Licences Unlikely

Prior to releasing the decree, President Correa said on his weekly radio show that, as a result of the new policy, generic copies of more than 2,000 medicines could be manufactured by local laboratories or imported from other countries. "All those pharmaceutical products we can produce and copy, we will elaborate in Ecuador," he stated.

Peter Maybarduk, an attorney with Essential Action, said that the figure mentioned by the president reflected the total number of granted and/or requested patents for pharmaceuticals in the country. However, multiple patents may apply to a single medicine and "it is thus not even theoretically possible for Ecuador to license 2,214 medicines as there aren't that many patented pharmaceuticals," he explained.

IEPI's Andrés Ycaza said the decree did not mean that compulsory licences would be issued for all drugs under patent. The institution is currently waiting for the Ecuadorian health ministry to draw up a list of the illnesses and treatments that would be of priority public interest. Once this is done, IEPI will examine each request on its individual merits. Considering the time this will take, as well as initial supply constraints, compulsory licenses are unlikely to be granted by the hundreds or even dozens, at least in the short term.

Legal Underpinnings

The presidential decree cites the Ecuadorian constitution, which guarantees citizens' right to health, as well as the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), which recognises that countries may issue compulsory licences under certain circumstances.

In conformity with TRIPS Article 31, IEPI will determine the scope, purpose and duration for which the compulsory licence is granted, as well as the amount and conditions for paying royalties to patent-holders, who will be notified that they will be subject to the compulsory licensing regime. IEPI may also terminate the authorisation "if and when the circumstances which led to it cease to exist and are unlikely to recur."

The decree also evokes the 2001 Declaration on TRIPS and Public Health, which clarified that the agreement "does not and should not prevent Members from taking measures to protect public health" and should be "interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all." The declaration further states that countries have "the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted."

Brandname Industry Accepts Decision

Industria Farmacéutico de Investigación (IFI), an association of 14 major foreign companies operating in Ecuador, said in a statement that its members accepted the president's decision to "legally implement this extraordinary measure. [...] No legal right is superior to the requirements of public health, above all in circumstances of special gravity." The group also said it expected IEPI to implement the decree through a 'legitimate and transparent' process, and underlined the importance of monitoring domestic production under compulsory licence to ensure that it follows the technical norms and procedures specified in international manufacturing standards.

Copenhagen Accord Not Enough to Address Climate Change

Frantic negotiations between heads of state and other high-ranking officials in the closing hours of the December climate summit managed to produce just a short, aspirational document, which left many sceptical about the chances of reaching a binding agreement next year.

After two weeks of virtually no progress on future commitments, the leaders of the United States, Brazil, China, India and South Africa spearheaded negotiations with some 20 other countries in order to reach at least a semblance of agreement rather than let the international event peter out with no outcome at all. The three-page Copenhagen Accord that resulted from the process is a political statement, which ultimately failed to garner unanimous support. (The document is distinct from the heavily bracketed text, crafted during the last two years, that negotiators will continue working on into 2010.) Although most delegations were willing to formally adopt the accord as a first step towards a legally binding treaty, Tuvalu, Cuba, Bolivia, Nicaragua, Sudan and Venezuela considered it unacceptable both in substance and due to the exclusive process in which it was drafted and presented for approval. In the end, the conference agreed to 'take note' of the document, leaving its status in limbo.

The accord originally gave the 192 parties to the Climate Convention until 31 January to inform the climate change secretariat about the greenhouse gas reduction targets (developed countries) or mitigation actions (developing countries) they plan to undertake. That date has since been shelved, the UN's top climate official, Yvo de Boer, told the press on 20 January. Although nothing in these communications will be legally binding, participation may be sub-optimal: one week prior to the deadline, the official count stood at nine. However, negotiations involving all parties and existing texts will continue in 2010 in the hope of a legally binding treaty in Mexico at the next Conference of the Parties at the end of the year.

The Copenhagen Accord: No Targets or Timeframes

The signatories of the accord agreed that global mean temperature should not be allowed to rise more than 2°C above pre-industrial levels (about 1.2°C above today's level), a level that reflects the 2007 recommendations of the Intergovernmental Panel on Climate Change, but is not as ambitious as the 1.5 °C that more recent scientific findings require and that the Africa Group and Alliance of Small Island States (AOSIS) demand for their future security.

Besides temperature rise, the text is less specific. It contains no short- or long-term greenhouse gas reduction targets or deadlines, which appeared in early drafts of the text, saying instead that countries should "co-operate in achieving the peaking of global and national emissions as soon as possible, recognising that the timeframe for peaking will be longer in developing countries."

The Intergovernmental Panel on Climate Change estimates that global emissions should peak no later than 2020 and be halved by 2050 in order to stabilise greenhouse gas concentrations in the atmosphere at a level that prevents dangerous human-induced interference with the climate system. According to the IPPC, this goal requires industrialised countries to collectively cut 25-40 percent by 2020 and at least 80 percent by mid-century.

Emissions Reductions

The accord commits developed countries to implement 'quantified economy-wide emissions targets' for 2020.

Targets tentatively proposed (or surmised) so far vary widely. Using 1990 greenhouse gas emission levels as a baseline, they range from 3 percent for Canada and 4 percent for the US, to 20-30 percent for the EU, up to 25 percent for Russia, 20 percent for Ukraine and 40 percent for Norway. An internal UN document leaked to the Reuters news agency during the Copenhagen conference noted that this range of cuts would not suffice to keep mean global temperature rise below 2°C. According to Reuters' calculations, the pledges tentatively on the table for the year 2020 would amount to a 14-18 percent reduction in developed countries' greenhouse gas emissions from 1990 levels, a far cry from 25-40 percent that the IPPC considers necessary.

The leaked UN report suggested that by 2020 developing countries should achieve at least a 20-percent reduction below business as usual. Some countries envisage stronger targets, including South Korea, which foresees a reduction in absolute terms, and Costa Rica and the Maldives, which aim to be carbon neutral around 2020. See table below for details.

Verification and Reporting

One of the sticking points throughout the negotiations was US insistence that major emerging economies accept international monitoring of the voluntary national climate actions to slow the growth of their greenhouse gas emissions.

China was the main target of this move. In the end, the line was drawn such that mitigation actions supported by international funds will be subject to international measurement, reporting and verification. The implementation of all other climate-related actions, however, will be self-monitored and reported every two years in national communications "with provisions for international consultations and analysis under clearly defined guidelines that will ensure that national sovereignty is respected."

Financing Pledges

Meagre progress was made on funding to assist developing countries in mitigating of and adaptation to climate change.

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Some developing country voluntary targets

Brazil	36-38% below projected business-as-usual growth by 2020
Costa Rica	Aims to be 'carbon neutral' by 2021
China	40-45 cut in 'carbon intensity' from 2005 levels by 2020
India	20-25% cut in 'carbon intensity' from 2005 levels by 2020
Indonesia	26% below projected business-as-usual growth by 2020; 41% with int'l support
Maldives	Aims to be 'carbon neutral' by 2019
Mexico	5% below projected business-as-usual growth by 2020
South Korea	4% cut from 2005 levels by 2020
Singapore	16% below projected business-as-usual growth by 2020
South Africa	34% below projected business-as-usual growth by 2020

Source: Reuters

The Copenhagen Accord commits developed countries to provide, in the short-term, 'new and additional' resources in the ball park of US\$30 billion between 2010-2012, with balanced allocation between adaptation and mitigation, with the most vulnerable countries getting priority on the adaptation funding. Adaptation will be prioritised for least-developed countries, small island states and Africa.

Longer-term, developed countries committed to the goal of mobilising US\$100 billion a year by 2020, with a caveat that this would happen 'in the context of meaningful mitigation actions and transparency on implementation'. The funds can be used for a range of actions, including technology development and transfer, as well as reducing emissions from deforestation and forest degradation. Somewhat vaguely, the text says the funding will "come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance."

Trade Issues: State of Play

Some of the actions countries take to respond to climate change, known as 'response measures', may have significant implications for international trade. Given the economic interests at stake, it is not surprising that these are among the negotiating topics that remain unresolved.

The most contentious issue is whether carbon-intensive products imported from countries that do not require 'comparable efforts' to mitigate greenhouse gas emissions could be taxed at the border so as to 'level the playing field' for domestic industry. This matter was debated throughout the year, with China and India leading a large contingent of developing countries who supported language in an eventual agreement that would prohibit such measures. Economic interest groups in developed countries fear that domestic regulations on emissions will encourage industries to set up shop in countries that apply lower standards, leading to job losses and an erosion of domestic producers' competitiveness. EU legislation foresees border carbon adjustments (BCAs) in the absence of a strong international climate treaty, as does the climate bill currently winding its way through the US Senate.

Many developing countries strongly oppose such measures. They see at least three concerns: (i) that BCAs may clash with WTO rules, which prescribe equal treatment for 'like products' irrespective of how they have been produced; (ii) that BCAs may be set as a disguised form of protectionism; and, (iii) that the notion of BCAs neglects and undermines the principle of common but differentiated responsibilities among countries at different levels of development.

A number of countries in Copenhagen expressed concern over the free emission allowances that developed countries grant to their trade-sensitive heavy industries, such as steel, cement and aluminium, under cap-and-trade regimes. Arguably, such allowances can be considered as a subsidy that confers a competitive advantage to the recipients.

The biggest hurdle to significantly reducing greenhouse gas emissions is perhaps the development and diffusion of new technologies that will wean the world off fossil-fuel dependence. The challenge is especially acute in the developing world. The Copenhagen Accord establishes a 'technology mechanism', which is to "accelerate technology development and transfer in support of action on adaptation and mitigation." In line with developing country demands, the mechanism will maintain a country-driven approach and account for national circumstances and priorities. In the technical negotiations, however, parties remain at odds on how to deal with intellectual property rights, which many developing countries in particular see as a major barrier to affordable access to the best available technologies.

Although absent from the Copenhagen Accord, agriculture is increasingly present in the climate negotiations, for two primary reasons: first, the sector is responsible for at least 14 percent of global emissions; and second, it will be highly affected by the increased temperatures, droughts, floods and unpredictable rainfall associated with global warming. The current negotiating text on agriculture, which will receive further consideration during the coming year, now emphasises the relationship between climate change and food security.

Reactions from the Protagonists

The leaders who hammered out the Copenhagen Accord have offered varying assessments. Xie Zhenhua, who headed the Chinese delegation, said the meeting had had "a positive result, everyone should be happy [...] both sides have managed to preserve their bottom line. For the Chinese this was our sovereignty and our national interest." India's Environment Minister Jairam Ramesh also liked the outcome since future negotiations would be based on the Kyoto Protocol (although this is not clear in the text), and developing countries had successfully resisted pressure to take on binding reduction targets or to set a 'peak year' for their emissions.

Brazil's Climate Change Ambassador Sergio Serra called the outcome 'very disappointing' but "not a failure if we agree to meet again to deal with the issues that are still pending." Dessima Williams of the Association of Small Island States expressed regret across the board: "We lost our vigorous commitment from other parties to [a temperature increase target of] 1.5°C. We were not able to secure a legally binding outcome. We were not able to secure mid-term targets, a peaking year and many other factors we believe are crucial to our survival." The spokesperson for Sudan, who held last year's presidency of the G-77, Lumumba Stanislaus Di-Aping, likened the accord to 'suicide pact' for Africa.

French President Nicolas Sarkozy stressed that although the text was not perfect, it had the merit of bringing China, India and the US under a 'contract' for the first time. President Obama called on countries to build on the momentum to ensure "that international action to significantly reduce emissions is sustained and sufficient over time." Echoing many others, UK Prime Minister Gordon Brown said governments should move quickly to ensure a legally binding outcome.

Ultimately, the global process is in the hands of 192 countries who, hopefully, are prepared to tackle another year of negotiations as they attempt to achieve a legally binding agreement in Mexico this coming December.

Technology Transfer and Intellectual Property: A Post-Copenhagen Assessment

Ahmed Abdel Latif

In the lead-up to the Copenhagen climate change meeting, technology transfer was – with emissions reductions and finance – one of the key sticking points. It was hoped that the conference would, at least, spell out elements of a ‘package’ that would serve as a basis for further discussions in 2010.

Enhanced action on the development and transfer of technology to support mitigation and adaptation to climate change was one of the building blocks of the Bali Action Plan, but the outcomes of the Copenhagen conference in this area appear meagre. While developed countries made specific announcements in relation to emissions reductions targets and financial pledges, no similar announcements emerged in the area of technology transfer and co-operation.

The word ‘technology’ did not even figure in the statement made by President Obama to the plenary session of the meeting. Nor did he mention it in his remarks to the press, where he stated that “...transparency, mitigation and finance form the basis of the common approach that the United States and our partners embraced here in Copenhagen.” Sweden, on behalf of the EU, mentioned in general terms that “a system should be established to provide long-term support to developing countries for reducing emissions, adaptation, technology co-operation and transfer.” Developing countries, on their part, called on developed countries to honour their commitments and speed up the transfer of climate-friendly technologies.

Ultimately, the Copenhagen Accord establishes a ‘technology mechanism’ to accelerate technology development and transfer in support of action on adaptation and mitigation. It further specifies that the mechanism will “be guided by a country-driven approach and be based on national circumstances and priorities” (paragraph 11).

Technology is mentioned in other parts of the accord, such as paragraph 3, which states that “developed countries shall provide adequate, predictable and sustainable financial resources, technology and capacity-building to support the implementation of adaptation action in developing countries.” Technology support will also be recorded in a registry along with mitigation actions, finance and capacity-building support (paragraph 5).

For several years, developing countries have been actively demanding an institutional strengthening of the technology transfer ‘pillar’ of the UN Framework Convention on Climate Change. From this perspective, the establishment of the technology mechanism represents a positive development. However, it comes as no surprise since in the lead-up to Copenhagen, key developed country players, such as the EU, had signalled their willingness to support such a measure. While the reference that the mechanism will be guided by a ‘country-driven approach’ is welcome, its effective implementation remains a challenge.

Most importantly, countries still need to work out the mandate, structure and organisation of work of this new body, a far more challenging task than the simple decision to create it. Contingent on a clarification of the formal status of the Copenhagen Accord, discussions are likely to resume on the basis of the latest text reached in the context of the Ad hoc Working Group on Long-term Co-operative Action (AWG-LCA).¹

According to the non-bracketed parts in that text, the technology mechanism would consist of a ‘technology executive committee’ and a ‘climate technology centre’. The mechanism would support the following actions: facilitate access to affordable and appropriate technologies required by developing countries for enhanced action on adaptation and mitigation; assess the adequacy and predictability of funds for development and transfer of, or access to, environmentally sound technology (EST); remove barriers to technology development and transfer and enhance means to promote technology transfer (bracketed); develop and enhance endogenous capacities of, and technologies in, developing country parties; and capacity-building to enhance the capability of developing country parties for the development and transfer of EST and know-how.

Other important elements of possible future agreement in the AWG-LCA text include the establishment of global and national technology objectives and action plans, the establishment of a network of regional technology and innovation centres, and strengthening national innovation systems in connection with climate-friendly technologies.

For these elements, too, many details need to be sorted out. In this context, there are still valuable lessons to be learned from the experience of existing international partnerships in other public policy areas where technology research and collaboration play an important role.²

Ultimately, negotiators need to ensure that the new global architecture for enhanced transfer of climate change technology is not overly burdensome or bureaucratic and that adequate funding is made available to secure its effective implementation.

Disagreement on IPRs Persist

The Copenhagen Accord does not mention intellectual property rights (IPRs) at all. This is unsurprising since all references to IPRs in the actual negotiating text are bracketed, reflecting the polarisation that has characterised the debate on intellectual property and climate change since the Bali meeting in 2007.

Developing countries have argued that IPRs are an important obstacle for the enhanced transfer of climate-friendly technologies, and vigorous measures are thus required, including the full use of existing WTO flexibilities. Developed countries maintain that IPRs are fundamental for promoting technological innovation and creating incentives for private sector investment in R&D.

This simplistic representation, while possibly convenient for negotiating postures, does not capture the complex role played by IPRs in technology development and transfer.

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It also reflects the lack of adequate empirical evidence in this area to achieve better understanding of the issues at hand. Several studies in the past year have sought to bridge this gap.

In this context, UNEP, the European Patent Office (EPO) and ICTSD have joined forces to explore issues around patent ownership and licensing practices in the area of clean technologies, particularly energy generation. Preliminary findings were presented in Copenhagen. The final report of this work should be available by spring 2010 and will hopefully better inform the policy debate.³ Negotiators and different stakeholders should seize the opportunity to analyse the emerging evidence and take it into consideration in their final negotiations.

Seizing the Opportunity

Theoretical and legalistic discussion concerning IP and technology in developing countries, without action and application, does not yield concrete results. As put recently by one observer, “mythologies that have failed should not be repeated, such as the notion that enforcement of IP laws per se promotes innovation (the favoured myth of developed countries) or that ‘technology transfer’ can occur in a one-way flow (the favoured myth of developing countries).”⁴

Addressing climate change presents the international community with a unique opportunity to re-energise the decades-old discussion on technology transfer and go beyond entrenched beliefs and received wisdom in this area. This calls for innovative approaches, solutions and partnerships.

Ahmed Abdel Latif is Intellectual Property & Technology Programme Manager at ICTSD.

ENDNOTES

¹ (FCCC/AWGLCA/2009/L.7/Add.3)

² See for instance, Carlos Correa. 2009. *Fostering the Development and Diffusion of Technologies for Climate Change: Lessons from the CGIAR Model*. ICTSD

³ More information is available at ictsd.org/i/environment/ips/51361

⁴ Cynthia Cannady. 2009. *Access to Climate Change Technology by Developing Countries: A Practical Strategy*. ICTSD

EU, South Korea Ink New Trade Treaty

The European Union and South Korea initialled a ‘21st century free trade agreement’ in mid-October, and hope that the pact can enter into force by June 2010.

EU Trade Commissioner Catherine Ashton said the treaty was the most ambitious free trade agreement ever negotiated by the European Union, and would be worth €19 billion to EU exporters. The Korea Institute for International Economic Policy has estimated that the FTA will boost Korea’s gross domestic product by 2-3 percent and exports by 2.5-5 percent. Last year, Korea exported goods worth €39.4 billion to the EU, while the latter’s exports to Korea stood at €25.6 billion. In all, the FTA is expected to boost two-way trade by 20 percent.

Within three years, Korea will phase out tariffs on 96 percent of imports from the EU, and 99 percent of Korean exports will enter the EU duty-free. The European Commission sees export gains in agricultural products such as cheese, as well as alcohol. In addition, European manufacturers of machinery, chemicals and pharmaceuticals are expected to benefit, as are services industries, including telecommunications, shipping, and financial, environmental and legal services. Korea looks to increase sales of cars, consumer electronics, and shoes and textiles.

Importantly for the EU, the agreement provides strong protection for geographical indications, which will give an edge to producers of specialties such as Parma ham and Feta cheese, as well as many wines and spirits. The FTA also contains provisions that will reduce Korea’s non-tariff barriers through the recognition of many EU standards and certificates.

In addition, the comprehensive FTA covers technical barriers to trade and sanitary and phytosanitary measures, as well investment, trade facilitation, government procurement, intellectual property rights, competition and trade-related aspects of labour and environment.

Co-operation on Sustainable Development

Under the chapter on Trade and Sustainable Development, the parties pledged not to weaken their environmental or labour standards, nor to use them for ‘protectionist trade purposes’. They also promised to facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies, sustainable renewable energy, energy efficient products and services, and eco-labelled goods.

The EU and Korea will co-operate on the “trade-related aspects of the current and future international climate change regime, including issues relating to global carbon markets, ways to address adverse effects of trade on climate, as well as means to promote low-carbon technologies and energy efficiency.” Among other areas of collaboration are the trade-related aspects of biodiversity including biofuels, sustainable fishing practices, illegal logging, and multilateral environmental agreements. The parties also promised to co-operate on the trade-related aspects of the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment and core labour standards.

The FTA will be presented for EU member states’ approval in early 2010, after which it still must be endorsed by the European Parliament. Korea’s parliament also needs to ratify the pact.

EU Auto Manufacturers Complain

The European Automobile Manufacturers’ Association (ACEA) has urged member states not to ratify the pact, arguing that it would give Korean carmakers an unfair advantage. Last year, for instance, Korea exported nearly half a million cars to the EU, while the EU sold only 37,000 cars to Korea. European industry is particularly incensed about the so-called ‘duty draw-back’, which allows exporters to recoup any import duties they have paid on components of vehicles that are exported to the EU. ACEA also claims that the allowable foreign content – 45 percent – is too high. The group fears that Korean carmakers will source auto parts cheaply in China and other Asian suppliers, but the European Commission says that only 10 percent of Korean car components come from overseas, including from the EU.

End Gridlock on Trade Policy, Obama Suggests, but How?

President Obama faces contradictory pressures on trade policy, with congressional Democrats pushing for a major change of tack and business asking for action on bilateral deals. Meanwhile in Geneva, trade negotiators lament the lack of US engagement.

Speaking at a meeting of his Economic Recovery Advisory Board in early November, President Obama provided some glimpses into his thinking on trade, but, once again, his comments lacked specifics. For instance, while Mr Obama said that the US must break out of a 'debilitating gridlock' on trade policy by ending the 'false choice' between a wide-open import policy, and a fearful, protectionist approach to trade, he gave no indications on how the administration intended to reconcile the two points of view.

He asked the advisory panel what mechanisms could be put into place to spur "the kind of growth that used to characterise the US economy – export-driven growth, manufacturing growth, growth that pays high wages and provides high living standards for a broad-based middle class." Part of what the US wanted, he said, was "an aggressive trade policy that says we can compete, we're not afraid of competing, we want to make sure we are competing in a fair way, and that other countries are not seeing the US markets as simply the engine for their growth, without any reciprocity."

Trade Review Not Imminent

The administration has been expected for months to deliver a major review of US trade policy, but that has not happened yet. In late October, an unnamed US trade official was widely quoted in the press as warning that there seemed to be a mistaken impression "that this review would conclude with a nice leather-bound volume, which would be the Holy Bible of the Obama administration's trade policy and make everything perfectly clear."

Some choices defining the president's trade policy had already been made, the official said, including the decision to keep 'the shoulder to the wheel' on Doha and to build support at home by increasing enforcement of trade pacts. The source added that both President Obama and USTR Ron Kirk had also made it clear that "the biggest mistake we could make is to come back with a Doha agreement that would be rejected politically by the US Congress."

Business Fears Inaction Will Lead to Loss of Market Share

US business seems largely indifferent about the Doha Round, but increasingly keen to see movement on bilateral free trade agreements. The signing of a comprehensive FTA between the EU and South Korea (see page 18) prompted many calls for passing the Korea-US treaty, which has languished in the congressional antechamber since 2007. For instance, an Investors.com editorial railed that "as the Obama administration dithers for the eighth straight month about three pending free-trade treaties, those dust clouds you see are Europe taking off and running with the big one – South Korea."

USTR spokesperson Carol Guthrie said the US was 'keenly interested' in the implications of the EU-Korea pact since "EU firms compete directly with US suppliers in key segments of the large and growing Korean market, such as machinery, chemicals, plastics, auto parts and dairy."

Administration Announces Trans-Pacific Talks

On 15 December, USTR Kirk notified Congress of President Obama's intention to enter into negotiations for a Trans-Pacific Partnership (TPP) Agreement "with the objective of shaping a high-standard, broad-based regional agreement" with Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore and Vietnam. The hope is that the initiative will eventually lead to wider pact encompassing Japan, Malaysia and other significant Asian economies.

Although the US will participate in a negotiating session in mid-March, the administration is likely to take months to develop precise negotiating objectives in collaboration with Congress (see below). The process will be further complicated by the fact that the US already has various trade-related agreements with all countries in the group except New Zealand.

Democrats Seek New Model

When this issue went to press, the backers of the Trade Reform, Accountability, Development and Employment (TRADE) Act sponsored by Representative Mike Michaud – now more than half of the House Democratic Caucus – were gathering signatures for a letter outlining their position on TPP to USTR Kirk.

The draft letter noted that it would be 'critical' for USTR to co-operate with congressional trade reform advocates. The TPP talks would be "the venue for President Obama to bring his message of change to the issue of trade and to begin creating a new trade agreement model that boosts prosperity and security at home and around the world," it said.

The Democrats' position on the talks closely reflects the objectives of the TRADE Act. The draft legislation calls for a radical overhaul of US trade policy, including a review of all existing agreements against new criteria spelling out what such treaties must and must not contain. Among the 'musts' are enforceable standards for labour and environment, as well as food and product safety. It also requires strong rules on currency manipulation and trade remedies.

The 'must nots' include service sector privatisation or deregulation, restrictions on Buy American, anti-sweat shop and environmental procurement policies, and investor-state dispute settlement. In addition, trade agreements must not contain provisions that US pharma companies could use to limit trading partners' access to affordable medicines.

If the Government Accountability Office finds that existing agreements fail these criteria, the president must present plans to Congress to remedy the gaps. Only after this is done, can new agreements be negotiated or congressional consideration of pending agreements take place. Congress would also need to approve the partners for new free trade negotiations, and certify that the 'must/must not' criteria are fulfilled. Reversing current practice, Congress would need vote on an agreement before it can be signed.

And Then They Were Twenty: Parsing the G-20 Statement

The Pittsburgh summit of twenty major economies confirmed a power shift in global leadership on economic matters, but gave little comfort to those looking for leadership in trade.

The most notable achievement of the summit was undoubtedly the decision to make the G-20 a permanent institution that will act as the ‘premier forum’ for international economic co-operation. The move effectively supplants the much less representative G-8, which in the future will meet on the sidelines of other gatherings. The move was widely welcomed as the G-20 countries account for about 90 percent of global economic activity and include major emerging powers, such as Brazil, China, India, Mexico and South Africa, as well as other developing countries such as Argentina, Indonesia, Saudi Arabia and South Korea.

Reflecting the shift to a more representative international decision-making structure, the G-20 also agreed that over-represented countries (essentially EU member states) would cede at least 5 percent of their International Monetary Fund quota to under-represented emerging markets and other developing countries. The details of IMF quota and governance reform are to be finalised by 2011. In addition, the G-20 called for at least a 3-percent increase in voting power for developing and transition countries at the World Bank.

Righting Global Imbalances

In their final communiqué, G-20 leaders said that they would “work together as we manage the transition to a more balanced pattern of global growth.” This would involve countries with large current account surpluses encouraging domestic spending, rather than relying on exports to fuel growth, while countries with deficits would increase both private and public savings. Such policies would “help us meet our responsibility to the community of nations to build a more resilient international financial system and to reduce development imbalances,” the leaders said.

Next, G-20 members are to agree on shared objectives and develop the policies needed to achieve them. They will assess progress through consultation and peer review, as well as report regularly to the IMF, which will be asked to assist the group with analy-

sis of “how our respective national or regional policy frameworks fit together.” Pointing to the IMF’s abortive effort to supervise a peer review of a similar nature in 2006, many analysts doubt that the mission will succeed this time round.

Strengthening Financial Regulation

The leaders gave their finance ministers and central bank governors a strong mandate to strengthen the international financial regulatory system. Rules should be agreed by end-2010 on improving the quantity and quality of bank capital and to discourage excessive leverage. Executive compensation, including bonuses, should reflect long-term performance in value creation and prevent dangerous risk-taking. Supervisors should have the authority to adjust compensation structures of companies that require ‘extraordinary’ public intervention. A legal framework for crisis intervention should be developed for ‘systemically important’ cross-border financial institutions. And, importantly, a single set of global accounting standards should be agreed by June 2011. The IMF was asked to report to the G-20 next June on “how the financial sector could make a fair and substantial contribution toward paying for any burdens associated with government interventions to repair the banking system.”

Stimulus to Stay

G-20 leaders noted that the actions they had taken to ensure recovery and repair financial systems had worked, but stressed that they would not withdraw stimulus measures until a ‘durable recovery’ was secured. They promised to prepare exit strategies and to withdraw their ‘extraordinary policy support’ in a co-ordinated way when the time was right.

With regard to the protectionist effects of their crisis response policies, the leaders repeated earlier promises to keep markets open and to refrain from taking WTO-inconsistent measures to stimulate exports. They invited the WTO, the OECD and UNCTAD to continue monitoring their actions. The three institutions’ latest report noted a “continued slippage towards more trade-restricting and distorting policies by many G-20 members” and urged the leaders to make a strong commitment not to introduce new trade restrictions and trade-distorting subsidies, *including those that are regarded as being consistent with WTO rules*. Unsurprisingly, the final statement did not include a pledge to refrain from WTO-consistent trade restrictions or subsidies.

The Global Trade Alert, which tracks protectionist measures taken by governments in response to the economic downturn, found that from November 2008 to September 2009, G-20 countries implemented at least 121 ‘beggar-thy-neighbour’ trade measures.

No Guidance on Trade Negotiations

As expected, the G-20 endorsed the goal of bringing the Doha Round to an ‘ambitious and balanced’ conclusion in 2010, ‘including with regard to modalities’. The majority of WTO Members feel strongly that framework agreements on agriculture and industrial market access – ‘modalities’ in WTO-speak – are essential for a balanced outcome prior to scheduling subsidy and tariff cuts. But in a nod to the US and others seeking more clarity on market access gains from large emerging countries, the leaders’ statement also acknowledged that negotiators needed to “directly engage with each other within the WTO [...] in order to evaluate and close the remaining gaps.” Closing those gaps should proceed ‘as quickly as possible’.

None of this means much, as delegates are already engaged in modalities-related work, as well as bilateral talks on market access. The gaps cannot be closed unless countries change long-held negotiating positions, and so far there are no signs of that. The G-20 communiqué called for trade ministers to ‘take stock’ of the results of the intense programme of work now underway in Geneva, and to ‘seek progress’ in all areas covered by the Doha Round mandate ‘no later than early 2010’. The stocktaking is now scheduled for the last week of March (see page 5).

Are There Large New Gains from Trade?

Kevin P. Gallagher and Timothy A. Wise

Each time trade ministers gather, economists seem to offer new projections of how much wealthier the world might be after liberalising trade. One recent study has created a stir by suggesting US\$300–US\$700 billion in potential global welfare gains from an ambitious Doha deal.

These figures contrast with the World Bank's widely publicised 2005 estimates of global gains from a 'likely Doha scenario' of less than US\$100 billion, with just US\$16 billion going to developing countries. So, have economists found another US\$150–\$350 billion in benefits for developing countries that the World Bank missed in 2005? Is development back in the Doha Round? The answer, of course, is no. We examine the recent economic projections, review previous estimates, and put these seemingly large numbers in their proper context.

Larger Gains, Larger Assumptions

Entitled *What's on the Table? The Doha Round as of August 2009*, the study by the Peterson Institute for International Economics reminds us why trade negotiators have grown so sceptical of pre-ministerial press releases from economists claiming large benefits for developing countries if those countries would only give more at the negotiating table. It suggests that the potential gains from a Doha deal could be as high as US\$300 billion to US\$700 billion annually. Moreover, and contrary to previous modelling estimates, the authors claim the benefits are "well balanced between developed and developing countries."¹

Recent statements by the Obama administration and other developed country governments suggest that the developed world will not re-engage in global trade negotiations unless there is more market access for them. *What's on the Table* attempts to model what some of those developed country demands could yield, at least under a generous set of assumptions.

How do Peterson researchers get such large numbers? The authors model four scenarios and sum them. One of those scenarios has been on the Doha table for a number of years – a modest swap of reductions in developed country tariffs and subsidies in agriculture for a reduction in manufacturing tariffs in developing countries. The estimates derived by the Peterson Institute for this Agriculture and NAMA scenario are similar to those found in other studies: the total gains are small and developed countries receive twice the benefits (66 percent) that developing countries do (34 percent). According to the report, total global income would experience a one-time bump of US\$114 billion, or 0.2 percent of GDP.

As the World Bank did before them, the Peterson researchers turn this apparent bias against developing countries into a supposed advantage by noting that, as a share of GDP, the gains to developing countries are higher than the gains to rich countries. This allows them to argue that, in the long run, inequality between rich and poor countries will decrease. While this is true, developing countries have repeatedly pointed out that absolute gains so heavily in favour of rich countries do not meet the basic Doha goal of development. They also note that even if gains as a share of GDP slightly favour developing countries, gains per person are embarrassingly skewed toward rich countries – US\$75 for the rich, US\$7.50 for the poor. (In the earlier World Bank projections, the per capita gains to rich countries were US\$79.04, compared to just US\$3.13 for developing countries.)

Agriculture and NAMA are, essentially, 'what's on the table' in a meaningful sense. The Peterson Institute gets larger estimates by assuming agreement on relatively ambitious proposals in additional areas, namely services, so-called sectorals and trade facilitation. The authors admit in their concluding paragraph that this "represents optimistic thinking on our part." Indeed it does.

In services, the Peterson study finds another US\$100 billion in income gains. It assumes a 10-percent reduction in services barriers to get that number, despite an admission that "given current offers, a 10-percent reduction or even a 5-percent reduction in barriers seems optimis-

tic." The authors also admit that the methodology for estimating services liberalisation is imprecise. In fact, most modellers of global trade recognise that modelling services is very much in its infancy and "have been problematic at best."

Indeed, the World Bank in its earlier work modelled services liberalisation and concluded that the results were too 'highly speculative' to publish with their Doha projections. The Bank got a much smaller estimate than Peterson – just US\$24 billion in estimated gains, with only US\$7 billion going to developing countries. Peterson, with an admitted 'dose of wishful thinking', gets US\$100 billion in gains to add to agriculture and NAMA.

The wishful thinking continues with assumed sectoral liberalisation agreements in chemicals, IT and electronic goods, and environmental goods. These essentially involve especially deep tariff cuts in targeted manufacturing industries by developing countries. Such negotiations were supposed to be voluntary for developing countries, but recent US proposals have in effect conditioned US agreement on the participation of key developing countries in such deals. Developing countries have resisted in principle and though some are participating in preliminary discussions, breakthroughs in these three sectors seem very unlikely. Calling their scenario 'optimistic but plausible', Peterson researchers come up with a further US\$104 billion in gains – the majority of which accrue to developed countries.

This brings the Peterson total over US\$300 billion. This is still only 0.6 percent of global GDP, and the majority of the gains go to rich countries. Peterson finds an additional US\$385 billion in gains from trade facilitation – making the administrative, transport and technical logistics of trade more efficient. This is undeniably an area of considerable interest to developing countries.

Continued on page 22

The estimates rely on a methodology developed by other researchers that assumes that developing countries make significant progress in improving port efficiency, customs, regulations and services infrastructure (e.g. information technologies). But agreeing to make such improvements is not the same as making them, and it cannot be achieved at the negotiating table in the same way tariffs can be slashed. Trade facilitation takes real investment. Developing countries would need years of significant and sustained investment in infrastructure, technology and human capital in order to realise the benefits estimated in the Peterson study. And they would need far more resources than are currently included in Aid for Trade packages. Peterson is, in effect, assuming agreement *and* assuming the financing to make it all happen. No wonder the authors caution that “these numbers should be taken with a tablespoon of salt as this method is less rigorous than methods used in other sections of this paper.”

For the Peterson Institute, this all adds up to GDP gains between US\$300 billion and US\$700 billion annually, which are “well balanced between developed and developing countries.” Our conclusions from a closer analysis of this study are that:

- The gains from ‘what’s on the table’ (agriculture and NAMA) are of the same order of magnitude as previous studies, about US\$100 billion, with the vast majority going to rich countries.

- The new estimates for services, sectorals and trade facilitation are highly speculative, use methodologies that are unproven, and assume far more ambitious outcomes than seem at all likely at this point.
- The claims of ‘balance’ are unfounded, as developing countries receive less half of the gains from any of the individual scenarios and only 31 percent of the total income gains from the combined scenarios.

Small Gains, Real Costs

The more realistic and sobering estimates are still the World Bank’s 2005 projections of gains from a ‘likely’ Doha deal. The Bank estimated that the global gains in the year 2015 would be just US\$96 billion, with only US\$16 billion going to the developing world. In other words, the developing country benefits represent a one-time increase in income of just 0.16 percent of GDP. This is often misconstrued as an increase in the annual growth rate; it is a one-time increase in GDP. In per capita terms, it amounts to US\$3.13, or less than a penny per day per capita for those in developing countries.

This would mean that just 6.2 million people would be brought above the US\$2/day poverty threshold, 0.3 percent of those living in poverty worldwide. Adding the Bank’s services estimates – US\$24 billion overall with US\$7 billion for developing countries – does not improve the outlook very much.

As we have pointed out before, the biggest shortcoming of these studies is that they examine only the potential benefits of immediate trade liberalisation, while downplaying the costs. The table below shows the World Bank’s estimated gains for selected countries and regions along with estimates of tariff losses and projected impacts on terms of trade, i.e. the ratio of export to import prices.

Total tariff losses for developing countries under proposed NAMA liberalisation were estimated to be as high as US\$63.4 billion. Most models ignore these losses, assuming that any loss of government revenue can be replaced by broad-based consumption taxes, certainly a questionable assumption. Many developing countries rely on tariffs for more than one-quarter of their tax revenue. A new study by the International Labour Organisation and the WTO shows that liberalisation under the current negotiations would cause a sharp initial increase in informal work in developing countries, making taxation even more difficult.

Most models also predict declines in terms of trade for developing countries. In the long run, declining terms of trade undermine developing country efforts to diversify and develop. In the wake of the current crisis, they also can accentuate balance of payments problems in developing countries and deepen the impacts of crises.

Lofty new projections aside, development has yet to find its way back to the WTO agenda. This is unfortunate. The organising principle for revived global trade negotiations needs to be a recognition that the world economy consists of nations at widely differing levels of development. Developing countries need the policy space to retain, adapt and evolve the kinds of government measures that have been proven to work for development in the west and in other developing countries.

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ENDNOTE

¹ Adler, M.; Brunel, C.; Hufbauer, G. and Schott, J. 2009. *What’s on the Table? The Doha Round as of August 2009*. Peterson Institute for International Economics. Washington D.C.

Doha's Hidden Price Tag:

Doha Benefits vs NAMA Tariff Losses, Terms of Trade Losses
(billions of 2001 US\$)

	WB 'likely' scenario*	NAMA tariff losses**	Terms of trade (%)***
Developed countries	79.9	-38.0	-0.12%
Developing countries	16.1	-63.4	-0.74%
Selected developing regions			
Middle East and North Africa	-0.6	-7.0	-1.32%
Sub-Saharan Africa	0.4	-1.7	-0.83%
Latin Am. and the Caribbean	7.9	-10.7	-1.12%
Selected countries			
Brazil	3.6	-3.1	-0.18%
India	2.2	-7.9	-1.62%
Mexico	-0.9	-0.4	-0.48%
Bangladesh	-0.1	-0.04	-0.58%

* Anderson and Martin. 2005. *Agricultural Trade Reform and the Doha Development Agenda*. Table 12.14: seminar 7

** De Cordoba and Vanzetti. 2005. *Coping with Trade Reforms*. UNCTAD. Table 11

*** Polaski, Sandra. 2006. *Winners and Losers: Impact of the Doha Round on Developing Countries*. Carnegie Endowment. Table 3.4

Climate Change and Competitiveness

While the WTO ministerial wound its way through pre-arranged motions, more than 400 experts, politicians, trade delegates, representatives of governmental and non-governmental organisations and academia, as well as the general public, flocked to ICTSD's Geneva Trade and Development Symposium. This civil society forum offered substantive debates on the many challenges facing the multilateral trading system, from systemic and institutional issues to topics under negotiation in the Doha Round and, of course, climate change. It was, in the words of many participants, 'the only show in town'.

One of the many sessions devoted to trade and climate change focused on constructive solutions to competitiveness concerns. Industries, and particularly those involved the most polluting activities, will face a burden in countries that have taken, or will take on binding commitments to reduce greenhouse gas emissions. This could put them at a disadvantage vis-à-vis foreign competitors that are not required to undertake similar action. In the worst case, production could migrate to countries with less stringent standards, causing job losses at home with no reduction in global CO₂ emissions (so-called carbon leakage).

Countries have devised a number of ways to respond to these concerns. One is to grant heavy industries free carbon emission allowances under cap-and-trade carbon regimes for a number of years to give them time to adjust. Although such allowances could be considered as WTO-illegal subsidies, they are far less contentious than border tax adjustments (BTAs), that is, either taxing imported carbon-intensive products, or requiring the importer to buy emission allowances so as to level the playing field for domestic producers. BTAs are foreseen in European legislation and the pending the US climate bill in the event that no global agreement, encompassing all countries (albeit with different levels of commitment) is reached in the climate change negotiations.

Panelists were unanimous that the best option would be to conclude a global accord, while unilateral BTAs would be worst way to address the problem. New Zealand's trade minister and associate climate change minister, Tim Groser, likened them to a 'time bomb under the WTO system'. Jake Colvin of the US National Foreign Trade Council concurred that border measures would almost certainly be WTO-inconsistent and that their use could spark a green trade war. (The incoming EU trade commissioner, Karel de Gucht, expressed a similar view in his confirmation hearing at the European Parliament.) Indonesia's trade minister, Mari Pangestu, said BTAs presented a risk of damage to the multilateral trading system.

Minister Groser (whose country passed a carbon trading scheme in November) and others noted that governments needed to respond to their citizens' concerns about the cost of the transition to a low-carbon path. Free emission allowances are one way to allay such fears, and could probably be accommodated through a 'temporary waiver' that would hold off subsidy challenges at the WTO for a period of five years or so.

Several panelists also said that lowering tariffs and other trade barriers on environmental goods and services could be part of the solution. Such liberalisation would not benefit just developed countries, but also competitive developing country producers, such as India and China.

Russell Mills of Dow Chemicals and Ambassador Anders Ahnlin of Sweden stressed that climate change action was not all pain for industries; improving energy efficiency could in fact lead to the next ten or twenty years being more about benefits than costs. A global price on carbon would be helpful, as would significant new investment in low-carbon technologies.

Minister Pangestu said that Indonesia had already lowered tariffs on clean technologies, and was trying to determine a broader national policy involving import regulations and the investment regime, as well as fuel subsidy reductions, and tax and budget incentives for clean energy.

For more information, visit <http://www.ictsdSYMposium.org/>

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WTO Meetings

Early Feb. Agriculture and NAMA Negotiations

Feb. 1-5 Services Negotiations

Feb. 8-12 Negotiating Group on Trade Facilitation

Feb. 15-19 Senior Officials Week (Doha Round)

Feb. 18 Dispute Settlement Body

Feb. 22-23 General Council

March 1-12 Agriculture Negotiations

March 2-4 Negotiating Group on Rules

March 2-4 TRIPS Council

March 8-12 Negotiating Group on Trade Facilitation

March 10 Committee on Agriculture (regular session)

March 16 Council for Trade in Goods

March 19 Dispute Settlement Body

March 22-27 Senior Officials Week (Doha Round)

End-March Stocktaking on the Doha Round

New Publications from ICTSD

www.ictsd.org

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