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Facts and Figures

- The IMF expects the combined public debt of Canada, France, Germany, Italy, Japan, the UK and the US to reach more than 113 percent of their GDP in 2010, a level not seen since 1950. High-income countries will need to cut government spending (or raise revenues) by 8.8 percent of GDP for a 20-year period in order to bring the debt-to-GDP ratio down to 60 percent by 2030.
- Nearly half of the annual increase in global demand from 2010 to 2012 will come from developing countries. Their imports will account for more than 40 percent of the increase in global exports. The economies of the developing world are expected to grow by about 6 percent, while high-income country growth will not exceed 2.7 percent.
- The economic crisis could reverse progress toward the millennium development goals. An estimated 64 million more people in developing countries live on less than US \$1.25 per day in 2010 than would have been the case without the crisis.

Source: Recovery at the Crossroads: Role and Implications for Developing Countries. World Bank, June 2010

Rebalancing Global Growth

Beyond Doha Round technicalities, the broader economic debate is focused on 'rebalancing' trade, access to resources and stabilising food prices.

The final communiqué of the G-20 summit in June was replete with references to 'more balanced growth' and 'rebalancing global demand'. The leaders agreed that advanced G-20 countries with current account surpluses would undertake structural reforms in support of greater domestic demand, while countries with deficits would boost national savings and enhance their export competitiveness.

Emerging surplus economies (read China) should strengthen social security nets and take action to help reduce precautionary savings, as well as enhance exchange rate flexibility. On 19 June, Beijing unpegged the yuan from the US dollar, but the effect of the move has been minor, increasing pressures on the Obama administration to take tough action to induce China to revalue its currency more drastically. This does not seem to be in the cards, and a number of analysts agree with Beijing that faster yuan appreciation would not significantly alter global trade flows (see page 3).

Instead of narrowing, current trends point to a widening of imbalances. For the first seven months of the year, Germany and China's exports continued to roar ahead outpacing imports. Japan is also running persistent trade surpluses, and Germany adopted tough austerity measures in June, making a significant increase in domestic consumption unlikely. Meanwhile the United States' trade deficit still hovers around 17.7 percent above last year's figures for the same period.

Against this backdrop, it is difficult to imagine a major boost to the multilateral trade negotiations that continue to stagnate in Geneva. British Prime Minister David Cameron acknowledged at the Toronto summit that the Doha Round was 'stuck', adding that it "doesn't look like it is going to progress unless we do something different." President Obama suggested a stronger focus on services to break the impasse. Most developing countries, however, remain reluctant to engage further on services liberalisation until there is more clarity on the level of ambition in agriculture and industrial market access, the two crucial components of the round on which virtually no progress has occurred since July 2008.

The next G-20 summit, to be held in Seoul in November, will review the status of the negotiations and try to chart a way forward. The leaders have also requested the OECD, the International Labour Organization, the World Bank and the WTO to report on the benefits of trade liberalisation for growth and jobs.

Access to Resources

Another increasingly hot trade flash point concerns access to raw materials. A number of developed countries in particular are seeking stronger curbs on export bans and quotas on products ranging from food to timber and steel to rare earths. The EU and the US have launched a WTO dispute on China's restrictions on a number of inputs used in steel manufacturing.

Continuing the trend, the United Steelworkers of America has filed a 5,800-page petition with the Office of the US Trade Representative calling for an investigation – possibly leading

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Bridges

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to another WTO case – of a broad range of Chinese measures that affect the competitiveness of the alternative and green energy sector in the United States.

The trade union alleges that export restrictions on raw materials, such as rare earths produced almost exclusively in China, as well as subsidies, performance requirements for investors and discrimination against foreign firms, have allowed China to “vault ahead the United States as a leading producer and exporter of green technologies,” jeopardising the promise of such jobs for Americans. The Pentagon has also expressed concern over the reduced availability of some rare earths that are critical to the defence industry. Corporate leaders in Japan and Europe are worried as well.

The issue is likely to command increased attention at the WTO, where countries currently have few restraints over the use of export controls (embargos, taxes and quotas). The organisation's latest World Trade Report, published this summer, noted that tension between rising demand for natural resources, and their scarcity and exhaustibility was likely to increase. The report concluded that “fears of inadequate access to supplies in resource-scarce countries and of inappropriate exploitation in resource-rich regions could lead to trade conflict or worse.”

Food Prices Back on the International Agenda

The spectre of a repeat of the 2007-2008 food crisis is rising in the wake of poor wheat harvests in drought-affected Russia and the Ukraine, as well as the loss of stored grain in the floods that submerged Pakistan's main growing region. Russia has imposed an export ban until the end of 2011, Ukrainian customs officials are slowing the clearance of shipments and Pakistan is all but certain to shelve its two-million-tonne export plan for this year.

These developments have led to a sharp rise in wheat prices over the last few months, although they are still 40 percent below the peak experienced in 2008. Social unrest is stirring in import-dependent countries such as Egypt and Mozambique, whose governments opted to foot a higher subsidy bill rather than increase the price of bread after deadly riots broke out. This time around, the issue appears to be the cost of wheat rather than a shortage of supply (see related articles on pages 21 and 23).

According to FAO Assistant Director-General for Economic and Social Development Hafez Ghanem, this year's grain harvest was the third highest on record and stocks are high. However, he acknowledged that the situation could change if there were further shocks to supply due to more bad weather and panic buying. In Russia, panic buying has led to a sharp rise in the price of several staples, including eggs and buckwheat. According to Economy Minister Elvira Nabiullina food prices have increased more than 30 percent in some regions.

Higher Price Volatility

In general, Mr Ghanem said, grain markets were increasingly volatile, in part because Black Sea suppliers with fluctuating yields now play a greater part in the global market, but also because climate-change-induced extreme weather phenomena can be expected to increase. Speculation also plays a part.

FAO member governments will meet on 24 September to take stock of the situation and discuss medium-term steps that countries could take to be better prepared for future episodes of price fluctuations.

Mr Ghanem also suggested that the G-20 could take the lead in looking at ways of dealing with higher volatility. That would include discussion of improved regulation of markets, of ensuring greater market transparency, and the establishment of an appropriate level of emergency stocks. “We also need to find ways of assuring a fluid and efficient international trade in food products,” he noted.

The wheat price hike has also resurrected the debate over using food crops as feed stocks for biofuels. In the UK, for instance, green groups have raised concerns about new bioethanol plants that could consume up to a fifth of the country's wheat crop by 2014.

Yuan Revaluation Will Not Deliver All Its Supporters Hope

Trineesh Biswas

Given the economic circumstances worldwide, it is hardly surprising that the exchange rate of China's currency has been the subject of a renewed wave of international attention. But even a considerable revaluation of the yuan is unlikely to right global trade imbalances.

Trade deficits and high unemployment are an unhappy combination for politicians. The United States has both. Lawmakers in Congress are looking to the yuan for a quick fix. They say that a meaningful rise in the yuan, which was effectively pegged to the dollar since July 2008, could help create domestic jobs and reduce the US's trade deficit with China by making American exports cheaper in China, and Chinese imports more expensive in the US.

Although China has strongly and repeatedly rejected claims that a stronger yuan would solve global trade imbalances, it did end the currency's two-year-long peg to the US dollar on 19 June at an average rate of 6.83. The US and other trading partners are now waiting to see the medium-term effects of the enhanced exchange rate flexibility. At the time of writing, the yuan had risen by less than 1 percent against the dollar.

This is not sufficient, a number of US politicians say. They have scoffed the Obama administration's reluctance to designate China as a currency manipulator, and New York Democrat Charles Schumer has vowed to make a new push this fall for a bill that would require countervailing duties to be imposed on Chinese goods unless Beijing agrees to revalue the currency within six months of the bill's entry into force. Pressure is growing in Europe as well.

Why Does China's Exchange Rate Matter?

An undervalued exchange rate is both an import tariff and an export subsidy. But despite their enormous ramifications for trade, exchange rates are not subject to any serious regulation at the international level. (A statute imposed by the IMF statute has proven toothless.)

Depending on their wherewithal, governments can exert substantial influence over their countries' exchange rate through monetary policy and active intervention in financial markets. But while the WTO disciplines a wide range of import-restricting and export-boosting policies, its rules on exchange rates amount to a clause ordering member governments not to 'frustrate the intent of the provisions' of the General Agreement on Tariffs and Trade through 'exchange action' (GATT Article XV(4)). This may prove too vague a basis for an unequivocal legal victory in a dispute at the global trade body.

The deep interconnection between China and the US, dubbed 'Chimerica' by the historian Niall Ferguson, saw the Chinese over-save while Americans overspent. Cheap Chinese imports kept US inflation low while generating jobs in China, and purchases of US debt with

Chinese savings kept US interest rates low. Now, with US households saving more and consuming less, Washington hopes to make up the difference by increasing exports – especially to fast-growing countries like China.

Other economists say that the focus on the China-US connection misses the point. China's exchange rate policy has direct ramifications for poverty reduction and for other developing countries.

Dani Rodrik, a professor of political economy at Harvard's Kennedy School of Government, has found that undervalued exchange rates can contribute to growth in developing coun-

tries by encouraging economic activity to shift into the production of tradable products, which tend to come from modern, higher-productivity sectors. He estimates that a sharp increase in the yuan could reduce growth in "the most potent poverty reduction engine the world has ever known," even threatening social peace in China.

Broader Implications

But the implications for development go beyond China's borders, argues Arvind Subramanian, a senior fellow at the Peterson Institute and the Center for Global Development. "Higher tradable goods production in China results in lower traded goods production elsewhere in the developing world, entailing a growth cost for these countries," he wrote in June in the *Financial Times*.

While China's seemingly insatiable demand for raw materials has been a boon for commodity exporters in developing countries, manufacturers of light goods such as clothing and toys have suffered. Countries like Thailand have seen a shift of focus from making toys, consumer electronics and clothes for the US market into exporting rubber, tin and agricultural commodities to China, says Ed Gresser, a trade expert at the Democratic Leadership Council, a centrist Democratic Party think tank in Washington.

Extremely low interest rates in the West have presented an additional challenge to developing countries with floating exchange rates. Investors searching for higher returns have been pouring capital into emerging economies, driving up their currencies and in turn exacerbating their competitiveness concerns with respect to China.

Officials from other developing countries have started to speak up about the effects of the low yuan, and are urging China to revalue – and Beijing may find their appeals harder to ignore than the US's. In April, the heads of the Brazilian and Indian central banks called for a stronger Chinese currency.

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Higher tradable goods production in China results in lower traded goods production elsewhere in the developing world, entailing a growth cost for these countries. Thailand, for instance, now makes fewer toys, consumer electronics and clothes for the US market but exports more primary goods, such as rubber, tin and agricultural commodities to China. Both Brazil and India have called for a revaluation of the yuan.

But Is the Yuan Undervalued?

It is notoriously difficult to estimate the 'right' exchange rate for a currency.

China, a fast-growing economy with an enormous current account surplus, should ordinarily have seen its currency rise. Instead, the yuan is yet to appreciate significantly from its July 2008 base rate.

Estimates of the undervaluation vary wildly. John Williamson and William Cline, economists affiliated with the Washington-based Peterson Institute for International Economics, estimate that as of the end of 2009, China's currency needed to appreciate by 40.7 percent against the dollar, and by somewhat lower amounts, on average, against other major currencies. In contrast, Goldman Sachs chief economist Jim O'Neil wrote last December that according to the bank's model for estimating fair value for different currencies, it was 'no longer so clear' that the yuan was undervalued.

The Chinese government has rejected claims that the yuan is undervalued. It notes that the renminbi, as the currency is also called, appreciated by over 20 percent between 2005 and mid-2008, when it allowed a controlled appreciation of the currency.

Beijing resents the suggestion that it is not doing its part to contribute to global spending, pointing to its 4 trillion yuan (US\$586 billion) fiscal stimulus package. (Ironically, China's fixed asset investment-heavy stimulus may actually have increased its need to export in the short run, by creating additional capacity.) Chinese officials say that if Washington really wants to narrow its bilateral trade deficit, it should remove export controls on sending a range of high-tech products to China.

Thanks to regional production chains, China's export goods are becoming more of a complement to the production of goods in other Asian economies than a substitute. A higher priced yuan could decrease Chinese imports of components from countries such as Japan, Korea and Taiwan, causing total exports from some of those nations to decline.

A further wrinkle comes from the fact that bilateral trade balances fail to adequately reflect the realities of global supply chains. For instance, the entire cost of a television set exported to California would figure in China's trade surplus with the US, even if it had simply been assembled in China from parts from Korea, Taiwan, and Malaysia. Indeed, China has in many years run trade deficits with several Asian countries.

For currencies other than the dollar, China's pre-June 2010 yuan peg cut both ways: when the dollar rose, as it did in late 2008 and early 2009 when investors fleeing financial market turmoil sought a safe haven in the US currency, so did the yuan. Between the start of 2008 and the end of 2009, the yuan rose against every major currency but the yen. And over the past few months, as the euro plummeted against the dollar, it has also fallen against the yuan – no small concern for Beijing, since the EU is the largest customer for Chinese exports.

Possible Consequences of Revaluation

Projections vary. One thing is clear: a yuan revaluation will not deliver everything its supporters want.

After the Plaza Accord in 1985, both the deutsche mark and the yen rose sharply against the dollar – as Washington had wanted. But while the US trade deficit with West Germany shrank, its deficit vis-à-vis Japan kept growing.

'Stress tests' conducted in March on labour-intensive industries in China's coastal provinces indicated that even rises of a few percentage points in the value of the yuan would slash profit margins of household appliance, automobile and cell phone makers by as much as half, according to reports in state media.

Would higher Chinese prices cause manufacturing jobs for such products to move back to the US? Probably not. Manufacturing would likely shift to other low-cost locations elsewhere in the world.

A rise in Chinese manufacturing prices might have some surprising consequences, reckon Alicia García-Herrero, chief economist for emerging markets at Spanish bank BBVA, and Tuuli Koivu, an economist with the Bank of Finland. Not only might a rise in the real value of the yuan actually *decrease* Chinese imports of components from East Asian countries like Japan, Korea and Taiwan, they project that it would cause total exports from some of those countries to decline. Thanks to regional production chains, they say, "China's export goods are becoming more of a complement to the production of goods in other Asian economies than a substitute."

China does have some good domestic policy reasons for letting the yuan appreciate. Many economists argue that a stronger yuan would confer considerable benefits for both China and Chinese consumers. Consumers would see their purchasing power rise. Allowing interest rates on bank deposits to rise – relaxing the financial repression that has kept the costs of 'sterilising' capital inflows manageable – would increase households' returns on savings, which represent a considerable portion of their income. At the international level, a less heavily managed yuan could play a greater role in global finance.

A recent development in China quite unrelated to the value of the yuan may portend a move towards a more sustainable balance between private domestic consumption, investment, and exports: substantial wage increases (some of the best known examples were prompted by a strike and a spate of workers' suicides).

In China, government revenue has grown rapidly, helped by state ownership of much of the economy. Household income, in contrast, has grown more slowly than GDP. This situation – a much richer country, but only modestly richer people – has been likened to a cocktail party without the cocktails. The drinks may finally be arriving.

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Waiting for Better Alignment of Political Constellations

Recent ministerial and senior-level gatherings have made no headway in charting a way forward for the Doha Round, and entrenched divisions were again on display at the WTO's Trade Negotiations Committee meeting in June.

On 19-20 May, the European Union and India jointly hosted a meeting of senior officials from 19 countries representing all major coalitions in the Doha Round negotiations. According to participants, the gathering served to underline the gaps separating central players such as the US and large developing countries like Brazil, China, and India.

Many were 'dumbfounded' by the depth of the differences, said one official. For the time being, the gulf seemed 'insurmountable', with countries divided not just on the substance, but on how to approach the negotiation, the source said.

After a first day devoted to the reiteration of well-established positions, officials recognised they were at an impasse. There was a 'common diagnosis of the problem' a trade diplomat said, but little headway towards agreeing on 'common terms of engagement'.

A ministerial gathering, held a week later on the sidelines of the OECD council meeting in Paris, showed that positions remain entrenched. WTO Director-General Pascal Lamy said the ministers had a "lucid discussion starting with the assessment that we are in an impasse and things have not been moving much in recent times." Moving towards a conclusion would require 'quite a bit of quiet diplomacy' with a focus on testing possible 'landing zones' in small groups and bilaterally, he suggested. Australia's Trade Minister Simon Crean admitted that there were conflicting views on whether greater ambition was needed, adding that this was "a dilemma that we have to resolve and unless we resolve it we won't have a conclusion."

TNC Debates Added Quantum, Who Should Move First

At the June meeting of the WTO Trade Negotiations Committee (TNC), DG Lamy sought to clarify the meaning of 'extra quantum', a term he used at the OECD gathering to describe what would be necessary to move the Doha process forward.

Many developing countries have interpreted the term as a nod to the US and others seeking more concessions from advanced developing countries, thus upsetting the architecture and balance of the 'deal on the table', i.e. the latest draft negotiating texts on agriculture and industrial market access.

Mr Lamy said he sensed the membership was "looking for extra quantum in these negotiations – by which I mean a combination of ambition and balance for all participants, combining what is already on the table and what needs to be there for a conclusion." He emphasised that "we cannot, I repeat, cannot have an ambitious result without overall balance. Such is our challenge – to aim for high ambition while ensuring balance."

While many WTO Members have faulted the United States for not engaging in the Doha Round negotiations, Trade Representative Ron Kirk told reporters after the OECD meeting that the US had made clear to advanced developing countries what it wanted, and suggested it was "time for others to be creative and put on the table in terms of what they think will accomplish a balanced and ambitious package." However, Mr Kirk emphatically rejected "the notion that we somehow have to pre-pay – or advance pay" to get the negotiations moving on industrial market access, rules or services.

At the June TNC, several developing countries turned this approach on its head, calling for countries seeking a higher level of ambition to start by outlining what further concessions they were ready to make in agricultural support, services and rules. These remarks appeared to target some of the US 'red lines' in particular, in areas such as domestic farm support, access for temporary service providers and 'zeroing' in the calculation of anti-dumping duties.

Brazil and India also argued that the deal on the table was already balanced and ambitious enough, and Members should accept the will of the majority rather than seek further concessions.

The US delegate countered that countries kept referring to 'a balance that never was' in the December 2008 negotiating drafts, while Costa Rica suggested that all Members should show more flexibility, and advanced developing countries should show leadership and take on responsibility.

On behalf of the least-developed countries group, Zambia reintroduced LDCs' call for a Doha Round early harvest. This would consist of a rapid implementation of duty- and quota-free access for LDC exports; a waiver that would allow developed countries to give preferential access to LDC services and service providers; an ambitious and meaningful solution for reducing cotton subsidies; and simplified rules of origin. The proposal was supported by Argentina, Bangladesh, Barbados, Brazil, China, India and South Africa.

Horizontal Negotiations Premature, Lamy Says

Mr Lamy noted that time was not yet ripe for so-called 'horizontal discussions', where Members start looking for trade-offs across all negotiating topics. This was so because in some areas there were still too many unresolved technical issues, he said.

For the time being, WTO Members appear set to continue a 'cocktail approach' in the elusive search for momentum. This will involve work in the various negotiating groups, small-group consultations between Members in specific areas, as well as horizontally, and consultations 'in various formats' led by DG Lamy to "explore the horizontal stage of the negotiations."

But, significant progress on substantive issues is unlikely to occur until "political constellations are more favourably aligned," the Hong Kong delegation concluded.

Ag Update

The negotiating group on agriculture wrapped up a lacklustre year in early July with little evidence of progress.

Despite a raft of studies on the potential impacts the special safeguard mechanism (SSM), delegates are no closer to agreement on how the system should operate. The purpose of the mechanism is to allow developing countries to shield their producers from import surges and price depressions by temporarily raising tariffs. The G-33 coalition of developing countries wants an SSM that is effective and simple to use, but export-oriented farming nations (developing as well as developed) say that the parameters – volume and price triggers, and length and frequency of tariff hikes – should be tighter to ensure that the SSM does not impede ‘normal trade’.

Although further analysis can be submitted, chair David Walker suggested that the discussion should turn to ‘problem solving’ after the summer break.

No progress occurred on tariff simplification, where Argentina argued that proposals contained in the December 2008 negotiating draft regarding methods for converting specific duties (such as one dollar per kilo) to ad valorem duties (percentage of a product’s price) would result in a higher tariff than that currently in force.

Some countries also made general comments. The G-10 group of import-sensitive countries warned that the balance of the December 2008 draft should not be altered, since the group is not in a position to make further concessions. The group of recently acceded Members made a statement along similar lines, underscoring that opening ‘stabilised’ text would be ‘unacceptable’.

Argentina and India said that technical work on templates for scheduling future tariff commitments – the main focus of the negotiating group for the past year – should not delay work on clearing up ambiguities and other substantive issues in the December draft.

No Sparks in NAMA Negotiations

Delegates' lack of enthusiasm came through clearly in the chair's summing up of a week of NAMA (non-agricultural market assess) negotiations in May.

The talks focused on non-tariff barriers, and the high point of the session was a ‘conceptual consensus’ to change the word ‘barriers’ to ‘measures’ in order not to imply that regulations automatically mean obstacles to trade. With more than a hint of sarcasm, chair Luzius Wasescha declared himself ‘overjoyed’.

Remanufactured Goods

The US, Switzerland and Japan are seeking to remove trade barriers, including non-tariff measures that affect refurbished used products, but several developing countries are wary of the implications for their producers of similar new goods, as well as the possibility of being inundated with potentially hazardous junk.

The upshot of the discussions was to hold a dedicated session on the definition of a remanufactured good. The proponents had tentatively defined it as an industrial product that is entirely or partially comprised of parts obtained from the disassembly of used goods, which have been “processed, cleaned, inspected, or tested to the extent necessary to ensure they are in original working condition; and have a warranty.”

Avoidance of Disputes

The so-called ‘horizontal mechanism’ was conceived as a means to enhance information exchange and defuse potential disputes with regard to technical regulations, standards or any other measure perceived as a non-tariff barrier to trade. Under this proposal, if the Members involved cannot resolve an issue through bilateral consultations, they may, by mutual consent, request the appointment of a facilitator to help them find a solution before launching formal dispute settlement proceedings.

On the face of it, this entirely voluntary mechanism seems unobjectionable. Nevertheless, after 18 months of extensive debate, Members are still wrangling over whether the mechanism should also cover non-tariff measures affecting agricultural products. This issue might need a ‘political fix’, Mr Wasescha suggested. Disagreement also prevails over whether countries should be obliged to bring their concerns to the attention of the relevant WTO committees (on technical barriers, sanitary measures, etc.) before seeking recourse to a facilitator.

The chair noted wryly that some delegations used the discussion on this topic to ‘enjoy a siesta’, and proposed that the scope of the mechanism (i.e. the inclusion agricultural NTBs) be left out of future deliberations “in order to avoid a repetition of a discussion we have already had about ten times.”

Transparency

Consultations on transparency focus on the timely notification of technical regulations to the WTO. Some Members think that all regulations that may have a significant impact on trade should be notified (instead of just those that exceed international standards), while others argue that would place too great a burden on the notifying authorities.

Other open questions include when Members should be required to publish draft regulations, and the extent to which they should be obliged to take account of outside comments when finalising the drafting. A number of delegations consider that the obligation should be limited to government feedback, but others would like all comments, including those from industry and consumer groups, to be taken into account.

Members also (inconclusively) discussed the designation of standard-setting bodies for the electronics sector, as well as proposals for minimising non-tariff barriers to trade in chemicals. The next NAMA meeting is scheduled for the week of 20 September.

Members Differ on Approach to Fisheries Subsidies

In early May, WTO delegates gave a mixed welcome to proposed exemptions for developing countries from new disciplines on subsidies that contribute to an over-sized fishing effort and an alarming decline in fish stocks around the world.

How to balance the need for effective disciplines to prevent overcapacity and overfishing on the one hand, and the flexibilities granted to developing countries under special and differential treatment (S&DT) on the other remains among the most controversial points in WTO negotiations on the fisheries subsidies.

The 2005 Hong Kong Ministerial Declaration called on the rules negotiating group to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing.” However, ministers also noted that “appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.”

In May, Members discussed a joint proposal from Brazil, China, India and Mexico (TN/RL/GEN/163), which sought to “convey what [the proponents] believe is needed for fulfilling the Hong Kong mandate regarding S&DT.”

Socio-economic Criteria for Small-Scale Fishing

The submission quite radically alters the November 2007 chair’s text (TN/RL/W/213) by suggesting new criteria for S&DT exemptions for ‘small-scale’ fishing activities.

Instead of defining such activities by limited boat size (ten metres in length), the geographic scope of operations (limited to territorial waters) and the subsistence nature of the fishing effort (essentially self-consumption of the catch and no major employer-employee relationship), the four-country proposal would allow developing countries to grant otherwise prohibited subsidies (listed in Article I.1 of the chair’s text) “where the benefits of those subsidies are conferred on *low-income, resource-poor or livelihood fishing activities*, provided that these activities are performed by fishworkers on an individual or family basis *or employed by associations or micro-enterprises or individual boat owners*” (editor’s italics).

These changes, opponents argued, would amount to a considerable loophole for developing country governments for two main reasons. First, the lack of a WTO definition for either ‘low-income’ or ‘resource-poor’ would allow them to decide unilaterally which activities would be eligible for subsidies. Second, the extension of the scope of eligible operations beyond family and local associations could allow subsidisation of fishworkers engaged in considerable com-

mercial activity as suppliers to larger fishing vessels off the coast.

In a spirited critique of the proposal, entitled *One Step Forward, Two Steps Back*, WWF noted that fishing communities in many countries were ‘low-income’ compared to other sectors. The conservation group argued that, as commonly used, the term “is subject to diverse and very broad interpretations, and could easily include fisheries already enjoying substantial commercial advancement.” The proposed carve-out could hand developing countries a ‘blank cheque’ that could jeopardise efforts to effectively limit overfishing, WWF suggested.

However, those supporting the proponents rejected the notion that developing countries were seeking a way to be allowed rampant subsidisation. One delegate pointed out that GEN/163 did not fundamentally differ from previous proposals on S&DT. While the proposal might not be perfect, the delegate acknowledged, it had been instrumental in breaking a longstanding deadlock in the rules negotiations.

New Chair Elected

Uruguay’s Ambassador Guillermo Valles Galmés stepped down as chair of the rules negotiating group in May, leaving a legacy of progressive action on subsidies.

In his February stock-taking report on the state of play in the negotiations, Chair Valles Galmés urged Members to keep in mind the dire, and worsening, state of global fish stocks. The number and scope of potential trade-offs between effective new rules and exceptions were ‘by definition’ limited by the mandate to discipline subsidies that contribute to overcapacity and overfishing, he said (Bridges Year 14 No.2 page 6).

On 13 July, Ambassador Dennis Francis of Trinidad and Tobago was elected to succeed Mr Valles Galmés. The new chair will need all of his vast diplomatic experience to steer the controversial rules negotiations – which also cover anti-dumping and industrial subsidies – to a successful conclusion.

Proposed scope of S&DT changes in submission TN/RL/GEN/163

Criterion	Chair’s Text 2007	GEN/163
Poverty level	Art.III.2(a) reflects the concept of livelihood/subsistence fishing	Low income, resource-poor or livelihood fishing
Fishing location	Within territorial waters	No limit
Technical fishing capacity	Non-mechanised net retrieval	No limit
Level of commercial fishing	Consumed principally by fishworkers and their families. Activities cannot go beyond small-profit trade.	No limit
Enterprise structure	Activities are carried out on their own behalf by fishworkers on an individual basis, which may include family members, or organised in associations without a major employer-employee relationship.	Performed by fishworkers on an individual or family basis or employed by associations or micro-enterprises or individual boat owners.

Source: WWF. April 2010. *One Step Forward, Two Steps Back: Comments on TN/RL/GEN/163*

TRIPS Council Hears Concerns over IPR Enforcement Trends

In June, the Council for Trade-related Aspects of Intellectual Property Rights addressed a number of contentious issues, including access to medicines and the enforcement of intellectual property rights, as well as a proposal to prohibit patents on biological resources.

Enforcement of IPRs is a sensitive issue at the WTO as the TRIPS Agreement essentially leaves governments free to decide how to implement the treaty's obligations. Nevertheless, India and China managed to place 'enforcement trends' on the council's agenda, arguing that agreements outside the WTO were increasingly undermining the flexibilities available under TRIPS.

China and India expressed particular concern over the Anti-counterfeiting Trade Agreement (ACTA) currently under negotiation between 11 (mostly developed) countries. They maintained, inter alia, that ACTA, as well as many regional and bilateral pacts, creates trade barriers and disrupts goods in transit.

Such deals, the two countries said, do not adequately consider the interests of developing countries. India acknowledged that the TRIPS Agreement sets out minimum levels of IP protection, but added that the agreement also establishes ceilings on government action – ceilings that these new deals often break. India stressed that its greatest concern about ACTA was the deal's potential to restrict access to medicines in poor countries – specifically, that it could allow for further seizures of generic pharmaceuticals (see opposite).

Peru, Cuba, Bolivia, Ecuador, South Africa and Egypt expressed support for India and China's statements, while the US, the EU, Japan and Canada argued that ACTA was not at odds with TRIPS. They claimed that the scope counterfeiting and copyright piracy had reached such proportions that some Members were looking for solutions outside the WTO, where discussions on enforcement had largely hit a stone wall.

The EU maintained that ACTA regulations would not affect trade in legitimate generic medicines since the treaty would not require border measures based on patent infringement. Nevertheless, the EU has been the main proponent for substituting the words 'piracy' and 'counterfeit' in ACTA by 'goods

suspected of infringing an intellectual property right'. This wording could include patent violations, as well as allow customs officials to confiscate suspect shipments even when the goods are in transit (Bridges Year 14 No.2 page 17).

Access to Medicines

Developing countries appear determined to conduct a thorough review of how well the so-called 'paragraph 6 solution' is working. The term refers to a paragraph in the Doha Declaration on TRIPS and Public Health, which instructed the TRIPS Council to find an 'expeditious solution' to the problem faced by developing countries lacking domestic capacity to manufacture generic versions of patented drugs under compulsory licence. The problem arose because the TRIPS Agreement requires generic drugs produced under compulsory licence to be 'predominantly for the supply of the domestic market'.

The solution, adopted by WTO Members in 2003, was a waiver of that provision. It allows generics makers to export drugs under compulsory licence to developing countries without manufacturing capacity, but also imposes a complex web of requirements on both exporters and importers, mostly designed to ensure that the drugs are not re-exported to other countries, where they could threaten brandname manufacturers' markets.

Evidence suggests that the waiver is not all that 'expeditious'. It has been used only once, for a shipment of HIV/AIDS drugs from Canada to Rwanda in 2008. Apotex, the Canadian supplier, has said it will not use the procedure again because of the time and difficulty involved.

The TRIPS Council reviews how well the paragraph 6 solution is working every year, but usually without much depth or detail. At the council's June meeting, Brazil, China, Cuba, Ecuador, India, Indonesia, Peru and Venezuela called for a substantive discussion on the issue, arguing that the system had proven too complex to be of practical use.

Members have agreed to dedicate the entire second day of the council's October 2010 session to reviewing the paragraph 6 solution. There is also agreement in principle to hold a workshop on practical experiences in using the system prior to that meeting, but at the time of writing Members were at odds over who should be allowed to attend. Many developed countries wanted to limit participation to delegates only, while China, India and some other developing countries argued that civil society and industry representatives should also be able to attend.

Bolivia Calls for Ban on Patents on All Living Organisms

Delegates at the meeting also responded to a communication on biodiversity that Bolivia first put forward in March (IP/C/W/545). The document proposed a complete ban on all patents of biological entities or materials under Article 27.3(b) of the TRIPS Agreement. It also called for the prevention of anti-competitive practices that threaten developing countries' food sovereignty, and better protection of indigenous peoples' traditional knowledge.

While Venezuela, Ecuador and some other developing countries supported the proposal, the EU, Switzerland and the US said patent protection for biotechnology inventions was necessary to encourage the development of new medicines and beneficial agricultural chemicals.

Unrelated to the Bolivian paper, many developing countries reiterated their support for adding a 'disclosure requirement' to the TRIPS Agreement. The provision would oblige patent applicants to disclose the origin of any genetic resources involved in their invention and thus help curb biopiracy, proponents say, as well as potentially allow the originator country to share the profits generated by the invention.

EU Challenged on Generics Seizures

After months of speculation, Brazil and India have launched a WTO dispute against the EU and the Netherlands over the seizure of generic drugs in transit.

The complainants requested dispute settlement consultations on 11 May, citing a raft of EU and Dutch regulations that allow customs officials to detain goods in transit through European ports and airports if they are suspected of infringing intellectual property rights.

That is what happened in 2008 and 2009 to sixteen consignments of generic medicines on their way from India to destinations in Latin America and Africa. No intellectual property rights were infringed by either the manufacturer or the recipient since the drugs in question were not under patent in either country. However, pharmaceutical companies that own Dutch patents on the medicines managed to stop the release of the goods in transit under the EU's extraterritorial application of patent rights. Most shipments were either destroyed or returned to sender. Only in a few cases were the generics permitted to proceed to their intended destination after considerable delay.

The best known example of such practices was the December 2008 seizure of hypertension drug losartan at Amsterdam's Schipol airport. The consignment, bound for Brazil, was held for 36 days before it was returned to India (Bridges Year 13 No.1 page 12).

Brazil and India singled out EU Regulation 1383/2003, which provides the legal basis for such seizures. Both countries claimed that the regulation (and related Dutch and EU-wide legal texts) violates GATT Article V under which WTO Members must provide freedom of transit through their territories via the most convenient routes. Furthermore, all charges and regulations imposed on traffic in transit must be 'reasonable', and the goods must not be subject to any unnecessary delays or restrictions "except in cases of failure to comply with applicable customs laws and regulations." The challenge for the panel will be to determine whether it is 'reasonable' to detain goods in transit because European patents may have been infringed while they pass through EU territory (Bridges Year 13 No.1 page 13).

Both complainants also alleged several violations of the TRIPS Agreement, including Articles 41 and 42, "because the measures at issue, inter alia, create barriers to legitimate trade, permit abuse of the rights conferred on the owner of a patent, are unfair and inequitable, unnecessarily burdensome and complicated and create unwarranted delays."

The complainants, as well as many civil society organisations, have also evoked a breach of the spirit, if not the letter, of the Doha Declaration on TRIPS and Public Health, which confirmed that the agreement "can 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."

Knowledge Ecology International noted that there was an important difference of opinion over whether countries should be "free to aggressively enforce patent and other intellectual property claims against goods in transit, or should goods in transit be protected when they are clearly intended to markets where their use is legitimate?" KEI expressed hope that an eventual dispute settlement panel would uphold the principle of 'goods in transit' due to the issue's relevance to the challenge of providing access to medicine for all.

Meanwhile, the European Commission insists that the EU is open to revising its border regulations. It "has already signalled its intentions to modify its legislation to the extent necessary to clarify the procedures relating to medicines in transit," said John Clancy, spokesman for DG Trade. "We are confident that a dispute on this issue will not be necessary," he added.

So far, the complainants have not requested the establishment of a panel. China, Canada, Ecuador, Japan and Turkey have joined the consultations as third parties.

Disputes in Brief

- **Zeroing** Apparently eager to defuse trade tensions, the EU and the US on 8 September requested the suspension of a WTO arbitration that was to determine the level of retaliation the EU should be allowed impose on imports from the United States in compensation for inflated anti-dumping duties resulting from zeroing. The EU gave the US another year to comply with previous rulings, but a USTR spokesperson cautioned that the joint request to halt the proceedings did not indicate what actions that the United States would take. The US has lost countless WTO disputes on zeroing, but still insists that the controversial method must remain available under the Anti-dumping Agreement.

Brussels had proposed annual retaliation figures ranging from US\$311 million to US\$477 million, but in May the US put the amount of EU trade affected by the duties at just US\$2.78 million. The arbitrator's verdict was already several months overdue when the proceedings were put on ice.

In related news, Japan reactivated its request for WTO arbitration of the harm done to its economy by the United States' use of zeroing in May. The proceedings had been suspended by mutual agreement two years earlier. Tokyo seeks the right to apply sanctions worth US\$245.8 million.

In addition, two more panels on US zeroing were established on 18 May, one at the request of South Korea with regard to steel products and the other on anti-dumping duties on Vietnamese shrimp.

- **COOL** On 10 May, panelists were appointed to hear Canada and Mexico's complaint over US country-of-origin labelling for meat, setting the clock running for a ruling in November. The two countries claim that the labelling rules are discriminatory. Thirteen countries have joined the dispute as third parties (Bridges Year 14 No.1 page 11).

Last-minute Deal Provides a Breather in Cotton Saga

Just two days before trade sanctions were to be imposed in the cotton dispute, Brazil and the United States reached a compromise agreement, which may finally yield the subsidy reforms that Brasilia has been seeking from Washington for nearly a decade.

The so-called ‘framework agreement for a mutually agreed solution to the cotton dispute at the World Trade Organisation’ concluded on 17 June commits Brazil to postpone trade retaliation – worth US\$830 million – on US goods and intellectual property rights until end-2012. That is when, at least in theory, the United States should have a new farm bill in place. The two countries will then “consider the changes in that legislation and evaluate the possibility of informing the WTO that a mutually satisfactory solution to the dispute has been reached.”

The Brazilian foreign ministry stressed that although the agreement was not a ‘final solution’ to the dispute, it set ‘important parameters’ for a process aimed at a substantial reduction of the negative effects of US subsidy programmes.

The two sides will use the transition period until 2012 to negotiate changes to the US subsidy regime, and Washington will stick to its April 2010 commitment to provide technical assistance and capacity-building worth US\$147.3 million annually to Brazil’s cotton sector until 2012. The amount corresponds to WTO arbitration of the annual damage caused to the Brazilian economy by WTO-inconsistent domestic support programmes still maintained by the US.

According to the April memorandum, the fund may also be used for cotton-related international co-operation activities in sub-Saharan Africa, Mercosur countries and associate members, as well as Haiti, if both parties so agree. African cotton producers, whose exports have suffered from subsidised US competition, have expressed interest in accessing the fund, but so far there has been no response.

The text of the framework agreement was not publicly available at the time of writing, but a press release from the Brazilian government provided some details on the deal’s main elements – domestic support cuts and modifications to the GSM-102 export credit guarantee programme.

Domestic Support

Three price-contingent support programmes were found to breach WTO rules: marketing loan payments, market loss assistance payments and counter-cyclical payments. Each helps US exporters remain competitive when the world cotton price drops below a certain threshold.

- According to the Brazilian foreign ministry, the ‘basis for the discussions’ under the framework agreement will be the establishment of an annual limit to these programmes. Their combined value is to be set at a level ‘significantly below’ the average for the years 1999-2005 (the period examined in the WTO).
- US and Brazilian officials will hold quarterly consultations throughout the negotiations for the next US farm bill to determine how the programmes will be counted against the annual limit in the new legislation.

Export Credit Guarantees

The GSM-102 export credit guarantee programme underwrites payments due to US financial institutions and exporters for credit they have extended to foreign banks, which in turn lend the money to importers of US agricultural products. According to the US Department of Agriculture, the purpose is to “encourage exports to buyers in countries – mainly developing countries – that have sufficient financial strength to have foreign exchange available for scheduled payments.”

Action on export credit guarantees under the framework agreement will focus on two features in particular: the duration of the loan period and risk premiums.

- The payback period for GM-102 loans will be shortened to a weighted average of no more than 16 months until the end of the transitional period ending in 2012;
- Risk premiums must rise by at least 11 percent if the value of the guarantees exceeds US\$1.3 billion, which represents 48 percent of the programme’s biannual budget.
- The readjustment will rise to 15 percent if GSM-102 guarantees exceed US\$1.5 billion, or 55 percent of the biannual budget.

Either party may terminate the agreement at any time, and Brazil has explicitly reserved its right to apply WTO-approved sanctions if the negotiations fail or the 2012 farm bill does not deliver the expected reforms.

Relief All Around

Both sides appeared relieved that a potentially damaging trade war had been avoided, at least for a time.

Trade Representative Ron Kirk and Agriculture Secretary Tom Vilsack expressed satisfaction over a solution that allows the US to “maintain our programmes while considering adjustments and avoiding the immediate imposition of countermeasures against US exports.” The National Cotton Council – a powerful lobby group – commended the administration for its determination to find common ground with Brazil, and promised to work with Congress on a cotton policy that would “provide a safety net for US farmers while helping assure our trading partners that US cotton programmes do not cause unfair trade distortions in the world cotton market.”

The Brazilian government’s press release called the agreement a ‘positive step’ and said it hoped the consultations ahead would lead to the US fully implementing WTO rulings, a goal Brasilia vowed to pursue. The country’s WTO Ambassador Roberto Azevedo said the process of negotiation and reform was preferable to retaliation, which would “not bring benefits to anyone in Brazil’s private sector.” While Brazil had no interest in retaliating, Mr Azevedo cautioned that it could do so ‘at any moment’ if the US did not uphold its end of the bargain.

Potential Impacts of Reforms in the World Cotton Market

Mario Jales

The Doha Round could have a significant positive impact on world cotton prices, as well as production and exports in developing countries. However, the likelihood of such an outcome is highly dependent on the depth of the product-specific domestic support caps adopted by WTO members.

Cotton has proved to be one of the most politically sensitive issues in the Doha Round. Substantial subsidies provided by developed countries have continued to depress world prices and undermine the viability of otherwise competitive producers in the developing world. Cotton-exporting Benin, Burkina Faso, Chad and Mali – collectively known as the Cotton Four (C-4) – have denounced the effects of subsidies on poverty and food insecurity at the farm level, and called for a mechanism to phase out support for cotton. Nevertheless, due to little concrete engagement by subsidising countries, the issue has languished.

Recent research commissioned by ICTSD assesses the likely implications for exporting and importing countries from a trade deal in cotton. The study estimates the price, production and trade effects of reforming cotton subsidies and tariffs under alternative scenarios, with a primary focus on the WTO Doha Round. For each scenario, the model simulates the prices and quantities that would have obtained in a base year had the policy reforms implied by the given scenario been retroactively applied to that year. Simulations cover ten base years (1998–2007) that not only provide a wide variance in prices and subsidy levels but also reflect recent trends in supply and demand.

Scenarios

The first two of the five alternative reform packages are in the context of the Doha Round; the following three are benchmarks to which the potential outcomes of Doha can be contrasted.

Scenario A models the December 2008 Revised Draft Modalities. It contains a number of special provisions applicable exclusively to the cotton sector. Most prominent among them are the more rigorous caps on cotton product-specific AMS and blue box support and the extension of duty- and quota-free access for cotton exports from least-developed countries (LDCs).

Scenario B is also based on the modalities draft, except that it subjects cotton to the general disciplines applicable to standard agricultural products. Given that the 2005 Hong Kong Ministerial mandate that cotton subsidies must be reduced ‘more ambitiously than under whatever general formula is agreed’, the outcome of the Doha Round must be more ambitious than Scenario B.

Scenario C models the hypothetical implementation by the US of the DSB recommendations in the WTO dispute, namely: (i) the withdrawal of export credit guarantees and user marketing payments; and (ii) the removal of the adverse effects of marketing loan programme payments (MLP) and counter-cyclical payments (CCP).

Scenario D models the insufficient measures actually taken by the US in response to the DSB recommendations. Although the US has withdrawn part of its prohibited subsidies, it has done nothing to remove the adverse effects of MLP and CCP.

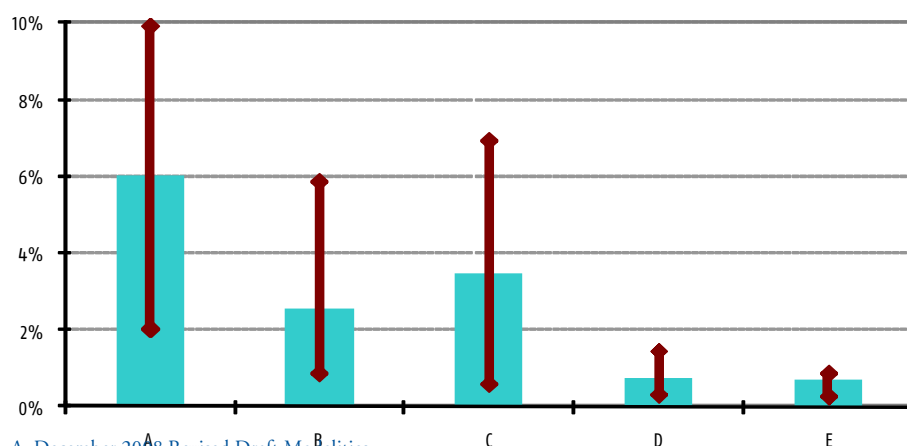
Scenario E abstracts from multilateral negotiations and litigations and focuses on internal reforms in the US and EU. It models policy changes introduced by both the 2008 US Farm Bill and the 2003–04 EU Common Agricultural Policy (CAP) reform.

Impact on Prices

Figure 1 summarises world price effects for each scenario. Bars indicate average impacts in 1998–2007 and arrows indicate the full range of results. Impacts are moderate to high in Scenario A, lower in Scenarios B and C, and negligible in Scenarios D and E. The substantial variance in results on a year-by-year basis is largely due to the counter-cyclical nature of a considerable share of notified cotton subsidies. Estimated price effects are highest in years with below average world prices and record high trade-distorting domestic support, such as 1999 and 2001.

Had cotton subsidies and tariffs been reduced in 1998–2007 as described in Scenario A, the world price of cotton would have increased by 6 percent on average, with a range between 2 percent and 10 percent. However, had cotton been treated as a standard product (Scenario B), the average world price increase would have been only 2.5 percent. This difference in results is mainly driven by the size of caps on US trade-dis-

Figure 1: Estimated impact of alternative scenarios on the cotton world price, 1998–2007
(bar indicates average; vertical line indicates range)



A: December 2008 Revised Draft Modalities
B: Cotton treated as a standard product
C: Hypothetical full implementation of WTO panel recommendations
D: Actual insufficient implementation of WTO panel recommendations
E: Recent internal reforms in the US and EU

Continued on page 12

torting domestic support for cotton in each scenario: US\$510 million in Scenario A and US\$2,240 million in Scenario B. Since the average trade-distorting support provided to US cotton producers in 1998-2007 was US\$2,248 million, it comes as no surprise that cuts in US subsidies are not very significant in Scenario B. Discarding the special cotton provisions from the modalities text would greatly reduce the potential of the Doha Round to deliver lower subsidy levels and higher world prices for cotton.

By comparison, the world price of cotton would have increased on average by 3.5 percent in 1998-2007 had the US fully implemented the DSB panel recommendations in the upland cotton dispute (Scenario C). The limited actions actually taken by the US (Scenario D) would have increased the world price on average by only 0.7 percent. Had recent unilateral domestic reforms in US and EU cotton subsidies applied over the entire 1998-2007 period (Scenario E), the world price would have increased by 0.7 percent on average. The EU CAP reform would have accounted for the entirety of this change. The US 2008 Farm Bill alone would have had no impact on the cotton world price.

Impact on Production

Production effects would have varied significantly across countries and scenarios. Output would have decreased in countries that undertake reductions in applied levels of subsidies and tariffs. Elsewhere, production would have increased.

In Scenario A, US and EU cotton production would have declined by 9 percent and 24 percent, respectively. In years with historically low world prices, the decline in US output would have been larger than average (15 percent). In 2001 alone, US production would have declined by 680 thousand metric tonnes, which was more than the combined production volume of the C-4 countries that year. The fall in US and EU production would have been almost fully compensated by output expansion elsewhere. On average, production would have been 2 percent higher in Australia, Brazil, the C-4 countries, Central Asia, Pakistan and Turkey, and 1 percent higher in China and India. More importantly, production value in these countries would have increased by 6-8 percent on average and (11-13 percent in years of peak subsidy levels).

The impact on production would have been significantly smaller in Scenario B. On average, production volumes would have declined by 4 percent in the US and remained unchanged in the EU. Average output expansion in the rest of the world would have been limited (between 0.8 and 0.3 percent). In Scenario C, US production would have fallen by 7 percent on average. In response, production would have increased by 1 percent in Australia, Brazil, the C-4 countries, Central Asia, EU, Pakistan and Turkey, and 0.5 percent in China and India. Scenarios D and E would have had negligible effects on production volumes across most countries, except the EU in Scenario E (-14 percent).

Impact on Trade

Among net exporters, export volumes would have retracted in the US and increased elsewhere (Australia, Brazil, C-4 countries, Central Asia and India). The simultaneous increase in export quantities and world prices would have led to an unambiguous rise in the value of exports for all net exporters except the US. The magnitude of changes in exports would have been largest in Scenario A, moderate in Scenarios B and C, and small or negligible in Scenarios D and E. Countries with large textiles manufacturing sectors would have benefited the most.

Among key net importers (Bangladesh, China, Indonesia, Pakistan and Turkey), import volumes would have decreased in every scenario analysed due to the expansion of domestic output and the retraction of domestic demand. Since reductions in import quantities dominate world price increases, estimated import costs would also have fallen. The magnitude of changes in imports follows the same pattern observed above for exports. EU import quantities and costs would have increased substantially in the scenarios where European production falls (A and E) and remained mostly unchanged in the other scenarios (B, C and D).

Subsidies vs Tariffs

Virtually all benefits for cotton in the Doha Round will accrue from the reduction of subsidies. There are two reasons why market access will play a marginal role at best. First, the cotton sector already enjoys exceptionally low levels of applied tariffs. Second, only two WTO members (US and Oman) will have to reduce current applied tariffs as a result of the negotiations. All other countries either: (i) already provide duty-free access, (ii) enjoy significant tariff overhang, or (iii) qualify for tariff cut exemptions due to their status as LDCs, very recently-acceded members or small low-income recently-acceded members.

The extension by developed countries of duty-free access for cotton exports from LDCs will have little if any impact on market access opportunities for LDCs. First, all developed countries apart from the US already provide duty-free access to cotton imports. Second, as US cotton consumption has plummeted in recent years, the country's share of world cotton imports has collapsed to only 0.05 percent. Moreover, US cotton quotas are consistently under-filled despite the low level of in-quota tariffs (between zero and 3 percent).

In contrast, developing countries account for nearly 95 percent of world cotton imports. Of the top fifteen developing country importers, all but China currently provide duty-free MFN access to cotton. The Doha Round will not significantly alter market access conditions in China since Beijing is likely to exempt cotton from tariff reduction and quota expansion by selecting it as a Special Product. Even if China were not to select cotton as a Special Product, the large tariff overhang would be enough to prevent any effective cut in the applied tariff.

When it comes to cotton, subsidies should be the heart and soul of the negotiations. There is an urgent need to rebalance existing trade rules that permit developed countries to highly subsidise domestic production, depress world prices, push farmers elsewhere out of production and impair prospects for economic advancement in the developing world. The adoption of ambitious domestic support reforms for cotton in the Doha Round would be a significant step towards the establishment of a fair and market-oriented trading system.

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Fighting Counterfeits without Endangering Public Health

Christa Cepuch

What is a counterfeit medicine? The answer depends on who responds. To an English-speaking lay-person, it generally means 'fake' or 'a pill made of chalk'. To the World Trade Organisation, it means a 'trademark infringement'.

An illustration of trademark infringement would be someone else using a pharmaceutical company's trade name or trademark on a particular product. To the World Health Organisation, it means 'deliberately and fraudulently mislabelled with respect to identity or source' (see related story on page 14). The International Medical Products Anti-Counterfeit Taskforce (IMPACT) uses a nasty-looking, fanged, forked-tongue cobra in a brochure to help clarify its definition of counterfeit medicines.

The puzzling list of definitions does not stop there. Under Kenyan law, counterfeits are addressed through the Anti-Counterfeit Act, which was passed in 2008 and came into force in 2009 (see Bridges Year 13 No.2 page 19). In the Act, the definition of 'counterfeiting' begins with the phrase: taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or elsewhere in respect of protected goods.

What does this mean? Does it mean fake? Does it mean trademark infringement? Does it mean mislabelling? What it actually means is much broader than all of this. Kenya's Act says that if you infringe any kind of intellectual property (IP), then you are counterfeiting. If you infringe a patent (even one recognised outside Kenya), you are now a counterfeiter.

This is a whole new meaning, and this is the essence of the problem with anti-counterfeiting initiatives which appear to be springing up in many African countries. Suddenly patent rights have been brought into the already-confusing counterfeit debate. There is need to stop this and ensure that the definition of counterfeit is not expanded to include patent infringement.

Patents, Trademarks and Copyrights

IP is important for trade purposes, but it has nothing to do with quality. When you get a patent, you have been acknowledged for inventing something new. A trademark is a registered sign to identify your product. Copyright is granted to an author on written material and to an artist for a musical creation. Regardless of whether your copyrighted art is enjoyable, or if your goods under trademark and/or patent are sound (i.e. regardless of the quality of the products), all these types of IP can be granted.

Seizures of Generic Medicines

Blurring the line between counterfeiting and patent infringement is not just a theoretical problem. To date, at least 22 shipments of generic medicines have been seized at various European ports because of the confusion (see page 9). These medicines were stopped en route to various public health programmes, including HIV treatment projects, in developing countries. Any seizure disrupts already tenuous procurement and supply chains. Shipment delays (or cancellations, in the worst case scenario) increase the risk of stock-outs in health facilities and can distort medicine prices.

The Real Issue: Quality and Safety of Medicines

The actual root of the counterfeit medicines problem is grounded in issues of public health, safety and quality. This is where the attention should be focused: to fix the reality of substandard and adulterated medicines. However, rather than developing the solution from a public health and regulatory angle (i.e. how to protect the public by preventing unsafe medicines from hitting the market; and/or how to get unsafe medicines off the market), the forces behind the anti-counterfeiting movement are using an 'IP enforcement' approach. Why? Could it be another – the newest, perhaps most creative – effort by powerful industries to protect their patents, and as such their profits?

Regardless of the public health claims being made by the anti-counterfeiting movement, it is absolutely inappropriate to deal with quality and safety issues by strengthening IP. Rather, the solution must begin in strengthening National Medicines Regulatory Agencies (NMRAs) and their services (registration, post market surveillance, pharmacovigilance, etc). For medicines, only the NMRA in a country can determine quality, efficacy and safety; not the patent office. Indeed, there are patents on many medicines which are completely unmarketable due to quality and safety concerns.

HAI Africa's Approach

Health Action International (HAI) is an independent, global network that aims to increase access to essential medicines and improve their rational use through research excellence and evidence-based advocacy. In support of people trying to access the medicines they need as they struggle to realise their right to health, HAI Africa and its network partners continue to resist efforts to blur the line between generics and counterfeits.

We strongly refute those who claim to be 'fighting counterfeits and protecting public health' while their efforts are in reality being used to frustrate access to generic medicines in order to protect enormous commercial interests.

HAI Africa acknowledges that there is a genuine concern over substandard and adulterated medicines, which are dangerous for individuals and harmful to the broader public health. But will enforcing various types of IP address these quality and safety issues? No. Enforcing IP through the framework of on-going anti-counterfeit initiatives puts access to medicines at risk and does not address the issues of the quality and safety of medicines.

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Fake Drugs and R&D Funding at Centre Stage of WHO Meet

The May annual meeting of the World Health Organisation was marked by a clash between developed and developing countries on the institution's approach to counterfeit medicines and the lack of progress in finding new ways to finance more research into tropical diseases.

The most heated exchanges were fielded by developing countries on the global health body's involvement in fighting counterfeit drugs, and the role of the International Medical Products Anti-counterfeiting Taskforce (IMPACT) in those efforts.

According to the WHO, IMPACT "aims to build co-ordinated networks across and between countries in order to halt the production, trading and selling of fake medicines around the globe." The taskforce comprises regulatory authorities of WHO member governments, intergovernmental organisations, including WIPO and the WTO, as well enforcement agencies (including the Interpol), pharmaceutical manufacturers associations and non-governmental organisations. The WHO insists that there is "a clear consensus among the taskforce's partners that 'counterfeit' medicines should not be confused with issues relating to medicines that are not authorised for marketing in a given country, nor with patents violations or disputes." A number of developing countries, however, see the group as overly influenced by producers of brandname drugs with an interest in undermining legitimate generic competition.

Brazil acknowledged that falsification of medicines (both generic and brandname products) was a critical issue, but said that some countries seemed to be "trying to disguise trade and commercial interests under public health." India made similar comments, and Venezuela asked WHO Director-General to help abolish IMPACT. Nigeria, however, called for strong measures to prevent the spread of counterfeits. Many African countries are struggling to keep out dangerous fakes due to their lack of regulatory capacity and porous frontiers.

The US argued that IMPACT was doing essential work to protect the public from dangerous products as "threats surrounding counterfeit, falsified or substandard medicine require active engagement by a diverse range of all stakeholders." The EU and Switzerland were also supportive of the group's contribution.

After sometimes acrimonious debate, delegates agreed to establish an intergovernmental working group, open to all member countries, to discuss the way forward for WHO deliberations on 'substandard/spurious/falsely-labelled/falsified/counterfeit medical products' (the long definition reflects a continued rift in the membership on what the focus should be). A number of countries fought hard to have the term 'counterfeit' – and its connotation with trademark violations – dropped from the decision, but Hans Hogerzeil, director of essential medicines and pharmaceutical policies at the WHO, said the organisation was not ready to do so "in an emotional moment in the assembly."

The new working group has an explicit mandate to approach the issue from a "public health perspective, excluding trade and intellectual property considerations." It is to focus on the WHO's role in ensuring the availability of safe, efficient and affordable medicines; the organisation's relationship with IMPACT; and the WHO's role in "the prevention and control of medical products of compromised quality, safety and efficacy such as substandard/spurious/falsely-labelled/falsified/counterfeit medical products."

The working group will report to the membership at the WHO's next Health Assembly in May 2011.

Funding Research into Neglected Diseases

Another controversy arose over the report of an expert working group (EWG) on financing research and development of medicines for diseases that disproportionately affect developing countries. Not only are new drugs needed to treat malaria and tuberculosis, but very little is available to cure so-called 'neglected diseases', including parasitic illnesses such as leishmaniasis, lymphatic filariasis (elephantiasis) and schistosomiasis, as well Chagas' disease, dengue fever and African sleeping sickness. Drug development for these diseases has virtually stopped, largely because they do not offer sufficient financial returns for the pharmaceutical industry to engage in costly R&D.

At the May Health Assembly, many of developing countries charged that the EWG had fallen short of its mandate in that it failed to propose innovative funding mechanisms for spurring research and development on treatments for these diseases.

Delegates also faulted the group for not exploring in depth the relationship between intellectual property rights and access to medicines. India's criticism focused on this point in particular. New Delhi expressed concern over developed countries adopting TRIPS-plus laws and regulations (data exclusivity, evergreening of patents, border enforcement) and exporting these standards to developing countries through bilateral or regional trade agreements. India argued that curbing the flexibilities available under the TRIPS Agreement could "impair the access of patients to competitively priced generic drugs." A number of developing countries regretted that the EWG had not gone into more detail on how research and development costs could be delinked from the cost of treatment.

The upshot of at times heated discussions was the formation of another body, called a 'consultative expert working group' (CEWG), to take the work forward. Members of the group will be nominated by governments, keeping in mind the need for 'diversity of experience'. The CEWG is to be more transparent than its predecessor about its working methods and the source of the proposals submitted to it. Reflecting lingering developing country suspicion over the influence of pharmaceutical companies in the WHO's work, the new body is to "put particular emphasis on the transparent management of potential conflicts of interest."

The group's report is expected in May 2012.

Intellectual Property and Public Health in the EU–CAN FTA

Xavier Seuba and Juan Fernando García

The relationship between the protection of public health and intellectual property rights (IPRs) was among the most delicate topics in the free trade negotiations recently concluded between the EU, Colombia and Peru. This article analyses the outcome from the public health angle.

The negotiations started in September 2007 with the intention of concluding a region-to-region ‘association agreement’ between the Andean Community of Nations (CAN) and the European Union. In February 2010, Peru and Colombia wrapped up the negotiations. If they so wish, Bolivia and Ecuador may either join the treaty at a later stage or try to negotiate an entirely new agreement.

What the IP Chapter Could Have Looked Like

The EU’s original proposal on intellectual property rights washed away flexibilities set forth in the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), enshrining new obligations that not only exceeded those required by TRIPS, but also in some cases surpassed the EU’s own legal regime. Mostly, however, the proposal paralleled EU legislation, particularly with regard to enforcement.

The proposal contained several worrying features when considered from the public health angle. These were mainly found in the general provisions, in the article devoted to patents and in numerous articles devoted to the enforcement of IPR. Both the general provisions and the objectives of the EU proposal centred almost exclusively on the interests of rights holders, and were laconic in comparison to those ones set forth in the TRIPS Agreement, as well as the IP chapters of several EU treaties and other multilateral agreements. The provisions did little to advance the public interest.

Criticism was also directed at unbalanced references to technology transfer, as well as provisions that implied limitations to compulsory licensing and parallel imports; restricted the Doha Declaration on TRIPS and Public Health merely to patents; criminalised patent infringements; and required rigorous border measures. Moreover, non-quantified costs and a concomitant chilling effect over generic competition could be inferred from the stringent enforcement framework taken as a whole. When the negotiations were already underway, the EU tabled another proposal that introduced the EU standards on test data protection, that is, the 8+2+1 years formula of data exclusivity.

Fortunately, many of these problematic issues have been removed from the final text, or the language has been amended, although some areas of concern persist.

General Provisions

In a positive and noteworthy development, the general provisions now take due account of the public interest. The first EU proposal regarding the objectives simply referred to ‘facilitating production and commercialisation of innovative and creative products’, and to ‘achieving an adequate and effective level of protection and enforcement’. In contrast, the latest version refers to the promotion of ‘innovation and creativity’ and states that the IP protection shall contribute “to transfer and dissemination of technology and favour social and economic welfare and the balance between the rights of the holders and the public interest”.

The article on the nature and scope of obligations has also been expanded. It now contains a reference to the “need to maintain a balance between the rights of intellectual property holders and the interest of the public” and the rights and obligations pursuant the Convention on Biological Diversity.

A new and long article recalls the possibility to make use of exceptions and flexibilities (particularly in the field of public health); alludes to the wide-ranging interpretative role of the Doha Declaration; makes reference to the WTO General Council Decision of 30 of August

2003 (in substitution of the obligation to ratify the controversial amendment of TRIPS article 31); recognises the importance of promoting the implementation of the World Health Assembly resolution WHA61.21 on public health, innovation and intellectual property; and recognises the right to adopt measures necessary to prevent abuses of intellectual property and enable free trade and technology transfer.

The agreement contains a long reference to the protection of biodiversity and traditional knowledge. Considering the health applications derived from biotechnology, both in its classic and modern senses, it is of great importance to public health that the text refers to the principles of fair and equitable sharing of benefits arising out of the utilisation of genetic resources and prior informed consent of the holders of the traditional knowledge. Equally positive is the reference to the right of the countries that provide the genetic resources to take measures aimed at providing access to the products resulting from those resources, and to foster the transfer of technology that makes use of those resources. Nevertheless, many controversial issues regarding biodiversity and biotechnology remain open and need more specific regulations.

Patents and Data Protection

Provisions on patents and data protection have been modified with the intention of not surpassing those in Peru and Colombia’s free trade agreements with the US.

Parties are required to make ‘best efforts’ to process marketing authorisation applications ‘expeditiously’ once the corresponding patent has been granted. With respect to patented pharmaceuticals, a party “may, in accordance with its domestic legislation, make available a mechanism to compensate the patent owner for the unreasonable curtailment of the effective patent term resulting from the first marketing approval”, a mechanism that “shall confer all of the exclusive

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rights of a patent subject”. Importantly, however, the agreement does not specify what would constitute an ‘unreasonable’ curtailment of the patent term. This, together with the term ‘may’, permits both Colombia and Peru not to grant extra exclusivity to pharmaceutical patents holders on the basis of administrative backlogs.

The section on data protection, including for pharmaceutical products, was one of the most difficult to agree on due to the big differences among the countries’ original proposals. In principle, the final text does not exceed the scope of Colombian and Peruvian provisions. For instance, the period of data exclusivity remains at five years for pharmaceutical products and second uses were kept out of this protection.

With regard to biological and biotechnological products, however, a discrepancy between Peru and Colombia was included as a footnote in the text: while Peru considers that test data should be protected through TRIPS article 39.2 (protection of undisclosed information), Colombia will continue awarding data exclusivity to biotech products, as it has done since 2002.

Enforcement

Enforcement provisions – the bulk of the IP chapter – have been amended so that potential parallel imports, compulsory licenses and transit of medicines are not hampered. However, right holders’ positions have strengthened in some areas.

Although Section 9.1 states that the chapter does not create any obligation with respect to resource allocation, it is difficult to envisage how Peru and Colombia could implement the provisions without devoting additional resources. These costs, however, as in any other FTA containing enforcement provisions, remain unclear. In comparison to the TRIPS Agreement, this section expands the entitled applicants and strengthens the position of IPR holders in various aspects, such as the evidence that they may request from the alleged infringer, measures for preserving evidence and the information that must be provided in response to a request of the claimant.

New obligations are also foreseen with respect to practices and IP categories in principle unrelated to the public health. Com-

paring the final text with the EU’s original proposal, references to subordinate the new obligations to national legislation have been included, while obligations to ensure that judicial authorities would rule in a specific way have been amended.

The original provision on injunctions had potentially damaging effects on generic competition and some of the proposals to amend it were taken into account, particularly a reference to TRIPS article 44.2 (fair and equitable procedures for civil remedies). The objective of this inclusion is to enable the continuation of compulsory licenses for use by governments, or by third parties authorised by a government, subject to payment of remuneration in accordance with TRIPS 31(h). On the other hand, regarding border measures, the final text does not foresee patents as an IP category enabling right-holders to request the suspension of release of an allegedly infringing good, neither does it contain a reference to study its inclusion. This means that generic medicines cannot be intercepted alleging patent rights when they are in transit. The fact that patents have been omitted from the scope of article 48 permits future changes that would enable the exploitation of the international exhaustion of rights regime even in cases where the patented product was put in the foreign market against the will of the rights holder. Finally, the European proposal to criminalise patent infringements has also been removed. Although the removal was foreseeable given EU legislation on the matter and the position of several Members in this regard, the Commission keeps trying to incorporate criminalisation in other fora, such as ACTA and the negotiations of other trade agreements.

Final Remarks

In comparison to the original EU proposal, the text of the final agreement is much better. Nevertheless, the IP chapter remains both TRIPS *plus* (exceeds existing obligations) and TRIPS *extra* (add new obligations). Moreover, the norms on enforcement are stricter than those contained in Peru and Colombia’s agreements with the United States.

On the positive side are good sections in the general provisions, the fact that data protection does not substantially change the current regulation (it remains to be seen how the reference to TRIPS article 39.2 will be interpreted), as well as non-mandatory patent extension and no specific time frames for ‘unreasonable’ curtailment of the term of protection.

From the public health angle, the text is also better when compared with other treaties negotiated by the EU with developing countries. This improvement can largely be imputed to co-operation between Colombian and Peruvian negotiators, and civil society in both countries. A powerful coalition of national and international NGOs (HAI/AIS, Misión Salud, RedGe) was formed to monitor the negotiations and influence the text. Importantly, the ministries of health of both Colombia and Peru were present in the negotiations.

There are, nevertheless, grey zones and problematic issues. One of them concerns the degree of interconnectivity between TRIPS *plus* and TRIPS *extra* standards included in different agreements. Although the TRIPS Agreement allows countries to adopt different stances in this regard, in practical terms the most probable outcome is the adoption of the highest levels of IP protection resulting from each of the agreements. A second controversial matter – both politically and technically – is the agreement’s impact on the Andean IP regime, and its relationship with Andean integration. In this regard, it should be kept in mind that an international treaty constrains the options to legislate differently in the future. While many obligations are in line with existing national legislation, the Peru and Colombia agreement may have an immobilising effect over further development of Andean, or indeed their own, IP law.

Finally, we must consider the fundamental question of the appropriateness of making intellectual property policy dependant on trade policy. In this precise case, probably neither Colombia nor Peru would have adopted the IP title as a free-standing treaty. Mindful of intellectual property regimes’ broad effects on public goods and societal interests, subordinating IP policy to trade objectives should be reconsidered. Instead, a subordination of both IP and trade policies to development policy would probably better suit the interests of Andean countries.

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EU Strengthens Trade Ties with Latin America

The EU has concluded a free trade agreement with six Central American countries, with both sides expressing satisfaction over an 'ambitious, comprehensive and balanced outcome'. In contrast, the revival of talks with agricultural powerhouse Mercosur, has angered many EU politicians.

Heads of state signed off on the 'trade pillar' of the association agreement between the European Union and a group of Central American countries at the EU-Latin America Summit held in May. The agreement closely mirrors the deals concluded by Peru and Colombia in March (Bridges Year 14 No.2 page 14).

Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama obtained more access for their agricultural products, including new annual import quotas for 10,000 tonnes of beef and 20,000 tonnes of rice. Importantly, their bananas will benefit from the same preferential tariff regime as those from Peru and Colombia (see table below). The EU's dairy sector secured new import quotas for powdered milk (1,900 tonnes) and cheese (3,000 tonnes).

Both sides will completely liberalise trade in industrial products, with transition periods for the Central American parties. Within ten years of the treaty's entry into force, European car makers will have free access to the Central American market. The EU is also eyeing sizeable gains in the electronics, banking, telecoms and environmental services sectors, as well as benefits from Central America's promise to protect European geographical indications.

Controversial Mercosur Talks Resume

The summit also saw a confirmation of the resumption of negotiations on an association agreement between the EU and Mercosur, the trade bloc comprising Brazil, Argentina, Paraguay and Uruguay. The talks were abandoned in 2004, largely due to the EU's political constraints in opening its agricultural market. That reality has not changed despite Brussels' determination to seek new avenues to boost exports while the Doha Round remains in a limbo.

Braving the opprobrium of member states intent on safeguarding the interests of their farmers, the head of the European Commission, José Manuel Barroso, has argued that any potential losses for the agricultural sector would be more than compensated for by improved market access in telecommunications, financial services and cars. This is unacceptable to Austria, Cyprus, Finland, France, Greece, Hungary, Ireland, Luxembourg, Poland and Romania. In a joint statement, farm ministers of the ten countries laid out their objections and stated categorically that the Mercosur talks "cannot under any circumstances be concluded before the completion of the Doha Round." They added that Doha concessions on agriculture must be the EU's absolute bottom line in the Mercosur negotiations.

Should the commission adopt this position, Mercosur countries would have no incentive to clinch a deal. Brazil's planning minister Paulo Bernardo indicated as much when he predicted that it would be 'very difficult' to reach an agreement unless the EU makes further concessions on farm trade. Thiago de Aragao of Arko Advice in Brasilia also doubted that big agricultural producers in Brazil were in the mood to lower their objectives. "I believe that these talks will not produce final results," he concluded.

EU trade commissioner Karel de Gucht said that while the relaunch of the negotiations had rekindled 'serious hope' for a substantive outcome, "the level of ambition depends on the political will of the EU itself to come to that kind of agreement."

According to the European Commission, an EU-Mercosur deal – covering some 750 million consumers – would increase exports by €4.5 billion annually.

ACP Countries Face Ever More Competition on Bananas

Latin American banana producers and the European Union put an end to decades of WTO litigation when they agreed on 15 December 2009 that the EU would immediately cut its most-favoured-nation (MFN) banana tariff of €176 per tonne to €148, followed by further

reductions over eight years to €114 (or two years later, if agricultural modalities have not been established by end-2013). WTO Members formally agreed to the tariff change on 31 May, and the EU has already started to reimburse exporters for duties paid at the higher level since last December.

The Geneva Agreement on Trade in Bananas was a bitter pill for the African, Caribbean and Pacific (ACP) group of states, which export bananas to the EU duty- and quota-free, but are likely to lose market share to more efficient Latin American producers as the EU tariff slides lower.

The EU's new trade agreements with Central America, Colombia and Peru will cause the ACP's preferential margin to erode even further, since the Latin American nations will ultimately pay just €75 per tonne (see table below). This, many ACP countries say, is too low for them to compete successfully in European markets against major exporters such as Costa Rica and Colombia.

Even in Ecuador, the world's top banana exporter, producers are worried. Although the country will benefit from the Geneva Agreement cuts, by 2020 every tonne of Ecuadorian bananas exported to Europe will have a €39 tariff disadvantage compared to its most serious regional competitors. This has already prompted Quito to resume dialogue with European officials on a possible revival of the association agreement negotiations it suspended a year ago.

EU Banana Tariffs 2010–2020

Year	MFN Tariff	Pref. Tariff*
2010	€148	€145
2011	€143	€138
2012	€136	€131
2013 ¹	€132	€124
2014 ²	€127 (€132)	€117
2015 ²	€122 (€132)	€110
2016 ²	€117 (€127)	€103
2017 ²	€114 (€122)	€96
2018 ²	€114 (€117)	€89
2019	€114	€82
2020	€114	€75

* Associated with annually increased quotas until 2020

¹ Tariff could be frozen at this level until Jan. 2016

² Bracketed figures indicate delayed schedule

US Update

President Obama is increasingly under pressure to act on the unratified free trade agreements the Bush administration negotiated with South Korea, Panama and Colombia.

At the June G-20 summit, President Obama announced his intention to resolve problems blocking the South Korean FTA by the group's November meeting. The main issues are more market access for American cars and beef, but it was not immediately clear how this could be obtained without reopening the agreement, something Korea has so far ruled out. Officials have promised to step up action on the Colombia and Panama agreements, but no deadlines have been set.

Among those calling for action are business associations, including the American Farm Bureau, as well as state governors and congressmen who are concerned about losing export markets as other countries conclude bilateral and regional deals around the globe. These include the EU's recent agreements with South Korea and Colombia, as well as Central America and Peru. The Canadian parliament approved Ottawa's free trade deal with Bogota on 21 June.

Trade unions and a number of congressional Democrats, however, have warned that their support would require 'significant changes' to the US-Korea pact, including investment, services and government procurement provisions.

The US Chamber of Commerce estimates that the United States could lose up to 380,000 jobs and US\$40 billion in export sales if the FTAs are not implemented.

Meanwhile, the US has embarked on negotiations of a regional deal with Australia, Brunei, Chile, New Zealand, Peru, Singapore and Vietnam. Although the initial gains from the Trans-Pacific Partnership (TPP) are likely to be modest due to the many FTAs already in place within the group, the US views the TPP as a launch pad for a wider pact involving more economies across the Asia-Pacific region.

China Relaxes Innovation Standard

After months of outcry from technology exporters, the Chinese government is proposing to scale down the most draconian IP requirements for 'indigenous innovation' products.

In November 2009, China caused consternation in the international business community by issuing new rules for government procurement in high-tech sectors, such as computers, software, telecommunications, energy equipment and energy-saving goods. Agencies at all levels of government were mandated to give preference to 'indigenous innovation products'. Among the main accreditation criteria for such a status were that a patented product's intellectual property rights must be fully owned by a Chinese entity, and that a trademarked product must be first registered in China (see article opposite for further details).

Taken aback by strong criticism from foreign business, as well as several governments, Chinese government agencies on 10 April issued a 'draft for comment' that proposed number of important changes to the eligibility criteria, including:

- **Intellectual property:** Instead of requiring intellectual property of indigenous innovation products to be owned by a Chinese entity, accreditation would be granted if the IP has been licensed for use in China from overseas.
- **Trademark registration:** Accreditation no longer requires trademarks and brands to be first registered in China. Instead, applicants must have exclusive rights to the product's trademark, or have the right to use the trademark, in China.
- **Technology requirements:** Under the 2009 accreditation scheme, indigenous innovation products were required to possess technology that reaches or surpasses international standards. The April draft relaxes this requirement by proposing that eligible products must possess technologies that have proven effective in conserving energy, reducing pollution, and/or raising energy-efficiency, or 'substantially' improve on an original product's structure, quality, material, craftsmanship, or performance.

The government invited public comments on the modifications until 10 May.

Cautious Approval, but Concerns Persist

Foreign companies generally welcomed the proposed changes, and China's vice minister of science Cao Jianlin told journalists in May that the draft revisions 'basically resolved' their concerns. "We think that the different companies have agreed that the (latest) draft is non-discriminatory, market-oriented and also reflects the principle of IPR protection," Mr Cao said, adding that Chinese authorities were "looking closely at the comments we have collected so far and are working on the improvement and the modification of the wording."

Despite the reassurances, trading partners' persistent concerns about the indigenous innovation policy were evident in the grilling they gave to China during its trade policy review at the WTO in late May.

Next Steps in the Accreditation Process

Companies seeking indigenous innovation status for their products have until 20 October 2010 to submit a 'product declaration', i.e. a detailed accreditation application, to the science and technology department of their administrative district. Local authorities will then undertake a 'preliminary accreditation' of the products.

Their recommendations will be reviewed by the central government's science and technology ministry in collaboration with the National Development and Reform Commission and the ministry of finance. The three agencies aim to publish a 'primary list' of qualified products before the end of the year. If there are no objections to the public notification of a listed product, it will be included in the National Indigenous Innovation Product Catalogue and thus be eligible for public procurement at all levels of government. The overall Chinese government procurement market was estimated at nearly US\$90 billion in 2008.

China's Indigenous Innovation, Government Procurement and More

Jingxia Shi

China has promoted indigenous innovation through an array of plans and measures in recent years. However, the moves, and particularly the newly launched national indigenous product accreditation system, have caused widespread concern about trade protectionism among foreign firms.

While China has experienced dramatic economic development since it put the 'reform and opening-up' policy into place three decades ago, the government has gradually become aware of a serious problem that is preventing the country from realising its full potential: China's economy and production capacity rely heavily on imported foreign technologies. Foreign-owned patents underpin much of China's economic growth and foreign brands dominate in the Chinese market place. Increasingly concerned about domestic enterprises being restricted by foreign core technologies, the government wants to base the country's development on Chinese-owned intellectual property rights (IPRs).

China sees 'indigenous innovation' as the key to reducing its reliance on low-tech manufacturing exports and moving up the value-added chain. The government developed the concept in order to boost the creation and commercialisation of home-grown proprietary ideas and technologies. Since the beginning of 21st century, 'indigenous innovation' has been a core component of China's economic development policy – aimed at transforming the economic growth model from relying on natural and labour resources to one driven by technological innovation.

Implementation of the Policy

In 2005, China's State Council released the Medium- and Long-term National Plan for Science and Technology Development (2006-20), which formally introduced the policy of 'indigenous innovation' or 'self-innovation' into China's national strategy. Since then, several government agencies – including the State Council Leading Group on Science, Technology and Education led by Premier Wen Jiabao, the National Development and Reform Commission (NDRC), as well as the ministries of science and technology finance, information industry and others – have been working together to develop concrete measures to implement the policy.

At the end of 2006, the science and finance ministries jointly with NDRC issued a document entitled Trial Measures for the Administration of the Accreditation of National Indigenous Innovation Products, which defines the products that are eligible for the status of indigenous innovation products. Over the past several years, a number of local governments have developed their own catalogues of accredited indigenous innovation products.

Based on this groundwork, the three institutions released a Circular Regarding the Launch of a National Indigenous Innovation Product Accreditation System (Circular 618) on 15 November, 2009. An attachment to the circular details the principles, scope, conditions, procedures and documentation requirements for indigenous innovation product accreditation. The government currently aims to accredit products in six areas, including computers and application equipment, telecommunications products, modern office equipment, software, new energy equipment and highly efficient energy-saving products.

Objectives of the Accreditation System

The establishment of a national indigenous innovation product accreditation system plays a vital role in encouraging indigenous innovation and building an innovative country. The product accreditation process is meant to fulfil two main functions: the first is to provide institutional guidelines for making the process more open, fair and transparent; and the second is to generate a 'national catalogue' of indigenous innovation products for government procurement. Governments at the central, provincial and local levels will use this catalogue to guide their public procurement decisions.

A product applying for accreditation should make a significant contribution to economic and social development, as well as reflect China's indigenous innovation capabilities. Central to this notion is that the product must be 'proprietary', meaning that in order to obtain the status of indigenous innovation product, the intellectual property rights of a patented product must be fully owned by a Chinese entity. In the case of trademarked products, the original trademark must first be registered within China. (The government is currently considering some modifications to these requirements, see opposite page, *ed.*)

The accredited products may enjoy preferential treatment particularly in government procurement, industrial policy, and the tendering and bidding process. Although the bidding process for government contracts allows competition, these advantages provide an edge to certified products.

Concerns of Trading Partners

The most explicit benefit conferred upon products that receive indigenous innovation status is a preference in government procurement. The gigantic size of China's public purchases (valued at US\$88 billion in 2008) presents substantial commercial opportunities across a wide range of industry sectors.

However, given the requirements above, it is unlikely that the majority of products developed by foreign investment enterprises operating in China will be accredited as indigenous innovation products. Consequently, the primary concern of foreign firms is that they may be excluded from the government procurement market because they develop IPRs and own trademarks outside of China. Some foreign companies have already reported difficulties in selling their products to government-related entities and attribute this to China's indigenous innovation policy and the accreditation system.

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tem. For instance, businesses in the United States have argued that China's policy targets the most innovative US manufacturing and services industries, and poses an immediate threat to market access for their competitive products.

Another concern is that the accreditation system may force foreign firms to transfer their IPRs to Chinese enterprises in order to be granted market access in government procurement. Concerned about intellectual property protection in China, some companies are unwilling to make such transfers.

With these concerns in mind, foreign industry associations and governments have taken measures to exert pressure on China to drop the accreditation system. For instance, in December 2009, the US-China Business Council and 33 other trade associations from Canada, Europe, Japan, South Korea and the US sent a formal letter of complaint to the ministers of science and finance and the head of NDRC, requesting China to delay the implementation of Circular 618. The EU Chamber of Commerce in China also has expressed concern over the lack of transparency in the drafting process of the accreditation system. The US, EU and Japanese governments have communicated their concerns as well.

WTO Compatibility

From the outset, foreign firms and governments labelled the indigenous innovation policy as a protectionist measure not in line with China's WTO commitments.

In order to understand whether the accreditation system runs counter to China's WTO

obligations, the first step is to clarify what the relevant commitments are. Only after this is done, can we determine whether the measure at issue breaches those commitments. Since the accredited products do enjoy favourable treatment in the government procurement market, we need to be clear about what obligations China has undertaken in this regard.

The most important WTO obligations on public procurement are contained in the Agreement on Government Procurement (GPA). The GPA is one of four plurilateral treaties within the WTO framework, and only applies to the 41 countries that have signed on to it. Although China committed to joining the agreement 'as soon as possible' upon its accession to the WTO in 2001, its GPA accession negotiations are still ongoing. And since China is not (yet) a member of the agreement, its government procurement policies are not subject to GPA disciplines. In other words, China's government entities are entitled to grant more favourable treatment to indigenous innovation products.

Some have also argued that the indigenous innovation accreditation system may potentially conflict with China's other market access commitments, but this argument seems unconvincing as well. All enterprises in China can apply for accreditation of their products. Eligibility is not based on the enterprise's ownership, but on whether the company carries out innovative activities and produces goods that have indigenous IPRs in China. All eligible products can be accredited, and all types of enterprises are treated equally. The rationale behind this policy is to encourage all enterprises to take on innovative activities in China, to increase their investment in research and development, and to create indigenous IPRs.

Many other countries have adopted government procurement policies that require a certain amount of local content, including 'Buy America' clauses in the US stimulus package. Japan used a similar innovation policy to boost its technological development. Circular 618 was carefully drafted to abide by and comply with relevant WTO rules. It is thus unlikely that the requirement of unique local IP ownership will be retracted.

Building a Stronger China

It is widely recognised that government support is absolutely indispensable to industry's ability to innovate, and the wave of co-ordinated procurement regulations demonstrates China's determination to pursue industrial adjustment and innovation policies in the field of science and technology.

China is not alone in this regard. Many countries, including a number of WTO Members, foster innovation through government procurement. This makes sense given the public nature and policy-oriented role of such purchases. In fact, the high level of support for the promotion of indigenous innovation indicates that China has started to apply the essential public policy function of government procurement. This is different from the role previously played by government purchases, which aimed at lowering prices and saving money in China. In the short term, the implementation of Circular 618 may have some negative impacts on China's technology trade. In the long run, however, the accreditation system provides the country's high-tech enterprises with the support and protection they need when their technology capacity is in its infancy. This is an important measure in achieving the goal of establishing an 'innovation society' by the year 2020 and further boosting China's competitiveness and maintaining its sustainable development.

The current global economic downturn puts every measure adopted by the Chinese government in a spotlight of attention. Notwithstanding the criticism and pressure from foreign governments and industries, it is safe to predict that China will not give up its indigenous innovation strategy and accreditation system. However, since the indigenous innovation policy and accreditation system encompass such intertwined issues as IP protection, government procurement and WTO obligations, China needs to exert more caution in striking a balance between indigenous innovation and an open economy.

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Many countries, including a number of WTO Members, foster innovation through government procurement. In the long run, the accreditation system provides China's high-tech enterprises with the support and protection they need when their technology capacity is in its infancy, and will help the country achieve its goal of establishing an 'innovation society' by the year 2020.

Is Hunger in the World on the Rise?

Peter Svedberg

In its latest report on food insecurity, the FAO asserted that 915 million people were undernourished in 2008, and the figure is estimated to rise to 1.02 billion in 2009. The alarming numbers raise the twin questions of how the estimates are derived and how reliable they are.

An accurate assessment of the overall prevalence of undernutrition is important for monitoring progress on the Millennium Development Goals. Policy-makers also need a solid basis for deciding the type of interventions required to improve the situation.

The FAO's Findings

The UN Food and Agriculture Organisation's report entitled *State of Food Insecurity 2009* estimated that 1.02 billion people could be undernourished by the year's end. This is a huge increase since 1995-97, when the estimated number was down to 803 million, after a steady decline over two decades. Moreover, the report suggests that, as a share of the total population in developing countries, the undernourished have increased from 16 to 18 percent since 2004-06. The alleged increase has been especially rapid in 2008 and 2009 in the wake of rising food prices and the global economic crisis (see Figure 1 overleaf).

The FAO's Methodology

The FAO's estimates are based on the availability of food in individual countries (own production and net imports). The calorie content of the various food items is obtained from standardised conversion tables, and the distribution of the available calories across households in a country is estimated from household food consumption surveys. Finally, the FAO establishes a norm for the minimum per-person calorie requirement of an average household. The households that have an intake of calories below the norm are classified as undernourished.

The first thing to note is that the estimations require a lot of data. However, each step in the FAO's calculations is based on more or less ambiguous assumptions and data that have weak empirical underpinnings. In some instances the data are indeed downright non-existent.

Food availability is notoriously difficult to estimate in countries lacking scientifically based methods for acreage inventory (enumeration) and crop yield assessment, as is the case in most African countries. Moreover, the FAO estimate of undernourishment in the world in 2009 builds mainly on food production assessments from 2004-06. The distribution of calories across households in each and every country is estimated on the basis of a handful of food consumption surveys, most of which were conducted in half a dozen countries some twenty years ago.

A further methodological flaw in the FAO estimates is that no explicit consideration is made of the fact that energy (calorie) expenditures, not only intakes, vary across households. Households have different per-capita calorie requirements (expenditures) because they differ in terms of age and gender composition, as well as the amount of calories burnt in physical activities, such as work. People become undernourished when their habitual calorie intake falls short of what they require to maintain a healthy body weight and to sustain the work needed to earn an income. When this is the case, the imbalance between energy intake and outtake (expenditures) shows up in loss of body weight (at all ages) and retarded skeletal growth in children (stunting). These dismal consequences are measured by anthropometrics.

In order to estimate the prevalence of undernutrition in a country with its own method in a theoretically correct way, the FAO would have to know not only the distribution of calorie intakes across households, but also how this is related to the distribution of calorie expenditures. Such data have never been collected and the FAO simply assigns an arbitrary value to this crucial parameter in its estimations.

All this means that the FAO calculations of undernutrition are utterly unreliable. Robustness tests reveal that even very small alterations in the uncertain values of the main parameters in the FAO model have large effects on estimated undernourishment. In light of this, to produce an exact estimate of 1.02 billion undernourished in the world in 2009 conveys an impression of rigour that is totally illusory.

Different Indicators, Different Results

There is no doubt that undernutrition is highly prevalent in many developing countries. Anthropometric indicators, based on the measured height and weight of individuals, are the current standard tools for estimating its extent. We have anthropometric estimates of the prevalence of child and, to a lesser extent, maternal undernutrition for most developing countries in the mid 2000s. According to these estimates, about 30 percent of the children were stunted (short for age) and 25 percent were underweight (low weight for age). These numbers are considerably higher than the 16 percent of the total developing country population that the FAO estimated to be undernourished in 2004-06.

Furthermore, the regional difference between the FAO estimates and those derived by the anthropometric method is often strikingly large. The FAO arrives at an estimate of 23 percent of the population in South Asia being undernourished and 30 percent in Sub-Saharan Africa in 2004-06. The anthropometric evidence suggests the opposite ranking, i.e. the prevalence of child undernutrition as measured by weight for age in 2005 was almost twice as high in South Asia (40 percent) as in Sub-Saharan Africa (24 percent).

At the level of individual countries, the FAO and anthropometric estimates are also often impossible to reconcile, as a few examples

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may illustrate. The agency estimated that in Nigeria, the most populous country in Sub-Saharan Africa, only 8 percent of the population was undernourished in 2004–06. In roughly the same years, 42 percent of the children were stunted and 25 percent underweight, while 15 percent of women were underweight. In India, the country with the highest prevalence of underweight young children (43 percent), as well as adult women (36 percent) and men (33 percent), ‘only’ 23 percent of the entire population was undernourished according to the FAO.

In most countries for which anthropometric data have been collected at two or more points in time (about 120), the incidence of undernutrition has declined.

In about half the countries, the pace of progress indicates that they are on track to accomplish the Millennium Development Goal (MDG) of halving ‘hunger’ between 1990 and 2015. In many other countries, including India and most countries in Sub-Saharan Africa, the decline has been disappointingly slow and on recent trends, the MDG will be missed. Although some 20 countries have made no progress, a few others – most notably populous China, but also Ghana, Malaysia and Mexico – have already attained the MDG.

Unfortunately, anthropometric surveys are carried out rather sporadically in most countries and so far only a few have been conducted and completed since 2008. This means that there is yet little possibility to gauge whether the recent food-price hike and the ongoing global economic crisis have seriously affected the nutritional status of vulnerable populations.

There are, however, anthropometric surveys from three African countries, Egypt, Ghana and Nigeria, carried out in 2008, that provide indications. In Egypt, the incidence of child stunting and child underweight increased by 4 and 1 percentage points from 2005. In Nigeria there was a small decrease, while Ghana experienced a notable decline in both indicators —when compared to 2003. The little anthropometric evidence at hand presently does hence not corroborate the drastic rise in ‘undernourishment’ reported by the FAO.

Why Do Methods Matter?

Why should we put more trust in anthropometric indicators than in the FAO’s estimates? A major advantage with the anthropometric estimates is that the data are simple to obtain free of measurement error, as only a few pieces of information are required (height, weight and age). This is also important for the transparency of monitoring undernutrition.

Moreover, anthropometric measures provide useful tools for directing policy. In order to be able to design and target interventions in an efficient manner, governments need reliable answers to a number of questions. They need accurate knowledge of how widespread undernutrition is, where it is concentrated, who the undernourished are, and why people are undernourished. For instance, if the incidence of undernutrition is very high – say half the population – interventions have to be undertaken at the national level (e.g. through lowering consumer food prices). If the prevalence is smaller, 10–15 percent, interventions can be targeted directly to those in need (if identified). This is what Brazil and Mexico have successfully done in recent years through well-targeted conditional cash transfer programmes.

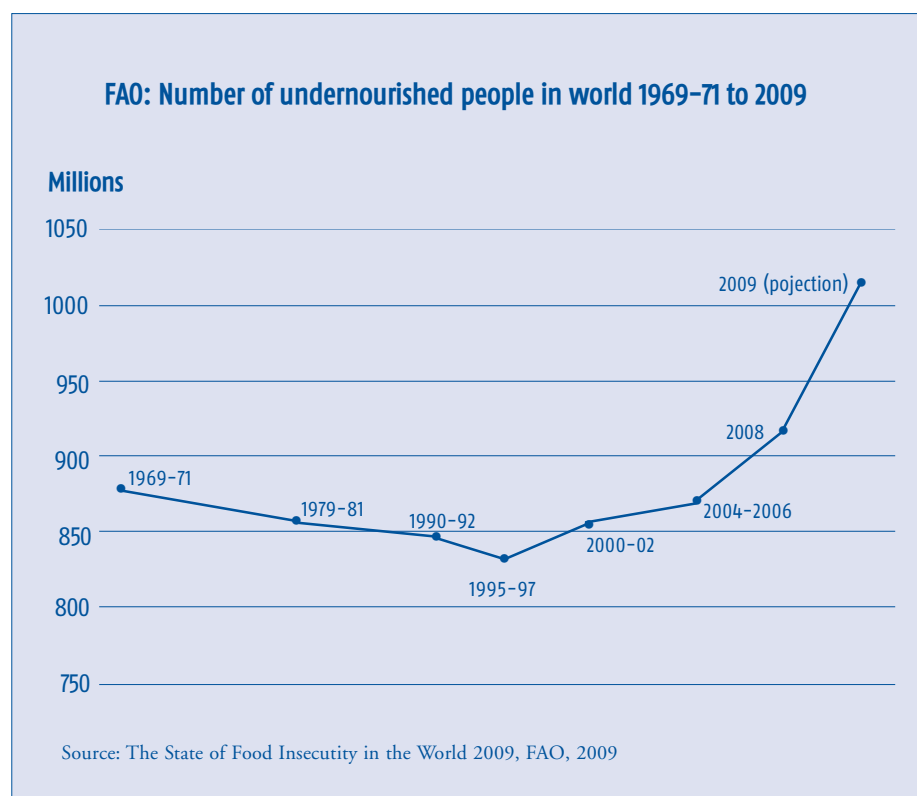
The FAO method is silent on most of these questions. As the agency admits itself, its method is only aimed at estimating the *share* of households in a country that falls below its calorie norm; undernourished individuals or groups of people cannot be identified.

Poverty, Not Availability, Is the Problem

Finally, on the question of the underlying reasons for undernutrition, the FAO analysis is misleading. The chief reason, as estimated by the FAO method, is insufficient availability of food in a given country. However, extensive empirical research has convincingly demonstrated that the foremost reason is poverty, but also maternal illiteracy and subjugation, and inadequate basic health-care facilities. Except in connection with wars and large natural disasters, there is no scarcity of food in any country for those who can afford to buy it. The main problem is affordability, not availability as purported by the FAO.

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Figure 1



Price Volatility Rattles Farmers

Even when the price of rice doubled and trebled in international markets, growers in the Philippines barely felt the tidal wave of money sweeping into the commodity.

A representative of farmers from the rice-staple country, Raul Montemayor, described to a recent seminar on agricultural price volatility how lack of investment and weak links between farm and market left many farmers struggling in boom times. Unpredictable swings in prices – most recently peaks – across a variety of key farm goods have left many developing country producers unable to fulfil their potential, driving some consumers to hunger.

Although farming is the primary livelihood of the vast majority of those in poverty, development assistance has flowed to other areas in recent years. At the same time, developing country governments, hoping to create better paying jobs and to diversify their economies, have failed to invest in the extension, research and support that are crucial to achieve the productivity gains necessary to grow enough food for ballooning populations. However, neither governments nor donors set the international prices that guide the winds of trade.

Prices, High or Low, Should Help Farmers

“Demand and supply factors are bridged by changes in prices,” observed Carlo Trojan, former EU ambassador to the WTO, “and as such send important signals to producers. Sudden and drastic price changes, however, cause significant challenges, in particular to the world’s poorest who can spend up to 70 percent of their very low incomes on food.”

The 2007-08 shock, as well as slowly rising prices for heavily traded agricultural goods in preceding years, marked a change from decades of a steady downward trend, when waning prices led to low investment in farms across the developing world. Development economists fretted about the price decline and its impact on incomes, scarcely foreseeing the impending rise.

The challenge, in the opinion of many agricultural trade experts, is to ensure that prices are transmitted to farmers but without the extremes suffered in 2007-08. Farmers and consumers both need the market signals that changing prices provide. However, when they fluctuate wildly, they increase the investment risk and potentially drive away badly needed resources.

Sustained Interest Crucial to Reform of Agriculture

The increase in aid and investment to the agriculture sector that tends to follow price shocks frequently leads to gluts in production and a decline in prices according to preliminary analysis from Josef Schmidhuber, an FAO Economist. The key to alleviating the worst boom and bust cycles is for donors and governments to maintain a sustained and long-term focus on farming. Aid and other policy reforms should not chase crisis after crisis in the sector.

“Price volatility is a life-and-death issue for many people around the world,” warned ICTSD Senior Fellow Sergio Marchi, adding that “trade policies should encourage investment in developing country agriculture, so that poor farmers can build resistance to future price shocks.”

Although trade policies are not the only determinant of the agriculture sector, historically high government support and closely guarded markets in developed countries have affected farmers in developing countries with the most potential for increased productivity. A conclusion to the long-running Doha Round would provide incentives for reforms in WTO Member countries to bring domestic policies in line with international commitments, especially since many have staked hopes for a more ambitious agenda on a future round of trade talks.

No single solution is a panacea to the woes of farmers and those left undernourished. A coherent set of policies that guide farmers to produce according to need will be crucial to shield them from future panics, gluts or spikes in the markets.

For more on the seminar, please visit <http://ictsd.org/i/events/dialogues/75957/>

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