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Facts and Figures

- Based on 2002 statistics, over half of the world's 100 largest economic entities are transnational corporations, not nations. Wal-Mart is bigger than Sweden and Home Depot is a larger economic entity than New Zealand.
- The world's leading 118 pharmaceutical companies had combined sales of US\$343,289 million in 2002. The top ten companies accounted for 53 percent of global drug sales, while the top 20 companies accounted for over 75 percent.
- The top ten firms accounted for 54 percent of the biotech sectors' US\$2 billion revenues in 2002.
- The top ten firms accounted for almost one-third of the world's commercial seed sales valued at roughly US\$23,000 million. Four companies controlled over three-quarters of the world's commercial maize market, excluding China.

Source: *Oligopoly Inc.*, ETC Group, 2003.

Rhetoric Aside, No Fast Forward for Doha Round

The WTO's General Council will meet on 11-12 February to adopt a new slate of committee chairpersons for the year to come. Members are also expected to discuss the way forward for the Doha Round negotiations that have stagnated since the Cancun Ministerial Conference last September.

The General Council session of 15 December achieved no more than a tacit agreement to restart meetings of the Doha Round negotiating groups. A number of delegates reiterated their commitment to concluding the negotiations on schedule, but such rhetoric was at odds with Member interventions showing old divisions regarding substance as well entrenched as ever.

A Slim Progress Report Draws Predictable Reactions

Outlining developments since Cancun, outgoing General Council Chair Carlos Pérez del Castillo noted that despite Members' willingness to engage in substantive discussions, he had perceived no sense of urgency to move forward or to translate political statements of commitment into actual negotiations. Accordingly, he had little to add to his 14 October report on the consultations that had taken place since Cancun (Bridges Year 7 No.7, page 1).

Agriculture and NAMA

Ambassador Pérez del Castillo's suggestion that the agriculture and non-agricultural market access (NAMA) negotiating groups "should continue to build on our consultations since Cancun, which have taken as their effective starting point the Derbez text" prompted a number of comments reflecting long-standing positions.

On behalf of the Group of Least-developed Countries, Bangladesh said major improvements would be necessary in the Derbez text's treatment of cotton, as well as smaller changes in the areas of agriculture and industrial market access. Members of the G-20 group of developing countries stressed that agriculture was the basic reason for the entire round, with South Africa noting that once movement was seen in this area, the rest would follow (see page 4).

The US supported basing talks on the Derbez text, but – together with other developed countries – highlighted concerns about its lack of ambition on industrial market access. China and many other developing countries countered that they expected "less than full reciprocity" of commitments between developed and developing countries.

With regard to the Cotton Initiative put forward by four least-developed African countries Chair Pérez del Castillo noted that progress had been made "in identifying the trade-related and development-related aspects that should be addressed during our further work" and suggested that Members avoid getting "bogged down" on the procedural question of whether to treat the issue as a 'stand-alone' item or as part of the agriculture negotiations (see page 19).

Development Concerns

Ambassador Pérez del Castillo noted that "restarting all the bodies dealing with the different aspects of the Doha agenda [would] enable us to give full attention to the development perspective", alluding to the fact that neither implementation concerns nor special and differential treatment (S&D) had been addressed in the WTO since Cancun. India and Kenya called for the creation of a separate body to deal with implementation issues and S&D.

Continued on page 2

Bridges

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The Singapore Issues

On the four contentious Singapore issues now pushed by Japan and Korea in particular, the General Council Chair indicated that consensus might be reached on negotiating modalities for trade facilitation. His suggestion that Members explore the potential for modalities in transparency in government procurement “without prejudice to the outcome” was far more controversial. It seems likely that the other two – investment and competition policy – will be dropped from the negotiating agenda, and perhaps from the WTO altogether.

In a communication (WT/GC/W/522) tabled just prior to the GC meeting, the LDC group and 15 other developing countries including China and India, stressed that “due to continued division over such a long period [...] on the status and substance of the Singapore issues”, Members should concentrate “on issues of core competence of the WTO, namely agriculture, non-agricultural market access, services and development issues.” They advocated dropping investment, competition policy and government procurement altogether, but said clarification (but not negotiations) on trade facilitation could proceed. The EU called on other WTO Members to show flexibility in return for its post-Cancun openness on the Singapore issues, but Korea maintained that negotiations should be launched on all four topics.

US Suggestions for Way Ahead

The only potentially significant new development since the 15 December General Council meeting was a letter outlining possible ways out of the present impasse, addressed by US Trade Representative Robert Zoellick to other WTO trade ministers on 11 January. The move reflects the growing involvement of capital-based officials in the negotiations, also evidenced by shuttle diplomacy and multiplying contacts undertaken by WTO Director-General Supachai Panitchpakdi, G-20 leaders, EU Trade Commissioner Pascal Lamy and Mr Zoellick himself.

While many developed and developing country Members welcomed the letter as a sign of US re-engagement with multilateral negotiations, it is far from certain that Ambassador Zoellick's proposals will suffice to break the deadlock, not least because the US continues to advocate a focus on ‘core market access issues’, including opening up large developing country markets.

Most importantly, Ambassador Zoellick acknowledged that to move forward, it would be necessary to agree on the elimination of agricultural export subsidies (including the export component of export credit programmes) by “a date certain”. The letter thus confirmed that the US was ready to abandon the 13 August 2003 EU-US joint text on agriculture, which led 20 developing countries to table a comprehensive counter-proposal (see page 4). However, this – and other – agriculture-related suggestions only reflected US positions prior to the compromises in the joint EU-US modalities proposal, and many of them were more or less explicitly included in the 13 September Derbez text (see page 16 for further details).

The same holds for other key areas. For instance, it came as no surprise that the US was ready to drop investment, competition policy and government procurement from the Doha Round. On the other hand, US insistence on only limited exceptions from a common set of obligations in market opening was entirely consistent with its previous positions on special and differential treatment (‘implementation’ was not even mentioned as such). This offers cold comfort to those developing countries that aspire to a re-orientation of the multilateral trading system through enhanced S&D. However, breaking with WTO practice to alternate developed and developing country ambassadors as chairs of the WTO General Council, Mr Zoellick suggested that Members again appoint a developing country representative, mentioning Brazil, Chile, Pakistan, Singapore and South Africa as potential candidates.

With regard to a timeframe, Mr Zoellick proposed agreement on the negotiating frameworks (i.e. ‘modalities’) by mid-year 2004, and holding a ministerial conference in Hong Kong before the year's end without specifying what the agenda for such a meeting should be.

¹ The ‘Derbez text’ refers to the latest (13 September 2003) version of the ‘Ministerial Text’, which was not adopted in Cancun and therefore has no legal standing.

Cherishing Multilateralism

Nick Clegg

I am a Member of the European Parliament, by definition a policy amateur blissfully free of the heavy responsibility of day to day decision making. For me, the mechanics of the Geneva trade negotiating process are little more than a fog of institutions, acronyms and ambassadors. Trade policy is the kingdom of the expert. The political world is the kingdom of the generalist.

But while I am especially ill equipped to make insightful comments on the details of the present stalled WTO Round, ignorance of detail can assist in fostering a clear sense of perspective. A certain distance from any subject matter is always necessary to capture the full picture. So, wary though I am of treading on the toes of those with far greater expertise, I submit here four general observations about the state of the trade system today.

First, the WTO has assumed a symbolic importance as the world's most sophisticated multilateral body which extends well beyond its immediate vocation. In no other field has the progress towards a fully developed set of multilateral institutions, rules and disciplines advanced as far as it has in the trade arena. In a political environment disfigured by a rash of political and military unilateralism, the persistence of the WTO serves as an invaluable reminder that there still are multilateral alternatives.

That is why the collapse of the talks in Cancun reverberated well beyond the immediate trade issue at hand. It was a symbol of the victory of narrow self interest over the common good, a dismally recurring theme in international politics today. The threat to the Kyoto Accord on climate change, the absence of key signatories to the international criminal court, even the collapse within the EU of talks on a new pan-European constitution, all tell the same story. Multilateralism is weak, national self interest is strong. The resuscitation of the Doha Development Round, then, assumes a mammoth importance. Upon it rests much of the confidence in multilateralism more generally.

Second, for those who cherish multilateralism, the burden of responsibility for the success of the Doha Round is especially heavy. It is quite clear that the rhetoric in favour of the Round is far outstripping real commitments. Talk is cheap, and there is much talk at the moment in favour of the Round without much supporting action. Hesitant stand-offs, where all parties wait until other parties move, is a sure route to further gridlock. For those who profess to value the importance of multilateralism, it is time to take risks and make significant concessions without knowing whether they will be reciprocated by others. Leadership implies the courage to make the first move, to make sacrifices not always entirely matched by those who follow. Trade negotiations involve much bluff and counter bluff. Trade negotiators hate to show their hand before others have shown theirs. Such skilful brinkmanship pays handsome dividends when there is an overarching appetite to secure a deal. It is both self indulgent and self defeating when, as at present, the system is in a state of crisis.

Third, one of the great ironies of trade policy is that at exactly the time when it has become a subject of global political interest, it has evolved into an ever more exotic technocratic art. The distance between the public and politicians on the one hand, and trade negotiators and experts on the other, is dangerously wide. The technocracy of trade talks rarely, if ever, evolve into a more politicised forum where painful deals can be hammered out. Whilst the WTO Ministerial meetings are supposed to bring together the politicians ultimately responsible for the outcome of the talks, the reality is that the process remains firmly in the hands of a fairly circumscribed community of trade experts. One of the key ingredients of successful negotiations is that, at the most difficult stages towards their conclusion, final input and decisions should be taken by new players who have not been responsible for the day to day talks.

However brilliant they may be, trade negotiators are by definition more liable to find themselves entrenched in inflexible positions which have evolved over a prolonged period of time and to which they feel personally committed. It is right that politicians should be invited to

make the final judgement on whether such positions should be overturned or reversed in a final bid to secure a deal. Given the sheer technical complexity of the present arrangements, such a 'clearing house' function for senior political players is simply not feasible. Trade experts prevail over the process from beginning to end, a fact which only increases the likelihood of further gridlock.

Fourth, and finally, public perceptions, at least in Europe, of what the WTO can deliver, or more precisely what damage it may inflict, have surpassed all reasonable reality. The WTO has assumed almost mythical proportions in the eyes of the public, particularly for those who are most antagonistic towards the amorphous process of 'globalisation'. This creates unsustainable political tensions as the public debates the pros and cons of the WTO on a rhetorical level entirely removed from the more humdrum nature of trade policy. In Europe, for instance, there is a widespread demand that the WTO should 'deliver' higher environmental and animal welfare standards which, however desirable, are simply not in the gift of the WTO. Failure to meet those expectations merely reinforces scepticism towards the trade system as a whole.

That is why it is crucial that the burden of expectations on the WTO should be spread more widely. Multilateralism across a bewildering array of policy areas cannot be borne by one institution alone. One of the greatest contemporary challenges is to emulate the example of the WTO by establishing flanking multilateral institutions in other areas. But spawning new multilateral bodies will remain no more than a distant dream as long as the WTO itself is suspended in a state of uncertainty. The urgency in restarting the Doha Round cannot be exaggerated. The future of multilateralism depends on it.

Nick Clegg is the Trade & Industry Spokesman for the Liberal Group in the European Parliament and a Liberal Democrat MEP from the United Kingdom.

Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun

Faizel Ismail

The only silver lining to the disappointment felt by G-20 members at the abrupt end of the WTO's Cancun Ministerial Conference was that developing country negotiators had come of age. They had galvanised a formidable group of developing countries and skilfully built a common negotiation position that provided a sound platform to continue negotiations for a fair and freer global market for developing countries' agricultural products.

Since Cancun, South Africa has been working to put forward a balanced interpretation of the events in Cancun to help avert an incorrect writing of history. As Minister Erwin wrote in the *Financial Times* on 30 September, blaming the poor and weak Members of the WTO for the Cancun outcome is unjustified and incorrect. The seeds of the unsuccessful outcome were sown many months earlier.

To correctly evaluate the conference we should consider both *process* and *substance*. With regard to the process, the failure to meet important deadlines in the Doha work programme contributed significantly to the inadequate preparation for Cancun. That programme was finely balanced – development issues first (S&D, implementation, TRIPs and public health), then agricultural modalities, followed by non-agricultural market access – and only then a decision to be taken on the Singapore issues. The inadequate and slow pace of agricultural reform in the EU largely contributed to the slipping deadlines and the consequent impasse.

As far as the *substance* is concerned, the EU-US joint text¹ – reflecting a bilateral compromise that accommodated both countries' protectionist policies – put into question the continued commitment of the two major subsidisers to the high ambitions set by ministers in Doha. This, in turn, threatened to undermine the fundamental development promise of the Doha 'Development Agenda' (DDA).

That work programme, including new negotiations, must be seen in the context of the failure of previous rounds to adequately address the issues of equity and balance – and indeed their persistent failure to provide genuine market access for products of interest to developing countries – including textiles and agriculture. It was this unfinished business that the DDA needed to address.

In addition, the perceived imbalances in the process of globalisation highlighted by civil society groups and developing countries spurred developed country leaders to make commitments in various international fora. These included the adoption of the UN 'millennium development goals', as well as promises made at the Monterrey Conference on Financing for Development and the Johannesburg World Summit on Sustainable Development. At all these conferences (including various G-8 meetings), leaders of the developed world pledged to address inequalities in the multilateral trading system through a 'development round' of negotiations in the WTO.

The increasing integration of the world economy and the interdependence of nations make walking away from the rules-based multilateral trading system no option for either developed or developing countries. Bilateral or regional trading arrangements cannot replace the need for multilateral rules. As evidenced by the inconclusive Free Trade Area of the Americas Ministerial last November (see page 13), genuine market access and the removal of major distortions in global agricultural and other product markets can only be successfully negotiated in the WTO.

Managing the proliferation of trade disputes between trading partners will require strengthening rule-making and the workings of the WTO dispute settlement system. The G-20 (see box on page 5) therefore cautions all those who seek to reduce interest in the Doha Round and the multilateral trading system, and those who seek to delay progress in the Round, to carefully consider the implications of their actions.

What lessons can we draw from Cancun?

First, the old tactics, relied on by the EU and others, of delaying progress and holding back on key flexibilities until the last moment will not work in a growing organisation of 148 members.

Second, countries should be cautious about forming strategic alliances that compromise the ambition of agricultural liberalisation. This could strengthen the forces of protection and divert these countries from the strategic objective of creating more open markets – as we witnessed in the US approach in the EU-US joint text.

Third, many developing countries, especially smaller African, Caribbean and Pacific (ACP) countries and least-developed countries (LDCs) need to develop the capacity to move more quickly, and exercise their flexibilities as new conditions unfold in the negotiations.

The way forward

The formation of the G-20 is an event of great significance in the multilateral trading system. It provides the opportunity for more equal negotiating capacities in the WTO. Developed countries should see this as an opportunity instead of a threat. The G-20 is not based on a North-South divide – there are several developed countries, such as those in the Cairns Group, who share our conviction that freer and more equitable global markets must be created in agriculture. This is an issue-based alliance.

Two steps are essential to move forward: first, the US should reconsider its 'unnatural alliance' with protectionist positions in the EU-US joint text (and thus not miss this historic opportunity to contribute to freer trade in agriculture) and, second, all WTO Members must continue the journey towards the successful conclusion of the Doha Round within the timeframe and faithful to its development focus.

Questions for further analysis and research

The US-EU joint text would have allowed the US to increase its use of the Blue Box (to continue with its trade distorting farm subsidy payments as provided in the 2002 Farm Bill, with some changes to its programmes), and taken the pressure off the EU to reduce its tariffs and eliminate its export subsidies. The US has stated that it regards the US-EU alliance as a ‘stepping stone’ to advance the negotiations and yet in Cancun it did not move from the joint position. Is the US-EU alliance a tactical or strategic one? Is either country able to withdraw from the agreement in favour of advancing the DDA or are they locked into an agreement that provides comfort to each others’ interests and sacrifices the ambition of the DDA?

On the position of the United States

The position of the US on agriculture before and during Cancun left many observers very puzzled. The US had adopted a more liberal approach prior to the conference, stressing the need for the EU to open its markets and eliminate its export subsidies. In agreeing to the EU-US joint text, the US appeared to have sacrificed these interests and lowered its ambitions.²

- Did the prospect of forthcoming US elections cast such a long shadow over the negotiations that it prompted the USTR to take a cautious route and abandon its commitment to pursue an ambitious outcome in the WTO agriculture negotiations? Or is the US hedging its bets, keeping one foot in the EU camp while remaining open to supporting the cause of creating freer and fairer trade in agriculture (with the Cairns Group and the G-20) when the conditions change?
- Are the agricultural lobbies in the US reflecting on what happened in Cancun? Do they recognise the setback in Cancun as a lost opportunity to advance the reform of agricultural protection in the EU and to level the playing field in agricultural trade?
- Did the coalitions in US agriculture shift in the direction of increased protectionism prompting the USTR to agree to lower its ambitions in the EU-US joint text before Cancun and withdraw from its Doha commitments? Did the joint text negotiated by the USTR strengthen the position of protectionist forces in US agriculture before Cancun?

On the position of the European Union

The EU has stated that it has moved in agriculture by adopting a package of reforms to its Common Agricultural Policy (CAP). Even the so-called ‘Northern liberals’ in the EU say (officially) that the reforms will create real reductions in production and in global market distortions.

- While the CAP reforms can be seen as a step forward, will they contribute to significant liberalisation and reductions of global distortions in agriculture? Will they contribute significantly to enabling developing countries to develop their agricultural potential?
- Does the EU reluctance to provide leadership reduce its potential for cashing in on the reforms it is making on the CAP? These reforms could be traded for concessions in other areas of interest to the EU. Does this loss of momentum in the WTO negotiations not reduce the external pressure the EU requires to stimulate and maintain further reform of the CAP?
- The agricultural negotiations are the centrepiece of the DDA. Failure to produce movement on this issue will slow down the entire process, bring the negotiations to a halt, and threaten the future of the WTO itself. EU member states are confronted with a choice between maintaining their protectionist position on agricultural reform and their commitment to the multilateral trading system and development. How will the (soon 25) EU member states confront this reality?

Faizel Ismail is Head of the South African delegation to the WTO in Geneva. This article is based on a presentation made on November 3-4, 2003 at the Workshop on Understanding and Shaping Trade Liberalisation to Benefit Low-Income People in Developing Countries at Resources for the Future, Washington, D.C.

EDITOR'S REMARKS

¹ The EU-US joint text issued on 13 August 2003 provided the basis for the agricultural negotiating modalities submitted to ministers in Cancun (Bridges Year 7 No.6, page 11).

² A letter sent by US Trade Representative Robert Zoellick to trade ministers of WTO Member countries on 11 January 2004 indicated that the US might be distancing itself from the approach taken in the joint text (see page 12 for further details).

The G-20 in a Nutshell

Led by Brazil, India, Mexico, Chile and South Africa, the G-20 emerged last August as a counterweight to the joint EU-US framework proposal for agricultural negotiating modalities. The broad-based alliance¹ is based on the common objective to create fair and freer markets in agricultural trade and to ensure that the outcome of the Round enhances the development of developing countries.

At Cancun itself, the G-20 steadfastly refused to accept as a *fait accompli* the agricultural modalities annex – largely inspired by the EU-US text – proposed to ministers. Refuting accusations that the group’s ‘intransigence’ caused the collapse of the talks, Faizel Ismail said the coalition was “prepared to demonstrate flexibility and to make concessions in order to secure a successful launch of the agricultural negotiations at Cancun. It is likely that one more trilateral meeting between the G-20, the EU and the US, as well as a meeting with all other players facilitated by the Chair would have tested the flexibility of all players. Only then would the world have known whether the EU, the US and Japan were truly willing and able to abide by their Doha commitments.”

Meeting on 12 December in Brasilia, G-20 trade ministers stated in a communiqué that any viable modalities framework “should be consistent with the Doha mandate and lead to the establishment of modalities capable of ensuring that negotiations in agriculture would result in substantial reductions in domestic support, substantial increase in market access, phasing-out of all forms of export subsidies and operational and effective special and differential treatment that takes into account rural development and food security concerns of developing countries.” G-20 ministers instructed their representatives in Geneva to develop a work programme based on the discussions held in Brasilia and the communiqué.

¹ The G-20 currently comprises Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, the Philippines, South Africa, Tanzania, Thailand, Venezuela and Zimbabwe.

Setback to Competition Policy Would Imbalance Globalisation

Pradeep S. Mehta

Competition policy may become another victim of the failure of the Cancun Ministerial Conference. And yet, considering the existing bias in favour of producers in the WTO and the increasing integration of world economies due to globalisation, competition policy can provide the necessary balance. Future talks must promote a better understanding of the possible benefits of competition policy at both national and international levels. And since WTO may not be the right forum, as many believe, an alternate forum needs to be looked at.

While the breakdown of the talks in Cancun will no doubt act as a bump on the road to a constructive dialogue on competition policy, discussions at the WTO on the relationship between trade and competition policy have already spurred many countries to bring in a competition regime. When the WTO came into being in 1995 about 35 countries had a competition law. Today the number is around 100 with many more in the queue. India, South Africa, the UK and Sri Lanka have revamped their old competition laws to cope with changing times.

Why is it necessary to have a competition regime? Today, business malpractices are crossing borders unabashedly. Examining a small number of international cartels discovered and prosecuted in the 1990s, a World Bank study estimated that developing countries imported goods and services worth US\$80bn per annum from these sectors. The firms concerned would have collected monopoly rents in the range of \$20bn-\$24bn per annum from the developing world. This is roughly half of the development aid granted to poor countries. It is also approximately double the benefit that developing countries could obtain if agricultural tariffs in the West were cut by half.

Why co-operation at international level? Because many of those in the developing world who realise the impact of these cartels also recognise their helplessness to act against them. No wonder then that when the tide was against a competition agreement at the WTO before the Cancun meeting began, the Federation of Indian Micro and Small & Medium Enterprises (FISME) of India asked the Indian government to agree to negotiate on this among the four contentious Singapore issues. In a statement, it said:

“On competition policy, we strongly feel the need to have a multilateral agreement. Having realised the importance of curbing

the anti-competitive activities of cartels, we in India have already adopted a new competition law. The activities of these cartels at the global level are much more damaging. These cartels cannot be controlled by one nation and need to be restrained and penalised through a multilateral agreement. The benefits of such an agreement would result not only in improved market access for Indian products, but also help reduce the prices of raw materials where cartels operate.”

In one notorious case, three European companies involved in a bulk vitamin cartel were fined over a billion dollars for having colluded to rig prices by competition authorities in the US, the EU, Canada, Australia, etc. This cartel caused harm of no less than US\$3bn to developing countries alone. But, other than Brazil, not a single developing country made any effort to prosecute the perpetrators. Brazil was able to do it because it had a co-operation pact with the US, which allowed it to obtain confidential information on the cartel.

Domestic firms may also operate as cartels. The cement industry, for instance, has been hauled before every possible competition authority in the world. The resulting media coverage has increased awareness across countries to curb such anti-competitive activities. A CUTS study on civil society's perceptions on foreign direct investment (FDI) in Bangladesh, Brazil, Hungary, India, South Africa, Tanzania and Zambia showed that most respondents rated the need for strengthening competition policy very highly to enhance gains from FDI.

When large companies in the West merge, they present a *fait accompli* to their subsidiaries in developing countries. In the West the companies involved go through a rigorous examination by competition authorities to ensure that the merged entity does not become a dominant player in the market and thus prone to anti-competitive behaviour. This process has often been a bone of contention between the US and European authorities. They have now arrived at an understanding to co-operate on merger reviews, so that there is less conflict between the two authorities and the firms do not have to file multiple applications. Still missing is a co-operative effort that would include developing and other countries where the merging firms operate.

Why should developing countries be involved in the merger review process? Another study by CUTS on competition regimes in developing countries has brought up examples of their competition authorities acting on big mergers quite effectively, and sometimes not at all. For instance, the Zimbabwean competition authority was able to get a large cigarette multinational to ensure competition by enabling a new party to come and take over a plant, which was being closed due to the merger of two subsidiaries. In neighbouring Zambia, when Lafarge took over Chilanga Cement, the competition authority was able to get a shut-down plant revived and managed hostile nationalist sentiments by ensuring that job losses do not take place.

Here we have highlighted just two major cross-border issues, which negate the benefits of trade liberalisation. There are many more, such as export and import cartels, abuse of dominance, etc. Thus international co-operation is an imperative, rather than a disadvantage to the developing world. As the WTO is the global economic body responsible for such issues, the talks were taking place there. The WTO does have an overloaded agenda and other problems of equity and transparency, but that does not lessen the dire need for an international competition policy.

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The Death of GSP? The panel ruling in the India-EC dispute over preferences for drug enforcement

Robert Howse

The panel ruling on India's challenge of the European Community's Generalised System of Preferences will have vast implications for the multilateral trading system, assuming it is not reversed on appeal.

By a 2-1 majority, the panel ruled¹ that a GSP scheme must treat all developing countries identically unless the non-identical treatment is based on narrow limitations acknowledged in a little known 35 year old UNCTAD document (*Agreed Conclusions*, discussed below).

The GSP schemes of both the EC and the United States are full of conditions and distinctions that lead to differences in treatment among developing countries.² If the key findings of the majority report are not reversed, major features of the most important national GSP schemes will be GATT-illegal, unless they can be justified under Article XX or Article XXI exceptions.

In the words of Ambassador Sanchez Arnau, from the inception of the Generalised System of Preferences “it was tacitly agreed that any donor country would have the powers to extend preferential treatment to any other country or to withdraw this treatment if there should be any valid reason for this in the opinion of the preference-giving country” despite the fact that “the developing countries’ stance was that preferential treatment should be given to all countries coming under this category, whatever their political system [...]”.³

The ruling of the majority has torn this tacit agreement in shreds.

The Legal Analysis of the Panel: Most-favoured Nation Treatment

By definition, preferences under GSP schemes violate the GATT Article I most-favoured nation (MFN) obligation, since such treatment is more favourable than that extended to other WTO (i.e. *non*-developing) Members, the latter being *a priori* ineligible to receive GSP benefits.

Thus, the panel might have been expected to proceed at once to the Enabling Clause, which allows GSP preferences to operate *notwithstanding* MFN, and consider whether the EC's preferences were in accordance with the Enabling Clause.

However, India (somewhat confusingly) claimed not only that the EC's drug preferences did not meet the conditions of the Enabling Clause, but also that the preferences constituted a violation of the GATT Article I MFN obligation with respect to *India*, since the drug preferences in question were extended to Pakistan and not to India.

The European Community argued that Article I:1 of the GATT allowed it to condition treatment of like products on objective, origin-neutral criteria, and that the drug preferences were of that nature. The EC claimed that the requirement to provide MFN treatment ‘unconditionally’ in Article I:1 of the GATT meant only that MFN treatment must not be conditioned on compensation or benefits provided reciprocally by the WTO Member in question. India argued that ‘unconditionally’ meant without any conditions whatsoever.

Astonishingly, the majority agreed with India on the doctrinal point, even though an earlier adopted panel ruling in *Canada-Autos* had come to the opposite conclusion, stressing that the MFN obligation was not intended to prevent distinctions between products that were origin-neutral.⁴ In failing to consider the *Canada-Autos* panel report here, the majority neglected its duty to take into account previous adopted panel reports.⁵

The majority saw “no reason not to give [the term ‘unconditionally’] its ordinary meaning” in the *New Shorter Oxford English Dictionary*. However, the panel in *Canada-Autos* had under-

stood that the notions of ‘conditional’ and ‘unconditional’ MFN were to be given their specialised meanings in trade law and practice (see Vienna Convention on the Law of Treaties, 31:4).

The GATT MFN Obligation and the Enabling Clause

Despite the clear language in paragraph 1 of the Enabling Clause that GSP schemes may operate ‘notwithstanding’ the GATT MFN obligation, the majority held that the MFN obligation still applied under the Enabling Clause, except to the extent that deviation from MFN is necessary in order to treat developing countries as a whole better than developed country WTO Members.

As noted above, in considering the meaning of ‘unconditionally’ in GATT Article I:1, the majority had refused to go beyond the dictionary, simply ignoring the possibility of a specialised meaning to *conditional* and *unconditional* MFN in the lexicon of trade law. Then, by sharp contrast, in defining the term ‘notwithstanding’ in the Enabling Clause, the majority decided to throw the dictionary out the window. The majority appears to have followed or not followed the practice of literal interpretation, depending on whether literalism got the result it wanted!

The Conditions of the Enabling Clause

India argued that the Enabling Clause only permitted GSP preferences that are provided to all developing countries alike. According to India, the Enabling Clause referred to a description of GSP as “generalised, non-reciprocal and non-discriminatory” as contained in the predecessor instrument to the Enabling Clause, the 1971 GSP decision. India claimed that the expression ‘non-discriminatory’ meant that in no respect might a GSP programme under the Enabling Clause deviate from *identical* preferential treatment to all developing countries.

Continued on page 8

In deciding what kind of legal meaning to attach to the description of GSP as “generalised, non-reciprocal and non-discriminatory”, the majority relied largely on an UNCTAD document entitled *Agreed Conclusions of the Special Committee on Preferences*. The majority viewed the detailed description of GSP in this document as essentially *incorporated* into the Enabling Clause through the description of GSP in the 1971 waiver. Thus, in order to take advantage of the MFN exception in the Enabling Clause, a WTO Member would have to operate a GSP scheme that conformed to the *Agreed Conclusions*.

There are many problems with the majority’s reliance on the *Agreed Conclusions*, and only some of them can be discussed in this space-limited forum. First of all, it is unclear whether the *Agreed Conclusions* were intended to guide the GSP beyond its first ten years of existence (see Article VI. Duration). Second, the final provision of the *Agreed Conclusions* (IX. Legal Status) notes that preference-giving countries have stated that the grant of GSP preferences “does not constitute a binding commitment” and that they can be withdrawn in whole or in part.

However, even assuming the majority is correct in its interpretation that the *Agreed Conclusions* is incorporated into the Enabling Clause as a binding legal instrument, Article II of the *Agreed Conclusions* merely alludes to “agreement with the objective that in principle all developing countries should participate as beneficiaries from the outset [...]”. Not only is this language aspirational – as evidenced by the words ‘objective’ and ‘in principle’ – but even the aspiration is to *universal participation*, not *identical treatment* of all participants.

It is difficult to admire the behaviour of developed countries in reasserting, over a period of more than 30 years, the *objective* that GSP should be non-discriminatory, while shirking from formal legal obligation, and all the while adding new distinctions and conditions to their schemes (albeit while often increasing the margin of preference in favour of recipient developing countries).

Article III.1 of the *Agreed Conclusions* states clearly: “The preference-giving countries reserve the right to make changes in the detailed application as in the scope of their measures, [...]”. This can even extend to limiting or withdrawing entirely or partly some of the tariff advantages in question, although such limitation or withdrawal is to be ‘exceptional’.

The *Agreed Conclusions* are, therefore, entirely consonant with subsequent practice, which suggests that non-discrimination is an objective or principle that ought to inform GSP schemes, but *not* a legal condition for their operation consistent with the GATT.⁶ Professor Georges Abi-Saab (now Judge Abi-Saab of the WTO Appellate Body) noted in a 1984 report to the UN General Assembly that the notion of GSP as ‘non-discriminatory’ had not crystallised or been generally accepted as international law.⁷

Justification of the Drug Preferences under GATT Article XX(b)

The panel rejected the EC’s argument that the preferences were necessary to protect the life and health of European citizens. This rejection was not surprising, given that on its face the drug preferences scheme was linked not to the protection of EC citizens but to achieving sustainable development in the recipient countries.

Even though the panel concluded that for these reasons the drug preferences did not fall within Article XX(b), it went on to speculate that even if they did, they would meet neither the ‘necessity’ test in that paragraph nor the conditions of the chapeau with respect to the obligation to avoid arbitrary or unjustified discrimination against countries where the same conditions prevail. The reasoning of the panel on ‘necessity’ is very difficult to follow; it seemed to think that the drug preferences could not be ‘necessary’ for the protection of human health because the EC was willing to withdraw GSP treatment altogether from certain countries with drug problems, such as Burma, on other (in this case human rights) grounds. However, this says nothing about the intrinsic value of the drug preferences in curbing imports of drugs into the EC; all it says is that with respect to certain countries other, overriding considerations have led the EC to suspend its efforts to encourage those countries to deal with their drug problems by offering additional preferences.

On the chapeau, the reasoning of the panel is more lucid; it compared the drug situation in Iran with that in Pakistan, and found no good reason why Iran should not be on the list while Pakistan was.

The Dissenting Opinion

Unusually, the GSP panel report contains a dissent (anonymous, as required by the DSU, but widely speculated in the media to be Prof. Marsha Echols).

The dissent took issue with the majority’s characterisation of the relationship between MFN and the Enabling Clause, in particular pointing out that the negotiating history and subsequent practice actually confirmed the literal meaning of ‘notwithstanding’: MFN was intended not to apply *at all* to measures that properly fell within the Enabling Clause.

According to the dissent, since the Enabling Clause is not a limitation or exception on most-favoured nation treatment (i.e. an affirmative defence) but rather a *sui generis* legal instrument that defines how GSP operates ‘notwithstanding’ MFN, India did not properly make a claim under the Enabling Clause itself. By India asserting (wrongly) that the Enabling Clause was merely an affirmative defence to a claim of *MFN violation*, the panel was unable, under its terms of reference, to examine whether the EC had violated the obligations of the Enabling Clause itself.

The substantive position of the dissent concerning the relationship between GATT Article I and the Enabling Clause is correct; but the analysis of the procedural consequences is faulty. India duly listed the relevant provisions of the Enabling Clause in its request for a panel, and thus those provisions constituted part of the panel’s terms of reference. India properly identified the Enabling Clause in its request, even if its *interpretation* of the Enabling Clause as an affirmative defence was faulty.⁸

Conclusions

As recently as Doha, the WTO membership reaffirmed that preferences granted to developing countries ‘should’ be ‘non-discriminatory’.⁹ Such a political exhortation would be superfluous and puzzling, if the panel majority were right, and GATT Article I and/or the Enabling Clause itself *already* legally obliged developed countries to provide identical treatment to all developing countries under their GSP schemes.

However, I am sympathetic to the result the majority was seeking. It is difficult to admire the behaviour of developed countries in reasserting, over a period of more than 30 years, the *objective* that GSP should be non-discriminatory, while shirking from formal legal obligation, and all the while adding new distinctions and conditions to their schemes (albeit while often increasing the margin of preference in favour of developing countries).

Perhaps the majority’s underlying message is that “enough is enough”, and soft law should not be a device of bad faith or hypocrisy. Second, the majority may have believed that if it did not bootstrap ‘non-discrimination’ into hard law, developing countries would have *no protection at all* against unpredictable and arbitrary application of GSP schemes. Deciding as it did, the majority might be confident that where there was a good *reason* for differential treatment of different developing countries, then GATT Articles XX and XXI would suffice to ensure such *justified* distinctions are possible. It is also worth noting here that Article X of the GATT (not affected in operation by the Enabling Clause) requires *inter alia* that “[e]ach contracting party shall administer in a uniform, impartial and reasonable manner all its [trade-related] laws, regulations, decisions and rulings.”

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ENDNOTES

¹ *European Communities – Conditions for the Granting of Preferences to Developing Countries*. Report of the Panel (WT/DS246/R). 1 December 2003.

² These include preferences linked to environmental and labour standards, some of which were initially challenged in the present dispute but dropped from India’s claim.

³ Juan Carlos Sanchez Arnau, *The Generalised System of Preferences and the World Trade Organisation* (London: Cameron May, 2002), p. 205.

⁴ “We therefore do not believe that, as argued by Japan, the word ‘unconditionally’ in Article I:1 must be interpreted to mean that making an advantage conditional on criteria not related to the imported product itself is *per se* inconsistent with Article I:1, irrespective of whether and how such criteria relate to the origin of the imported products.” Para. 10-24.

⁵ Of course, even if the panel had interpreted ‘unconditionally’ according to precedent in *Canada-Autos*, it still might have found in the end that the EC preferences, or the way they were administered, violated I:1, because there was origin-based discrimination.

⁶ This point is developed at length in R. Howse, “India’s WTO Challenge to Drug Enforcement Conditions in the European Community Generalised System of Preferences: A Little Known Case with Major Repercussions for ‘Political’ Conditionality in US Trade Policy”, 4 *Chicago Journal of International Law* No. 2 (2003), pp. 385-405.

⁷ *Analytical Study in United Nations, Report of the Secretary-General on the Progressive Development of the Principles and Norms of International Law Relating to the New International Economic Order*, UN Doc. No. A/39/504, p. 78.

⁸ In a number of cases, such as *Hormones* and *Sardines*, complainants have argued that a particular provision of a covered agreement was an affirmative defence or ‘exception’ to be proven by the defendant; where the Appellate Body has found instead that the provision in question creates substantive obligations of its own, rather than being a defence or exception to substantive obligations in other clauses. The Appellate Body has then simply treated the complainant’s allegation as a claim that the substantive obligations in question have been violated.

⁹ Doha Implementation Decision, 12.2.

EU Appeals the GSP Ruling

On 8 January 2004, the European Communities appealed the GSP panel ruling. The appeal notification (WT/DS246/7) argued *inter alia* that the panel erred in finding that:

- the Enabling Clause was an ‘exception’ to GATT Article I:1;
- the Enabling Clause did not exclude the applicability of GATT Article I.1; and
- the EC had the burden of proving that the drug arrangements were consistent with the Enabling Clause.

In case the Appellate Body upholds the panel’s conclusion that the drug arrangements violate the MFN obligation or finds that India’s claim is valid under the Enabling Clause (despite the procedural reasoning of the dissenting opinion), the appeal asked the AB to review the panel’s claim that the EC had failed to demonstrate that the drug arrangements were justified under the Enabling Clause. The EC challenged the panel’s interpretation of the term ‘non-discriminatory’ and the notion that ‘developing countries’ in para. 2(a) of the Enabling Clause meant *all* developing countries.

In related news, the European Commission announced on 7 January that Sri Lanka would be granted enhanced GSP benefits due to its adherence to the International Labour Organisation’s ‘core’ labour standards concerning forced labour, freedom of association, discrimination in employment and child labour.¹

Should India react to the announcement by acting on its threat to challenge the labour (or environmental) provisions of the EU’s GSP scheme if their application threatens its commercial interests (Bridges Year 7 No.8, page 6), the EU’s GSP scheme could face another WTO dispute even before the Appellate Body has ruled on the legality of the drug arrangements.

¹ In contrast, enhanced GSP benefits for Belarus could be – at least temporarily – withdrawn if the Commission’s investigation into “serious and systematic violation of freedom of association as defined in the relevant ILO conventions” substantiates the alleged violations.

Disputes in Brief

- **US: Byrd** Brazil, Canada, Chile, the EU, India, Japan, Korea and Mexico have requested a special meeting of the Dispute Settlement Body on 26 January to secure the right to retaliate against the US, which failed to repeal the Byrd Amendment (officially the Continued Dumping and Subsidy Offset Act) by the 27 December deadline set by the Dispute Settlement Body. Before the Byrd dispute, Ecuador was the only developing country to have sought (and been granted) trade sanctions against a developed country. Those sanctions were never implemented. The Byrd Amendment allows anti-dumping duties collected by the government to be redistributed to petitioning industries (Bridges Year 7 No.1, page 7).

- **US: FSC** Unless the US Congress passes legislation replacing the Extraterritorial Income Act (ETI) before March 2004, the EU will start phasing in retaliatory import duties worth more than US\$4 billion, approved by the WTO in August 2002. An initial tariff of five percent will be levied on a wide range of US exports. The tariffs will increase by one percent a month for a year, by when the EU hopes the tax regime will be reformed.

The Appellate Body condemned the ETI in 2002 as providing an illegal export-contingent subsidy. Its predecessor, the Foreign Sales Corporations (FSC) Act was ruled WTO-incompatible for the same reason in 1999.

- **US: 1926 Antidumping Act** A WTO arbitration is expected in late January on whether the EU may impose mirror legislation in retaliation to the US failure to repeal the 1916 Anti-dumping Act (Bridges Year 7 No.7, page 15).

- **EU: Sugar** Former WTO Deputy Director-General Warren Lavorel, Gonzalo Biggs of Chile and Naoshi Hirose from Japan have been appointed to the panel that will hear the complaint filed by Australia, Brazil and Thailand against the EU's export subsidies for sugar (Bridges Year 7 No.7, page 13). The ruling is not expected before late summer 2004 at the earliest.

Argentina Prepares to Challenge Ag Subsidies, EU Biotech Regulations

Argentine ministers have indicated that their government is likely to start WTO dispute settlement proceedings against agricultural subsidies that harm Argentina's exports after the expiration of the Peace Clause in January 2004. Argentina is also drumming up support for challenging new EU regulations on labelling and traceability of genetically engineered agricultural products.

Argentina's Economy Minister Roberto Lavagna said on 11 December that his country should be ready to use the expiry of the Peace Clause – which shielded most agricultural subsidies from dispute settlement challenges – “to the fullest” if no progress was made in the WTO's agriculture negotiations over the next few months.

According to industry officials, Argentina has already started assembling a case against the EU's dairy subsidies – worth US\$6 billion a year, half of which go to export support (a recent government study found that without EU subsidies Argentina could increase cheese sales by 266 percent, butter by 79 percent and powdered milk by 22 percent). According to Agriculture Secretary Miguel Campos, export subsidies are particularly pernicious as they push down international prices and thus impede Argentina's ability to increase its exports, about 60 percent of which are agricultural products.

No official announcement has yet been made, mainly due to the need to build a solid case proving that ‘serious injury’ to domestic industry is caused by subsidies – a key element in the ongoing disputes against the EU's sugar subsidies and US subsidies for upland cotton (Bridges Year 7 No.8, page 12).

EU Biotech Regime Targeted

Argentina is also concerned about the EU's traceability and labelling legislation for genetically modified crops, which according to Agriculture Secretary Miguel Campos could block US\$1 billion worth of Argentine soybean and soybean flour exports a year. Minister Campos said on 22 December that while his country was prepared to challenge the new laws on its own, his government had requested US authorities – increasingly under pressure from farmers' and manufacturers' associations at home to launch a fresh challenge of the EU's biotech regime – to help make a case at the WTO. Other countries, including members of the G-20 developing country alliance, have also reportedly been sounded out about a possible panel request.

In a separate dispute, Argentina, the US and Canada have already obtained a panel on the EU's approval processes for genetically modified organisms (GMOs), although the panelists have not yet been chosen. The three complainants claim that the suspension of considering/granting biotech product approvals, as well as several national marketing and import bans, are inconsistent with a number of provisions in the Agreement on Technical Barriers to Trade, and the Agreement on Sanitary and Phytosanitary Measures (Bridges Year 7 No.7, page 13).

However, a case against the EU's legislative framework would be far more complex than the approval processes dispute, not least because the EU has ratified (and Argentina has signed) the Cartagena Protocol on Biosafety. The Protocol, which entered into force in September 2003, regulates the transfer and handling of live GM organisms, and could allow countries to refuse GMO imports if their safe use cannot be guaranteed. The Protocol's trade aspects are expected to take centre stage at the first meeting of the Parties in late February.

The GMO issue is an extremely sensitive one in Europe, where member states have repeatedly stymied the Commission's efforts to get the *de facto* approvals moratorium lifted (see page 17). The Commission has argued that the new regime, years in the making and due to enter into force in April, would allow approvals to resume and thus make the current WTO dispute unfounded.

Antidumping Sunset Review Ruling Divides WTO Membership

The Appellate Body ruled on 15 December that the US use of ‘sunset reviews’ to prolong anti-dumping duty orders was WTO compatible. The verdict was severely criticised by Japan, the EU and Korea, who have been pushing for tighter disciplines in WTO negotiations on trade remedy rules.

The case was brought by Japan, which contested the basis on which the US continued an anti-dumping duty order on certain steel products. Under the WTO’s Anti-dumping (AD) Agreement, AD orders generally expire (i.e. ‘sunset’) not later than five years from their imposition. The US in particular has taken advantage of an exception contained in Article 11.3, which allows the duty to be maintained if domestic authorities determine that removing it “would be likely to lead to continuation or recurrence of dumping and injury.” Indeed, the US Department of Commerce (DoC) has found “likely dumping” in every single sunset review in which the US industry has participated.

The DoC action is based on a *Sunset Policy Bulletin* issued in 1998, which provides what the US claimed was ‘guidance’ as to when the DoC should conclude that dumping would be ‘likely’ to continue or recur if the order were revoked. The US argued that the *Bulletin* was not a ‘measure’ subject to challenge in WTO dispute settlement proceedings, because it was not mandatory. The Appellate Body ruled that there was “no reason for concluding that, in principle, non-mandatory measures cannot be challenged ‘as such’” but concluded that as the sunset review was applied in this particular dispute, the DoC had a sufficient factual basis for its conclusions concerning the likelihood of continuation or recurrence of dumping. The Appellate Body did, however, issue a warning that “provisions that create ‘irrebuttable’ presumptions, or ‘predetermine’ a particular result, run the risk of being found inconsistent.”

The decision marks the first time the Appellate Body has determined the scope of Article 11.3. At the March 2003 rules negotiating session, the US rejected out of hand a proposal (TN/RL/W/76) made by Japan and 13 other ‘Friends of Anti-dumping’, who aimed to restrict Members’ “expansive use” of the Article 11.3 exception in a way that turns the continuation of the order into a *de facto* practice (Bridges Year 7 No.2, page 9).

No End in Sight in Lumber Dispute

The Appellate Body confirmed on 19 January that Canada’s low ‘stumpage fees’ for trees harvested on government land constituted a subsidy and that other prices than those prevalent in the subsidising country could be used for determining the ‘benefit’ to subsidy recipients.

Overtaking the panel conclusion, the AB ruled that investigating authorities could use another benchmark than the price prevailing in the subsidising country if they had first established that ‘private prices’ in that country were distorted due to the government’s “predominant role in providing those goods”. It upheld the panel’s view that Canada’s stumpage programmes offered domestic loggers a “financial contribution” that could be considered a countervailable subsidy under the WTO’s Agreement on Subsidies and Countervailing Measures.

If the Appellate Body’s decision settled two key aspects of the decade-old softwood lumber dispute between Canada and the US, it left several other crucial questions open, most likely to be determined by future panels. Most importantly, the AB declined to rule on whether the comparison price chosen by the US (i.e. the private stumpage prices in US states bordering Canada) was WTO-consistent. It also avoided setting a precedent on the appropriate benchmark to be used by investigating authorities if they decided that private prices in the subsidising country were distorted due to government intervention.

The ruling on the final US countervailing duty determination was the first AB decision in seven WTO disputes initiated by Canada on the softwood lumber conflict. Three panel reports have already been issued and another are two expected in February 2004.

A panel report released to the parties on 19 December supported Canada’s claim that the US International Trade Commission (ITC) used a faulty method to calculate countervailing and anti-dumping duties for Canadian lumber. According to sources familiar with the report, the panel ruled that an unbiased investigation would not have reached the ITC’s conclusions that Canadian exports were set to increase substantially, bringing down prices and threatening US producers.

Pressing for a negotiated solution, the US has implied that its logging industry will keep petitioning for new ITC investigations, which could lead to endless litigation.

DSU Review Update

A new cycle of meetings on the Dispute Settlement Understanding (DSU) review will start on 26 January with a view to achieving draft agreement on amendments to the WTO’s dispute settlement rules by early April. The hope is that after two more months of discussion and legal review of the draft, Members would be in a position to conclude the review by its (already extended) deadline of end-May 2004.

Amendment proposals will be examined in four clusters: (1) pre-panel; (2) panel; (3) Appellate Body; and (4) compliance and implementation. The January session was expected to focus on the last cluster. Other sessions are scheduled for 24-25 February, 25 March, 22-23 April and 11, 24 and 28 May.

At the 18-19 December 2003 negotiating session, the Chair proposed a list of questions to guide issue-by-issue discussions, including whether an earlier establishment of panels should be facilitated and whether at least one developing country panelist should be appointed in disputes involving a developing country Member.

A Closer Look at the US Negotiating Proposal

On 11 January, US Trade Representative Robert Zoellick sent a widely-publicised letter to other WTO trade ministers laying out suggestions for the way forward in the Doha Round negotiations. Despite some indications of flexibility and a generally conciliatory tone, the document does not deviate from the fundamental market access orientation of US trade policy (see page 1). This article briefly surveys the main elements of the paper.

Agriculture

Export competition: In the only significant post-Cancun reversal, the letter reiterates the erstwhile US position that modalities for the agriculture negotiations must include an ‘understanding’ that export subsidies (and the subsidy component of export credit programmes) will be eliminated by “a date certain, with the exact date not set until there is a better sense of the overall package, including non-agricultural components.” This is a major departure from the 13 August 2003 EU-US joint text on agricultural modalities, in which the US abandoned its aggressive pro-liberalisation approach in favour of a compromise that both trade super powers could live with (see page 4). It also goes a step further than the Derbez text of 13 September, which only proposed a set date for the elimination of export subsidies for products of particular interest to developing countries, and a vague commitment to reduce “with a view to phasing out” export support for other products.

Domestic support: Ambassador Zoellick proposed ‘substantially’ lowering caps for most trade-distorting (Amber Box) support, as well as “disciplining caps on Blue Box support”. Both proposals were present in the Derbez text, which called for time-bound reductions in aggregate and product-specific Amber Box subsidies, as well as first capping Blue Box support at five percent of the total value of agricultural production between 2000 and 2002 and then applying annual linear cuts. The Zoellick letter does not mention the Green Box, which the G-20 has targeted for stricter disciplines.

Tariffs: According to Ambassador Zoellick, Members should be guided by three principles: (1) the need for “substantial openings in markets of developed and developing countries, especially those that are competitive in sectors of agriculture”; (2) a cap on high tariffs and significant growing access to create a basis for true access to markets over time in case a ‘blended formula’ still permits extremely high tariffs; and (3)

“a common [tariff reduction] methodology” capable of incorporating “different degrees of reduction of barriers and longer staging for developing countries that need more time to adjust.”

Before and at Cancun, numerous developing countries opposed the application of a ‘blended’ reduction formula¹ to their agricultural tariffs, arguing that, as a special and differential treatment measure, these should only be subject to linear cuts. On ‘Special Products’, the USTR admitted that Members’ ability to share a common reduction formula would depend on different treatment for a “very limited number” of Special Products for certain developing countries “concerned about harming rural development and subsistence farmers.” The Derbez text proposed giving developing countries “additional flexibility” in the linear cuts category – under conditions to be determined “to designate Special Products which would only be subject to a linear cut of a minimum of [...] % and no new commitments regarding tariff rate quotas”. The Derbez text would have exempted “very low” tariff bindings from reduction requirements.

No Special Treatment for Cotton

The US position remains unchanged: it refers the issue to the Doha Round agriculture negotiations, the results of which are to apply to *all* agricultural products. Somewhat vaguely the letter notes that such measures “can be combined with comprehensive economic reforms in individual countries and new technologies to offer additional opportunities for developing countries.”

Non-agricultural Market Access

Again, there is an emphasis on a blended formula implicitly applicable to all Members, although for “less competitive developing economies” the methodology “could give flexibility for sensitive items while enabling the WTO to proceed with an ambitious formula that significantly narrows the larger gaps in tariffs.” With regard to the controversial sectoral tariff cuts, Mr Zoellick suggested that “a middle ground” could perhaps be found “by defining an approach to ‘critical mass’ participation in order to find a balance between sharing responsibilities and providing appropriate flexibility for developing countries, especially the poorer and less-developed.”

Services and Singapore Issues

The brief section on services suggests adopting a “near-term goal of meaningful offers from a majority of WTO Members”, as well as the identification of sectors “that seem especially fruitful for synergies between developed and developing economies.”

The US never was particularly keen on developing WTO disciplines for three of the Singapore issues: investment, competition policy and transparency in government procurement. Accordingly, Mr Zoellick proposed to retain only the fourth, trade facilitation, as a subject for negotiations while keeping the door open on transparency in government procurement if others believed that the topic merited “ongoing engagement”.

S&D

While calling for a “reasoned discussion about the level of participation of various countries given the wide differences in current capacities to participate in the global economy”, the letter makes clear that the US retains its view that it will not be possible to design flexibilities for “countries or even types of countries or regions with special problems [...] if every provision automatically applies to some 100 or more countries – including some that are highly competitive in a sector.”

¹ A combination of linear cuts (with specified average and minimum levels) for a certain number of tariff lines, complemented by steeper ‘Swiss formula’ cuts for other products.

The FTAA: Time for Fairer, Greener Regional Integration

Carolyn Deere

At the Free Trade Area of the Americas Ministerial in Miami, trade ministers from the Western hemisphere achieved what proved elusive at the Cancun WTO Ministerial – a positive spin on the outcomes of the meeting. Two months later, the implications of this fragile compromise are becoming clearer.

Fraught with conceptual and political problems, the ongoing negotiations appear set to squander the original 1994 Summit of the Americas vision of hemispheric integration that would advance simultaneously on three policy fronts – social, economic and environmental. The Free Trade Area of the Americas (FTAA) negotiating framework still fails to address development coherently. Similarly, environment remains off the agenda – underlining the urgent need for a ‘trade and environment’ vision that better accounts for developing country needs. The 2003 Miami Declaration did strike some positive notes on transparency and participation, but there is significant room for improvement.

Neglected Development

The FTAA negotiations confront the political challenge of integrating economies at vastly different stages of development. The Western hemisphere is host both to some of the world’s poorest countries and to its greatest extremes of income inequality. Most governments in the region view international trade agreements as a vital means for generating the market access, investment and foreign exchange central to their development strategies. Developing countries are increasingly determined to address imbalances in the trade playing field, which can constrain both exports and domestic production, such as US agricultural protectionism, export dumping and the rise of non-tariff barriers to trade.

The Miami Ministerial saw a shift away from the ambition of a single undertaking across the nine negotiating areas¹ toward an ‘FTAA-lite’ – a framework which envisages agreement on yet-to-be-defined minimum standards across all areas combined with an opt-in/opt-out (plurilateral) approach to any higher commitments.

On the one hand, the more modest FTAA ‘lite’ approach signals a developing country success – led by Brazil – in resisting the imposition of a mercantilist US agenda, particularly on issues such as investment and intellectual property. This pushback leaves the US without the prize it covets most – access to the Brazilian market – and positions Brazil to consolidate its own Mercosur sub-region.

On the other hand, talk of the FTAA lite as a more ‘development-friendly’ approach seems premature. First, despite the warm, fuzzy talk of more technical co-operation and ‘flexibility’ to accommodate different needs and circumstances, most of the hard substantive issues have simply been pushed back to negotiating groups, which will pose exceptional challenges for the groups’ Chairs and for small delegations with limited negotiating resources. Second, the plurilateral approach, while providing some short-term relief, could also put developing countries in the position of signing on to deals – at some later stage – which they played little role in shaping.

Third, and perhaps most worrisome, is that the ‘lite’ framework has bolstered US resolve to achieve (or exceed) through a web of asymmetric bilateral and subregional trade arrangements the priorities that are proving too challenging in the regional context. The US has announced plans to open trade talks with six Latin American countries and continues to forge ahead with negotiations with five Central American nations (see page 16). In each case, developing countries negotiating independently are likely to be more vulnerable to US economic pressures. And, absent the ability to bargain collectively, opportunities to press the US to open its markets and to reduce subsidies are diminished.

Finally, a growing group of parliamentarians, academics and civil society groups from across the Americas is prompting governments to examine carefully the development impacts of trade

agreements and to take an approach to integration that focuses more explicitly on development, social and environmental objectives as the end goals, adopting elements from the European model with respect to assistance to capacity-building and social development programmes. Citing Mexico as an example, they raise concerns about the failure of significant export and foreign investment gains to translate into poverty reduction, employment growth or greater income equality. They stress that for developing countries the price for greater market access is often the sacrifice of ‘spaces’ needed for development and industrial policy tools – like government procurement – to build and maintain competitiveness, harness the economic opportunities that market access can bring, and to manage the distributive impacts of trade-induced structural economic changes.

Environment: The recurring casualty

In the face of US-centric environmental interests and a disregard for fears about economic costs, developing countries have long taken a defensive posture toward the ‘trade and environment’ issue. But even if they manage temporarily to resist environment discussions in the FTAA context, they will face US-led environmental pressures in bilateral negotiations: US trade law now requires environmental provisions in any trade agreement presented to Congress.

Now is the time for a shift in political strategy. By adopting a proactive three-pronged negotiating stance, developing countries could achieve ‘win-win’ benefits – on the economic and on the environmental front.

The first steps are procedural ones. Countries should agree to compose an Environment Negotiating Group of qualified government officials charged with ensuring that environmental issues are systematically addressed across the FTAA’s nine negotiating groups. Developing countries can then har-

Continued on page 14

ness the North's need to deliver to its environmental constituencies as a way to push the North on its own performance, to extract commercial and financial concessions to share developing countries' burden in upgrading their environmental performance, and to advance their market access interests.

In the area of market access, for example, negotiators could pursue zero tariffs on environmental services and goods (for instance to promote access to pollution-control and clean-energy technologies); an expansion of the definition of environmental goods and services to gain access for goods and services produced in an environmentally-friendly manner (such as sustainably-harvested, certified forestry products and organic agricultural goods); and the elimination of environmentally harmful subsidies, tariffs and tariff escalation in areas of particular commercial interest to developing countries (such as agriculture, energy, fisheries and forestry).

To facilitate preparations for these negotiations, trade ministries should designate a point-person for integrating environmental issues into negotiations and engage in trade policy consultations with non-trade ministries and with national civil society, including representatives of both in negotiation delegations. Each government should commit to conducting *ex ante* sustainability assessments of the potential positive and negative effects of both domestic trade policy reforms and those of trading partners (including consideration of the impacts that the North's failure to reform its trade policies can have on both developed and developing country environments and, conversely, the benefits reform could bring). To help developing countries advance this agenda, environmentalists – from North and South – should work to build analyses of the environmental and economic harm stemming from the North's economic and trade policies both in its own backyard – such as land degradation and fossil fuel intensive production in the United States – and elsewhere in the world.

Second, some elements of the trade-environment relationship are so tightly intertwined that it is now widely accepted that they should be dealt with in the main text of any trade agreement. To begin with, developing countries should negotiate for binding commitments from wealthier trad-

ing partners – contained within the core text of the agreement – to concrete targets, deadlines and modalities with respect to the provision of funds, technical assistance and capacity-building to governments and producers for environmental purposes.

The main text would also need to address several of the more common-place 'trade and environment' issues, such as:

- making clear that trade commitments and rules do not overrule existing international environmental agreements;
- placing the burden of proof on the party that challenges another party's environmental or health measures;
- discouraging countries from lowering environmental standards or relaxing environmental enforcement in order to enhance competitive advantage or attract foreign investment (including via a citizens' submission process);
- ensuring that any dispute-settlement process provides ready access to environmental, scientific, and technical expertise; and
- addressing alleged environmental non-compliance through dispute resolution efforts, dialogue and perhaps fines (rather than sanctions or other tools for withdrawing trade concessions).

Perhaps the most controversial issue to negotiate as part of the core text concerns environmental standards. In principle, there is growing acknowledgement that trade rules should defer to national environmental standards (as long as they reflect legitimate environmental policy-making and are transparent, based on scientific criteria, and applied non-discriminatorily to both domestic and foreign products). In practice, however, developing countries raise well-founded fears that the progressive upgrading of developed country environmental, health and consumer safety standards – particularly those based on production and processing methods – increases the costs of production and can devastate their producers' competitive advantage. The rub, however, is that Northern environmental standards and ecolabels proliferate by the day, and developing countries stand little hope of preventing them.

Developing countries could nevertheless use trade and environment discussions as an opportunity to extract a series of concessions related to standards, such as: extended implementation periods and concrete capacity-building for their producers to meet new standards; graduated application of standards to their products; the development of tools and processes for distinguishing between legitimate and protectionist standards, and compensation where new standards shut them out of valuable export markets. In the longer term, by meeting higher standards, developing country exporters could gain better prices for higher value-added products. In addition, by accepting ecolabels and standards based on PPMs, developing countries could acquire new tools with which to compete against developed country products and to challenge exports that rely on environmentally unfriendly production and processing methods (e.g., fossil fuel intensive production and land-degrading agricultural methods).

Finally, governments should commit to a parallel track of environmental negotiations (led by environmental agencies with the participation of trade and other officials) to complement efforts to strengthen national environmental performance and address environmental issues arising from the process of regional economic integration. The negotiations would focus on strengthening environmental co-operation across borders through six core functions:

- improved environmental data gathering and analysis;
- capacity-building, co-ordination, policy exchange, and sharing of 'best practices';
- promoting environmental compliance and public participation in environmental management (including a mechanism for citizen submissions and independent investigations relating to compliance with environmental legislation by governments and foreign investors);
- innovative financing to government, civil society and business to build environmental infrastructure, promote foreign investment and improve capacity to meet international environment and health standards;
- leveraging private-sector environmental co-operation, technology transfer, innovative financing, and implementation of environmental management and certification schemes; and
- facilitating the process of environmental reviews of trade agreements.

Several institutional fora are possible. One compelling option could be the establishment of a flexible Hemispheric Environmental Commission, whose priorities could be shaped by an annual meeting of regional environmental ministers (perhaps building on those currently hosted by UNEP). With a modest commitment of resources and official time and energy, governments could leverage a lean, decentralised public policy network of existing national environmental institutions, the secretariats of multilateral, regional, and bilateral environmental agreements, and other relevant regional organisations. For instance, the Tripartite Commission composed of the Organisation of American States (OAS), the UN Economic Commission for Latin America and the Inter-American Development Bank could provide a forum for ensuring coherence, not least through providing funds negotiated as a *quid pro quo* for adjustment and environmental upgrading. A greater role could also be given to the OAS Sustainable Development Unit in order to foster effective co-operation.

Openings for Civil Society Engagement

The Miami Declaration contains several long-awaited initiatives regarding engagement with civil society and transparency. It commits governments, for example, to improving mechanisms for the dissemination of information and for the publication and release of documents, including updated draft negotiating texts. But more can and should be done.

First, building on the Americas Trade and Sustainable Development Forum (ATSDF) experience – the first officially-sanctioned, non-business, NGO meeting held within the FTAA ‘security perimeter’ – governments should establish a permanent Trade and Sustainable Development Expert Advisory Group. Comprised of a rotating team of around 30 social and environmental policy analysts selected from a diverse range of NGOs, research centres and universities across the region, the group would be responsible for convening an annual forum and providing advice to representatives of the nine FTAA negotiating groups and the proposed Environmental Negotiating Group. The usefulness of such an Advisory Group to governments would depend on their commitment to a new mode of engagement – one in which ideas are discussed, considered and analysed rather than heard and dismissed.

However, policy experts (whether NGOs, think-tanks or universities) are but one part of civil society. Governments and civil society organisations should together establish an equally serious Regional Civil Society Forum to ensure that major stakeholder groups and representatives of civil society at large have opportunities to provide input. Accompanied by similarly participatory national consultation processes, the Forum should provide formal mechanisms for periodic consultations with government officials on substantive topic areas; host an annual meeting; and conduct regular public briefings on issues under negotiation in order to elicit ideas on how best to address them and to learn about concerns on the ground. Moving beyond the notion of mere consultation to a meaningful exchange, there should be mechanisms to ensure reasoned consideration of civil society organisations’ contributions and the incorporation of their recommendations.

In mid-January, the Summit of the Americas again brought leaders from the Western hemisphere together. Reflecting the fragility of the compromise reached in Miami, governments struggled to come up with a consensus statement regarding the future of the FTAA negotiations (see opposite). Indeed, many governments used the meeting to publicly register their dissatisfaction with the ‘Washington Consensus’ model on which the FTAA is based. The time has clearly come to move away from the old FTAA agenda toward a regional integration agenda that is both fair and sustainable.

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ENDNOTE

¹ The nine negotiating areas are: investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy.

Fracious Summit of the Americas Gives Nod to FTAA

It was only after prolonged debate that even a mention of the Free Trade Area of the Americas made it to the Declaration of Nuevo Leon signed on 13 January by the region’s leaders (except Fidel Castro as Cuba is not a member of the OAS). Brazil, Venezuela and Argentina led the push to keep the FTAA off the Americas Summit agenda, but in the end the 34 heads of state adopted a brief paragraph taking note “with satisfaction of the balanced results” of the Miami Ministerial Meeting and supporting “the agreement of ministers on the framework and calendar adopted for concluding the negotiations for the FTAA in the established timetable.”

Venezuela entered a reservation to the FTAA paragraph “because of questions of principle and profound differences regarding the concept and philosophy of the proposed model and because of the manner in which specific aspects and established timeframes are addressed.” In his speech, President Hugo Chavez called the FTAA “an infernal machinery that, minute by minute, produces an impressive number of poor.” Brazil’s President Luiz Ignacio (Lula) da Silva insisted on governments’ rights to pursue development-friendly social, industrial and agricultural policies, while Argentina’s Nestor Kirchner warned that “the principles followed to the letter in the 1990s, the disappearance of the state, privatisations at any cost, were what led to ... the bankruptcy of our economy.”

With regard to multilateral trade negotiations, American leaders affirmed their commitment “to advance the Doha Agenda in order to benefit all our economies, particularly developing economies, by promoting, among other measures, better access to markets and by eliminating export subsidies and by substantially reducing trade-distorting domestic support.”

They emphasised that liberalisation of trade in agricultural products was “an essential element” for the development of agriculture in the Americas and reaffirmed their commitment to trade negotiations to promote effective access to markets.

Regional Integration in Brief

- As this issue of Bridges went to press, Australian and US negotiators were meeting in Washington to iron out several major differences with regard to the free trade agreement they had originally hoped to conclude in December. Unresolved issues included US demands for changes in Australia's Pharmaceutical Benefits scheme and regulations on audio-visual content quotas, as well as Australia's restrictive quarantine regime for agricultural imports. On the Australian side, negotiators were pushing for better access for 'sensitive' agricultural products, as well as the US government procurement market. Both sides hoped to finalise the deal at a meeting between Australian Trade Minister Mark Vail and USTR Robert Zoellick on 26 January.
- The US was also scheduled to conclude negotiations with Morocco by end-January. According to negotiators on both sides, agriculture remained a 'tough issue', with Morocco seeking to protect its wheat, pulse and meat producers, as well as requesting better access for its textiles.
- The next round of negotiations between the South African Customs Union (SACU, i.e. Botswana, Lesotho, Namibia, South Africa and Swaziland) and the US will take place in February 2004. SACU is seeking to obtain special and differential treatment for its poorer members, as well as concessions on US agricultural subsidies and trade remedy practices. In February, the two sides are expected to start drafting 'negotiated text' with a view to concluding the FTA by end-2004.
- Despite Brazil's WTO dispute on the EU's sugar subsidies and Argentina's plans to challenge the Union's dairy support and biotech rules (see page 10), both sides in the EU-Mercosur free trade area talks seem confident that negotiations can conclude on schedule next October. The latest round held in early December highlighted difficulties, *inter alia*, over EU demands for the inclusion of animal welfare and for a reference to 'highest international standards' in intellectual property protection.

Costa Rica, US Still to Finalise CAFTA

On 17 December 2003, El Salvador, Honduras, Guatemala and Nicaragua concluded their negotiations with the US on the Central American Free Trade Area (CAFTA). Costa Rica said it needed more time to study – and respond to – a last-minute US request for opening its insurance sector.

Negotiations between Costa Rica, Central America's largest economy, and the US resumed on 5 January and were still ongoing when this issue of Bridges went to press. Costa Rican negotiators were attempting to gain better access to the US textiles and agricultural markets to balance potential concessions in opening up state insurance and telecommunications monopolies. In return for accepting less than hoped for improvement for its sugar exports, Costa Rica was also seeking to protect local rice, chicken and pork producers.

Sugar and Textiles

Costa Rica is unlikely to get a better deal on sugar than the one negotiated by the other CAFTA countries. That agreement immediately expands the duty-free sugar tariff quotas for El Salvador, Guatemala, Honduras and Nicaragua by some 75 percent (from 111,000 tonnes to 200,00 tonnes), with the quotas growing by two percent annually for the next 15 years. However, even after the 15-year period, sugar imports from the four Central American countries will total only about 1.4 percent of the US market. Out of quota tariffs will not be lowered. In addition, a special safeguard mechanism would allow the US to regulate sugar imports if they threatened the US market, although the exporting countries would need to be compensated.

The textile market access agreement finalised between El Salvador, Guatemala, Honduras and Nicaragua allows 'cumulation' to the extent that certain categories of apparel manufactured in Central America from Mexican or Canadian fabric will enter the US duty-free under CAFTA rules of origin. The deal also offers 'tariff level preferences' (TLPs) for certain undergarments and lingerie items made with Asian yarn and fabric. Nicaragua secured an enhanced TPL for at least five years to make up for its lower level of development. In addition, forty-seven items were included in a 'short supply' list, meaning that products containing such components from third countries will be considered as originating in the CAFTA.

While sugar (and other agricultural products) and textiles have captured the lion's share of media coverage, many vital elements of the CAFTA remain shadowy. These include, *inter alia*, investment provisions, intellectual property rights, the environment chapter, services concessions and government procurement. The Office of the United States Trade Representative was to post the entire draft text of the CAFTA agreement on its website <http://www.ustr.gov/> before the end of January, most likely after the agreement had been notified to Congress.

Difficulties Ahead

Many representatives of sugar-growing and textile-producing US states have vowed to oppose the treaty's ratification in Congress. Others have severely criticised the CAFTA's incomplete environment and labour provisions (Bridges Year 7 No.8, page 13). Senator Max Baucus, for instance, said the announcement of the deal's conclusion was "premature" and called for environmental and labour co-operation agreements to include monitoring by objective international or regional organisations "to assure that standards in the region are, in fact, improving." The Congressional vote is likely to take place in the early summer at the earliest.

On the Costa Rican side, chief negotiator Anabel Gonzalez has warned that without further US concessions on agricultural and textiles market access, her country's law makers would not be able to pass the CAFTA due to fierce opposition from trade unions affiliated with the state-owned telecom and insurance companies.

In related news, free trade negotiations between the Dominican Republic and the United States started on 12 January. Only three rounds of talks are scheduled before a deal is struck allowing the largest Caribbean Basin economy to join the CAFTA some time next spring.

African Experts Outline Trade Priorities

In late November, African trade negotiators and officials, as well as trade experts from around the world, held a meeting aimed at assisting African countries in developing and refining their strategies for post-Cancun negotiations.¹ Highlights from their conclusions are excerpted below.

Agriculture

While the Derbez text, along with other inputs, could serve as a basis for restarting the negotiations on agriculture, imbalances in the Annex on Agriculture need to be redressed, particularly with regard to the formula to be applied for tariff reductions; trade-distorting agricultural support measures; modalities for providing flexibility to developing countries to deal with strategic products and food security and other developmental aspects of agriculture; and modalities for tackling the issue of special and differential treatment and erosion of preferences.

The resolution of the cotton issue is one of the critical aspects of the current round of multilateral trade negotiations, and there is a need to keep the Cotton Initiative as a separate stand-alone issue rather than being subsumed in the talks on agriculture.

Non-Agricultural Market Access

The “non-linear” formula proposed for tariff reduction would create serious problems for many African countries, particularly as regards its impacts on Africa’s industries and government revenues. If it does not prove possible to remove the Derbez text’s Annex B paragraph 6 on sectoral initiatives, the approach should not be mandatory, and the scope and choice of sectors should take into account the sensitive sectors of African economies.

Further trade reforms should take into consideration the role of tariffs as an instrument of industrial policy in many African countries, which should be allowed to bind tariffs at rates and levels commensurate with their levels of development. Any agreement on modalities should take into account the implications of tariff reductions on preferences for developing countries currently enjoying preferential treatment in developed country markets.

Singapore Issues

The proposed opt-in and opt-out approach for dealing with the Singapore Issues presents a danger as it would inevitably imply the creation of a two-tier WTO. It is also of concern that

while African countries are resisting agreement on multilateral frameworks on these issues in the WTO, they remain under pressure to agree to them in the Economic Partnership Agreement talks with the EU and other bilateral trade negotiations.

Development Issues

The Derbez text does not reflect the positions taken by African countries prior to or at Cancun, particularly with regard to Special and Differential Treatment (S&D), where the items proposed for “early harvest” are neither of economic value nor provide policy space for African countries. The meeting recommended the replacement of paragraph 12 of the Derbez Text with the African Group proposal, WT/MIN(03)/W/13 dated 11 September 2003. Modalities must be found for resolving the impasse in the negotiations on S&D and implementation-related issues, which are fundamental to Africa’s integration in the global trading system.

¹ The meeting was organised by the Economic Commission for Africa in partnership with the African Union and the Government of Ghana on 28-29 November 2003, in Accra, Ghana.

EU Authorisation for GM Corn Postponed Again, ‘Unique Identifier’ System Notified to the WTO

In a setback for the European Commission, experts from EU member governments returned an evenly split vote in December on whether to authorise the first import of a genetically-modified agricultural product since 1998.

The decision is now likely to revert to the Commission, which is expected to approve the application in order to demonstrate that the GMO approval process is back on track after the adoption of new regulations on traceability and labelling last September (Bridges Year 7 No.5, page 22). Member states must start applying the legislation by 18 April 2004.

The strain of sweet corn under consideration received a favourable scientific risk assessment more than five years ago. However, the pending decision only covers the variety as a fresh, canned or frozen product for human consumption rather than cultivation. Approvals for cultivation are expected to be much trickier due to certain member states’ continued concern about ‘co-existence’, i.e. preventing contamination between conventional and GMO crops. Current legislation leaves it up to member states to establish their own co-existence measures, but Austria and Luxembourg are pushing for EU-wide rules before resuming approvals.

In related news, the Commission has adopted a draft regulation on a system that will assign a ‘unique identifier’ composed of letters and digits to each GMO approved for use in the EU.

To ensure accurate tracing and labelling of GMOs contained in food and feed products throughout the production and distribution chain, operators must provide documentation listing the codes for individual GMOs that were used to constitute the original raw material for products intended for food, feed or processing.

The draft regulation was notified to the WTO on 8 December as a measure that completes the EU’s regulatory framework on the authorisation, labelling and traceability of GMOs. The Commission also noted that the regulation followed OECD guidelines on unique identification and took account of the requirements of the Cartagena Protocol on Biosafety with regard to the specification of the identity of GMOs.

Energy – A Link Between Russia's WTO Accession and the Kyoto Protocol

Malena Sell

Russia holds the key to the entry into force of the Kyoto Protocol. Once it ratifies, the Protocol becomes operational, and a host of new projects are expected to flow to the country, helping upgrade its dilapidated energy and industrial system. Yet, Russia is stalling.

In a different set of negotiations, Russia is inching towards WTO accession. A major stepping stone on the way is its dual energy pricing system – under which gas and electricity are sold domestically at prices four to five times below export prices – a practice many of its trading partners consider an unacceptable indirect subsidy.

Officially, the talks are not linked. But in both processes, access to abundant fossil fuel energy as the basis for economic growth is at centre stage. In order to tweak the path of Russia's future growth into a more sustainable direction, looking at the processes in parallel may help point to some sorely needed new solutions.

The Kyoto seesaw

Climate negotiators returning home from their most recent annual meeting in late 2003 reported back on rather meagre results. The main reason was that Russia's ratification of the Kyoto Protocol, which sets quantified reduction targets for emissions of greenhouse gases, remains as uncertain as ever. After the US pulled out in 2001, Russia's ratification alone can trigger the Protocol's entry into force.

Many observers have been puzzled as to why Russia, which is expected to benefit financially by selling credits under a Kyoto emissions trading scheme, is stalling. Parts of the puzzle can be found in the fact that, with the US out of the game, Russian gains from trading are likely to be much smaller than earlier projected. President Putin's economic advisor Andrei Illarionov has been stressing that the Protocol might hamper future opportunities for economic growth and, following the US line, questioned why Russia should make any commitments if large developing countries remain exempt.

In terms of timing, President Putin is, in any case, expected to hold off on a decision until after the Presidential elections in mid-March this year. Other issues highlighted as

affecting the decision include the heavy Russian bureaucracy, or pure brinkmanship. Observers have also pointed to possible linkages to other issues, such as Russia's WTO bid.

Russia's long road to the WTO

While the talks in Russia's ten-year WTO accession process cover a host of areas, its dual energy pricing system has proved a particularly difficult element. Before completing its bid, Russia has to clinch bilateral deals with WTO Members that so request. The EU in particular is asking Russia to abolish its low domestic gas and electricity prices, arguing that they amount to a *de facto* subsidy to industry, providing an unfair advantage over foreign competitors. The price differential is particularly marked in the energy-intensive fertilizer, steel and aluminium sectors.

Moscow argues that dual energy pricing is not prohibited under WTO agreements, and that it has the sovereign right to govern the use of its natural resources. Maxim Medvedkov, Russia's chief negotiator for the accession talks, claims that as long as the cheap energy is available in Russia to both foreign and domestic firms, the dual pricing system is by no means discriminatory.

Finding a lower-carbon path

The low energy prices that President Putin has defended as a natural asset and Russia's comparative advantage serve as a disincentive for technological change and the development of new, less greenhouse gas intensive processes. Interestingly, it is lobbyists from the EU fertiliser industry that have mobilised around the issue of the dual energy prices in Russia's WTO bid. Green NGOs have focused on the climate regime, pointing to the projected influx of new technologies through joint projects under the Kyoto Protocol, which would allow Russia to set off on a lower-carbon path – eventually reducing the need for the low energy prices.

While the benefits flowing from the emissions trading scheme may not be as large as initially anticipated, these are still likely to be significant. A number of projects are already underway, and many in the Russian business community are speaking up in favour of the Kyoto Protocol. Especially those in the business of energy efficiency, renewable energies and environmental services can expect a serious boost under the Protocol.

Time to bargain across regimes?

While both Brussels and Moscow maintain that the two sets of negotiations are not linked, this assertion seems peculiar. The crux of both – access to cheap and abundant fossil fuel energy to drive economic growth – represents two different sides of the same coin. Meetings and statements on climate change and on Russia's WTO bid have tended to take place almost back to back.

The time may not yet be ripe for much bargaining across regimes, at least not when it comes to bargaining between complex beasts such as the Kremlin and the European Commission. However, it seems there would be room for making some key links at a time when the climate regime is at peril. Kyoto implementation in the EU – the only real international driver – is already off track, and if Russia fails to ratify, those EU constituents that oppose the Protocol might get the upper hand.

In this regard, if Russia signals it wants to go ahead with Kyoto and set out on a path where economic growth can be decoupled from growth in greenhouse gas emissions, perhaps the EU could take a more conciliatory approach on the issue of dual energy pricing, helping Russia instead to build a sounder energy system using the market-based Kyoto mechanisms. On the other hand, if Russia does not signal any intention to ratify the Protocol, why should the EU let Russia off the hook on its below-market energy pricing in its WTO entry negotiations?

Will Cotton Survive Endless WTO Debate?

Nadine Keim

The December 15 deadline passed at the WTO with no encouraging signs regarding the will of Member countries to find a specific and expeditious solution to the pressing issue of cotton. The four African countries that launched the Cotton Initiative have no other choice than to firmly defend one of the rare products that allows them to benefit from the multilateral trading system.

Discussions on cotton have not advanced since Cancun despite Benin, Burkina Faso, Mali and Chad succeeding in placing their initiative squarely on the negotiating table there.¹ The Chair of the General Council, Carlos Pérez del Castillo, recognised in his statement of 15 December that the issue required further work.² He noted that three crucial questions were still pending: Should cotton be part of the larger agricultural negotiations? What were the real effects of domestic support on international trade in cotton? What financial and technical assistance would be appropriate for the affected countries and what institution should provide it?

These questions remain unanswered despite the fact that cotton was one of the four priority issues under informal consultation after the failure of the Cancun Ministerial Conference. During the consultations, the four African countries strove to give clear signals, showing a willingness to relaunch the Doha Round, as well as to open negotiations on cotton. They reformulated their first initiative to take into account the reactions from other Members.³ It is now clear that they face stiff opposition to their request and must gear themselves for a long and difficult battle at the WTO.

The Points of Contention

Several significant divergences remain between the African countries and Members who subsidise their cotton producers. First, most Members do not wish to treat cotton separately from the agricultural negotiations underway at the WTO. This position is logical *per se* as cotton is an agricultural product affected by problems related to subsidies. Nevertheless, integrating cotton in the agriculture negotiations carries the risk of the issue losing its specificity. An agreement on an across-the-board reduction in agricultural support will not take into account the special interests of economically weak countries entirely dependent on a single export product. As a consequence, African countries need a separate decision on cotton, whether in the form of a stand-alone declaration or a special provision in the Agreement on Agriculture.

Second, many countries favour dealing with the question of compensation through a development institution rather than the WTO. They want to divide the cotton issue in two: the trade aspect related to subsidies on the one hand and the development dimension with financial indemnities on the other. However, the creation of a compensation mechanism would only be of interest if it were directly linked to the dysfunctions of the international trading system. Otherwise a mechanism outside the WTO risks becoming a substitute for an effective and durable reform to the perennial problem of subsidisation. This is why African countries feel strongly about linking the concept of compensation to WTO commitments.

Finally, the urgency of the situation has become less clear-cut due to the substantial rise in cotton prices in the past few months. However, compensatory measures are more vital than ever. With the Cancun failure, negotiations are likely to last much longer than initially foreseen. In addition, African countries need other WTO Members to take seriously the distorting effects of their subsidies on cotton trade and to make a gesture in their favour. This should be done in a timeframe that takes into account the precarious situation of cotton producers in least-developed countries.

The Objectives of the African Countries

For all these reasons, African cotton producing countries continue to uphold the goals they announced pre-Cancun. They seek to obtain:

- special treatment for cotton. Cotton is a specific product even among primary commodities. It is of vital interest to numerous least-developed countries, most of which have no other

export products. Cotton is also the most highly subsidised Northern product, and the elimination of these subsidies will essentially benefit the least-developed countries;

- the establishment of a market undistorted by cotton subsidies. Disciplines should be clearly defined: all export subsidies and domestic support must be eliminated. The only exception could be support decoupled from production (Green Box) on condition that the payments are subject to precise criteria; and
- a timely decision on cotton. While awaiting the elimination of production and export subsidies, a transitional support mechanism is essential to allow least-developed countries to continue the reform of their cotton sectors. Cotton remains their only means of generating the financial resources necessary for investment in the sector and rural development in the region.

The EU's Gestures

Together with the US, the European Union is directly targeted by the Cotton Initiative since it subsidises Greek and Spanish cotton producers to the tune of • 800 million a year. EU subsidies per kilo are the highest in the world. In its November 2003 position on the relaunch of the Doha Round, the EU proposed treating cotton in the context of the agriculture negotiations,

Continued on page 20

World Cotton Supply and Distribution

Season	2002/03	2003/04	2004/05
Production*	19.259	20.27	21.81
Consumption*	20.966	20.68	20.64
Exports*	6.393	6.65	6.40
Ending Stocks*	8.516	8.11	9.28
Cotton A Index	55.70**	65**	53**

* Million tonnes

** US cents per pound

Source: International Cotton Advisory Council
December 2003

but in a specific manner and with a firm deadline for implementation.

In parallel, the European Commission recently adopted proposals for reforming the cotton sector.⁴ While most payments are to remain at their present level, support will be partially decoupled from production and an amount will be reserved for rural development. The Commission proposes to allocate 60 percent of support to direct income aid to producers ('single farm payments'), while 40 percent will remain linked to the amount of cotton produced by hectare ('area payments'). The first measures fall into the WTO's Green Box category while the area support corresponds to the Blue Box. About • 100 million are foreseen in support of rural development in cotton producing regions. The European Parliament will debate the Commission's proposals in February 2004 and the final decision is expected later in the spring at the earliest.

Will these proposals have a real impact on African cotton producers? According to the European Commission, the reform would reduce the effect of European cotton on world markets through shifting current compensatory payments to a combination of support measures that will have no or minimal distorting consequences on trade. Other analysts note that the reform may not diminish European cotton production due to two main reasons: it does not foresee a reduction of the level of financial support measures, and the decoupling is only partial, as well as unlimited in time.

Several European countries have already prepared amendment proposals aiming at completely decoupling support, or at least accelerating the timeframe of the process. A recent World Bank study on agricultural subsidies confirms that decoupled support only acts as a structural adjustment mechanism if it fulfils certain conditions.⁵ Notably, all support must be decoupled and time-limited in order to give a credible signal to producers to undertake reforms.

Cotton is a crucial test of whether the WTO is capable of taking into consideration the vital development interests of those of its Members that are the most disadvantaged in the world.

For its part, France hopes to rally the support of other EU members for its own initiative in aid of West and Central African cotton producers.⁶ In addition, several European development cooperation ministers are studying possibilities for improving development aid for the cotton sector. They are also examining ways to boost capacity-building in the area of multilateral trade negotiations. African countries do indeed sorely lack even elementary means to follow the Cotton Initiative effectively: their decision-making and consultative mechanisms are not organised according to the needs of WTO negotiations. They also lack information, means of communication and analytical and strategic capacities. European gestures seem to be multiplying and African countries are setting great store in them. However, a wide gap remains between rhetorical promises and action at the political level.

US Opposition

Although European cotton subsidies have less of an impact on world markets than those of the United States, EU reform would send an important signal to other WTO Members. Only 'serious and credible' change at EU level would have a chance of influencing Washington and its powerful cotton lobby. For the time being, the US position seems unchanged since Cancun. The US recognises the importance of cotton for poverty elimination but does not appear ready to discuss reduction in cotton support in a sectoral manner, i.e. outside the agriculture negotiations. In addition, it has shown no willingness to address either the effects of subsidies or the question of compensation despite the fact that its subsidies are the most significant in the world, reaching up to US\$3.3 billion per annum.

So, nothing was achieved in Cancun or the months that followed. Even if it is improbable that the WTO can ignore cotton in the future, there is a clear danger of the issue losing its specific character as the subsidising powers have every incentive to dilute the question within the overall negotiations. Another approach would be to hide behind 'beautiful promises' the fact that subsidising Members are not in a position to offer a concrete response to the Cotton Initiative. African countries' only option is to continue to fight for specific and urgent measures, linking them to the trade distortions caused by subsidies and the precarious situation of their cotton growers. Future will tell whether the WTO is capable of taking into consideration the vital development interests of those of its Members that are among most disadvantaged of the world. In this respect, cotton presents a crucial challenge to the multilateral trading system.

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ENDNOTES

¹ WTO documents TN/AG/GEN/4 of 16 May 2003 and TN/AG/GEN/6 of 4 August 2003.

² Statement by the Chairperson of the General Council of WTO, *Key issues clearer, possible solutions become visible*, 15 December 2003.

³ WTO document WT/GC/W/516 of 7 October 2003. This negotiating proposal on cotton would commit countries to take, within three months, specific measures including the elimination of export subsidies within three years and the removal of production subsidies within four years starting in 2005. In addition, a transitional fund to support the cotton sector in least-developed countries would be created, and a working group would be established under the supervision of the WTO Director-General to elaborate the modalities for financing it.

⁴ European Commission document IP/03/1559 of 18 November 2003, aimed at reforming the tobacco, olive oil, cotton and hops sectors. These proposals are part of the vast Common Agricultural Policy (CAP) reform launched in June 2003 with the aim of decoupling subsidies from production. The reforms would enter into force in 2005 and be subject to a report in 2009. They would be revenue-neutral in relation to previous years.

⁵ World Bank. *Global Economic Prospects 2004*. Chapter on agriculture.

⁶ President Chirac announced this initiative during his visit to Mali on 24 October 2003. It has three main dimensions: correcting external market-distabilising factors, consolidating African cotton production streams and elaborating a framework to respond to volatile exchange rates.

Access to Drugs under TRIPS: A not so expeditious solution

Carlos Correa

The Doha Declaration on the TRIPS Agreement and Public Health, adopted in November 2001, was one of the most important international developments in the area of intellectual property rights in the WTO since the adoption of the TRIPS Agreement in 1994. This article examines the interim implementation of the Declaration's paragraph 6, which seeks to respond to the needs of countries that cannot take advantage of compulsory licensing due to insufficient or inexistent domestic manufacturing capacity.

According to the Declaration, in cases of conflict between intellectual property rights (IPRs) and public health, the former should not be an obstacle to the realisation of the latter. In affirming that the TRIPS 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” (paragraph 4), Members have developed a specific rule of interpretation that gives content to the general interpretive provisions of the Vienna Convention on the Law of the Treaties on which GATT/WTO jurisprudence has been built.

The confirmation that the TRIPS Agreement has room for flexibility at the national level, namely with regard to the determination of the grounds for compulsory licensing and the admission of parallel imports, has important political and legal implications. It indicates that the pressures exerted by some developed countries to impede the use of available flexibilities run counter to the spirit and purpose of the TRIPS Agreement, especially in the light of the recognised “gravity of the problems”¹ faced in the area of public health by developing and least-

developed countries. In legal terms, such confirmation means that panels and the Appellate Body must interpret the Agreement and the laws and regulations adopted to implement it in light of the public health needs of individual Member states. Therefore, in cases of ambiguity, or where more than one interpretation of a provision is possible, panels and the Appellate Body should opt for the interpretation that is effectively “supportive of WTO Members’ right to protect public health”.

Paragraph 6 of the Doha Declaration instructed the Council for TRIPS to address a delicate issue: how can Members lacking or with insufficient manufacturing capacities make effective use of compulsory licensing? It requested the Council for TRIPS “to find an expeditious solution to this problem and to report to the General Council before the end of 2002”.

On August 30, 2003, an agreement was reached by the General Council² for the implementation of paragraph 6. This ‘solution’ is based on a compromise developed by the Chair of the Council for TRIPS and on a ‘Statement’ by the Chair of the General Council requested by the US as a condition for accepting the compromise. The Decision takes the form of an *interim* waiver, which allows countries producing patented products under compulsory license to export the products to eligible importing countries, provided that a compulsory license has also been granted in the importing country and that various other conditions are met. The waiver is set to last until the TRIPS Agreement is amended.

The conditions established in both the text of the Decision and the Statement for allowing exports of patented medicines, are hardly compatible with the idea of an ‘expeditious’ solution: in order to qualify for im-

Conditions for the operation of the ‘solution’ under paragraph 6

- if a prior request for a voluntary license does not apply, an entity in the importing country must seek a voluntary license from the patent owner;
- failing this, an application for a compulsory license must be submitted and the license be obtained in the importing country;
- the importing country must assess its generic industry’s capacity to produce the medicine locally;
- if capacity is lacking or insufficient, it must notify the WTO of its decision to use the paragraph 6 ‘solution’;
- the interested importing country or party must identify a potential exporter;
- the prospective exporter must in turn seek a voluntary license on commercially reasonable terms for a commercially reasonable period of time;
- if the voluntary license were refused, the potential exporter must seek a compulsory license (to be granted on a single-supply basis) from its own government;
- if a license is granted, the exporter will have to develop the chemistry and formulate the drug (when produced by the licensee for the first time), and to investigate the shape, colouring, labelling and packaging of the patent-holder’s product in the importing country in order to differentiate the product for export;
- the exporter will also need to seek product registration and prove ‘bio-equivalence’ and ‘bio-availability’, when required by national law;
- if in the importing country exclusivity (as promoted by the US and the EU) is granted with regard to data submitted for the registration of a medicine, the supplier will have to obtain the data holder’s authorisation before using the information, or to develop its own studies about toxicity and efficacy, unless the use of such data is included in the compulsory license;
- before shipment begins, the licensee must post on a website information about the quantities being supplied and the distinguishing features of the product; and
- the exporting Member must notify the Council for TRIPS of the grant of the license, including the conditions attached to it.

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porting drugs under this mechanism, twelve exacting steps must be followed.³ The process described in the box on page 21 must be fulfilled over and over in the exporting country since only the amount necessary to meet the needs of one particular eligible importing Member may be manufactured under the licence, and the entirety of this production shall be exported to the Member that has notified its needs to the Council for TRIPS.

Additional Requirements

In addition to all these steps, and as a precondition for the operation of the system, eligible countries may have to amend their national patent laws to allow the granting of licenses for export, or for import. The waiver of the obligations under article 31(f) and (h) only means that a *WTO Member* will not complain against another Member using the system, but it does not prevent a *private party* from blocking the exportation or importation of drugs, if the national laws do not specifically permit such exports or imports under compulsory licenses on the terms of the Decision.

Although the intent of the majority of WTO Members in drafting the Decision was to facilitate the export of affordable drugs produced under compulsory license, the Chair's Statement added further constraints to the already cumbersome Decision. The Statement indicates that the special conditions (as set out in paragraph 2(b)(ii) of the Decision) apply not only to formulated pharmaceuticals but also to active ingredients produced and supplied under the system and to finished products produced using such active ingredients. The Statement also adds (without any supporting evidence, that it "is the understanding of Members that in general special packaging and/or special colouring or shaping should not have a significant impact on the price of pharmaceuticals". In addition, it introduces a monitoring system aimed at facilitating challenges to another Member's use of the system, including on how the Member in question has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector.

The Statement also indicates that Members recognise that the system "should be used in good faith to protect public health and,

without prejudice to paragraph 6 of the Decision, not be an instrument to pursue industrial or commercial policy objectives". This ignores that the only sustainable way of providing a credible alternative to the supply by patent owners is the creation of incentives for other commercial companies to supply the required drugs and, ultimately, the development of a viable domestic industry.

In order to be effective, a solution to the problem described in paragraph 6 should be economically viable, and not only diplomatically acceptable. This agreement fails to provide an effective means of increasing competition and lowering drug prices. The adopted 'solution' is so cumbersome for potential suppliers that they will hardly be encouraged to use the Decision, "because it is so designed that no generic manufacturer would be able or willing to comply with its provisions".⁴ Such a complex and burdensome system does not create a serious risk to the patent owners' position; hence, they will have little or no incentive to lower their prices or to negotiate voluntary licenses.

In sum, the adopted 'solution' is largely symbolic in view of the multiple conditions required for its application. It is unlikely to lead to any significant increase in the supply of medicines, particularly for the poor. In any case, developing countries now face two important tasks in relation to paragraph 6:

- developing an interpretation of the Decision and Statement that clarify both the constraints and the flexibilities for the application of this 'solution. Many ambiguities in the text, as well as the legal status of the Statement, need to be clarified.
- elaborating and proposing a *permanent* solution to the problem affecting countries with limited or no pharmaceutical manufacturing capacities, in order to reach an amendment of the TRIPS Agreement. Such an amendment may be based on a fresh conceptual start, including a possible clarification to Article 30 of the Agreement. It should aim at a simple and effective solution both in legal and economic terms.

Finally, it should be noted that paragraph 6 only describes *one of the problems* arising in the context of the TRIPS Agreement with regard to public health. The protection of pharmaceutical IPRs will continue to pose significant challenges to public health policies in developing countries, even if the agreed 'solution' were proven to be viable and effective. Controversies are likely to continue, especially as developed countries seek TRIPS-plus protection via interpretation⁵ or the negotiation of bilateral and regional agreements,⁶ and as patents on marginal or trivial developments (sometimes called 'ever-greening' patents) are granted – and used – to block or delay generic competition.⁷

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ENDNOTES

¹ See paragraph 1 of the Declaration.

² See IP/C/W/405.

³ See, e.g., Brook K. Baker, "Vows of Poverty, Shrunk Markets, Burdensome Manufacturing and Other Nonsense at the WTO", *Health GAP*, Sept. 27, 2003.

⁴ Comments by D. G. Shah, Indian Pharmaceutical Alliance (mail of August 26, 2003, on file with the author).

⁵ The USTR, for instance, interprets that article 39.3 of the Agreement requires the granting of an exclusive period of protection for data submitted for the marketing approval of pharmaceuticals and agrochemicals.

⁶ See, e.g., the recent US-Chile and US-Singapore bilateral agreements.

⁷ See, e.g., Carlos Correa (2001), *Trends in drug patenting. Case studies*, Corregidor, Buenos Aires.

Asian Experts Target Key Regional Trade and Environment Priorities

At a 14–15 January consultation in Sri Lanka, twenty regional experts in trade and environment met to discuss the central issues of concern to South and Southeast Asia on environment in the WTO. They looked not only at the major regional priorities in the ongoing Doha Round negotiations, but also envisioned elements of a proactive trade–environment agenda for developing countries in the WTO for the future.

At the Sri Lankan consultation, which included a diverse range of academics, non-governmental organisations (NGOs), and representatives from regional capitals and Geneva-based trade missions, participants identified four broad priority areas for the South/Southeast Asian region in trade and environment at the WTO:

- agriculture;
- environmental measures;
- intellectual property rights (IPRs), risk and precaution; and
- environmental goods and services.

In addition to listing the key areas of concern in each of these, they also identified knowledge gaps where further research, analysis and capacity building were essential. Further cross-cutting themes included special and differential treatment, technology transfer, and operationalising trade–environment links at the bilateral and regional levels.

For instance, the impact of northern agricultural subsidies on both price of commodities and local environments in developing countries was seen to be poorly understood, as were the impact of developing countries' own subsidies on domestic agriculture. On environmental measures, participants identified the need for a compendium of all imposed environmental standards, the necessity for a means to keep updated on emerging ones, and the importance of developing country participation in international standard-setting bodies.

A paper presented at the meeting by Simon Tay of the Singapore National University advocated the urgent need for Southern countries to advance a positive agenda on trade and environment. Dr Tay argued that post-Cancun, focus will and should shift to regional and bilateral levels, where links and experience can be drawn upwards from the regions to the multilateral processes at the WTO. For instance, talks on harmonisation of standards in the Association of Southeast Asian Nations (ASEAN) and in the South Asian Free Trade Area (SAFTA – scheduled for 2006) could lend these countries experience that they could use to their advantage in related discussions with other WTO Members.

The Southern Agenda

The informal deliberations in Sri Lanka formed part of the 'Southern Agenda' project. Now in its second phase, this is an ongoing initiative that aims to assist developing countries to bring forward their own environmental concerns as these relate to the multilateral trading system. The Southern Agenda is a partnership between ICTSD, the International Institute for Sustainable Development (IISD) and a group of regional NGOs (the RING) active in the area of sustainable development. The Sri Lankan meeting was the third in a series of six such meetings that aim to reflect the diversity of perspectives on trade and environment from across Asia, Africa and Latin America. Two were held in West Africa and South America in 2003. The regional meetings are supplemented with ongoing Geneva-based consultations with developing country trade negotiators, who provide valuable input on the needs, concerns and priorities of their governments in the area of trade and environment.

Further information, together with background papers and supporting documents, is available online at <http://www.ictsd.org/issarea/environment/partnerships/sagenda/index.htm>.

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that aims to contribute to a better understanding of development and environmental concerns in the context of international trade.

ICTSD upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy. ICTSD implements its information, dialogue and research programmes through partnerships with institutions around the globe.

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Meetings of WTO Bodies*

Feb. 11-12	General Council
Feb. 17	Dispute Settlement Body
Feb. 18	Committee on Trade and Development
Feb. 24-25	Dispute Settlement Body, Special Session*
March 8-10	Council for Trade-related Aspects of Intellectual Property Rights (TRIPs)
March 9	Sub-Committee on Least-developed Countries
March 12	Committee on Market Access
March 16-17	Committee on Trade and Environment
March 17-18	Comm. on Sanitary and Phytosanitary Measures
March 19	Dispute Settlement Body

* *Special Sessions denote negotiations mandated in the Doha Ministerial Declaration. Negotiations on agriculture, services, non-agricultural market access, special and differential treatment, WTO rules, the environment, and a multilateral registry of geographical indications for wines and spirits are expected to resume after the 11-12 February General Council meeting.*

Other Meetings

Feb. 23 Geneva	Preparatory Committee for UNCTAD XI Civil Society Hearing Contact: amel.haffouz@unctad.org
Feb. 23-27 K. Lumpur	First Meeting of the Parties to the Cartagena Protocol on Biosafety http://www.biodiv.org/meetings/mop-01/

Documents Circulated at the WTO

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