Bridges

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In this issue

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Facts and Figures

- Due to protectionism and subsidies in industrialised nations, Latin America and the Caribbean lose about US$8.3 billion in annual income from agriculture, Asia loses some US$6.6 billion, and sub-Saharan Africa, close to US$2 billion.

- Trade-distorting measures of industrialised nations also displace more than US$40 billion of net agricultural exports per year from developing countries. Elimination of these measures would triple developing countries' net agricultural trade. In Sub-Saharan Africa the displacement amounts to about 3.4 percent of total agricultural income, compared to 3 percent for Latin America and the Caribbean, and 1.7 percent for the developing countries of Asia.

- More than half of the displaced exports are caused by the policies of the EU; somewhat less than a third are due to US policies; Japan and other high-income Asian countries cause another 10 percent.

Source: International Food Policy Research Institute. *How Much Does It Hurt – The Impact of Agricultural Trade Policies on Developing Countries, August 2003.*

The Deadlines Game of the Cancun Ministerial: Where Is the Substance?

Forewarned that the Cancun Ministerial Conference will be a stock-taking rather than a decision-making exercise, expectations are low regarding concrete progress in the round of trade negotiations launched in Doha in 2001. Members continue to disagree on practically all items on the agenda, but nowhere more so than on agriculture, non-agricultural market access and the four Singapore issues: investment, competition policy, transparency in government procurement and trade facilitation. Ahead of the Ministerial, they narrowly averted a public relations disaster by reaching agreement on 30 August on the conditions under which countries without manufacturing capacity can import generic versions of patented medicines from abroad (see page 9). Going to Cancun without that agreement would have been a serious blow to a 'development' round already in trouble.

Members did not endorse the draft Ministerial Text and its seven annexes sent to Cancun on the personal responsibility of Ambassador Carlos Pérez del Castillo as the Chair of the General Council. While many Members objected to presenting ministers with a document that did not reflect their views, Ambassador Pérez del Castillo defended his text as "the best way of seeking common ground" and "a manageable basis for discussion". He promised to accompany the document with a letter clarifying the extent of dissent. As this issue went to press, the cover letter was not yet made public. As to the many blanks in the text regarding targets, timeframes and deadlines, the Chair noted that the level of ambition in liberalising agricultural and industrial goods trade would depend on how Members filled those blanks after Cancun.

Agriculture

Agriculture is all important to the Doha Round's success. However, ministers are not expected to agree on the 'modalities' to negotiate tariff and subsidy cuts but rather to set a new deadline (the original expired on 31 March) for reaching agreement after further negotiations in Geneva. The agriculture annex – modelled after a joint paper from the US and the EU – is weaker and far less detailed than previous proposals by the agriculture negotiations Chair Stuart Harbinson. It contains no timeframes or figures for cuts. Galled by the extent to which it saw the Cancun draft catering for US-EU concerns, Brazil called it "an unacceptable basis for negotiations." In addition to lenience on domestic support and vagueness on the elimination of export subsidies, the draft lists a number of "issues of interest but not agreed", including many key demands from developing countries, as well as other controversial topics such as "certain non-trade concerns", the peace clause and geographical indications (GIs). These are high on the EU's agenda, in particular as it just agreed a list GIs for food names that it wants the WTO to protect. For further details, see page 11.

Non-agricultural Market Access

While the EU and the US cooked a deal that would leave their agricultural support programmes largely intact, together with Canada they tabled an ambitious proposal on 20 August aimed at deeply reducing industrial tariffs worldwide. This, however, was roundly rejected by developing countries. Neither was there consensus on a Chair's compromise proposal or the numberless Annex B outlining a framework for negotiating modalities forwarded to ministers. Much, if not all, of the stalling on the industrial tariff talks is due to developing country reluctance to agree on deadlines or the extent of tariff cuts when agriculture fails to progress (see page 10).

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Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle
Address: 13 chemin des Anémones
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: ictsd@ictsd.ch
Web: http://www.ictsd.org

Regular ICTSD contributors include:
Heike Baumüller (TRIPs, MEAs)
Hugo Cameron (trade and environment)
David Primack (trade and development)
Malena Sell (WTO rules)
Mahesh Sugathan (investment)
David Vivas (TRIPs and services)
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The Singapore Issues

The only thing ministers are actually mandated by the Doha Declaration to decide – by explicit consensus – is whether or not to start negotiations on the Singapore issues. Like everything else in the Doha Round, how that decision pans out largely depends what the modalities will be and – as far as some developing countries are concerned – on progress on agriculture, implementation issues and the revue of special and differential (S&D) treatment provisions.

Most developing countries believe that new Singapore issue disciplines would result in more costs than benefits (see related article on page 7). These include the African Group and least-developed countries, as well as India, Pakistan, Cuba and others, who resolutely oppose launching negotiations in these areas. Others, in particular the EU and Japan, are pushing for that to happen.

Reflecting these diametrically opposed positions, the draft Ministerial Text offers two alternatives on all four issues. The first would launch negotiations on the basis of modalities set out in annexes attached to the Ministerial Text. Of these, Annex D on investment is the most detailed on substance. The others are largely limited to procedural issues, with Annex F on transparency government procurement providing a [bracketed] 31 January 2004 deadline for initial offers and a 30 June deadline for a first draft agreement. These two annexes are heavily based on proposals from the EU and Japan. India and 11 other developing countries objected forcefully to the Singapore issue modalities annexes being sent to ministers, arguing that these too one-sidedly reflected the approach of the EU and Japan. Chair Pérez de Castillo said his cover letter to ministers would explain the opposing position.

The other bracketed option – with no annexes – would simply have ministers note that discussions so far do not provide a basis for starting negotiations and that clarification of the issues should continue in the relevant WTO bodies.

S&D, Implementation and Non-violation Complaints

The Ministerial draft is deeply disappointing on special and differential treatment for developing countries and the so-called implementation issues, which concern changes proposed by developing countries to correct imbalances in existing rules (or their application). The draft proposes the adoption of 24 S&D provisions as an early harvest, but almost none would make a significant difference. About 60 other proposals would remain on the table (see page 14).

On implementation, it only notes that "some" progress has been made and instructs the relevant WTO bodies to "redouble" efforts to find solutions. The extension of GI protection to other products than wines and spirits is singled out through a specific instruction to the Director-General to continue his consultations. In para. 21, ministers are to extend until [...] the deadline for recommendations on non-violation complaints under the TRIPs Agreement, which developing countries in particular want to terminate. That this is mentioned as a stand-alone item, could reflect either a higher degree of urgency or – depending on the date chosen – make non-violation termination a de *facto part* of the single undertaking.

The Ministerial Text does address one development concern not mentioned in the Doha Declaration. In para. 26, it instructs the Committee on Trade and Development to continue work and report on progress to the General Council before the next WTO Ministerial regarding "the dependence of many developing countries on a few commodities and the problems created by long-term declines and sharp fluctuations in the prices of these commodities". A lone unfinished phrase refers to the initiative launched by four Central and West African cotton exporting least-developed countries to rapidly eliminate cotton subsidies (see page 14).

Other TRIPs Issues and the Environment

Reflecting a deadlock at the TRIPs Council, the deadline for concluding negotiations on a multilateral registration system geographical indications for wines and spirits is to be extended to an unspecified date. No action is taken on the Doha Declaration para. 19 mandate to examine the relationship between the TRIPs Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore (see related article on page 20). The environment only rates a mention that ministers are "committed" to the negotiations.

Developing Countries and Agricultural Negotiations: Much More is Needed

Eugenio Diaz-Bonilla, Xinshen Diao and Sherman Robinson

The recent partial changes in the domestic support component of the European Union's Common Agricultural Policy (CAP) have raised hopes for a breakthrough that would lead to a meaningful deal for developing countries. However, although the CAP reform may put pressure on the United States to revise its own increasingly distorting domestic support measures, overall those reforms are not enough.

The EU argues that it is an important import market, but more relevant is the net effect: European net demand for agricultural products from the rest of the world, which amounted to about US$50 billion at the beginning of the 1980s (measured in constant 2000 dollars), disappeared by the end of the 1990s due to the subsidies and protection of the CAP. Those policies not only wiped out a substantial percentage of effective demand from world markets but, for some products, such as cereals, beef, and sugar, the EU moved from being a net importer to being a net exporter, affecting domestic production in many developing countries through the disposal in world markets of surplus production.

A CAP reform that really creates opportunities for the expansion of agricultural production in developing countries requires several additional commitments not present in the recently announced changes: more tightly decoupled and substantially reduced domestic support measures in the EU and other industrialised countries, the elimination of export subsidies and similar practices, and meaningful market access opportunities.

S&D for the Rich?

From the point of view of developing countries the current WTO legal system appears highly unbalanced with a large list of exemptions for industrialised countries that has been sarcastically called "special and differential treatment" for the rich. When developing countries began to increase their share in world industrial production through different trade and investment measures, those policies were either included in the disciplines of the GATT, and were the target of countermeasures, or the output was subject to so-called grey measures such as voluntary export restraints, or outright quotas as in textiles. This happened even though developing countries' industrial sectors were not dominant at the world level. In contrast, industrialised countries, which loom large in world agricultural markets, were allowed to maintain policies that basically displaced agricultural production and employment in developing countries. In other words, while policies that could have been predicated on the potential "multifunctional" effects of industrial development in developing countries were quickly disciplined, those aimed at expanding the avowed multifunctionality of agriculture in industrialised countries have been allowed to stay and expand.[1] Obviously, the issue is not to extend to industry in developing countries the distorting "beggar-thy-neighbour" policies that industrialised countries practice in their agricultural sector, but to have a common set of balanced policies with adequate special and differential treatment for those low-income countries that really need it.

Leaving aside the issue of asymmetric treatment, the unfair and substantial "special and differential" treatment for industrialised countries has led to the displacement of agricultural production and employment in developing countries as a whole, even in the case of net food importers. This impact has important implications for poverty and hunger. About 75 percent of the 1.2 billion people who subsist on less than a dollar a day live in rural areas in developing countries. While for all developing countries both agricultural GDP and exports account for somewhat less than one fifth of the total, for the lower income countries, including the UN-designated least-developed countries (LDCs), those percentages exceed one third.

The Prospects of Liberalisation

Rich country subsidies and protection discourage investments in the rural sector of many developing countries that have become dependent on cheap and subsidised food from abroad. Many of them, particularly in Sub-Saharan Africa, have turned from net food exporters into net importers. In fact, by depressing the world prices of temperate-zone staples, current OECD farm policies have forced many developing countries to specialise excessively in tropical products. Thus, liberalisation may well bring about an increase in developing countries' production of temperate-zone staples and close substitutes.

Different studies during and after the Uruguay Round have estimated the negative impact on developing countries' agriculture of protection and subsidies in industrialised countries. We recently calculated that net trade from developing countries may increase by about US$40 billion per year, and agricultural and agroindustrial incomes may go up by about US$26 billion annually, if protection and subsidies in industrialised countries were eliminated, with more than 50 percent of that effect coming from the elimination of distorting policies in Europe, and about 30 percent by the US.[2] These are only the static effects; they can be multiplied several times once dynamic considerations are factored in, leading to further expansion of a more diversified production due to less distorted world markets.

Other studies have also shown the negative effects of rich country protectionism and subsidies in specific products: Mali may see poverty increase by 4 percent, and suffer export declines larger than US aid, due to US subsidies in cotton, while other countries such as Mozambique may be losing exports approximately equivalent to European Union aid, due to EU subsidies to sugar.

It has been argued, however, that while the agricultural policies of industrialised countries have hurt developing countries that were net exporters, those same policies may have helped other developing countries that were net importers of those products. But, as argued before, this argument does not consider the negative dynamic effects from the disincentives in developing countries to invest in their own agriculture, and the ur-

Continued on page 4

ban bias generated by the price structure. Considering that agriculture and agroindustry are the main economic activities in many developing countries, particularly poor ones, regardless of their net trade position, and that such activities usually have significant growth multipliers for the whole economy, the level of lost production and employment opportunities may have been substantial.

If the Millennium Development Goals are to be achieved, particularly those related to cutting poverty and hunger, a bold approach is needed to level the playing field. It must centre on the elimination of exemptions and special privileges enjoyed by rich countries under the Agriculture Agreement. Limiting industrialised countries' possibilities for subsidisation and protection is the best way to stimulate opportunities for production in developing countries, both for export markets and for their own domestic markets, where they often must compete with subsidised products from industrialised countries.

Policy Options for Developing Countries

Developing countries also need to carefully consider their own agricultural policies. For years many of them have discriminated against agriculture, and currently, although the most obvious macroeconomic biases may be gone, a large percentage still does not invest enough in agriculture and rural development. At the same time, however, several developing countries have indicated concerns during the current WTO agricultural negotiations that further trade liberalisation could create problems for their large and predominantly poor agricultural populations. They have argued for a slower pace in reducing their tariffs on the premise that industrialised countries should first eliminate their higher levels of protection and subsidisation. A related concern is how to manage sudden negative impacts of subsidised exports, or import surges. Poor producers may see their livelihoods irreparably damaged by unfair trade competition and drastic shocks, if for instance they are forced to sell productive assets or take children from school. Requests for longer transition periods and the design of some policy instruments in the WTO framework that are better tailored to poor countries' capabilities to manage unfair trade practices and shocks seem compelling.

However, there have also been arguments for even further agricultural protection in developing countries to ease poverty and promote food security. Sometimes this suggestion is accompanied by the argument that protection "does not cost money" and is easier to implement in poor countries than alternative policies such as investments in agricultural technology, extension, and infrastructure. These notions are mistaken. Contrary to common perceptions that see protection as a tax paid by foreigners and collected by governments, much of the (implicit) tax (as argued before) is paid by domestic consumers and collected privately by producers in the form of higher prices. This tax on food has an obvious negative impact on poor households, which in many developing countries spend more than 50 percent of their incomes to feed themselves. It must be remembered that landless rural workers, the increasing number of poor urban households and many poor small farmers tend to be net buyers of food. Their problems are better addressed through policies and investments targeted to them directly. The focus should mostly be on vulnerable groups rather than crops.

The best approach for developing countries is to eliminate biases against the agricultural sector in the general policy framework and to maintain a neutral trade policy reducing protection over time, while fully using transition periods negotiated in the WTO to increase investments in human capital, land tenure, water access, technology, infrastructure, non-agricultural rural enterprises, organisations of small farmers, and other forms of social capital and political participation for the poor and vulnerable. None of these policies are constrained under the WTO Agreement on Agriculture, and current negotiations seem poised to give even more policy room to developing countries in that area. The claims for more protection out of concern for small farmers while under-investing in rural development and poverty alleviation would otherwise ring hollow.

The Lose-Lose Risk

Any negotiation entails the risk of a 'lose-lose' scenario. In the Doha Round, this would translate into a result where industrialised countries retain their high levels of protection and subsidisation, while developing countries, as a defensive response, increase their levels of protection. This is basically the option offered by the EU, Japan and some other countries. The US, for its part, can lead developing countries to a similar defensive approach by asking for wide liberalisation while retaining policy instruments (basically large domestic subsidies) that would force the rest of the world to compete against its Treasury.

In a non-liberalising bargaining equilibrium, developed country taxpayers and consumers would still be burdened with the costs of subsidising inefficient producers. Given the recent food scares (from 'mad cow' disease in Europe to bacterial infections in the US and Japan), the pollution of water and the environment linked to agriculture in industrialised countries, as well as the fact that large farmers receive most government support, the claim that the expected benefits of subsidies – in terms of safer food, cleaner environment and better income distribution – are larger than the costs appears false. Rather, most of these transfers end up in unintended pockets (landowners, suppliers of other farm inputs) and in waste through inappropriate (subsidy-based) choices of crops, while generating an increasing divide between large and small farmers. The costs for developing countries of such a negotiating outcome would probably be even larger: they would lose export and production opportunities that generate employment and incomes, while paying the costs of higher food items in their own markets. Such an outcome would most likely worsen trends in poverty, hunger, health and security in poor countries.

Eugenio Diaz-Bonilla is a Senior Research Fellow, Xinshen Diao is a Research Fellow and Sherman Robinson is an Institute Fellow at the International Food Policy Research Institute in Washington D.C.

ENDNOTES

[1] See Diaz-Bonilla E. and J. Tin (2002) "That Was Then But This Is Now: Multifunctionality in Industry and Agriculture" March 2002. Trade and Macroeconomics Division Discussion Paper 94. International Food Policy Research Institute.

[2] Diao X., Diaz-Bonilla E., and Robinson S. (2003) "Poor countries would gain from open agricultural markets" in Agriculture in the Global Economy. Hunger 2003. 13th Annual Report on the State of World Hunger. Bread for the World. Washington D.C.

Prospects for the NAMA Game

Sam Laird

The main focus of discussions in the WTO negotiations on non-agricultural market access (NAMA) has been on finding a formula approach to cutting tariffs, taking account of the needs of developing countries and LDCs. Essentially, Doha requires an effort to make deep cuts in rates facing developing countries' exports. Developing countries need to make lesser cuts, allowing them some flexibility or "policy space" for industrial policy purposes.

Economies that have been able to diversify towards the production and export of manufactures have grown faster than economies that remain dependent on basic commodities. The benefits of trade liberalisation are widely recognised, but estimates suggest important tariff revenue and output losses in key sectors in developing countries.

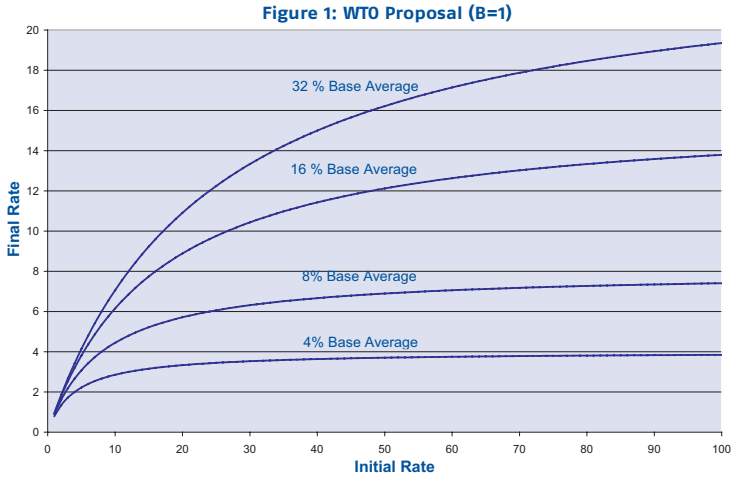
The game plan...

The following countries presented clearly defined formulae for modifying all tariffs: People's Republic of China, European Communities, India, Korea and United States.

The China proposal is essentially a Swiss formula with a variable coefficient dependent on the simple average of the base rates, applied rates for developed countries and a simple average of applied and bound rates for developing and newly acceded countries. The EU Commission has proposed a "compression mechanism" that would set a maximum level for all tariffs, based on a coefficient to be negotiated. The Indian proposal is for a linear reduction with developing countries making two thirds of the cuts of developed countries (e.g. 50 percent by developed countries and 33.3 percent by developing countries). Korea has presented a mechanism that combines linear cuts with minimum cuts per tariff line, also linked to the starting average rate of the individual WTO member. The United States has made a two-stage proposal that, at the conclusion of the second stage, would lead to global free trade in tariffs after 2015 for all countries.

The Chair of the WTO Negotiating Group on Market Access has made the most complete proposal. First, each rate would be converted to percentage form (ad valorem equivalents), and a base rate would be established under which 95 percent of lines and 95 percent of imports would be bound (except for LDCs), with some credit being granted for autonomous liberalisation since the end of the Uruguay Round. Then, tariffs would be cut according to a Swiss formula with the maximum coefficient set equal to the simple average national tariff of each Member, times a common factor – B – yet to be negotiated. In addition, tariffs would be eliminated in specific sectors, namely electronics and electrical goods, fish and fish products, textiles, clothing, footwear, leather goods, motor vehicle parts and components, stones, gems and precious metals, which are said to be of export interest to developing countries, although developed countries also have strong interests in these sectors. Finally, these cuts would then be supplemented by further liberalisation by request and offer, zero-for-zero, and sectoral negotiations. Least-developed countries would not be required to undertake reduction commitments.

Figure 1: WTO Proposal (B=1)



In the WTO formula, if B is set at 1 then the average bound rate of a Member would become its own maximum. Hypothetical rates for four different averages are shown in Figure 1. For example, if a Member's base average tariff is 8 percent, then an initial rate of 10 percent would be reduced to 4.44 percent, and if the base average tariff is 16 percent then an initial rate of 10 percent would be reduced to 6.2 percent. However, above average tariffs are reduced more than proportionately. Thus, if the base average is 8 percent, then an initial rate of 30 percent would be reduced to 6.3 percent, and if the base average tariff is 16 percent then 30 percent would be reduced to 10.4 percent.

If the B coefficient is increased, then the cuts are less, and vice versa. Thus, if B=2 and the base average tariff is 8 percent, then an initial individual rate of 10 percent would be reduced only to 6.2 percent rather than the 4.4 percent when B=1.

Unless the B factor is set at a higher level for developing countries, developed and developing countries with the same average initial tariffs would make the same percentage reduction.

... and how it shapes up

The levels of initial and final bound and applied tariffs are shown in Table 1 for developed and developing countries under the main proposals (see page 6).[2] Under all proposals, the developing countries make the largest percentage-point cuts in bound and applied rates. The greatest change occurs under the US proposal, while the changes for developing countries' bound rates under the EU, Chinese and WTO (B=1) proposals are similar (around 60 percent reduction), and the least reductions take place under the Korean and Indian proposals. All proposals imply reductions of applied rates for developing countries as a whole. There are considerable differences across countries and sectors.

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Table 1: Bound and applied non-agricultural tariffs before and after application of various proposals

	Developed countries		Developing countries	
	Bound %	Applied %	Bound %	Applied %
Initial	3.0	2.8	14.6	8.3
Proposal				
EU	1.6	1.5	5.6	4.6
Korea	2.1	1.8	11.5	7.0
India	1.4	1.3	10.8	7.5
China	1.1	1.1	5.7	5.0
WTO (B=1)	0.7	0.6	5.8	4.1
USA	0.0	0.0	0.0	0.0

Source: Derived from GTAP dastabase, Comtrade, TRAINS and AMAD.

The global change in imports is estimated to range from 1.8 percent under the Korean proposal to 5 percent under the US proposal (Table 2). Corresponding to the tariff changes, the greatest increase in imports result from the US free trade proposals; the EU, Chinese and WTO (B=1) proposals are next, and the Korean and Indian proposals imply the least increase in imports. Reflecting their greater tariff reductions, developing country imports increase most. There are some small declines in some regions because, under the modelling framework, there can be changes in both inward and outward trade flows as a result of policy changes in other countries as well as at home.

Under the US free trade proposal, there would cease to be any tariff revenues in the industrial sector, while estimated losses would be in the range 40-60 percent for a number of developing countries under the EU, Chinese and WTO proposals. The least impact occurs under the Indian and Korean proposals. All countries will have to consider how to replace these revenue losses from alternative sources, and this problem will be acute for several developing countries that are still highly dependent on trade taxes.

Moderate overall averages changes in output conceal important sectoral and regional variations. A closer scrutiny of detailed data shows that under the main WTO proposal, there would be a fall in output in the motor vehicles sectors of over 30 percent in North Africa, 40 percent in Indonesia and 60 percent in South Asia. Falls in leather production of over 20 percent may be experienced in some developed countries, while there would be important gains for developing producers, such as Indonesia. These changes reflect high initial protection rates plus the proposed elimination of tariffs in these sectors. Although there are compensating increases in output in some sectors, policy makers will therefore be concerned to look at the need for social safety nets or retraining, targeting those sectors that are likely to suffer significant negative effects.

The estimated static annual gains and losses in welfare from the tariff reforms are quite modest – mostly in the range of 1-2 percent, or some $21 billion under the Korean and Indian proposals to over $40 billion under the US free trade scenario. 1 The EU, Chinese and WTO (B=1) proposals produce similar results, some $33 – $34 billion. Under all scenarios the main longer-term welfare gains go to the developing countries since they liberalise most.

Two questions remain. How important is the B coefficient in the WTO proposal? and How important is the elimination of tariffs in specific sectors? By our estimates, the effect on imports of doubling the B coefficient reduces the overall increase in imports from 3.5 to 3.2 percent. Foregoing the elimination of tariffs in specific sectors has a greater impact, reducing the increase in imports to 2.4 percent.

The final score

Whatever the approach, developing countries will make the greater cuts in their bound tariffs and will face greater proportional increases in imports. They will also face substantial tariff revenue losses. In some countries the motor vehicle sector will face a major contraction, posing a threat to industrialisation goals, unless covered by proposals for the exclusion of sensitive sectors. The developing countries are also being asked to make the greater commitments by way of extension of the tariff binding coverage. However, bindings set at, or close to, applied rates, will limit the scope for the use of tariffs for industrialisation and there will likely be an increase in anti-dumping actions to respond to any perceived threat from imports. The dilemma is that the formulae with deeper cuts also offer greater export opportunities and, in the longer term, should lead to higher economic growth.

Other elements need to be tallied up. First, LDCs, ACP countries, etc., could lose from the effects of erosion of preferences, but they may gain in markets, including FTAs, where they now face MFN rates, as well as from the general boost that successful negotiations give to world production and trade. Second, account needs to be taken of the outcome on rules of origin, anti-dumping, TBT/SPS and TRIPs issues, and factors affecting market entry.

Table 2: Change in imports relative to base

	Scenario					
	EU %	Korea %	India %	China %	WTO %	USA %
European Union 15	0.2	-0.1	0.0	0.2	0.2	0.4
United States	2.2	1.4	1.8	1.9	2.1	2.0
Japan	4.7	2.7	3.1	4.9	4.9	6.1
China	14.1	7.4	6.5	14.0	12.2	17.0
India	16.6	2.5	3.9	14.3	12.6	22.8
Canada	0.1	-0.2	-0.4	-0.2	-0.2	-0.8
Oceania	2.1	0.6	1.3	3.0	2.2	4.0
Other West Europe	1.6	0.0	0.0	0.0	0.1	-0.6
Central and Eastern Europe	10.5	4.3	5.0	10.3	9.5	15.3
Indonesia	10.2	6.4	6.4	10.2	9.7	12.4
South East Asia	5.8	3.3	3.1	5.6	5.2	6.8
South Asia	18.6	13.2	14.5	18.5	18.0	20.7
Rest of Asia	9.1	5.0	4.8	9.5	8.6	12.4
Central America & Caribbean	2.2	-1.0	-1.1	1.9	1.5	5.5
Mercosur	13.2	4.6	4.9	12.2	11.0	22.9
Andean Pact	5.8	1.6	0.7	5.4	3.9	10.3
North Africa	17.3	3.0	4.0	15.1	14.3	21.7
Middle East	10.8	5.3	5.4	8.2	7.8	10.3
South Africa	3.8	0.8	2.3	3.5	4.3	5.3
Sub-Saharan Africa	6.6	2.9	5.2	8.5	8.8	10.1
Rest of World	4.7	3.1	4.0	4.7	5.6	5.6
World	**3.9**	**1.8**	**1.9**	**3.7**	**3.5**	**5.0**

Source: GTAP simulations using Version 5.3 database.

Sam Laird works for UNCTAD and the University of Nottingham. The views expressed are personal. This paper is based on a study co-authored with Santiago Fernandez de Cordoba and David Vanzetti to be published by the Commonwealth Secretariat.

ENDNOTES

[1] Some simplifying assumptions are explained in the more detailed paper to be published by the Commonwealth Secretariat.

[2] Some studies that incorporate agriculture and services, as well as imperfect competition assumptions, give gains as great as US$ 500 million. Developed countries gain considerably from the inclusion of services. Agricultural importers gain from their own liberalisation.

Why the Singapore Issues Make No Sense at the WTO

J. Michael Finger

Few would question that opportunities offered by the international trading system have been an important vehicle for development, nor that GATT/WTO negotiations have played a critical role in creating that system. At the Uruguay Round, the international community extended the coverage of GATT/WTO regulation to new areas, particularly services, standards and intellectual property. Although the relevant regulations and institutions do affect trade, they more fundamentally establish the basic structure of the domestic economy and are traditionally forged in the interplay of the domestic interests that will be affected. The attempt to label the current negotiations a 'development agenda' signals how widespread is the conclusion that the 'new-area' agreements have provided a troubled approach to development.

Even so, the Doha Agenda proposes to extend the WTO's scope even further; to investment, competition policy, government procurement and trade facilitation – i.e. the 'Singapore Issues'. I argue here that this is a mistake, a mistake not because these topics have nothing to do with development or with trade, but because multilateral negotiations are a poor way to get to the right policies and to establish the right institutions in these areas. We should learn from the errors of the Uruguay Round, not compound them.

Trade Facilitation

Trade facilitation is about reducing the cost and the time taken to move goods into and out of countries. Of the four issues in this package, it is perhaps the most closely related to trade. It is also an area in which developing countries are actively seeking to improve. A review of World Bank lending 1995-2000 found projects in twenty different countries.[1] John S. Wilson reports that modest improvements in port capacity among APEC countries might increase intra-APEC manufactures trade by 21 percent.[2]

Examination of these World Bank projects indicated, however, that the Uruguay Round trade negotiations did not identify the problems that developing countries were trying to fix. These projects covered 16 major categories of activities, ranging from building refurbishment and computerisation to drug interception equipment. Not one involved valuation procedures, yet valuation is the only element addressed by the Agreement on Customs Valuation adopted at the end of Uruguay Round. It is perhaps a millimetre in the full metre of issues 'trade facilitation' encompasses. Moreover, the valuation process legislated by the agreement presumes that the same conditions exist in developing countries as in developed. Applying it in developing countries would enhance rather than reduce the possibility of using valuation as a non-tariff barrier.[3]

Reforms here cost money. The project in which the World Bank participated involved a minimum of US$10 million borrowed from the Bank, and more resources from domestic sources.

Transparency in Government Procurement

Under the general rules of the GATT/WTO, governments in their procurement of goods and services can favour national suppliers over foreign, or one foreign supplier over another.

A separate agreement on government procurement exists, however, among 25 WTO Members (few developing countries are in it.) Each 'party' to the agreement is committed to treat suppliers of any other party no less favourably than it treats domestic ones. Such treatment is limited to an explicit, positive list of purchasing agencies, products and services, and to procurement contracts above specified threshold values. The coverage of the lists is the result of bargaining among the parties; the WTO estimates that approximately US$300 billion/year of procurement is covered (WTO, 2003).

The agreement lays heavy emphasis on transparency. It requires publication of laws, regulations, judicial decisions, administrative rulings and notices of invitation to participate in covered procurement. It also requires publication of information on the award decision. To prevent misuse of technical standards as a protectionist device, the agreement limits the technical specifications that may be imposed.

The Doha Ministerial Declaration calls for negotiations "which shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers."

As a guide to unilateral reform, the agreement makes sense. Like tariff reductions, a 'concession' toward increased transparency would probably augment the national economic interest of the concession giver, as well as of the concession 'receivers', and cost little to implement.

A government interested in such reform might consider the use of an international agreement as a device to push domestic policy reform. This is an old GATT/WTO tradition, although the negative perception of those institutions in many circles lessens the power of a WTO agreement to sway domestic politics.

Moreover, an individual WTO Member could work the same strategy against domestic opposition by negotiating itself into the existing plurilateral agreement. Such an approach might be more effective in domestic politics, as the concessions received in exchange would be more closely identifiable.

Interaction between Trade and Competition Policy

Developing countries purchased about US$11 billion/year of goods produced by international cartels that were prosecuted during the 1990s. The mark-up over competitive prices on these products ranged from 10 percent for stainless steel tubes to 45 percent for graphite electrodes.[4] The EC and Japan are the major demanders of a WTO agreement on competition policy. It is difficult to understand why: their enterprises are more often partners in such arrangements

Continued on page 8

than those in developing countries, hence they are likely to be net collectors of such monopoly rents rather than payers. In mercantilist, as well as in real economics, controlling international cartels would be a loss for the industrial countries.

Proponents insist that an agreement would mandate no new institutions. Alan Winters, however, argues convincingly that an agreement would require – though not necessarily oblige – developing countries to adopt developed country practices and standards.[5] If a developed and a developing country were acting together against a hard-core cartel, Winters reasons, the developed country government would not want its case undermined by laxity on the part of the developing country.

Implementation would demand lots of money. Winters points out that the Anti-Trust Division of the US Justice Department had a budget in 2000 of US$110 million, the UK Office of Fair Trading a staff of 450 and a budget of £33 million.

With a WTO agreement, half a competition authority might be worse than none at all. Its flaws would prevent it from being included in combined actions against international cartels. Its flaws would also be the basis for the cartels, through their governments and the WTO dispute settlement mechanism, to discredit its actions at home.

As domestic policy, further action on reduction of import barriers would be a means to control monopoly power without the cost of new administrative mechanisms. Bernard Hoekman and others found openness to imports to be an effective discipline on market power, particularly in smaller economies.[6] The GATT/WTO record on competition issues – antidumping is its major contribution – does not inspire confidence. Antidumping does nothing to control monopoly power, much to create it.[7]

Relationship between Trade and Investment

The South wants to receive more investment and to obtain larger benefits from that investment; the North wants to make more investments, less burdened by regulation in the host country. A trade agreement, some hope, would clarify and help to resolve differences between the two objectives.

Many argue that in real economics there is no conflict, that non-discriminatory, liberal treatment of foreign as well as domestic investment is the strategy to most effectively ensure that the host country will benefit, for example through current rather than outdated technology that comes with foreign direct investment.[8] Some, however, disagree.

A trade agreement would not be a useful way to decide who is correct, nor to help countries with wrong policies to shift to better ones. The situation with investment is different from that of early tariff reductions when the carrot of reciprocal concessions and the stick of international obligations were needed to overcome the domestic political difficulties of liberalisation. Unlike imports, foreign investment is politically attractive. There is less need for an international agreement as a lever for domestic reform. Even with trade restrictions the Asian example of export-led growth has been a more powerful propagator of trade reform in developing countries than has reciprocal exchange. Do not overlook the importance of domestic ownership of policy reform.

Summing up

As to *trade facilitation*, trade negotiations have not been a useful instrument to identify problems or to construct solutions. On *government procurement*, negotiating accession into the existing, plurilateral agreement would provide more effective support for policy reform in developing countries than forming a new agreement. To suggest that developing countries' acceptance of an agreement on *competition policy* would buy substantial reform of industrial countries' agricultural policies is to misconstrue even the mercantilist economics of the reform. The example of successful developing countries to benefit from *foreign direct investment* is a better way to identify the more successful policies and to support the domestic politics of reform.

A broad agenda, some argue, is needed to provide something for everyone. But a broad agenda can trade nothing for nothing, as well as something for something. If Japan and the EC put in competition policy to have a 'receivable' to nullify their 'payable' in agriculture, shame on them. To expand the scope of the WTO to include the Singapore issues shows little potential to augment the institution's service to development. (It has also provoked a parallel and equally barren discussion of special and differential treatment.) Back-to-basics would be a more development-friendly approach. GATT/WTO negotiations have rendered great service to developed and developing countries alike where reforms are twice-blessed – good for the concession 'giver' as well as for the 'receiver'; and where legal obligation and project design are identical – like tariff reductions.

In areas where implementation costs are significant and where a Member can lose in real economics, as well as in the mercantilist calculus of trade negotiations, the development banks are better designed to deliver whatever support the international community wants to provide. Cost-benefit analysis is an integral part of their work. Their country- and project-specific legalities are more suited to the one-off problems and trial-error rhythm of what is needed than is the WTO's generic approach to legal obligation. Give local solution the benefit of the doubt, remember that support for local solution is different from dictating what it will be. Subsidiarity is the most useful 'new area' the EC could bring to the Doha Agenda.

Joseph Michael Finger is Resident Scholar at the American Enterprise Institute in Washington, D.C.

ENDNOTES

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[2] Wilson, John S. 2003. *Trade Facilitation, WTO Rules and Capacity Building: What Is at Stake?* in World Bank Institute, Development Outreach

[3] Finger and Schuler, 2001, p. 118

[4] World Bank. 2003. *Global Economic Prospects and the Developing Countries*, p.137

[5] Winters, L. Alan. 2002. *Doha and the World Poverty Targets*, paper prepared for the World Bank's Annual Bank Conference on Development Economics

[6] Hoekman, Bernard, Kee Hiau Looi, Marcelo Olarreaga. 2001. *Markups, Entry Regulation, And Trade - Does Country Size Matter?* World Bank Policy Research Working Paper 2662

[7] Hindley, Brian and Messerlin, Patrick A. 1996. *Antidumping Industrial Policy: Legalized Protectionism in the WTO and What to Do About It*, Washington, DC, American Enterprise Institute

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WTO Members Agree on TRIPs and Public Health Text

After a flurry of eleventh hour negotiations, WTO Members on 30 August adopted the 16 December Decision on paragraph 6 of the Doha Declaration on the TRIPs (Trade-related Aspects of Intellectual Property Rights) Agreement and Public Health together with a statement by the TRIPs Council Chair Ambassador Vanu Gopala Menon of Singapore. The Decision spells out the conditions under which countries without pharmaceutical manufacturing capacity can import generic versions of drugs still under patent. Earlier attempts to adopt the Decision had foundered due to US opposition arising from pharmaceutical companies' fears that it could be abused. The negotiations were deadlocked, with developing countries adamant that the Decision was as far as they would go and the US insisting on more reassurance to protect research-based pharmaceutical companies.

The Chairperson's Statement, hammered out with the US, Brazil, India, South Africa and Kenya, allowed the 16 December Decision to be adopted without changes. The Statement notes Members' commitment to using the system established by the paragraph 6 Decision "in good faith to protect public health" and not as "an instrument to pursue industrial or commercial policy objectives". This, however is qualified by the phrase that these limitations must be *without prejudice to paragraph 6 of the Declaration on the TRIPs Agreement and Public Health* (see box). The statement goes on to stress the need for preventing diversion of cheap drugs (including active ingredients) to developed country markets, noting Members' understanding that "in general special packaging and/or special colouring or shaping should not have a significant impact on the price of pharmaceuticals". This differs from the Decision, which states that special packaging should only be required "provided that such distinction is feasible and does not have a significant impact on price".

The Statement also notes that Members will seek to resolve any issues arising from the Decision "expeditiously and amicably", including the possibility to call on the Director-General or the TRIPs Council Chair to find a "mutually acceptable solution" in case of concern over its implementation. Neither the Decision nor the Chair's Statement include references to WTO dispute settlement.

The Statement includes a list of 23 developed countries that have decided to opt out of using the system as importers. The 10 countries about to join the EU agree to use the system in case of national emergency only until they become members of the EU after which time they will not use the Decision at all. In addition, the following advanced developing countries have agreed not to use the system except in situations of national emergency or other circumstances of extreme urgency: Chinese Taipei, Hong Kong, Israel, the Republic of Korea, Kuwait, Macao, Mexico, Qatar, Singapore, Turkey and United Arab Emirates.

Developing Countries Wanted Their Interpretations on Record

In meetings before the adoption of the Decision and its accompanying Statement, Venezuela and the Philippines had raised questions regarding the legal weight of the Chair's Statement. Ambassador Sergio Marchi of Canada described it as a "political statement", implying that the text was not legally binding, according to trade sources. During a final informal General Council meeting on 30 August, Kenya and South Africa employed all the eloquence they could muster to convince such developing countries as the Philippines, Argentina, Cuba and others, that the Chair's Statement would not jeopardise their rights. Multiple formal interpretative statements, which a number of developing countries wanted on record when the Statement was first circulated, would only create further uncertainty, they argued. The Philippines, for instance, in an earlier prepared statement had pointed out that the Chair's text did not reflect the draft Decision's 'best endeavour' language regarding measures to prevent diversion. In the end, the Statement was adopted without Member interpretations.

Civil Society Groups, Industry Split over Chair's Text

Civil society groups, including Médecins sans Frontières (MSF), Oxfam, Health Action International, Third World Network, Health GAP and Consumer Project on Technology, strongly rejected the Chair's Statement, denouncing the conditions it imposes as a discouragement for developing countries to use the system. Describing the 16 December Decision as "a monstrosity that seems to be designed to be a solution that won't work", Ellen 't Hoen from MSF noted that "the proposed deal poses so many hurdles and hoops to jump through that we are really worried it may not work at all". She also pointed out that the TRIPs & health discussion seemed to have lost its focus, being more about giving comfort to the pharmaceutical industry than about access to medicines. Commenting on the Statement, Ms 't Hoen also criticised the apparent assumption that protecting public health and pursuing industrial or commercial objectives were contradictory objectives.

Harvey Bale, Director-General of the International Federation of Pharmaceutical Manufacturers Associations, rejected the groups' criticism, saying the text added "clarity to the focus on the neediest."

> "We recognise that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002."
>
> *Paragraph 6 of the Doha Declaration on TRIPs and Public Health*
>
> Such a solution was needed to overcome the limitation in TRIPs Article 31(f), which requires manufacture under compulsory license to be "predominantly for the domestic market of the Member authorising such use."

Vague Market Access Draft Divides WTO Membership

The draft framework for cutting industrial tariffs sent to Cancun is a good deal vaguer than previous modalities proposals put forward either by Members or the negotiations Chair Pierre-Louis Girard. Like the agriculture text, it lacks numerical targets or timeframes. And, again mirroring the agriculture talks, ministers need to do no more in Cancun than set a new deadline for agreeing on the negotiating modalities.

When it became clear that ministers would be handed a blank check regarding agriculture (see page 11), most developing countries simply lost any incentive to move forward on industrial tariffs, which they perceive as profiting industrialised countries most. Indeed, at the last General Council meeting before Cancun, Brazil demanded the removal of the few bracketed numbers still present in Annex B, which contains the draft market access framework.

Even without the parallelism complication, the Negotiating Group on Non-agricultural Market Access (NAMA) was seriously divided over how industrial tariffs should be cut. Developing countries repeatedly emphasised that steep tariff cuts would mean an important drop in government revenue and have detrimental effects on local industries. While most of them had reacted positively to the draft modalities elements issued by Chair Girard in May (Bridges Year 7 No.4, page 12), subsequent documents tabled jointly by the US, the EU and Canada, as well as the Chair, would have required developing countries to make greater concessions.

The May draft proposed a tariff reduction formula that would have affected high average tariffs, such as those typically prevalent in developing countries, less steeply than lower average tariffs (it would, however, have bitten hard on tariff peaks in all countries). The formula responded to the Doha Ministerial Declaration mandate that "the negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, *including through less than full reciprocity in reduction commitments*" (editor's italics).

The US-EU-Canada proposal sought a higher level of market opening through a formula that would have reduced all high tariffs more than low ones. This approach was generally rejected by developing countries, which felt that – contrary to the Doha language on 'less than full reciprocity' – they would be required to make the greatest cuts.

In an effort to bridge positions, Chair Girard subsequently issued various changes to his May draft, but none commanded unified support. An 11 August 'Possible Options' paper would have used the average between bound (usually much higher) and applied rates as the basis for reductions. It also suggested that Members may determine to cap the average of the base tariff rates at a certain level. On 19 August, Chair Girard released a revision of the draft modalities elements (TN/MA/W/35/Rev.1), whicht reflected some of the changes suggested in his Options paper. Although Members did not endorse the 19 August draft, the equally unendorsed Cancun Annex B 'confirms' their intention to use the document as a reference for future work.

Main Elements of Annex B

Compared to the documents above, Annex B is bland. It does not specify the exact formula, but affirms that the Negotiating Group "shall continue its work on a non-linear formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments."

Reductions would be based on bound rates. For unbound tariff lines, the basis for reductions would be twice the MFN applied rate in 2001. Autonomous liberalisation is to be credited, for tariff lines bound on an MFN basis in the WTO since the conclusion of the Uruguay Round. Participants with a binding coverage of non-agricultural tariff lines of less than [35] percent would be exempt from making tariff reductions through the formula, but they would be expected to bind [100] percent of industrial tariff lines at an average level that does not exceed the overall average of bound tariffs for all developing countries.

No Mandatory Sectoral Liberalisation

Previous drafts by the Chair and the US-EU-Canada group had proposed to eliminate tariffs in sectors of particular export interest to developing countries, such as textiles and apparel. Many developing countries – which themselves have high duties on these tariff lines – wanted participation in this endeavour to be voluntary. Annex B drops the idea of making sectoral liberalisation an integral part of the negotiating modalities. Instead it encourages the Negotiating Group "to pursue its discussions on such a component, which includes adequate provisions of flexibility for developing-country participants."

However, the draft would have ministers agree that "pending agreement on core modalities for tariffs, the possibilities of supplementary modalities such as zero-for-zero sector elimination, sectoral harmonisation, and request & offer, should be kept open." Participants are also asked to "consider the elimination of low duties."

Special and Differential Treatment

Developing countries are to have longer implementation periods for tariff reductions. In addition, "they would be given the flexibility of keeping tariff lines unbound, as an exception, or not applying formula cuts, for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports." While least-developed countries would not be required to apply the formula or participate in the sectoral approach, they are expected to substantially increase their level of binding commitments. The Negotiating Group is also instructed to 'elaborate on' special provisions for newly acceded Members "in order to take into account their extensive market access commitments undertaken as part of their accession."

Finally, the Annex notes that non-reciprocal preference erosion and high tariff revenue dependency "shall be further considered."

Agriculture: A Blank Check Bitterly Contested

Pre-Cancun agricultural negotiations finally picked up after the EU and the US tabled a joint paper outlining a framework for agricultural modalities on 13 August. The document, which differed radically from those issued earlier by the negotiations Chair Stuart Harbinson, prompted a complete counter-proposal from twenty developing countries, as well as less comprehensive proposals and comments from a number of other WTO Members. Based on these contributions, the General Council Chair Carlos Pérez del Castillo issued a compromise 'framework for establishing modalities in agriculture' on 24 August. This was attached as Annex A to the draft Ministerial Text, which was sent to Cancun on the Chair's own responsibility.

One of the principal reasons for the Members' failure to formally adopt the draft Ministerial Text was continued disagreement on the substance of the agriture draft, largely based on the EU-US joint paper. The key feature of Annex A is a quasi-total lack of numbers or dates for tariff and subsidy reductions (the general expectation is that these will be negotiated after Cancun). Ministers are, however, expected to set a new deadline for agreeing the negotiating modalities (the original one exprired on 31 March 2003), as well as a cut-off date for submitting draft Schedules (this was supposed to happen before the fifth Ministerial Conference).

Brazil, China, India and 17 other agriculture exporting developing country Members now dubbed the G-20[1] responded to the EU-US paper; as did the Dominican Republic and five other low-income developing countries[2]; Switzerland and five other Members characterising themselves as "countries with small and/or vulnerable agricultural sectors and with no or minimal exports of agricultural products"[3]; as well as China, Japan and Norway. The African Group offered critical comments. At the last General Council meeting before Cancun, Brazil declared unequivocally that the draft Annex A sent to ministers was unacceptable as a basis for negotiations and is expected to lead the effort to change it in Cancun.

Market Access

Among the central elements of the EU-US paper was a three-pronged approach to tariff cuts: an unspecified percentage of tariff lines would be subject to linear reductions; another percentage would be cut using the so-called Swiss formula (no coefficient specified); and a third unspecified percentage of tariff lines would be duty-free.

The main rival paper from Brazil et al. endorsed this approach, but reinforced developed country commitments regarding tariff peaks and escalation, as well as market opening for tropical products and other agricultural goods from developing countries. The G-20 also wanted tariff rate quotas (TRQs) expanded and in-quota rates reduced to zero.

Critical of the US-EU paper's treatment of developing country concerns – it only noted that special and differential (S&D) treatment for developing countries would include lower reductions longer implementation periods – Brazil et al. specified that developing country tariffs would only be subject to linear average and minimum cuts. In addition, the negotiations would establish a category of Special Products. The Dominican Republic et al. paper, which focused on S&D, proposed that such products be self-designated and exempt of tariff reductions.

Unlike the other two submissions above, Brazil et al. called for the existent Special Safeguard (SSG) to be terminated for developed countries. With some variation in scope, all three groups endorsed the creation of a Special Safeguard Mechanism for developing countries.

The paper from Switzerland and al. emphasised that the group could only accept the hybrid tariff cut approach if linear cuts remained the norm and Swiss formula reductions an exception (with tariff lines freely chosen); if there was no mandatory TRQ expansion; if tariffs were not capped; and if the SSG remained in place. Japan's position was similar, except for a linear-cuts-only approach (with flexibility built in for 'sensitive' sectors').

Annex A: The draft retains most of the EU-US proposals. It also includes the creation of a Special Products category for developing countries, but not the proposal that these be self-designated. For a comparison between Annex A and the main proposals, see table on page 12.

Domestic Subsidies

The US – EU paper would have maintained virtually unchanged the Green and Blue Boxes, which cover the majority of their domestic support measures. The G-20 reacted by proposing the elimination of the Blue Box, and stricter disciplines (including a spending cap) for the Green Box. The group also requested more onerous and detailed reductions in the most distorting forms of support (i.e. the Amber Box).

Annex A: The draft retains much of the EU-US approach, but agrees that Green Box criteria remain under negotiation and adds [unspecified] Blue Box reduction commitments. Combined support should be reduced below the year 2000 level rather than that of 2004 (see table on page 13).

Export Competition

This section of the EU-US compromise reflects the EU's insistence that any export subsidy reductions must be mirrored by parallel disciplines on export credits and other export-oriented financial guarantee programmes. The paper proposed the elimination of both export credits and subsidies to an unspecified list of products of export interest to developing countries in a timeframe to be determined. The commitment to eliminate other export support was unclear. The G-20 proposed that export subsidies be eliminated for *all* developing country products as a priority, while developing countries would keep present exemptions. Both papers agreed on stricter disciplines for food aid. In a nod to the US, the joint text also proposed curbing the privileges of state trading enterprises.

Annex A: Again, most (non-)commitments reflect the EU-US paper. The only significant differences are an insistence on subsisidy reductions *with a view to phasing out* and more detailed provisions for developing countries (see table on page 13).

Continued on page 12

Special and Differential Treatment

Some S&D was built in the EU-US text through the acknowledgement that such treatment for developing countries would be an 'integral part' of the negotiations, and include (but not necessarily be limited to) longer timeframes and smaller reduction commitments. Many developing countries were critical of the lack of specifics and, in particular the paper's failure to mention Special Products, i.e. a new category of products that developing countries would be allowed to protect through the maintenance of high tariffs or a facilitated use of safeguard measures.

This omission was corrected in the papers from the G-20 and Dominican Republic group. On the other hand, these countries omitted in turn any mention of the EU-US proposal to adjust S&D treatment for 'significant food exporting developing countries', which was widely interpreted to mean agriculture powerhouses such as Brazil and Argentina.

There is little disagreement on not requiring new commitments from least-developed countries. China drew attention to the special situation of newly acceded Members who had already made large concessions as part of their commitments upon joining the WTO.

Annex A: All provisions related to developing countries – whether on market access, domestic support or export competition – come under the heading of special and differential treatment. The effect of these provisions remains difficult to assess until the criteria for Special Products are agreed (Bridges Year 7 No.5, page1) and the missing numbers and deadlines are filled in, effectively showing the difference between developed and developing country commitments.

'Non-trade' Concerns

While the US and EU managed to find a common position regarding the 'three pillars' of agricultural negotiations (i.e. market access, domestic support and export competition), their

The Agriculture Annex and Major Group Proposals: Market Access

	Developed Countries			
	Annex A	**US-EU Proposal**	**Brazil et al. Proposal**	**Dominican Rep. Proposal**
Tariffs	**2.1(i) Linear Cuts** [x]% of tariff lines – average tariff cut of [x]% and a min. of [x]%; market inrease for these import-sensitive tariff lines will result through a request-offer process that could include TRQs. **2.1(ii) Formula Cuts** [x]% of tariff lines subject to a Swiss formula coefficient of [x] **2.1 (iii) Zero Tariffs** [x]% of tariff lines shall be duty-free	**2.1(i)** Identical to Annex A **2.1(ii)** Identical to Annex A **2.1(iii)** Identical to Annex A	**2.1(i)** [x]% of tariff lines – average tariff cut of [x]% and minimum of [x]%[1] **2.1(ii)** Indentical to Annex A[1] **2.1(iii)** Identical to Annex A	**2.1(i)** Identical to Annex A **2.1(ii)** Identical to Annex A **2.1(iii)** Identical to Annex A
Tariff peaks and escalation	**2.2 Tariff peaks**: Tariff lines exceeding a max. of [x]% to be reduced to that maximum, or additional market access provided through a request-offer process that could include TRQs. **2.2 Tariff escalation** will be effectively addressed.	**2.2** Identical to Annex A **2.3** Not mentioned	**2.2** Tariffs exceeding a maximum of [x]% to be reduced to that maximum. **2.3** Factor [x]% to applied to tariff cuts on processed goods if tariff higher than on the same product in primary form.	**2.2** Identical to Annex A **2.3** See Brazil et al.
Special (existing) Safeguard (SSG)	**2.4** The use and duration of the SSG remains under negotiation	**2.4** Identical to Annex A	**2.4** The SSG for developed countries shall be discontinued.	**2.4** Identical to Annex A
Additional provisions			TRQs shall be expanded by [x]% of domestic consumption and in-quota rates reduced to zero.	
	Developing countries[2]			
Tariffs	**2.6(i) Linear Cuts – Special Products** [x]% of tariff lines – average tariff cut of [x]% and a min. of [x]%; market inrease for these import-sensitive tariff lines will result through a request-offer process that could include TRQs. Within this category, developing countries shall have additional flexibility under conditions to be determined to designate Special Products which would only be subject to a linear cut of [X]% and no new commitments regarding TRQs. **2.6 (ii) and (iii) ALTERNATIVE I – Linear Cuts** Two additional categories to be created subject to [x]% average and [x]% minimum cuts. **2.6 (ii) ALTERNATIVE II – Formula Cut** Replace (ii) and (iii) above by: [x]% of tariff lines subject to a Swiss formula coefficient of [x].	**2.6** Implicitly, same rules as for developed countries (2.1) save special and differential treament.	**2.6 Linear Cuts – Special Products** All tariff lines subject to an [x]% average cut and a [x]% minimum cut. Developing countries "shall benefit from the establishment of Special Products, under conditions to be determined in the negotiations."	**2.6 Linear Cuts – Special Products** Tariff lines to be subject to average and minimum tariff cuts at the most half of those for developed countries. Developing countries "shall have the flexibility to self-designate [x]% of tariff lines as Special Products, which shall be exempt from tariff reductions."
Tariff peaks	**2.7** The applicability of para. 2.2 above to developing countries to remain under negotiation taking into account their development needs.	**2.7** Not mentioned,but implied that para 2.2 could apply.	**2.7** Not mentioned	**2.7** Not mentioned
Special Safeguard Mechanism (SSM)	**2.8** An SSM shall be established for use by developing countries subject to conditions and for products to be determined.	**2.8** An SSM shall be established for developing countries as regards import-sensitive tariff lines.	**2.8** An SSM shall be established for developing countries, scope would depend on the impact of tariff cuts under 2.6.	**2.8** An SSM shall be established for use by all developing countries.
Additional provisions	**2.9** All developed countries will seek to provide duty-free access for at least [x]% of imports from developing countries through a combination of MFN and preferential access. **2.10** Participants undertake to take into account the importance of preferential access for developing countries.	**2.9** Identical to Annex A Adjustments in S&D for significant net food exporting developing countries.	**2.9** All developed countries shall provide duty-free access to all tropical products and other agricultural products representing at least [x]% of imports from developing countries. **2.10** Under conditions to be determined by negotiations, the question of preference erosion shall be addressed. No TRQ expansion commitments or in-quota tariff rate reductions.	**2.9** Identical to Annex A See Brazil et al.

[1] The total of tariff cuts on items (i) and (ii) shall be at least [x]% and, in any event, significantly higher than the tariff cut under (i).
[2] All developing country provisions are placed under the heading Special and Differential Treatment.

joint text acknowledged that no agreement had been found a number of key issues, including non-trade concerns (NTCs). The Agreement on Agriculture requires that such concerns be taken into account when negotiating further liberalisation. The EU, Japan, Korea, Norway and Switzerland are part of a group informally known as Friends of Multifuctionality, which maintains that support for legitimate non-trade concerns such as the environmental and social roles of agriculture, should be exempt from reduction commitments. The submissions from Japan, Norway and Switzerland et al. regretted that NTCs were not addressed in the EU-US paper, and indicated that they would be able to show more flexibility in subsidy reduction if such concerns were addressed. The 'implementation concern' likely to loom largest in Cancun is the protection of geographical indications (GIs) of food products, an issue that bitterly divides 'old world' countries, who want the protection, from 'new world' WTO Members, who do not.

Annex A: The opening paragraph recognises that non-trade concerns must be taken into account. Nothing further is specified. Developing countries' NTCs are to a certain extent recognised in the recurrent phrase *'Having regard to their development, food security and/or livelihood security needs'*, which precedes all special and differential treatment provisions. However, many of the key S&D provisions remain under negotiation.[4]

ENDNOTES

[1] Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand and Venezuela.

[2] The Dominican Republic, Honduras, Kenya, Nicaragua, Panama and Sri Lanka.

[3] Bulgaria, Chinese Taipei, Iceland, Korea, Liechtenstein and Switzerland.

[4] Among other unresolved issues are product-specific commitments in domestic support, terms of expansion/opening of TRQs, proposals for flexibility for certain groupings, 'certain non-trade concerns', the implementation period, sectoral initiatives, the peace clause, the continuation clause and GIs.

The Agriculture Annex and Major Group Proposals: Domestic Support and Export Competition

	Annex A	EU-US Proposal	Brazil et al. Proposal
	Domestic Support		
Developed countries	**1** All developed countries shall achieve reductions in trade-distorting support significantly larger than in the Uruguay Round; Members having the higher trade-distorting support to make the greatest efforts.	**1** Identical to Annex A	**1** Identical to Annex A
	1.1 AMBER BOX: Reduce Final Bound Total AMS in the range of [x]%-[x]%	**1.1 AMBER BOX:** Identical to Annex A	**1.1 AMBER BOX:** Reduce all trade-distorting support in the range of [x]%-[x]%, on a product specific basis. The difference in upper and lower ranges shall be no more than [x]%. First cut of [x]% to be made within the first year of the implementation period. Upper level of reduction "with a view to elimination" to apply to products counting for more than [x]% of world exports.
	1.2 DE MINIMIS: Reduce *de minimis* by [x]%	**1.2 DE MINIMIS:** Identical to Annex A	**1.2 DE MINIMIS:** Identical to Annex A
	1.3 BLUE BOX: Allowable blue box support: **(i)** direct payments - based on fixed area yields; or - made on 85% or less of the base level of production; or - made on a fixed number of head. **(ii)** support under 1.3(i) not to exceed 5% of the total value of agricultural production in the 2000-2002 period by [...]. Subsequently, such support shall be suject to an annual linear reduction [x]% for a period of [...] years.	**1.3(i) BLUE BOX:** Identical to Annex A **1.3(ii)** support under 1.3(i) not to exceed 5% of the total value of agricultural production by the end of the implementation period.	**1.3 ELIMINATE THE BLUE BOX**
	1.4 COMBINED SUPPORT under the Amber Box, the Blue Box and the *de minimis* level to be reduced significanty below the level of 2000 in the [unspecified] first period referred to in para. 1.3(ii).	**1.4 COMBINED SUPPORT** under the Amber box, the Blue Box and the *de minimis* level to be reduced significanty below the level of 2004 (not specified by when).	**1.4 COMBINED SUPPORT:** Reduce the sum of Amber Box and *de minimis* support by at least [x]% (not specified by when).
	1.5 GREEN BOX: Criteria to remain under negotiation.	**1.5 GREEN BOX:** No change to existing rules implied	**1.5 GREEN BOX:** Direct payments shall be, as appropriate, capped and/or reduced. Additional disciplines shall be agreed.
Developing countries [1]	**1.6** Special and differential treatment to include lower reductions under paras 1.1-1.4, longer implementation periods; and with respect to the provisions of Art. 6.2 of the Agreement on Agriculture and the Green Box.	**1.6** Not specifically mentioned	**1.6** Exempt subsidies for developing countries under Art. 6.2 of the Agreement on Agriculture to be expanded so as to include focused and targeted programmes.
	1.7 No reductions required in trade-distorting *de minimis* domestic support.	**1.7** Not mentioned	**1.7** Maintain *de minimis* at present level
	Export Competition		
Developed countries	**3** Disciplines shall be established on export subsidies, export credits, export state trading enterprises and food aid programmes.	**3** Identical to Annex A	**3** Identical to Annex A
	3.1 Export subsidies: - eliminate, over a [...]-year period, the following products of particular interest to developing countries [...]; - for the remaining products, Members shall reduce, with a view to phasing out, budgetary and quantity allowances for export subsidies.	**3.1 Export Subsidies:** - identical to Annex A - identical to Annex A, minus the reference to 'with a view to phasing out'	**3.1 Export Subsidies:** - eliminate subsidies for products of particular interest to developing countries over an [x]-year period. - eliminate export subsidies for remaining products, over a [y]-year period.
	3.2 Export Credits: - eliminate, over the same period as in para. 3.1, the trade-distorting element of export credits through disciplines that reduce the repayment terms to commercial practice ([...] months), for the same products as in para 3.1; - for the remaining products, a reduction effort, with a view to phasing out, that is parallel to the reduction in para. 3.1.	**3.2 Export Credits:** - identical to Annex A - identical to Annex A, minus the reference to 'with a view to phasing out'	**3.2 Export Credits:** Indentify and eliminate the subsidy component of officially supported export credits, guarantee and insurance programmes through a rules-based approach.
	3.3 Parallel Schedules: Reductions (with a view to phasing out) of all forms of export subsidies mentioned in paragraphs 3.1 and 3.2 will occur on a schedule that is parallel in its equivalence of effect on export subsidies and export credits.	**3.3 Parallel Schedules:** Identical to Annex A	**3.3 Parallel Schedules:** Not mentioned
	3.4 State Trading Enterprises: The above provisions shall apply equally to all forms of export subsidies related to or provided, directly or indirectly, by or through state trading enterprises.	**3.4 State Trading Enterprises:** Establishment of disciplines on the single desk export privileges, prohibition of special financing privileges and disciplines on pricing practices of state trading enterprises.	**3.4 State Trading Enterprises:** Not mentioned
	3.5 Food Aid: Additional disciplines to be agreed to prevent commercial displacement through food aid operations.	**3.5 Food Aid:** Identical to Annex A	**3.5 Food Aid:** Identical to Annex A
	3.6 Phase-out Date: The question of the end date for phasing out of all forms of export subsidies remains under negotiation.	**3.6 Phase-out Date:** Not mentioned	**3.6 Phase-out Date:** See 3.1 above
Developing countries [1]	**3.8** Developing countries shall benefit from longer implementation periods for reductions of, with a view to phasing out, all forms of export subsidies.	**3.8 - 3.10** Not addressed beyond general recognition of special and differential treatment for developing countries.	
	3.9 Until such time as the phasing out of all forms of export subsidies is completed, developing countries shall continue to benefit from the special and differential treatment provisions of Article 9.4 of the Agreement on Agriculture.		Maintain exempt subsidies for developing countries under Art. 9.4 of the Agreement on Agriculture.
	3.10 Participants shall ensure that the disciplines on export credits to be agreed shall make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries.		

[1] All developing country provisions are placed under the heading Special and Differential Treatment.

Whither the Cotton Initiative?

In paragraph 25 of the draft Cancun Ministerial Text, ministers "take note of the proposal by Burkina Faso, Benin, Chad and Mali entitled *Poverty Reduction: Sectoral Initiative in Favour of Cotton* and agree that [...]."

The initiative's proponents hope that the three points will translate into the adoption of a decision to eliminate all cotton subsidies worldwide in three equal annual amounts during a three year period running from 2004 to 2006.

The draft decision presented to the General Council session of 26-27 August would also establish a transitional mechanism to compensate least-developed cotton exporting countries for export revenue losses due to subsidised production and exports during the phase-out period. This mechanism would be financed by subsidising WTO Members .

Most WTO Members admit that the four proponents have solid arguments. African countries have generally expressed sympathy with the initiative. Net importers, such as the EU and China, argue that their subsidies do not distort international markets as they do not export – and even import – cotton from Africa. Exporting countries, such as the US and the Cairns Group, agree with the principles of the initiative, but demand that they be applied to all agricultural products.

In preparation for the Cancun Ministerial, Oxfam International and ENDA Tiers Monde have embarked on an awareness-raising campaign in Europe and the United States in order to raise support for cotton subsidy elimination at the WTO Ministerial. They argue that the compensatory mechanism alone would not address the structural causes that push world cotton prices to unsustainably low levels.

The largest cotton subsidisers are the US, the EU and China. US subsidies alone exceed the GDP of Burkina Faso, where two million people depend directly on cotton (for more on the Cotton Initiative, see Bridges Year 7 No.4, page 1).

Special and Differential Treatment

Almost 18 gruelling months into a mandate that was supposed to last only nine, the review to strengthen special and differential treatment (S&D) provisions is sure to maintain its role in Cancun – like agriculture – as a central yardstick of whether the negotiations launched in Doha truly live up to the highly touted 'development' agenda. Will ministers make a decision on S&D – as the current draft Cancun Ministerial text would imply; or will they put off a decision on S&D until after Cancun – as certain developing countries have increasingly called for? With missed deadlines and ambiguous mandates unquestionably expected to factor into any deal reached at Cancun, a key question is whether developing countries will be willing (or have to) pay – for a third time they would argue – for a new deadline and a clear mandate on S&D?

As was the case for most problematic issues in the run-up to Cancun, General Council Chair, Ambassador Pérez del Castillo (Uruguay), struggled to find agreement amongst Members on a meaningful pro-development 'early harvest' package of S&D provisions. Divisions were so great, particularly with regard to the S&D paragraph the first draft Cancun Ministerial text, that African Members felt the need to submit a letter expressing deep concern that no meaningful progress had been achieved to warrant a decision on substantive issues in Cancun. While it was reportedly later rescinded, upon the request of Ambassador Pérez del Castillo, sentiments voiced by most developing country Members at the final pre-Cancun General Council meeting confirmed that Members go to Cancun widely divergent on the work to-date to strengthen and operationalise all S&D provisions.

The latest draft Cancun Ministerial circulated to Members (JOB(03)/150/Rev.1), on the responsibility of the Chair (i.e. not approved my Members), takes a decision on approximately 24 proposals that have, as one observer put it, "dubious value". An quick scan of the provisions shows that most 'reaffirm' decisions already taken, or rights already established – with a mere four proposals arguably offering what one trade source termed "anything remotely close to carrying meaningful economic value".

The current draft goes on to instruct the special session of the Committee on Trade and Development (CTD) to continue its work on agreement-specific proposals and "other outstanding issues" (the former referring to those proposals that did not make the initial harvest). Exactly what the latter refers to – and why it was changed from listing explicitly the other outstanding issues (i.e. cross-cutting issues, the monitoring mechanism, and the incorporation of S&D into the architecture of WTO rules) – is still not clear. One commentator speculated that this effectively 'downgrades' the remainder of the mandate, carrying important implications for the part that relates to the proposal for a Framework Agreement on S&D (WT/GC/W/442).

An additional concern raised by developing countries – something also touched upon in the 20 August letter from the Africa Group – relates to the perception that the General Council has essentially usurped the role of the CTD with regards to S&D. That the General Council is responsible for monitoring and receiving reports on the work referred to negotiating groups, as well as for reporting back to ministers, has caused concern for numerous observers who had hoped the S&D mandate from Doha would help to make the trading system more responsive to development. That no specific deadlines appear for these various activities does not bode well for developing countries, which will in all likelihood will have to make concessions elsewhere in the work programme to see dates that maintain the sequence of the bargain struck in Doha.

This question of linkages – trading-off, for example, S&D aspirations for movement on agriculture – appears to hold a clear answer for numerous developing country delegates: "there are none." The key *demandeurs* for S&D, mainly Africa and the LDCs, have been resolute on demanding meaningful S&D and are unlikely to give up on the mandate at this stage. Greater clarity on the S&D review's future will depend on their ability to withstand the pressures that come with holding up movement in the work programme – on S&D or elsewhere.

Rediscovering Subsidies in Services Negotiations?

By David Vivas Eugui and Alex Werth

WTO negotiations on subsidy disciplines for the services sector have attracted less attention than other services-related rule-making efforts. However, the existence or non-existence of services subsidies will have significant consequences for the effectiveness and value of the market access concessions achieved in the ongoing Doha Round. Disciplines regulating the use of subsidies might also have a large impact on Members' ability to use subsidies for promoting national policy objectives that can contribute to the fulfilment of sustainable development objectives.

The future existence, or non-existence, of services subsidy rules will have important implications for sustainable development. Such disciplines will be a precondition for creating a level playing field for developing countries, which generally do not have the same capacity as most developed countries to support their domestic services industries. According to the WTO Secretariat, services related to tourism, transport, finance, information technologies, construction, audiovisuals, telecommunications and energy top the list of sectors supported by governments.[1] While developing counties may not yet have a big share of the services trade, they are moving up the value-added chain. If the services trade follows the same trend as trade in goods, poorer countries will gradually overtake developed countries in certain services sectors in terms of competitiveness. Subsidies would then become a major stumbling block, which could seriously hamper the economic development of developing countries.

Subsidies are an important policy tool to ascertain the universal provision of services, or to maintain public services that generate a deficit (such as water supply). Subsidies are also a necessary incentive for existing services providers to become more environmentally friendly, to promote competitiveness, and to support small- and medium-sized enterprises. It is thus clear from the outset that any disciplines regulating services subsidies may limit a country's policy spaces to adopt this economic instrument as a tool for pursuing sustainable development goals.

The GATS Subsidy Provisions

Some rules in the General Agreement on Trade in Services (GATS) do have – in principle – disciplining effects on how subsidies are granted by WTO Members. If, when depositing a commitment under the GATS, a particular country does not exclude granting subsidies from the application of the most-favoured nation (MFN) and the national treatment (NT) principles, these subsidies must be subject to non-discrimination. Members such as the US, the EU, Japan, and Canada have made horizontal exceptions in their initial offers for subsidies in areas such as research and development. The US in its offer even exempted commitments on market access and national treatment regarding subsidies in all sectors under modes one and two (cross-boarder supply and consumption abroad). GATS Article XXIII.3 could also in theory help discipline subsidies by allowing the deposit of 'additional commitments' that could include not granting or phasing-out subsidies – but only in specific sectors. In conclusion, current GATS rules do not sufficiently discipline the use of subsidies, either on an across-the-board basis or with respect to the amount of subsidies, or the areas to which a subsidy is being granted.

The Services Subsidies Mandate

Article XV of the GATS explicitly recognises the 'distortive effects' that subsidies can have on the services trade. It therefore mandates Members to:

- hold negotiations "with a view to develop the necessary multilateral disciplines to avoid such trade-distortive effects";
- consider "the appropriateness of countervailing procedures";
- recognise the "role of subsidies in relation to the development programmes of developing countries";
- take into account the "needs of Members, particularly developing countries" for flexibility; and
- for the purpose of the negotiations, "exchange information concerning all subsidies related to trade in services".

Initially, the subsidies negotiations did not have a deadline. This situation changed with the approval of the services Negotiation Guidelines[2] which mandated Members to aim to complete negotiations prior to the conclusion of the market access negotiations – i.e. before 1 January 2005.[3]

Exchange of Information

The first action taken by the Working Party on GATS Rules (WPGR) was to address its mandate to facilitate the exchange of information through a questionnaire requesting Members to provide information on their domestic support programmes in services.[4] This proved a failure as only four Members replied to it. Many Members justified their hesitance to reveal their services support with the argument that they were unable to identify their subsidies related to trade in services without having a definition on what actually constitutes a 'subsidy in services'. This chicken-and-egg situation has so far prevented the discussions from going anywhere.

Definitional Problems

The definitional issue discussed at the WPGR is far from being resolved as, again, sufficient inputs from interested Members, and the political will by others to move the debate, remain limited. While many countries favour a simple working definition, others consider that a special definition is required for the particular case of services. Countries preferring the use of a simple definition argue that the definition given in the WTO Agreement on Subsidies and Countervailing Measures (SCM) applies to services. Some authors, however, believe that the definition in Articles 1 and 2 of the SCM Agreement is not adequate. Professor Marc Benitah, for instance, has affirmed that the principle of territoriality applied to subsidies rules in goods is not helpful in the area of services.[5] He shows that although most subsidies in services are provided locally, this does not preclude a subsidised entity from providing services by other modes of supply to, or within, third countries.[6] As a side

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effect of this conceptual difference, the notion of 'export subsidy' is less clear and less helpful than it is in the goods sector.[7]

'Distortiveness' vs Public Policy

According to GATS Article XV, only subsidies with 'distortive effects' should be subject to possible multilateral disciplines. In economic theory, all subsidies are trade distortive as they affect the natural conditions of competition. However, subsidies are – as shown above – at the same time an important tool for achieving sustainable development objectives. Consequently, in certain cases the goal of avoiding trade distortions needs to give way to countries' justifiable aim – or even obligation – to pursue public policy objectives. Nevertheless, judging by the experiences in goods and agriculture, the objectives of disciplining distortive subsidies, on the one hand, and preserving spaces for public policies, on the other, are not *per se* incompatible. Efforts could therefore be expended in defining common elements for reducing, phasing out, or even outlawing certain support measures, while keeping privileged treatment for subsidies that promote sustainable development.

Possible Models for Services Subsidies Rules

There seem to be two possible models for disciplines for subsidies in services. The first option, based on the 'goods model', basically establishes three categories of subsidies: prohibited, actionable and non-actionable subsidies. For example, certain export subsidies, or environmentally harmful subsidies, could be included in the first category, whereas support considered of importance for achieving public policy objectives would be regarded as non-actionable. All other subsidies could be actionable.

Following the concept of the SCM Agreement, the use of the goods model could imply a countervailing mechanism in services. Some experts, however, are critical of this approach because many developing countries lack the resources to use this remedial tool, and because certain developed countries have already used the SCM countervailing mechanism as a disguised safeguard.[8]

The second option is based on the model used in the WTO Agreement on Agriculture (AoA)[9], which would imply a five-step approach:

- agreeing on a definition for subsidies in services;
- mandatory notification of all services subsidies;
- stand-still commitment (i.e. freezing of existing subsidies levels);
- reduction commitments of existing non-exempt subsidies to be implemented in a sequential manner; and
- eventually, phase out of all non-exempt support.

Obviously, choosing the 'AoA model' would mean that it would take more time to arrive at tangible results in terms of tackling the trade-distorting effects of services subsidies. Many WTO Members have, however, started to look at this option with greater sympathy as it offers a politically feasible way to move the process forward in the WPGR.

Need for Exemptions

Many WTO Members believe that subsidies necessary to achieve certain public policy objectives should be exempted from general subsidy disciplines. This demand is backed up by the GATS, which provides that Members' needs for flexibility in the area of subsidies are to be taken into account. Beyond this general concern, many developing country Members are calling for additional spaces for development policies – for developing countries only – under special and differential treatment (S&D). In their view, such S&D must be part of all normative results of the Doha Round, and WTO agreements should provide policy spaces to allow the undertaking of 'active' policies[10], including those related to subsidies.[11]

To adequately reflect these differing needs for flexibility in providing subsidies, a reasonable approach could be to create a Sustainable Development Box consisting of three exempt-support categories, which would match the three pillars of sustainable development: economic, environmental, and social development. The exceptions contained in the first pillar of the box would – as part of S&D – only be available to developing countries for promoting economic development and competitiveness. All Members – regardless of the individual level of development – would be eligible for the other two categories to allow flexibility to pursue environmental and social objectives.

Economic Development Pillar

Measures under this pillar (which would be open to developing countries only) could include subsidies for enhancing competitiveness, diversifying the services supply, improving marketing strategies, research and development, increasing the technological absorbing capacity, etc.

Social pillar

Under this category, all Members could provide subsidies *inter alia* for education, health, access to basic services (water), universal provision of services, addressing regional asymmetries, etc.

Environmental pillar

Support measures under this pillar could include subsidies used to promote environmental/environmentally-friendly services and services production and supply methods, etc.

Roadmap for Cancun

Cancun will provide an important opportunity to revitalise the subsidy debate in services. To that end, efforts need to be made to balance out the asymmetries in the ongoing Doha Round talks, where market access negotiations are already at the request/offer stage, but the parallel rule-making package is stuck in the brainstorming phase. Therefore, efforts to advance the development of subsidies disciplines need to be renewed to assure that the new market access commitments currently being negotiated will not be impaired by subsidies in services. Nevertheless, looking at the current draft language on services to be presented to the Cancun Ministerial Conference, it appears that such readjustment of negotiation priorities is not likely to take place in the post-Cancun phase. On market access, the draft text goes much beyond the work programme which is currently on the table, as it will set a new 'landmark date' by which Members are to submit their final offers.[12] In contrast, on rule-making, the draft simply reiterates existing mandates and deadlines. A new 31 March 2004 deadline is just a temporal benchmark by which progress in the rules negotiations is to be reviewed.

Therefore, developing countries should push for clear guidance from Ministers in Cancun on the desirability of services subsidy disciplines. Moreover, a strict 'landmark date' needs to be set by which negotiations on subsidies in services must conclude. Finally, services subsidies negotiations should end before Members table their final offers, as Members can only then undertake an adequate evaluation of the actual value of the offers received from trading partners.

David Vivas is Programme Manager of Intellectual Property, Technology and Services, and Alex Werth is Programme Officer, International Law, Agriculture and Services at ICTSD.

ENDNOTES

[1] See S/WPRG/W/25/Add.3
[2] S/L/93, 29 March 2001
[3] See WTO document WT/MIN(01)/DEC/1, paragraphs 15 and 45
[4] See WTO document S/WPGR/W/16, 5 February 1997
[5] Marc Benitah. Working Paper on *Subsidies, Services and Sustainable Development*, March 2003; http://www.ictsd.org/dlogue/2003-03-10/Benitah_working%20paper_final.pdf.
[6] This could apply to any of the modes of supply depending on the case. Benitah quotes here the examples of county A providing a subsidy to a domestic firm which sends a team of computer programmers to country B (mode four); a subsidy provided to a hotel (mode two); or country A providing a subsidy to a firm which then establishes a subsidiary company in country B (mode three).
[7] Benitah, 2003.
[8] Ibid.
[9] Ibid.
[10] These refer to policies undertaken directly by the government to promote competitiveness.
[11] In services, the need for additional spaces for developing countries is reflected in Article XV, which recognises the role of a 'development programme' and the 'specific needs' for flexibility of developing country Members.
[12] Para. 15 of the Doha Declaration only requests Members to submit their initial offers by 31 March 2003.

Environmental Goods and Services: Bridging Doha, Johannesburg and the Millennium Development Goals

Mahesh Sugathan

Two years after the Doha Ministerial Declaration mandated negotiations on the liberalisation of trade in environmental goods and services, Members are grappling with what exactly constitutes such goods and services. These definitional issues are closely tied with the key question of whether faster liberalisation in goods and services that are considered 'environmental' would help the attainment of sustainable development objectives.

Paragraph 31(iii) of the Doha Declaration mandates negotiations on the 'reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.' How such goods and services are defined is relevant if Members read this injunction as a mandate to liberalise trade in 'environmental' goods and services (EGS) faster than other goods and services. If they do not, it may well be argued that at least in the short-term, classification issues do not matter as trade in EGS will be liberalised anyway at the same pace as other (industrial) goods and services.

In Para 31(iii) of the *Doha Declaration*, ministers agreed to "negotiations, without prejudging their outcome, on the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."

The *Johannesburg Plan of Implementation* calls on countries to "support voluntary WTO compatible market-based initiatives for the creation and expansion of domestic and international markets for environmentally friendly goods and services, including organic products [...]."

UN *Millennium Development Goal #7* enjoins governments to 'ensure environmental sustainability' through
- integrating the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources;
- halving, by 2015, the proportion of people without sustainable access to safe drinking water; and
- having achieved, by 2020, a significant improvement in the lives of at least 100 million slum dwellers.

Whether faster liberalisation of EGS would speed up the attainment of sustainable development objectives should also be examined. This is important given the mandate from the World Summit on Sustainable Development in Johannesburg, as well as the urgency of attaining the Millennium Development Goals (see box).

While some observers have drawn a link between the Doha Declaration's Para 31(iii) and the Johannesburg call for expending markets for 'environmentally friendly' goods and services, others have questioned whether 'environmentally friendly' could be equated with 'environmental'. However, as this article will attempt to show, 'environmentally friendly' products are on the radar screen of certain developing countries for the purpose of the Doha negotiations and could be one way of ensuring that the multilateral trade liberalisation round results in the attainment of sustainable development and not just environmental objectives.

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EGS as a Driver of Sustainable Development

Access to EGS is critical in combating environmental problems such as pollution of air and water, sanitation, desertification, land and resource degradation. Through enabling the integration of higher environmental standards in production and resource-extraction processes, ESG may also assist developing countries in accessing markets in the developed world where high environmental standards can act as market barriers. In addition, countries' ability to sign on to various multilateral environmental agreements (MEAs) could be enhanced by facilitating transfer of environmentally sound technologies and know-how embedded in environmental goods and services.

While these environmental goals are desirable in themselves, EGS can also act as engines for development. Channels for achieving this would include the creation of domestic EGS capabilities in developing countries including through foreign direct investment in environmental goods and services and the consequent creation of jobs including through forward and backward linkages in the economy. It could also happen through exports of environmental goods and services where possible comparative advantages may be identified, or obtained through government procurement. It is now up to developing countries to develop a coherent strategy for negotiating EGS as part of the Doha mandate so that access to EGS through these various channels maximises their sustainable development objectives and priorities as identified in the Johannesburg mandate and the Millennium Development Goals.

Elements of a WTO Strategy

In the WTO negotiations on environmental goods, developing countries are keen to include products of export interest beyond traditional definitions, which focus on end-of-pipe pollution treatment equipment and capital-intensive technologies. At the same time, many developing countries are averse to including goods that may rely on PPM (process and production methods)-based criteria. Similarly in environmental services many countries want to go beyond the Services Sectoral Classification List, which many Members believe is outdated and focuses too heavily on end-or pipe treatment.[1]

Whether definitional approaches are broad or narrow, developing countries will need to ensure that their sustainable development objectives are adequately reflected. With regard to environmental goods, the Doha Ministerial Declaration's market access mandate (para. 16) may be helpful. It requires the negotiations to:

- reduce or eliminate tariff-peaks, tariff-escalation, as well as non-tariff barriers with emphasis on products of export interest to developing countries;
- take fully into account the special needs and interests of developing and least-developed countries including through less than full reciprocity in reduction commitments; and
- take fully into account the principle of special and differential treatment for developing and least-developed countries.

Developing countries must ensure that these principles are reflected in any agreement on environmental goods. This will be a challenge considering that according to OECD and APEC definitions of the environment industry, the predominant export sectors (i.e. end-of-pipe goods and technologies) are concentrated in developed countries and developing countries are net importers. A definitional clarification may be necessary so as to include goods, possibly agricultural goods of export interest to developing countries. Here the main challenge is to address the issue of 'likeness' and developing country fears on the inclusion of 'PPM-criteria'. Focussing on environmental impact of end-use may initially be a solution as suggested by some OECD experts. Solar cars, for instance, reduce energy consumption and emissions although their production process may not be a criterion. But such a distinction may be hard to draw for agricultural crops where production methods rather than consumption cause most of the environmental impact.

There is also a need to ensure that liberalisation, if confined to a narrow definition of environmental goods and services, would meaningfully address the sustainable development needs and concerns of developing countries. From an environmental perspective as mentioned earlier, access to these EGS through imports will no doubt be highly beneficial. From a development perspective, the channels of access will clearly be important. As mentioned earlier, investment and procurement of EGS may be better options than imports to create the necessary domestic capacities including domestic infrastructure, jobs and incomes. In the case of services, regulating 'commercial presence' through Mode 3 may be an important way of ensuring that development objectives are met even if products of export interest to developing countries are not included. Imports and investment of EGS may also enable domestic firms to economise on energy or resource-use, which would help both competitiveness and the environment. Technical assistance and capacity-building will be crucial in this regard.

Ensuring Coherence

There is a need to ensure coherence both within and between the Committee on Trade and Environment (where definitional issues are discussed), the Committee on Non-Agricultural Market Access (where industrial tariff negotiations take place), the special sessions of the Council for Trade in Services (which negotiates market access concessions in services) and the special sessions of the Committee on Agriculture (if applicable).

Coherence within Negotiating Bodies

Coherence *within* negotiating bodies in terms of definitional clarification and appropriate classification of environmental goods and services is important, as such boundaries may be significant in determining the nature and levels of commitments Members may undertake across sectors.

The Services Sectoral Classification List (see endnote 1) outlines four categories of environmental services: sewage, refuse disposal, sanitation and 'other'. WTO Members can decide collectively on whether there is a need to update the classification in the light of developments in the environmental industry, services negotiations and ongoing work elsewhere. Proposals for updating the list include several sub-sectors such as water delivery, (hazardous) waste management; recycling and protection of air-quality and climate. The EC has proposed a new classification entitled "water for human use and wastewater management". It is difficult to separate

water purification from collection and distribution services. Civil society and many developing country voices have raised questions regarding ownership and control of essential services, and in the case of water, a vital resource. As in many cases of services with an environmental end-use, identifying and isolating the environmental objective for scheduling separate commitments may be a difficult but worthwhile exercise.

Many Members have proposed adoption of a 'cluster' or 'check-list' approach to services with an environmental end-use for which commitments could be entered in separate schedules. Such a 'cluster-building' process could be used to clarify the relationship not only between different services but also between various environmental goods and services. While modalities for the negotiations can draw upon cluster-based analysis, the actual scheduling of commitments (tariff and other concessions) in goods and services by both developed and developing countries must take into account not just increased trade but also developing countries' assessments of their sustainable development priorities (such as building competitive domestic capabilities in EGS sectors), as well as their environmental and social priorities.

Coherence between Negotiating Bodies

Again, from a definitional perspective, considering linkages between Para 31(i)[2] and 31(iii) negotiations could be integrated into the classification debates and these linkages in turn could determine how definitions are arrived at at the Committee on Trade and Environment and the Negotiating Group for Non-Agricultural Market Access. MEAs could greatly influence the definitional exercise for environmental goods. For instance, the HS codes allow the capturing of all goods, including environmental goods provided they are described in such a way that they can be identified on the basis of objective criteria when presented. In January 2002, the World Customs Organisation released stand-alone codes based on environmental criteria (for wastes and chemicals specified under certain MEAs, notably the Basel Convention and the Montreal protocol).[3] It is also important to recognise the linkages between different negotiating mandates in the Doha Declaration. For instance, some developing countries – notably Kenya and Colombia – have identified organic agricultural products as being of possible export interest as part of negotiations on EGS. But here the issue of linkage and coherence with the pace of negotiations in the Committee on Agriculture arises (see box).

The need for coherence between the negotiating bodies on environmental goods and services is made clear when we consider that many environmental goods might be required for the effective delivery of environmental services by foreign subsidiaries or by domestic environmental services firms. Rapid tariff liberalisation in the environmental goods sector could help such firms, as well as enable export-led firms including in developing countries to comply with market- or MEA-driven environmental standards. But would this help build local environmental goods capabilities in developing countries that could provide more jobs and incomes? Could a slower liberalisation in goods sector and a quicker liberalisation in Mode 3 environmental services motivate firms to go in for tariff-jumping investment in developing countries? Similarly what services would help – consultancy and certification come to mind – developing countries produce environmental goods for export? These questions might need further analysis and developing countries will have to weigh and balance their different sustainable development goals before undertaking definite concessions and commitments.

Conclusion

Viewed through the prism of maximising sustainable development benefits, the various elements of a developing country strategy should include, *inter alia*, an understanding of the various inter-linkages not only within the trade and environment negotiating mandate but also with other negotiating mandates. This should be reflected in a coherent approach to negotiations within and across the various negotiating bodies and should keep in mind the realisation of the Millennium Development Goals and the WSSD Johannesburg mandate. This will ensure that negotiations on environmental goods and services serve as a bridge linking Doha, Johannesburg and the Millennium Development goals and help realise a 'win-win-win' outcome for trade, environment and development.

Mahesh Sugathan is an economist and trade policy analyst at ICTSD.

ENDNOTES

[1] MTN.GNG/W/120, developed during the Uruguay Round, and largely based on the United Nations Provisional Central Product Classification.

[2] Para 31(iii) mandates negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs).

[3] Vaughan, Scott, *Trade Preferences and Environmental Goods,* Trade Equity and Development, February 2003, accessible at http://www.ceip.org/files/pdf/TED_5.pdf

The Organic Agriculture Paradox

Would the inclusion of organic agricultural products in a definition of environmental goods imply a reduction not only in tariffs but also non-tariff barriers for such products, including state support? Assume that export subsidies and domestic support for organic agriculture is removed in OECD countries in order to facilitate exports from developing countries. If negotiations in agriculture fail to make much progress, this would leave intact export subsidies and domestic support (amber box subsidies) to non-organic OECD agriculture. The paradox would be one of artificial support to non-organic agriculture resulting in big price advantages over organic produce. Even assuming that they fall into different market niches, the price differences could be sufficient to make organic production unviable in developing countries as well.

The issue of sequencing is thus important. Scott Vaughan mentions that it would be more sensible to take a 'tariffs first' approach.[1] Special and differential treatment could also be a solution but may not resolve this paradox. For example, developed countries' General Systems of Preferences may provide quota- and duty-free access for all organic products. But such products would still have to compete with subsidised OECD non-organic production. Hence meaningful encouragement to organic farming will also depend upon the dismantling of various existing supports for non-organic developed country agriculture.

[1] Vaughan, Scott, *Trade Preferences and Environmental Goods*, February 2003

The Multilateral System of Genetic Resources Exchange: Why trade in food genetic resources matters?

Susan H. Bragdon

For many years, WTO Members have fruitlessly debated whether the provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) should be modified to ensure that trade rules are compatible with the Convention on Biological Diversity and the International Treaty for Plant Genetic Resources for Food and Agriculture (IT). Both agreements contain obligations for the preservation of plant genetic resources, as well as for sharing benefits from the commercial exploitation of such material with those who conserved it through centuries of stewardship. In this article, Susan Bragdon explains what the IT is and how it fits in the complex web of instruments that touch on intellectual property rights.

From the beginning of agriculture some ten thousand years ago, humans have relied on genetic diversity available in plants to develop a wide range of genetically diverse crops that have enhanced human survival. Diversity remains a critical component of agricultural production and food security today. The loss of individuals and populations narrows the genepool of a species and restricts its ability to adapt and evolve to changing circumstances. The US corn blight in the early 1970s and the failure of a high-yielding wheat variety planted almost exclusively in the Ukraine during the winter of 1971-72 were harsh lessons in the importance of diversity but also of the importance of being able to access this diversity to solve imminent threats.

Today, the agriculture of virtually all countries depends on a supply of resources from other parts of the world.[1] Even the countries considered richest in biodiversity are dependent on plant genetic resources from other parts of the world. Rich or poor, impeded access to plant genetic resources for food and agriculture (PGRFA) raises the vulnerability of farmers by increasing risks and undermines the stability of agriculture.

Establishing International *Ex Situ* Collections of PGRFA

Motivated by the twin goals of research facilitation and conservation, national and international efforts to collect, evaluate and conserve PGR became concerted and organised in the 1960s. To facilitate research, stores of germplasm were centralised in genebanks accessible to all rather than haphazardly stored in various jurisdictions around the world. The second incentive recognised the need to conserve the genetic information upon which the development of newer and better crops depended.

These international efforts catalysed a dramatic change in world agriculture. What came to be known as the 'Green Revolution' was instigated by the public sector in the 1960s. It began with the development of a new set of high-yielding varieties that greatly increased agricultural production and hence the world food supply. Interestingly, intellectual property rights had little role in this process.

The push toward commercially mass-produced varieties led to the abandonment of diverse landraces. In 1967, an FAO technical conference proposed the creation of a global network of genebanks to store representative collections of the main varieties of food. Priority was given to preserving the landraces, many of which were immediately threatened.

As noted above, the risks of crop uniformity were felt in the early 1970s. In response to famine[2] and fear of potential widespread famine in the future, collecting missions were organised and genebanks established in an atmosphere of crisis with little contemporaneous thought to legal issues of ownership and control. In 1971, the FAO, the World Bank and the United Nations Development Programme founded the Consultative Group on International Agricultural Research (CGIAR). The CGIAR is an association of public and private donors who support a network of 16 international research centres (IARCs). The CGIAR conserves approximately 600,000 seed samples which may amount to up to 40 percent of the world's unique germplasm in storage worldwide. There is no dispute that the vast majority of crop germplasm held in the IARCs was collected primarily from the fields and forests of the South's farming communities. But at least partially because of the atmosphere in which they were originally assembled, issues of ownership, accountability and whether or not the CGIAR germplasm can be subject to intellectual property protection by any party, were topics of controversy and debate.

Legal Regimes Affecting Trade in Plant Genetic Resources

While controversies over the ownership, control and exchange of plant genetic resources for food and agriculture (PGRFA) may be old, the array of interests and hence legal instruments affecting those resources have become increasingly complex. Trade relations, intellectual property rights, conservation and the rights of indigenous peoples are examples of the myriad of areas where there are now legal instruments or arrangements of relevance to PGRFA.

Because of its importance to food security this note will focus on the newest developments in international law governing the exchange of PGRFA, in particular the multilateral system of exchange (MLS) established by the International Treaty for Plant Genetic Resources for Food and Agriculture (IT). The issue of ownership and control of the resources in the IARCs were central in the IT negotiations and were partly resolved by the creation of the MLS and provisions inviting the CGIAR to join in the system. Many issues, however, remain unresolved and will be determined by decisions of the Parties to the Treaty and through its implementation.

A brief history of the IT and the IARCs

The FAO Commission on Plant Genetic Resources was established in 1984 as the first permanent intergovernmental forum in the United Nations System to deal with agricultural biological diversity. Since its establishment the Commission has coordinated, overseen and monitored

the development of a Global System for the Conservation and Sustainable Utilisation of Plant Genetic Resources for Food and Agriculture. The keystone of this system was the 1983 International Undertaking on PGRFA (IU) which was the first comprehensive international agreement dealing with PGRFA. In accordance with IU Article 7.1(a) – and because of the uncertainty regarding the legal situation of *ex situ* germplasm in genebanks – the Commission called for the development of an International Network of *Ex Situ* Collections in 1989. Subsequently, in 1994 twelve IARCs signed agreements with the FAO placing most of their collections in the International Network. Through these agreements, the Centres recognised "the intergovernmental authority of the FAO and its Commission in setting policies for the International Network" and accepted to hold the designated germplasm "in trust for the benefit of the international community" and "not to claim ownership, or seek intellectual property rights over the designated germplasm and related information."

In 1993, the FAO Commission began a negotiation process to revise the IU primarily to:
- bring it in harmony with the Convention on Biological Diversity (CBD);
- consider the issue of access to plant genetic resources including ex situ collections not addressed by the CBD; and
- realise Farmers' Rights.

On 3 November 2001, the thirty-first FAO Conference adopted the IT by unanimity.[3] Thus far, 20 countries have ratified the IT, which will enter into force after ratification by 40.

The International Treaty contains 35 Article and 2 annexes. While its scope covers all PGRFA, this note focuses on the articles in Part IV of the Treaty that establishes the MLS for the particular crops listed in Annex I.

The Multilateral System of Access and Benefit-Sharing

Major changes established by the MLS

The MLS should help reduce tensions around the transfer and use of Annex I PGRFA and thus should facilitate collection and exchange of these resources. Annex I contains approximately 35 crops and a modest number of forage species. While an important list, some important crops are not included. Access to materials of others crops – including some important excluded crops such as soyabean, groundnut, sugar cane and most tropical forages – will likely be more difficult, requiring a specific agreement with the country providing access. The concept of designated germplasm from the 1994 FAO Agreements will be dropped, replaced by the new distinction between PGRFA of crops that are part of the MLS and those that are not. Access to material in the MLS will be provided under terms specified in a standard material transfer agreement (MTA). The terms of the MTA are to be agreed to by the IT's Governing Body and will bind recipients to benefit-sharing arrangements in particular defined circumstances. Farmers' Rights are largely assigned to national governments, which can define and implement them as they see fit.

Overview of MLS provisions

Access is to be provided to both *in situ* and *ex situ* materials other than those "under development" (these are available at the discretion of the developer during the period of development). The Annex I resources must also be under the management and control of the contracting party and in the public domain. The International Treaty does not cover access for purposes that are not related to food and agriculture. While intellectual property rights (IPRs) are to be respected, the the Treaty nevertheless prohibits a recipient from claiming any IPR that would "limit facilitated access to PGRFA, or their genetic parts and components, in the form received from the Multilateral System."

Benefit-sharing in the form of a payment into an international fund at FAO will be mandatory when genetic material from the MLS is used to produce a "product that is a PGRFA" (e.g., a line or cultivar) that is commercialised, unless this product is made available without restriction for further research and development. In effect, patenting will likely trigger the benefit-sharing mechanism; plant breeders' rights probably will not. Material accessed from the MLS can therefore be used in breeding programmes and the resulting varieties or lines protected by IPRs although benefit-sharing provisions may be triggered depending on the availability of the PGRFA-product. The precise terms of benefit-sharing are to be determined by the IT's Governing Body. The IT states only that the benefits will be "in line with commercial practice." The MTA text noted above will need to operationalise this requirement. Once received, the monetary benefits are to be used to support PGRFA-related programmes.

Information that is "associated, available, non-confidential and descriptive" must be made available by Parties to the Treaty and by CGIAR Centres. Information is interpreted as data and knowledge, not as genetic material.

Outstanding Issues

The ethical, legal and moral debate surrounding the relationship between IPRs and germplasm is not new. Some of the proposals arising in the context of the TRIPs review of Article 27.3(b)[5] have been to amend TRIPs to prohibit IPRs over life forms. The IT explicitly recognises IPRs in relation to germplasm and hence shifts the question of whether or not the international community should sanction IPRs in relation to germplasm to questions of interpretation and definition of how exactly they will apply. In this way, the IT can arguably be seen as weakening the position in other fora that IPRs related to germplasm in any form are unacceptable.

The ambiguities contained in the IT that will likely be most difficult to clarify are those that relate to precisely what is being accessed under the MLS, how it can be used and protected and under what conditions access might be denied or granted. As noted above, in dealing with IPRs, the IT uses the term 'genetic parts and components' and the even more problematic phrase 'in the form received'.

Continued on page 22

For countries considering protection systems under TRIPs Article 27.3(b), it is worth noting that patenting is likely to trigger the IT's mandatory benefit-sharing requirement while a plant variety protection system (because products are usually available for further research and breeding) probably will not.

ACP Ministers: No Patents on Life

At the WTO Council for TRIPs, as well as other fora, a number of Members have repeatedly called for living organisms to be exempted from patenting obligations. Most recently, trade ministers of the African, Caribbean and Pacific (ACP) Group of States called for the review of TRIPs Article 27.3(b) to "conclusively clarify that all living organisms including plants, animals and parts of plants and animals, including gene sequencing and biological and other natural processes for the production of plants, animals and their parts should not be patented."[1]

In June, trade ministers of the least-developed countries made a similar statement, adding that WTO Members "shall ensure that the TRIPs Agreement is fully compatible with the provisions of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture (Bridges Year 7 No.5, page 19).

ACP ministers called on WTO Members to "develop mechanisms that require, as a condition for the grant of a patent, patent applications to disclose the country or area of origin of any biological resources and traditional knowledge used or involved in the invention, and to provide confirmation of compliance with all regulations in the country of origin, including prior informed consent, and access and benefit-sharing arrangements." Nevertheless, the ministers noted that such disclosure requirements, could not address the basic concern that patents on plants, animals, micro-organisms and their parts, as per Article 27.3(b) "give patent holders exclusive rights over the use of the resources and thus deny communities the ability to determine the conditions for their use."

[1] TRIPs Article 27.3(b) – currently under review at the WTO – requires Members to protect plant varieties through either an "effective *sui generis* system" or patents. Patents are obligatory for micro-organisms and "non-biological and microbiological processes" for the production of plants and animals.

Neither is defined and each is clearly subject to multiple interpretations. Some countries were of the opinion that this paragraph would preclude the kind of patenting of isolated, purified genes which is allowed in some countries because the patented gene would be the same as that received. Others believed that the isolated and purified form is different from the 'form received' from the MLS.

For countries considering protection systems under TRIPs Article 27.3(b), it is worth noting that if all the definitional hurdles requiring benefit-sharing in the IT are met, it is likely that a patent system (because the products are more likely to not be freely available) will trigger the mandatory benefit-sharing requirement while a plant variety protection system (because products are usually available for further research and breeding) probably will not. Nevertheless, even when benefit-sharing is triggered, the level, form and manner of payment must be "in line with commercial practice." As 'commercial practice' is not defined in the Treaty, the definition will need to be taken up by the Governing Body.

In terms of access, Article 12.3(e) states that "access to PGRFA under development, including material being developed by farmers, shall be at the discretion of the developer, during the period of its development." It is not clear what constitutes 'development' and, when it is determined that development is occurring, when the 'period' begins or ends.

Conclusion

The IARCs hold some of the largest and most useful and used collections around the world. The Centers have formally welcomed the IT and indicated their intention to associate themselves with it. Sixty-seven countries plus the European Union have signed the Treaty, and 20 countries have ratified it. The IT, and its MLS, have wide support, indicating an understanding of the importance of the availability of these resources. During the negotiations proposals were made that would have undermined this goal. These included, for example, proposals for repatriation of germplasm in the IARC collections and calls for farmers to take ownership of these resources in the name of Farmers' Rights. In establishing the MLS and inviting the CGIAR to affiliate, the negotiators rejected these proposals and embraced the principles of the 1994 FAO-CGIAR Agreements which stated that the resources were to be "conserved and used in research on behalf of the international community, particularly developing countries."

There are legitimate concerns for equity and the recognition of the rights of indigenous and local communities reflected in various fora including, *inter alia*, WIPO, the WTO and the CBD. There is no reason that proposals to include, for example, rights for local communities in intellectual property protection under Article 27.3(b), cannot be drafted to be consistent with the provisions of the IT. What is important is for parties in other fora, such as the WTO TRIPs review, to be aware of the IT and to recognise that it reflects not only the broad support of the international community but its understanding that the system of facilitated access established was the best way to see that the resources of the *ex situ* collections are conserved and used to achieve food security and end hunger.

Susan Bragdon is Senior Scientist, Law and Policy, at the International Plant Genetic Resources Institute (IPGRI) in Rome. The views expressed in this article are the author's and do not reflect those of IPGRI.

ENDNOTES

[1] Sub-Saharan Africa, for example, is estimated to be 87 percent dependent on other parts of the world for the plant genetic resources it needs.

[2] Crop uniformity was one factor in the epidemics. Other factors were also important, including, for example, the international oil crisis and the Sahelian drought.

[3] With two abstentions: the United States and Japan.

[4] Article 15 calls upon the IARCs to sign agreements with the Governing Body of the Treaty to make PGRFA listed in Annex I and in their collections available in accordance with the provisions of Part IV of the IT.

[5] Article 27.3(b) requires WTO Members to provide for the protection of plant varieties by patents or a *sui generic* system (or some combination of the two).

ICTSD at Cancun: The Trade and Development Symposium

At the Doha Ministerial Conference, governments reaffirmed their commitment to the objectives of sustainable development. Today's uncertain outlook – with many key deadlines missed, including those for agriculture and special & differential treatment – challenges academia, research institutes, the business sector, non-governmental and intergovernmental organisations and parliamentarians – to spell out the links between trade policies and development concerns and to convey them effectively to decision-makers and other relevant actors.

The fifth WTO Ministerial Conference in Cancun therefore presents a timely opportunity to inject innovative thinking and impetus into trade policy negotiations. In order to provide a platform for dialogue on issues related to trade and development and to address the Cancun negotiations' key concerns, ICTSD and El Colegio de Mexico are co-convening a Trade and Development Symposium on 11-12 September 2003. The symposium is open to the public.

The main objectives of the Cancun Trade Development Symposium are to:

- encourage innovative thinking on issues related to trade and development to be translated into inputs for negotiations;
- build greater understanding of the positive and negative development-related impacts and concerns of trade policies/rules and the current agenda;
- promote the need for 'policy coherence' – particularly among and within rich countries – in relation to trade negotiations; and
- provide informed recommendations on development-related policies to key actors in the Doha Round negotiations and in regional and bilateral agreements.

More than 25 organisations have come on board as sponsors and session organisers of the CTDS. It is our intention to hold a Trade and Development Symposium in conjunction with a WTO Ministerial Conference every two years to provide an ongoing non-partisan platform that can enrich and inform the debate through new thinking from many different perspectives. For more information, please go to www.ictsd.org/ministerial/cancun/tds or e-mail tds@ictsd.ch.

ICTSD at Cancun: The Global Biodiversity Forum

From 5 to 7 September 2003, IUCN-The World Conservation Union, ICTSD, the IUCN Commission on Environmental, Economic and Social Policy, the Ministry of Environment and Natural Resources of Mexico (SEMARNAT) together with more than thirty other organisations will jointly host the 18th session of the Global Biodiversity Forum.

The event's main objective is to provide an opportunity for the trade and biodiversity communities to consider how the pursuit of their respective goals and objectives might complement or hinder each other. Specifically, the GBF18-Cancun aims to:

- build greater understanding of the positive and negative impacts of the international trade agenda on biodiversity from a range of perspectives;
- explore key issues that could lead to mutual supportiveness between international processes related to trade, biodiversity and sustainable development; and
- provide informed recommendations on biodiversity-related policies to key actors in the Doha Round.

The GBF will include three workshop streams, focusing on Risk, Precaution and Biosecurity; the Relationship between the TRIPs Agreement and the WTO; and Trade and Sustainable Livelihoods. The workshop outcomes will be drawn together and will feed into the WTO Ministerial meeting. To this end, the recommendations will be presented to ministers during a High Level Roundtable on Trade and Environment to be held in Cozumel, Mexico, on 9 September, organised by the Mexican Ministry of Environment and Natural Resources in collaboration with the Ministry of Economy and the Ministry of Foreign Affairs.

Sessions at the GBF18-Cancun are being organised by a wide variety of organisations, available with all other information on the forum at http://www.gbf.ch or e-mail gbf@iucn.org.

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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Other ICTSD periodicals:

BRIDGES Weekly Trade News Digest
A weekly electronic news service on trade, sustainable development and the WTO.
Editor: Malena Sell

BRIDGES BioRes
Co-publisher: IUCN – The World Conservation Union
A bi-weekly electronic news service on trade, sustainable development and biological resources.
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TRADE NEGOTIATION INSIGHTS
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Bi-monthly publication with a particular focus on Africa and ACP countries, the multilateral WTO negotiations and the Cotonou process.
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Meetings of WTO Bodies

Sept. 10-14 Cancun	**WTO Fifth Ministerial Conference** For documents and other information, see: http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm#docs
Sept. 25	Committee on Agriculture, regular session
Sept. 29 - 2	Services Week
Oct. 2	Dispute Settlement Body
Oct. 3	Council for Trade in Services, special session*
Oct. 6	Services Meeting
Oct. 6-9	Committee on Agriculture, special session*
Oct. 7-8	Negotiating Group on Rules
Oct. 10	Council for Trade in Services, special session*
Oct. 21-22	General Council
Oct. 27	Negotiating Group on Rules
Oct. 28-31	Committee on Trade and Environment; regular session followed by special session*
Nov. 3	Negotiating Group on Rules
Nov. 7	Dispute Settlement Body

**Special sessions denote negotiations mandated in the Doha Ministerial Declaration.*

Other Meetings

Sept. 5-7 Cancun	Eighteenth session of the Global Biodiversity Forum on Biodiversity, Trade and Sustainable Development www.gbf.ch/present_session.asp?no=31&lg=EN
Sept. 4-5 Phuket	APEC Finance Ministers' Meeting www.apecfmm2003.org/information/home.php
Sept. 11-12 Cancun	Trade and Development Symposium Co-convened by ICTSD and Colegio de Mexico www.ictsd.org/ministerial/cancun/tds
Sept. 23-24 Dubai	Annual World Bank and IMF Meetings www.imf.org/external/am/2003/index.htm
Oct. 8-10 Bangkok	Workshop on Non-tariff Measures and Trade Facilitation www.pc.gov.au/news/apecworkshop.html.

Doha Round Briefings, Cancun Updates

ICTSD , in collaboration with IISD, has published updates to the series of Doha Round Briefings issued in February 2003. The 13 Cancun Updates provide a comprehensive overview of the current status of negotiations and the prospects for Cancun in the following key areas:

- Agriculture
- Services
- Special and Differential Treatment
- Implementation-related Issues and Concerns
- Intellectual Property Rights
- Market Access for Non -agricultural Products
- Negotiations on WTO Rules
- The Singapore Issues
- Trade and Environment
- Dispute Settlement Rules
- Technical Assistance
- Trade and Transfer of Technology
- Trade, Debt and Finance

During the Cancun Ministerial Conference, ICTSD will publish **Daily Updates** on the negotiations in English, Spanish, French, German, Portuguese, Chinese and Russian. These will de distributed at the conference venues, as well as posted on the ICTSD website www.ictsd.org.

Other New ICTSD Resources

Bellmann Christophe; Dutfield, Graham and Meléndez-Ortiz, Ricardo (*eds.*). August 2003. Trading in Knowledge: Development Perspectives on TRIPs, Trade and Sustainability. 376 pages. Earthscan. London

Trade Negotiations Insights: From Doha to Cotonou. August 2003 *Disponible en français également.*

UNCTAD-ICTSD Project on IPRs and Sustainable Development:

Intellectual Property Rights: Implications for Development. August 2003. Policy discussion paper

Dutfield, Graham. June 2003. Protecting Traditional Knowledge and Folklore: A Review of Progress in Diplomacy and Policy Formulation. Issue Paper No.1

Kim, Linsu. June 2003. Technology Transfer and Intellectual Property Rights: Lessons from Korea's Experience. Issue Paper No.2

Lall, Sanjaya and Manuel Albaladejo. June 2003. Indicators of the Relative Importance of IPRs in Developing Countries. Issue Paper No.3

Rangnekar, Dwijen. June 2003. Geographical Indications: A Review of Proposals at the TRIPs Council: Extending Article 23 to Products Other than Wines and Spirits. Issue Paper No.4

Jerome H. Reichman and Catherine Hasenzahl. June 2003. Non-voluntary Licensing of Patented Inventions: Historical Perspective, Legal Framework under TRIPs, and an Overview of the Practice in Canada and the USA. Issue Paper No.5