

# WTO Public Forum

"Trading into the Future"



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## Foreword by the Director-General



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This year's Forum – “Trading into the Future” – was designed to provide a unique opportunity for governments, non-governmental organizations, academics, businesses, and students to come together to discuss how the trading system could best reflect the future needs and aspirations of the international community. The Forum took place against a background of financial instability, high oil and food prices, and asked: “how can the trading system be taken into the future?” In doing so, it hoped to trigger a frank and open debate on the role and responsibility of the multilateral trading system on complex issues such as the food crisis, financial markets, climate change, human rights, and electronic commerce, to mention but a few topics. The Forum attracted a record number of 1330 civil society participants, who all came to the WTO to express their views on the host of different challenges facing the multilateral trading system, and to voice their particular preoccupations.

Through the numerous informative sessions which civil society itself organized at the Forum, there is no doubt that the Forum has been enriching. It has taken the WTO one step closer to civil society and to the public, to whom it must be deemed accountable. This interaction must continue. We need civil society to help WTO members to guide us forward, and it is in that vein that I herewith share with you the records of the Forum. I hope that you will find these records useful to your work. They are certainly part of the compass we all need for direction in these difficult times.

Pascal Lamy

WTO Director-General







## Acknowledgements

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## Introduction

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**The 2008 Public Forum was held at WTO headquarters in Geneva from 24 to 25 October. This year's Forum entitled "Trading into the Future", provided a unique opportunity for governments, representatives of non-governmental organizations, parliamentarians, academics, members of the business community, journalists, lawyers and students to debate and discuss how the trading system may best reflect the future needs and aspirations of the international community.**

This year's Forum, which took place against the backdrop of the most severe financial crises in modern history, volatile oil and food prices, considered the kind of international trading system we hand down to future generations. The different sessions held during the Forum aimed at triggering a frank and open debate on the role and responsibility of the multilateral trading system on complex issues such as the global food crisis, the financial markets crisis, climate change, human rights, and electronic commerce, to mention but a few topics. The debates and ideas put forth by the public at large can but contribute towards a strengthened multilateral trading system, based on rules and regulations, that is up to speed with new market realities as well as an effective dispute settlement mechanism.

This publication provides a summary of the proceedings of the different sessions held during the Forum. Each report was prepared under the full responsibility of the individual organizer(s) of each panel. The publication is divided into three main parts structured around the three sub-themes of this year's Forum, namely: (i) challenges and opportunities facing the WTO; (ii) challenges and opportunities facing the main actors and stakeholders of the multilateral trading system; and (iii) the way forward for the multilateral trading system.

The sessions under the first sub-theme considered the challenges and opportunities the WTO faces in each of its institutional functions, including: (a) negotiating the reduction of obstacles to trade (import tariffs and other barriers to trade) and agreeing on rules against discrimination in international trade; (b) administering and monitoring the application of the agreed rules for trade in goods, services, intellectual property rights; (c) surveying the trade policies of members as well as ensuring transparency of regional and bilateral trade agreements; (d) settling disputes among members; and (e) building capacity of developing country government officials in international trade matters.

The questions dealt with in the different sessions were, mainly, of an institutional nature and focused on: how WTO rules can ensure coherence and avoid conflict with the rules of other international institutions like International Labour Organization (ILO) rules on Decent Work, and the United Nations Framework

Convention on Climate Change (UNFCCC), to mention but two of many; how the processes through which negotiations are conducted at the WTO can guarantee that consensus is reached in an efficient manner, and in line with the interests of all Members; how the WTO Secretariat can improve its capacity-building programmes for developing countries; and how the increasingly significant share of world trade covered by regional and preferential trade agreements can be brought into a positive symbiosis with the multilateral trading system.

The sessions that addressed the second sub-theme considered the challenges and opportunities facing the main actors and stakeholders of the multilateral trading system and asked what may happen with public services in a new era of liberalization, and who will be affected by these changes, and how. A number of questions were discussed, namely: how can the international frameworks to defend human rights be used in conjunction with trade rules to yield a more "people-centred" system of international trade?; how can entrepreneurs, and Small and Medium size enterprises, especially those in developing countries, benefit more from international trade and contribute towards creating successful and strong economies; how must the agricultural sector across the world, adapt to changes while defending livelihoods, and food security?; what prospects can we foresee for countries currently negotiating WTO membership, and what unique challenges face newly acceded countries?; and how can the link between trade openness and poverty reduction be most effectively made, and what, in many cases, remains as a missing link?

Finally, the sessions that addressed the third sub-theme considered the way forward for the multilateral trading system. These sessions dealt with questions about what ought to be done with energy markets, food markets, sustainable development, climate change, good governance, poverty reduction, developing country participation and institutional reform and looked into the future with regard to systematic analysis of the challenges facing the trading system today and in the years to come. They addressed the following questions: how has the participation of developing countries in the GATT/WTO evolved and what are the prospects for the future?; how might agenda formation at the WTO be addressed in the future?; how to strike the right balance between inclusiveness and efficiency in the decision-making process as it has evolved from the GATT to the WTO?; and how should regionalism be addressed in the future?

By addressing the challenges and opportunities facing the WTO and its main actors and stakeholders, the Forum provided a platform for the public at large to identify practical and effective ways forward for the multilateral trade system and world trade governance.



# Inaugural speech by the Director-General





Mr Pascal Lamy – WTO Director-General

Wednesday 24 September 2008 – 10.00-10.30





## “First Things First”

Ladies and gentlemen, Welcome to the WTO!

**This year the WTO opens its doors to the public against a background of newspaper headlines heralding a potential *Great Depression “Two”*. But policy-makers in the United States, who have seen several giant financial institutions sound their alarm bells last week, as well as policy-makers across the globe, are desperately seeking to avoid the series of mis-steps that accentuated the financial crisis of the 1930s.**

They are all stressing that lessons from the Great Depression have been learned, and that the many policy mistakes that were associated with it, will be avoided. But one of the important lessons of the Great Depression, which we must not forget, is that “protectionism” and economic isolationism, do not work. They are policies of the past, which should have no place in our future.

As tempting as it is in moments of crises to give our producers comfort that we are shielding them from competition by shutting our borders to imported goods or services, this course of action must not be pursued. In fact, the infamous *Smoot-Hawley Tariff Act* of the 1930s that raised US tariffs on over 20,000 imported goods to record levels, led to nothing but a trade war between nations. In so doing, it ended up impoverishing us all; proving that protectionism, and beggar-thy-neighbour policies, are a dead-end road.

In a financial crisis, and at times of economic distress – in particular at a time of soaring world food prices, what impoverished consumers desperately need is to see their purchasing power enhanced and not reduced. What is needed in times of crises, is to enable consumers to purchase more for less. The temptation to shut our borders does exactly the opposite. There is no doubt therefore that the current hurricane that has hit financial markets, must not dissuade the international community from pursuing greater economic integration and openness. But in order to be both sustainable and fair, this integration has to be based on rules. And the rule-book needs to be updated regularly.

This year’s Public Forum is aptly entitled “Trading into the Future,” and in that title lies a question: *What kind of an international trading regime do we bequeath to future generations?* Do we want a strengthened multilateral trading system, based on rules and regulations, as well as an effective dispute settlement mechanism between members, or do we want a spiral of free-trade agreements? Those who favour FTAs point to the inefficiency of the multilateral process. They argue that a multilateral trading system that runs a round of negotiations – in this case the Doha Development Agenda – for 7 years, without closure, is a failed system.

But to them I say: And how long does it take you to negotiate an FTA? Often, the answer is the very same number of years, but with an outcome limited to only two or very few players, and to a narrow set of topics. Surely, therefore, more credit needs to be given to an international attempt aimed at

updating the World Trade Organization’s rule-book, an attempt whose coverage would span all of its 153 members.

To sceptics of the multilateral process, I would also say: And where is the FTA that has delivered “subsidy” reductions? Isn’t the reduction of subsidies that distort trade vital to truly levelling the playing field in international trade relations? While FTAs may have their *forte* in the reduction of tariffs, subsidy reduction surely is not their area of strength. Thus, I do not quite frankly see many alternatives to the WTO – as imperfect as the WTO system may be today!

If any one is in doubt as to the importance of subsidy reduction for the world’s poor, I would point them to the many subsidy disputes that have been brought to the WTO; such as the *Cotton Case* against the United States, or the *Sugar Dispute* against the European Community. It is such subsidies that have now led the developing world to place agricultural negotiations at the forefront of the Doha Development Agenda. In doing so, the developing world has asked developed nations to “walk their trade opening talk,” if I may say so. This is the importance of the WTO as a platform for negotiations. A platform, I hasten to add, in which members with only a few million can bring disputes against entire continents, and win them.

But if the multilateral trading system is this useful to us all, how then do we take it into the future? My answer to that is that we can only make a success of the WTO’s future, if we are able to make a success of its present. The Doha Development Agenda must be completed to the satisfaction of all its participants, if a strengthened WTO is to move forward. In other words, “*first things first*,” to put it plainly.

What the world has before it today in the Doha Round of trade negotiations is a package that includes: the reduction of unfair agricultural subsidies; the reduction of tariff walls on industrial and agricultural goods; the reduction of barriers to trade in critical services, such as banking, energy, and environmental services; and beyond that, a myriad of new trade rules in areas such as trade facilitation, anti-dumping or fishery subsidies to name a few. This, in order to bring the trading system up to speed with new market realities.

But beyond this lies a more fundamental political objective. The Doha Round is about renewing the “*affectio societatis*” - the vows of the original WTO contract. Its two fundamental principles being: one, that contributions to more open trade be made on the basis of a member’s level of development and, two, that members be bound by a set of international obligations.

Despite the setback that Doha negotiations suffered last July, talks have once again been restarted with the aim of completing a deal on the parameters for tariff and subsidy reduction, by the end of this year (in our jargon, “modalities”). There is no doubt that this important milestone must be crossed, before considering either an enlargement of the WTO’s agenda or a changing of its decision-making practices.

Three principal constraints today represent a challenge to our work: the first is the *bottom-up approach*, under which members must themselves always take the lead in tabling negotiating proposals and compromise solutions; the second is the concept of a “*single undertaking*,” which implies that in a round of negotiations with 20 different topics, nothing is be agreed until all is agreed; and the third is decision taking by consensus, which is reasonably close to unanimity.

These three factors combined have no doubt slowed the negotiating process. But they are also essential for the legitimacy and the balance of any negotiating outcome. And, I am firmly of the view, that with these factors, the Doha Round must simply make do! I personally do not believe that it is the time to launch a parallel negotiation on how to negotiate! That's for later!

The Doha Round represents an important opportunity for civil society to make its voice heard. Several of the topics on the negotiating agenda, are topics that civil society has fought long and hard for; such as the lowering of rich world agricultural subsidies; the lowering of environmentally-harmful fisheries subsidies; trade-opening in environmental goods and services (EGS); and ensuring greater compatibility between WTO rules and multilateral environmental agreements. With these topics now firmly on the agenda, civil society must continue to engage the WTO. I would argue that your work – ladies and gentlemen – is cut out for you. You must help us bring each and everyone of these topics to closure.

Some of these topics, if successfully addressed, can already go a long way towards addressing problems such as the food price crisis, and climate change. The reduction of agricultural tariffs and subsidies, would allow agricultural production to shift

more towards the developing world; enabling supply to better adjust to demand; easing the structural causes of the food crisis. Similarly, trade opening in EGS, in particular in climate-friendly technology, can make vital pollution prevention and reduction equipment more accessible to countries in need; thereby easing the climate crisis.

At our Public Forum last year, I cited to you some of the success stories that civil society has had in influencing the WTO; most notably in the area of Trade-related aspects of intellectual property rights (TRIPS) and access to medicines. Just yesterday we saw the first shipment of AIDs generics from Canada to Rwanda under the provisions resulting from the Doha mandate. Today, I call on civil society to continue bringing its ideas and solutions forward. It is only with your active participation, that the WTO can come to reflect the type of institution you seek for the future.

This forum, organized through the usual bottom-up approach, is *your* forum. You have set the agenda, and organized the many sessions that will take place over the course of today and tomorrow. All we have given you is the venue. But the most important thing we give you in these few days, in my view, is our attention. For WTO members, and Secretariat staff alike, this is listening, and learning time. So, let me conclude by thanking you for making this year's Forum possible.

Pascal Lamy

WTO Director-General

**II.**

# **Challenges and Opportunities Facing the WTO**



A.

## Mutual Supportiveness of Trade, Climate Change and Development Objectives and Policies



### **Moderator**

Ms Fiona Harvey – Environment Correspondent, Financial Times

### **Speakers**

Dr Mari Pangestu – Minister of Trade of Indonesia

Mr Thomas Becker – Deputy Permanent Secretary; Climate Change Negotiator for Denmark, Ministry of Climate and Energy, Denmark

Mr Adrian Macey – Climate Change Ambassador, Ministry of Foreign Affairs and Trade, New Zealand

Mr Pascal Lamy – WTO Director-General

### **Organized by**

WTO – Trade and Environment Division

### **Report written by**

WTO – Trade and Environment Division

Wednesday 24 September 2008 – 10.30 - 12.30



## Abstract

*This session focused on issues arising at the intersection of trade, climate change and development. It examined in particular how mutual supportiveness between the trade and climate regimes could be promoted especially in the context of ongoing multilateral negotiations in both of these areas. The main objective of the session was to stimulate a debate on the inter-linkages between trade and climate change against the background of the Informal Trade Ministers' Dialogue held at the United Nations Framework Convention on Climate Change (UNFCCC) Meeting in Bali in December 2007, and the discussions on a post-2012 regime in the lead-up to the UNFCCC COP 15, which will take place in Copenhagen in 2009.*

*Presentations and discussions ranged over such aspects as: the need for concerted multilateral action to tackle the problem of global warming; how to address developing countries' concerns and bring them on board in the global efforts to reduce greenhouse gas emissions; the importance of capacity building and access to clean technologies for developing countries; how the trade system could provide incentives and support towards climate change objectives, including through the Doha mandate to liberalize environmental goods and services; and what could be done to further develop synergies between the trade and climate change regimes.*

## 1. Presentations by the panellists

### (a) Dr Mari Pangestu Minister of Trade, Republic of Indonesia

Minister Pangestu began by sharing some of the views that had emerged at the Informal Trade Ministers Meeting held on the sidelines of the UNFCCC Meeting held in Bali in December 2007. First, she noted that there was now a greater consensus on the scientific evidence that the "business as usual" path was no longer acceptable and that developing countries would be the most affected by climate change; hence the need for developing countries to be proactive on the issue. However, developing countries were the ones that faced the greatest difficulties given their limited resources and capacity to deal with climate change. She noted that one of the main challenges in climate change discussions was how to manage climate change without taking away the development objective.

The interaction between climate change and development was clear: one aspect had to do with the notion of common but differentiated responsibilities, i.e. taking steps to enable developing countries to manage climate change without impeding on development and growth; another aspect was how to support development without preventing the achievement of environmental objectives. Evidence regarding the relationship between increased trade and environmental degradation was still inconclusive, since openness to trade could also lead to greater access to clean technologies and better environmental outcomes.

At the meeting in Bali, Trade Ministers had reached the conclusion that unless there was a multilateral agreement addressing fundamental issues relating to climate change mitigation and adaptation, such as targets to reduce greenhouse gas emissions and the pricing and measurement of carbon, it would be difficult to achieve the right framework for trade instruments. Developing countries had expressed concern regarding the growing number of policy measures adopted in the absence of a multilateral consensus. Some countries were already implementing national plans and various border adjustment measures were being considered. Failure to reach a multilateral consensus in the area of climate change would further expose developing countries to instruments that could hinder market access, block trade, or introduce a form of "environmental protectionism". In the meantime, further reflection would be needed on the inter-linkages between trade, development and climate change, including empirical work and studies on the matter.

In summary, the informal Trade Ministers' dialogue had recognized: the necessity to adopt a "carrot approach" to encourage developing countries to do more with respect to climate change, for instance by developing capacity building and facilitating access to clean technology; the need for WTO to engage more interactively with the UNFCCC processes in order to minimize the potential conflict between trade and climate change policies; the importance of successfully concluding the Doha negotiations and avoiding the proliferation of bilateral and regional agreements, which could include environment-related mandates inconsistent with what had been developed multilaterally; the need for a multilateral consensus within the UNFCCC framework. Minister Pangestu concluded by recalling that mutual supportiveness between trade, development and climate change would depend on a successful conclusion of multilateral negotiations within both the trade and climate change regimes.

### (b) Thomas Becker, Deputy Permanent Secretary, Ministry of Climate and Energy, Denmark

Mr Becker started his presentation by saying that the current global momentum and political willingness that had built-up over the issue of climate change were not likely to come back in a long time, hence the need to take action now. The Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) had made abundantly clear the potentially dramatic consequences of climate change. It was also evident that these consequences would be felt most by the poorest countries. There was an increasing global consensus that a major structural change would be required in our society in the future in order to achieve a 50 per cent reduction of emissions by 2050.

Five main "building blocks" were being discussed in the lead-up to UNFCCC COP 14 in Poznan in December 2008 and COP15 in Copenhagen in 2009: (1) a long-term shared vision on how the world should develop with respect to its carbon future, along with some short-term goals identifying immediate actions to be taken; (2) mitigation, i.e. clear



short- and medium-term targets for reducing greenhouse gas emissions; (3) adaptation to the expected effects of climate change, which would mostly affect developing countries; (4) finance and investment, i.e. finding predictable financing, especially for adaptation but also for mitigation measures; and (5) technology, with a special focus on the need to strengthen the development and deployment of climate-friendly technologies in both developed and developing countries.

**(c) Adrian Macey, Climate Change Ambassador, Ministry of Foreign Affairs and Trade, New Zealand**

Ambassador Macey identified two key challenges for the conclusion of the climate negotiations: first, to get greenhouse gas emissions to peak, then to decline and eventually to stabilize; second, to help countries get the resources and technology to adapt to the global warming that was already foreseen.

He noted that what distinguished the ongoing negotiations from earlier negotiations that had led to the adoption of the UNFCCC and Kyoto Protocol, was the economic dimension. Looking further into the future, as the scale of ambition around greenhouse gas reduction would increase, the economic dimension for States would become even more important.

With respect to the linkages between trade and climate change negotiations, he made the following three points. First, regarding trade measures, he noted that if countries were taking on ambitious commitments domestically to reduce greenhouse gas emissions, this would be imposing costs on the economy, in particular on those parts of the economy that were intensive in terms of their greenhouse gas emissions. There was therefore a political necessity to ensure protection to these industries at least until an international agreement was reached.

Second, using trade measures as a coercive tool to bring other countries to reduce their greenhouse gas emissions was not the right strategy to adopt.

Third, the trading system could provide both incentives and support to the climate regime, for instance by looking to achieve more sustainability in world production and consumption, and by reducing barriers to the flow of climate-friendly technologies. With respect to the introduction of market mechanisms, he recalled that a huge amount of finance would be required to get on a low-carbon emissions development pathway and that about 80 per cent of the finance would have to come from the private sector.

While there was some angst as to whether the trading system would be supportive of what would be achieved in climate change negotiations, in his view, all the signals coming from the WTO system were positive. Finally, he stressed that for countries to reach an international consensus, they would have to be convinced that there is more to gain from a comprehensive international agreement than there is to lose from it.

**(d) Pascal Lamy, WTO Director-General**

Mr Lamy noted that climate change was an extremely serious issue for WTO, in particular because there was a specific mandate set out in the Marrakech Agreement Establishing the WTO that trade opening should serve sustainable development. WTO had a duty to work towards fulfilment of this mandate with a view to achieving sustainable development.

He noted that there were mainly three ways of looking at the relationship between trade, development and climate change: the first one, which had to do with economics, raised the question: Is trade good or not for climate change? The second angle related to trade measures and raised the question as to whether trade policy and climate change could work together. The third angle was more political: it concerned geopolitics and where the trading system interacted with the international system on environment.

He noted that the first angle, i.e. whether trade in itself was good or bad for climate change, was a small issue as compared to much bigger economic challenges from a domestic point of view. With respect to the debate about the carbon footprint of international trade, in particular as regards to transport, according to the numbers most of the international trade in goods was shipped, and shipping was among the lowest emitters of all the modes of transportation. The solution to this lied mostly on the side of energy pricing, i.e. if energy pricing was right, then international transport would internalize the cost of CO<sub>2</sub> emissions.

On the other side, trade made the system more efficient and the gains of efficiency standing from more trade also applied to the use of natural resources. With respect to the issue of food miles, for instance, there was an intuitive notion that bringing goods from far away was damaging for the environment. However, based on the numbers this was not necessarily the case, because goods imported from afar were sometimes produced in a less carbon emitting manner than in the country of import. This was not true in all cases but one had to keep the sense of proportion: as compared to domestic policy issues that had to do with energy, transport, agriculture, heating or consumption patterns, international trade was a relatively minor issue in economic terms.

Looking at the angle of trade measures, he noted that opening trade could in a classical way lead to more climate-friendly results. There was a mandate within the Doha Development Agenda (DDA) to ensure that environmental goods, services and clean technologies were traded more easily. There were also issues arising with respect to border measures, such as carbon taxes on energy intensive imported goods; schemes that would require energy intensive importers to purchase pollution permits to offset their emissions production; or rebating carbon taxes on exports of energy intensive goods to offset the domestic competitive advantage. The question of WTO compatibility of such measures was a complex one and could not be answered in general terms.



With respect to the desirability of such measures, it depended on whether it was part of an overall agreement within the UNFCCC framework or whether there was a sort of "go-it-alone". In his view, it was in the environmental arena and not in the trade arena that a solution had to be found; if no answer could be found in the environment arena, it would not be found in WTO. The trading system would adjust when the time would come for precise policy solutions in the light of any international system, consensus, or convention that would be developed multilaterally.

With regard to the relationship between WTO rules and Multilateral Environmental Agreements (MEAs), he argued that while there could be some theoretical issues, in practice, there had been no problem of interaction between trade and MEAs that had a trade limiting component. If there was an MEA post-Kyoto, similarly there would probably be no problem in adjusting to this new agreement.

Regarding Minister Pangestu's point about sequencing, he noted that most of these policies were to be developed at home and should not wait for international issues to be solved; there was also a need for an international convention that would work on the interface; and if there was a trade problem at the end of the day, WTO members would most likely look at it in a supportive manner. In fact, the UNFCCC already provided that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. This provision already contributed to achieving coherence between WTO rules and the future climate regime that would build on the UNFCCC.

Finally, turning to the geopolitical angle, he noted that the main problem in the post-Kyoto negotiations was one of fairness or equity. There were countries who emitted one ton of carbon per head and per year, and there were other countries who emitted 20 to 25 tons of carbon per head and per year. This raised an important burden-sharing issue that related to the principle of "common but differentiated responsibilities". The whole problem lied in this question, namely who should cut its emissions and by how much. Developing countries, notably emerging ones, would not step into the necessary commitments - without which there would be no solution, but which were politically difficult for them - without more trust in the system, i.e. that the rules of the game were balanced in a way that brought them comfort.

This was where there was a systemic geopolitical intersection between the Doha Round and climate change negotiations. For most developing countries, the politics of the Doha Round, leaving technicalities aside, were about rebalancing the rules of world trade that had been inherited from previous periods where the balance of forces worldwide was different. The new balances in today's world had to be reflected in the rules of world trade. The first duty if members wanted to help with respect to climate change was to try and do in the WTO what countries had decided to do between themselves. Comparing the relationship between trade and

climate change to a string, which could be pulled but not pushed, he made the point that while trade could help with the pulling, the push would have to come from the other side.

## 2. Questions and comments by the audience

Ms Harvey opened up the discussion by pointing out that climate change was often perceived by developing countries as a protectionist weapon used by developed countries, and asked how one could get over this perception. Minister Pangestu responded by pointing out that the problem lied in defining what was meant by "common but differentiated" action against climate change, noting that while there was general agreement that developed countries should bear a heavier burden than developing countries, there was disagreement regarding how much more that burden should be. She listed several key areas where work could be done to improve the developing world's attitude towards climate change efforts, namely: adopting "carrot" rather than "stick" approaches to encourage developing countries to take significant action; capacity building; and most importantly, building up the developing world's confidence in the policies of the developed world. Additionally, she mentioned the importance of developing national climate change plans, noting that ideally such national plans would exist under a multilateral consensus.

Next, Ms Harvey asked Mr Becker how to ensure that developing countries would see the benefits of a climate change agreement at Copenhagen in 2009 as opposed to just the costs. Mr Becker started by arguing that developed countries needed to take serious action not only because their current path was unsustainable but also in order to gain the trust of developing countries. An expanded carbon market and pricing system would make the benefits of emission reductions easier to see and quantify. However, he noted that several problems existed in bringing this about, namely the lack of an emission baseline in developing countries and the need for a predictable financing mechanism for the least developed countries who would suffer a disproportionate share from emission reduction targets. This would help the developed world gain the trust of the developing world. Finally, he recalled that developing countries covered a wide spectrum; they did not face the same challenges or had the same needs and therefore could not be treated as one single group.

Ms Harvey stressed that the question of trust was an important aspect of negotiations. Noting that the Doha Round negotiations might have stalled partly because of a lack of trust, she asked how this trust could be restored. Mr Lamy noted that the problem had to do with perceptions on both sides. Many developing countries were not convinced that developed countries were playing fair. On the other hand, there was a perception in developed countries that developing countries needed to pay their share and could not simply free ride on the actions of the developed world. Mr Lamy commented that there needed to be a change in these perceptions. The major test of this would come at the WTO. Failure to reach



agreement on the DDA would send a bad signal with respect to countries' ability to reach agreement in the climate change negotiations.

Ms Harvey asked Mr Macey how New Zealand planned to reconcile the development agenda with the trade agenda. Mr Macey noted the difficulty of agreeing on what a global goal of emission reductions should be, emphasizing once again the issue of trust. Mr Macey then highlighted some of the key differences between trade liberalization and climate change issues. While unilateral trade liberalization was good for a given country, unilateral reduction of greenhouse gas (GHG) emissions did not actually do anything for the country. There needed to be a critical mass of global GHG emission reductions in order to get on the path to stabilization. Mr Macey argued that the main challenge was in reaching that critical mass to enable emissions to peak and then decline, which would need to involve the bigger GHG emitters who currently had no commitments. The essential element to a climate change package was finance for technology and adaptation, which would enable countries that had no commitments to reduce their emissions, opening the way for a global path of peaking and declining.

The discussion carried through on the theme of financing and technology, as Ms Harvey asked Minister Pangestu how to break down barriers in the developing world's access to clean technologies, and how technology transfer should work. Minister Pangestu responded that developing countries would like to use these technologies but could not afford them. However, free access to intellectual property rights in clean technologies did not represent a viable option because it would break down the incentives to innovate. Stressing the importance of incentives in research and development, Dr Pangestu suggested the establishment of a Global Fund where resources would be made available to developing countries to pay for or develop these technologies, as well as providing capacity building and technical assistance. Dr Pangestu next commented that developing countries themselves were developing clean technologies which were often most suitable in other developing countries. A Global Fund could play a vital role in ensuring access to these sorts of technology transfers. Dr Pangestu concluded by stressing that the fundamental question regarding financing and technology revolved around accessibility and affordability.

Ms Harvey asked Mr Lamy what he believed the WTO should do to ensure that technology transfer could happen. Mr Lamy responded that technology transfer worked where trade worked, also noting the importance of foreign direct investment. He also commented that many developing countries, for example China, had production conditions that were extremely efficient in terms of CO<sub>2</sub> emissions or energy consumption. However, other production technologies, such as coal energy production, were still being used. While noting that WTO was not in the business of financing projects, he mentioned WTO's coordinating role on Aid for Trade, as well as the Clean Development Mechanism under the Kyoto Protocol.

Ms Harvey noted that developed countries often feared that if they agreed to emission targets whilst developing countries did not agree to similar targets, their industries would be put at a competitive disadvantage. She asked how this problem could be addressed at Copenhagen. Mr Becker suggested that developed countries needed to earn the respect of developing countries by taking the first step in emission reductions without conditions. Noting the difficulty of the "first mover" problem, he pointed out that much of the damage to the atmosphere had been done by industrialized countries. In conclusion, he suggested that an expanded carbon market and common price on carbon could help avoid this so-called "environmental dumping".

Ms Harvey asked Mr Macey how countries like New Zealand would cope with the issue of embedded emissions, especially in products that were transported a long way. Mr Macey started by noting that the food miles debate had become very sophisticated. He warned against the attractiveness of switching current carbon accounting practices from a production based approach towards a consumption based approach, arguing that specific measurements for accounting had been developed and could not just be thrown out the door. Mr Macey next addressed the growing popularity of carbon foot printing among consumers noting that the climate change problem could not be addressed only with economic instruments; there needed to be an element of consumer behavioural change as well. Mechanisms such as energy labelling were important in raising consumer awareness and changing behaviour. Mr Macey stated that these sorts of commercial imperatives would drive countries towards getting out of unsustainable or high emission products and it was in these instances that embedded carbon became important. Additionally, private companies were also starting to feel the pressure to use more sustainable production practices, and were changing their behaviour accordingly.

The first question by the audience concerned the need for strengthening the role of the public sector in order to respond to the impacts of climate change. It was noted that the public sector was starved of the financial resources needed for research and development and for technology transfer. Mr Lamy noted that the public sector structure was not within the mandate of the WTO. He acknowledged the fact that there was a funding issue, although this was not the most important one. The real issue in his view was whether countries were ready to enter into binding commitments in order to tackle CO<sub>2</sub> emissions, hence the need to focus on the Copenhagen process.

Ms Harvey asked Mr Lamy if he believed having a global system of carbon trading and a global carbon price would be enough to bring market forces to ensure that economic growth was environmentally sustainable. According to Mr Lamy, such efforts would be helpful. With respect to questions concerning border measures and the logic of having national systems of allocation of emission permits and not being able to have a similar system globally, he noted that if a fair system was doable nationally, it was also doable internationally.



A second question concerned the constraints that small scale manufacturers and small and medium enterprises (SMEs) were facing and how to deal with technology requirements, given that small producers often lacked the necessary funding. Minister Pangestu responded that the issue of SMEs and how they could respond to the needs of markets was not solely a question of funding. Part of the solution had to do with capacity building to meet standards imposed on products exported by these countries. She also highlighted the increased awareness regarding sustainable production and how this could actually increase the export value. In this regard, she recalled that the demand came mostly from consumers rather than governments.

The third question concerned the issue of compatibility between economic growth and population growth, and how the world could continue to grow despite a declining resource base. The point was made that the debate should be on how to reduce economies and limit the use of resources. Mr Lamy argued that the objectives of economic growth and the preservation of the environment were indeed compatible and that the market mechanisms would internalize these constraints. However, there were areas where market systems were not efficient and which had to be dealt with through regulatory measures. Mr Lamy acknowledged the problems of development and emphasised the need for economic growth to reduce poverty. Mr Becker added that the market based approach had been the most efficient tool in terms of changing behaviour with respect to CO<sub>2</sub> emissions in Europe as compared to any legal instrument. In this regard, he emphasised the need and importance of financing adaptation, as well as the need for a vigorous private sector to enforce and implement such efforts.

The fourth question addressed the issue of subsidization of conventional energy sources. It was noted that environmentally sustainable alternatives currently available were often held back by the cost of carbon alternatives immediately available, such as petroleum and coal. Thus the process of scaling up environmentally sustainable alternatives was hampered by comparably cheap petroleum and coal. The question was raised whether these barriers were real, and if so, to what extent they could be handled at the multilateral level. Mr Macey acknowledged that subsidization of fossil fuels existed but noted that the increased price of oil was changing the equation and the point at which renewable energy became profitable. He also emphasised the role of the international system in rolling out lower emissions technology. The financing made available could, for instance, be used to cover some of the incremental costs between standard technology and more expensive climate friendly technologies.

A final question was addressed to Mr Lamy concerning what he believed was the most important issue between tackling climate change and pursuing trade liberalization. Mr Lamy replied that the answer to this question was to be found in the rules and constitution of the WTO. The WTO was in the business of trade opening but this trade opening had to serve other related goals, including sustainable development. As regards the environment, he recalled that the notion that the WTO system did not live in "clinical isolation" from the rest of the international system had been recognized many times in WTO dispute settlement.

B.

## Settling Disputes Among Members



### **Moderator**

Ms Claudia Orozco – Of-Counsel, Trade Practice of DLA Piper UK

### **Speakers**

Professor Giorgio Sacerdoti – Member of the Appellate Body, WTO

H.E. Mr Ujal Sing Bhatia – Ambassador, Permanent Representative of India to the WTO

Mr Fernando Pierola – Counsellor, Advisory Centre on WTO Law

Ms Patricia Holmes – Counsellor, Mission of Australia to the WTO

### **Organized by**

DLA Piper UK LLP

### **Report written by**

Ms Miriam Gonzalez, DLA Piper UK LLP

Wednesday 24 September 2008 – 16.15-18.35





## Abstract

*The session addressed the question of efficiency of the Dispute Settlement System (DSS), the ultimate tool to ensure compliance with agreed WTO rules. While its importance seems to be demonstrated by the over 300 cases initiated since 1995 and the nearly one hundred disputes adjudicated with the adoption of Panel and Appellate Body reports, criticism is frequently heard from academics, the business community and some WTO members who often question the usefulness and cost effectiveness of bringing cases to the DSS.*

*Claudia Orozco (DLA Piper, EU International Trade Practice), introduced the panel explaining that as a core function of the WTO and in accordance with the Dispute Settlement Understanding, an efficient dispute settlement system would be one with three characteristics: First, it should result in prompt settlement of disputes; second, it should be instrumental in preserving the rights and obligations of all WTO members regardless of their level of development or economic importance; and third, in all cases it should result in a multilateral determination of the WTO compatibility of a challenged measure.*

*With these features in mind, the panellists offered their views concerning the unique characteristics of the WTO system, reviewed the experience of India, compared the WTO system with regional arrangements and analyzed the need to establish a remand procedure. The analysis led to the identification of issues that require immediate action and offered suggestions to ensure that the DSS responds to the needs, expectations and rights of WTO members.*

## 1. Presentation by the panellists

By way of introduction, Ms Orozco summarized the activity of the DSS until August 2008 which showed an average of ten Panels composed per year, a yearly average of seven mutually agreed solutions or withdrawal of measures (notified to the Dispute Settlement Body) and an average of eight panel reports and five Appellate Body reports adopted per year. The review showed that 80% of the adopted reports had been implemented satisfactorily (did not move to a Compliance Panel or to suspension of concessions) and that retaliation has been an exception: 17 Decisions concerning the level of concessions have been issued and only one third has resulted in suspension of concessions.

The utilization of the system showed that the United States and the European Commission have been by far the most frequent users with over 30 panel proceedings initiated by each. Canada with 13, Brazil and Korea with 10 panel proceedings initiated at their request followed. The utilization, while high, is clearly concentrated on large trading nations.

### (a) Professor Giorgio Sacerdoti, Member of the Appellate Body

Professor Giorgio Sacerdoti addressed the issue of efficiency of the WTO Dispute Settlement Mechanism by

identifying its unique characteristics.

Professor Sacerdoti explained in great detail some of the key benefits of the system to members. According to Professor Sacerdoti, the dispute settlement mechanism helps in providing a rules-based system for governing international trade, which in turn provides security and predictability to the multilateral trading system. These features ensure that benefits ensued from the negotiations were effected and respected. Professor Sacerdoti then went on to discuss some of the key features of the dispute settlement mechanism such as its compulsory nature, which is very rare in international law. Professor Sacerdoti also mentioned that the dispute settlement mechanism provides the exclusive forum for settling disputes between members arising out of WTO obligations, unless the members agreed to arbitration. He described the system as impartial, based on the rules of international law, and relatively speedy. He further stated that the system which is Member-driven, combines bilateral and multilateral dispute settlement (due to third party rights), and its decisions are of significance to all members. One of the important and unique features of the system is the two-stage adjudication, namely, first a panel (similar to an arbitration) and second an Appellate Body that can review the legal reasoning of the panel. The Appellate Body members, who unlike the panellists are lawyers, add legal competence to the system.

Professor Sacerdoti also discussed the status of a panel and Appellate Body reports. He explained that, unlike a normal court, the decisions are not automatically binding; they are only binding when adopted by the Dispute Settlement Body (DSB). This puts the decisions at a higher level because, in addition to the legal reasoning, the adopted decisions also have political backing. He also discussed the multilateral nature of surveillance by the DSB of compliance with decisions. Professor Sacerdoti clarified that the WTO, and hence the dispute settlement system, was strictly inter-governmental. Only Member states can participate in proceedings. However, private entities and interest groups can encourage their respective governments to initiate proceedings. He also stated that with decisions allowing amicus curiae briefs and open hearings there was increased public participation in the dispute settlement system.

### (b) H.E. Ujal Singh Bhatia, Ambassador of India to the WTO

#### The experience of India as user of the Dispute Settlement Mechanism

Ambassador Bhatia reviewed the participation of India and highlighted lessons that can be drawn from this participation and issues of importance to developing countries that require urgent attention.

As complainant, India has requested consultations concerning 17 matters. 6 cases were not pursued, 8 cases were won, it obtained a mutually agreed solution twice, and lost one case. Most cases have been filed against the US and

the EC and cover textiles and clothing, steel, pharmaceuticals, shrimp and rice.

As defendant, India settled six cases through a mutually agreed solution and lost five. These cases concerned quantitative restrictions applicable to imports, the automotive investment regime, the introduction of a mailbox mechanism under the TRIPS Agreement, and trade restrictions to imports including an antidumping-action.

Ambassador Bhatia explained how the implementation of the first three of the above mentioned cases implied important policy and political challenges for the Government in India. The Ambassador explained how, even in light of the internal difficulties posed by implementation, India as a mature participant in the WTO, complied with implementation in all cases. It shows commitment to the system and consistency with its overall trend towards greater liberalization of the economy.

In the first situation, implementation of the TRIPS case touched on the internal debate about public health challenges faced by India. Implementation required a legislative act and therefore called for immense political effort by the executive. Following implementation, the industry responded to the new challenge and the product discovery sector of Indian pharmaceuticals is currently growing as rapidly as the generics sector.

The implementation of the automotive case implied removal of minimum local requirement obligations and export obligations. The change to the investment regime was strongly opposed by different stakeholders. The Government carried out the necessary changes and the Indian-auto components industry geared up to become a global competitor. Similarly, the removal of quantitative restrictions on imports required accelerating the liberalization process. The increasing competitiveness of Indian industry has allowed them to adjust to tariff only protection.

With these examples, Ambassador Bhatia stressed the importance of compliance and reiterated the fact that India has complied with all dispute rulings against it while some larger WTO members have not.

Ambassador Bhatia explained how, over the years a pattern of consultation and coordination between the Government and the business community emerged about the decision to pursue a matter as a WTO case. Ambassador Bhatia mentioned the recent case against the US concerning the Customs Bond Directive applicable to imports of shrimps as a good example. The industry, represented by the Seafood Exporters Association submitted detailed facts to the **Marine Products Export Development Authority (MPEDA), a government sponsored** body acting as an interface between the government and the industry. Based on the recommendation of MPEDA, the Government made a detailed legal evaluation of the issues. Throughout the case, the industry was closely involved with the preparation of briefs and answers to the questions raised by the panel and the Appellate Body (AB).

Another important aspect of the Indian experience highlighted by Ambassador Bhatia was the increased level of maturity of

practitioners in India. On the one hand, disputes are being completed exclusively by Indian based lawyers. On the other hand, in recent complaints filed against trade remedy actions, the Government has negotiated mutually agreed solutions rather than going to panel proceedings.

Turning to the participation of developing countries, Ambassador Bhatia recalled that only 35 developing countries have participated as party in a WTO case. Moreover, Ambassador Bhatia indicated that statistics show that over time, participation has not increased and remains limited to a few large developing countries. In his view, inclusion of developing countries is urgent. Issues that would greatly contribute are the following:

- i) A solution to the litigation costs that developing countries must face in order to bring a case. Such a need can be addressed with the creation of a fund from the WTO budget or requiring reimbursement by developed countries when a successful complaint is brought by a developing country.
- ii) Improving conditions to induce compliance, that Ambassador Bhatia considers very necessary as non-compliance by developed countries is not infrequent. This can be achieved through specific S&DT changes to the Dispute Settlement Understanding (DSU) such as exempting developing countries from the long list of requirements in Article 22.3 on cross retaliation. Ambassador Bhatia, considers that developing countries need to be empowered to seek redress by being able to suspend concessions and other obligations in sectors of their choice, and according to the Ambassador, even this should not be feared by major trading nations as experience shows that cross-sector retaliation authorized to Ecuador and Brazil has not been implemented.
- iii) A third important action refers to strengthening the S&D provisions regarding consultations and establishment of panels.
- iv) Finally, it is necessary to think about dispute avoidance. This is especially important for smaller developing countries that lack the resources or capacity to take advantage of the DSS. Trade barriers, while in most cases affect low trade volumes, they are crucial to the country affected. For such situations, India and several developing and developed countries proposed a mediation based approach. This would provide significant relief to a large number of small developing countries.

In concluding, Ambassador Bhatia recalled the importance of consistency by the Appellate Body and the need to improve participation of developing countries.

### (c) Fernando Pierola, Counsel at the Advisory Centre on WTO Law

#### Effectiveness of the WTO Dispute Settlement System in the light of Regional Dispute Settlement Arrangements



Fernando Pierola focused on the results achieved through dispute settlement between 1995 and 2006, which indicate that, discounting the 21% pending complaints at that time, 53.36% of cases have been resolved directly by the parties (without adjudication), 27.92% have resulted in the withdrawal of illegal measures or adverse effects, 3.89% were resolved without effective recommendations (i.e. complaints based on measures that were withdrawn at the end of the proceedings), 7.06% of cases were apparently settled through related complaints (i.e. complaints that were not pursued as they were dealt with in similar cases) and only 7.77% have not led to a positive solution.

With more than 85% of cases resulting in a 'positive result', Mr Pierola turned to the question of the main areas of criticism of the current dispute settlement process, which are the length of the process and the lack of effective remedies. With respect to the first question, he focused on selected stages of the dispute settlement process in order to compare them with analogous stages in other dispute settlement fora.

First, he noted that while the adjudication process should take 9 or 12 months as contemplated in the DSU the process takes in practice an average of 18 months. Second, the DSU establishes that the reasonable period to implement rulings should not exceed 15 months, and although the period used in the majority of cases has been less than 15 months, it is possible that arbitrators take up to the 15 month period as practice also shows. Third, the length of the compliance process is excessive. While the DSU foresees two steps of 90 days each (compliance Panel and Appeal), in reality recourse to the whole compliance process takes an average of 13 months.

These timeframes were compared with those of analogous procedural steps in the dispute settlement procedures of NAFTA, CAFTA, other FTA's signed by the United States; the EU – Chile and EU – Mexico Agreements, as well as MERCOSUR.

The timeframes foreseen in the agreements are all shorter than those established in the DSU. Nevertheless, Mr Pierola cautioned that actual time for adjudication in the first category of Agreements was always much longer than the length of a WTO procedures due to various factors, and notably the selection of panellists. The WTO foresees that in the absence of agreement by the parties, the complainant may request the Director General to appoint the Panellists. In contrast, NAFTA, CAFTA and US FTA's do not foresee a similar mechanism and this failure has led to anomalous situations where the final composition of panels have taken several years.

On implementation, two of the three groups of Agreements analyzed by Mr Pierola showed an implementation period strikingly shorter than the Reasonable Period foreseen in the WTO Agreement. Both MERCOSUR and the US FTA's foresee 30 days as the reasonable period for implementation. Likewise, the compliance procedures foreseen in the agreements are shorter than an Article 21.5 Panel and Appeal.

In drawing observations from this comparison, Mr Pierola mentioned that it has been suggested that the introduction of a permanent panel body into the WTO dispute settlement process may assist in shortening the length of adjudication. However, he expressed the opinion that practice does not necessarily support that assumption as the length of adjudication in tribunals of a permanent nature may be similar to the WTO one (e.g. the European Court of Justice or the Andean Tribunal). As far as the reasonable period of time is concerned, while the period provided in various regional agreements may be shorter than that of the WTO, he raised the question of whether such shorter timeframes may be in all circumstances more advantageous for the purpose of finding a real solution to the dispute. In contrast, much could be gained from shorter periods of implementation and a more streamline implementation process, similar to those established in regional agreements. For instance, the regional agreements at issue contemplate certain implementation period (except for NAFTA), and a simple retaliation procedure that may be subject to a challenge. However, there is no controversy as to the order and sequencing of the process.

The second important element analyzed by Mr Pierola referred to remedies. Three aspects of the WTO system have important shortcomings: the lack of interim measures to be adopted while the case is pending; the lack of retrospective remedies or measures to deal with damages that occurred between the adoption of the Panel Report and implementation of rulings, and the absence of reimbursement of litigation costs.

At regional level, the European Court of Justice, the Andean Tribunal, MERCOSUR and South African Development Community (SADC) all provide for interim measures applicable when the complainant demonstrates a prima facie case and the risk of irreparable damage. Similarly, the European Court of Justice, MERCOSUR and the Andean Tribunal, all provide for retrospective remedies.

Finally, the principle that the unsuccessful party bears the cost of litigation is contemplated in some RTA's, such as SADC and the Andean Tribunal.

This comparative analysis indicated that in the light of the encouraging results in the performance of the WTO Dispute Settlement System, the improvement of the system may be focused on specific areas of concern. There is no regional dispute settlement mechanism that may be used as a sample of perfection. However, there are some features of regional trade agreements that may be considered for the reform of the DSU in order to address situations of long implementation period in the absence of interim measures or retrospective remedies and without reimbursement of litigation costs.

#### **(d) Patricia Holmes, Counsellor at the Mission of Australia to the WTO**

##### **The need to establish a remand procedure**



This is an aspect that will contribute to ensure determination of the WTO compatibility of a challenged measure. Ms Holmes reminded the participants, that while the system functions well, there are areas where improvement would be valuable. One of them is the creation of a remand procedure. The origin of the problem was graphically explained: the DSU stuck a horse's head in a cow's body meaning that in the Uruguay Round of negotiations, a civil law type of appeal system was added but the Appellate Body was established exclusively to examine issues of law (thus without the authority to retrial the case as in civil law countries) and without the authority to ask the panel to re-examine facts as in common-law systems Article 17.6 of the DSU limits its mandate to reviewing issues of law.

Ms Holmes used the Australia – Salmon case to illustrate the problem: The Appellate Body found that the Panel erred when defining the sanitary measure as heat treatment and found that the measure at issue was an import prohibition on fresh salmon. At this point, the successful complaint brought by Canada would have been in limbo, had the Appellate Body stopped its analysis and would have required Canada to request a new panel to review the measure as defined by the Appellate Body. In that particular case, the AB decided that it could complete the analysis based on the factual findings made by the Panel and the undisputed facts on the record.

Ms Holmes then turned to more complicated situations when the AB may not be willing or able to complete the analysis. For example, a GATT Article III case, where the defendant invokes an Article XX exception as defence and the Panel dismisses the claim because it finds that the measure is not “necessary to protect human, animal or plant life or health” and consequently the requirement of the sub-paragraph is not met. If such finding is reversed by the AB, and the Panel had applied judicial economy, the defendant would win in appeal but still not have a finding concerning the WTO compatibility of the defence it has invoked.

Ms Holmes explained the on-going negotiations concerning the DSU Review. The proposal on remand procedure establishes that the AB in its report would make recommendations and rulings on aspects of law and would identify findings required from the panel to complete the analysis of certain claims when a panel finding has been reversed. The Appellate Body would not have the authority to remand the case to the panel. This would be a right of the complainant (and possibly the respondent). The Appellate Body Report could be adopted while the remand Panel completes its work.

Ms Holmes mentioned that while the proposal has support from the majority of the members, problems have been identified: it implies two reports for one case; it should not result in unnecessary prolongation of the procedures hence initiation of a remand Panel by the original respondent should be limited to particular situations, the issue of how to deal with new evidence needs to be resolved.

An alternative to a remand procedure would be to give fact finding powers to the Appellate Body...put a horse's body to the

current horse's head. But this option had not received much support from members to date.

In Ms Holmes' view the discussion on remand procedure and more generally the DSU Review is linked to the DDA. Consequently, practical alternatives that do not require amendment of the DSU should be explored as has been done with complicated issues such as transparency and amicus briefs. The AB could ‘complete the analysis’ as it did in certain situations faced in its early years and Panels should assess carefully when to exercise judicial economy. Likewise decisions by the DSB or a revision to the working procedures could be used to find a flexible and efficient approach to improving the functioning of the system.

## 2. Conclusions and way forward

The session offered an important opportunity to review the utilization and results obtained through the DSS. The frequency with which it is used shows confidence by WTO members in the results to be obtained.

The DSS is clearly a unique system for dispute resolution in international law. While the compulsory nature and relative speed of the adjudication process are exceptional, the discussion clearly pointed to areas that require attention in order to have a DSS that responds to the functions assigned in the Dispute Settlement Understanding.

The first area refers to actions required to improve access to the system by developing countries. The accumulation of certain characteristics of the system, makes dispute settlement too expensive for some members to even engage. In this respect, it seems necessary to develop an alternative dispute settlement mechanism for situations that ought to be resolved through mediation and a mechanism of reimbursement of litigation costs for expenses incurred by developing countries. In addition, the experience of India of internal consultations between the private sector, business associations and government shows how the utilization of the DSS also requires that members develop an internal structure to guarantee communication between the business community and decision makers.

Further, it seems important to learn from trade arrangements signed between WTO members that the implementation period may be much shorter than envisioned in the DSS and that trade remedies may be retroactive. Both of these will enhance substantially the efficiency of the DSS.

Finally, it seems necessary to work on some procedural aspects to ensure that all claims brought to the system can be addressed. Experience shows that the creation of an Appellate Body without remand or powers to engage in fact finding can be problematic in certain situations where the Appellate Body reverses findings made by panels. This can exceptionally create situations where the DSS does not result in a multilateral determination of the WTO compatibility of a challenged measure.





## Decent Work Challenges for the WTO



### **Moderator**

Ms Esther Busser – Trade Policy Officer, International Trade Union Confederation (ITUC)

### **Speakers**

Ms Florencia Cabatingan – Chairperson of the Women’s Committee, Trade Union Congress of the Philippines, (TUCP)

Mr Robert Kyooh – Senior Economic Advisor, Integration and Statistics Department, ILO

Ms Gabrielle Marceau – Counsellor, Office of the Director-General, WTO

Ms Carla Coletti – International Officer, International Metalworkers Federation, IMF

Ms Aileen Kwa – Programme Coordinator, Trade and Development Programme, South Centre

### **Organized by**

ITUC

### **Report written by**

ITUC

Wednesday 24 September 2008 – 14.00-16.00



## Abstract

*The panel fitted into the global trend towards addressing decent work issues in both national and international policymaking. It aimed for an open discussion and ideas on how to address decent work challenges and workers' rights violations in export related industries in a multilateral context, bringing together panellists from different backgrounds.*

*It was attended by some 50 participants including NGOs, trade unions, researchers and academics, producers' and employers' organisations, the European Parliament, European Commission and representatives of the WTO missions of Belgium, Netherlands, Germany and France.*

*Esther Busser (ITUC) introduced the panel, explaining the importance of decent work and its endorsement by various bodies of the UN over recent years. Nonetheless, immense decent work deficits persist, leading to few real benefits of global trade for many workers. The WTO has remained somewhat outside the efforts to address decent work within multilateral institutions, while it should be part of it. Trade must improve labour standards and increase productive employment rather than replace productive jobs by low quality jobs, and enhance social protection and social dialogue. It must not undermine the bargaining power of workers and governments, as is currently all too often the case.*

## 1. Presentations by the panellists

### (a) Flor Cabatingan, TUCP, Philippines

Flor Cabatingan emphasised her organisation's commitment to decent work despite frequent government and employers' opposition. Her organisation has conducted two studies of export processing zones, concerning various aspects of working conditions and compliance with national and international standards. Of 200 enterprises surveyed, most were Korean, Filipino, Japanese or Taiwanese. Women constituted 72% of workers in garment enterprises and 52% in other companies. There were many instances of low labour standards; violations included requirement of forced overtime for 3 consecutive days before workers were allowed to go home, in a form of forced labour in order to comply with export orders. In another apparel company, long overtime was required with no morning or afternoon breaks while drugs were provided to enable workers to continue working for 24 hours. Workers were concerned about being fired if they refused to comply. The national health and safety institute recorded many links between such abuses and grave health complaints. The TUCP sought to disseminate such information widely.

Many companies also violated laws on minimum wages by unilaterally extending training periods or forcing workers to remain apprentices for many years. Both men and women were paid low wages. Many companies did not provide adequate annual leave and requests for leave were declined when export

orders came in. Social deduction contributions were often not remitted by employers. Basic sanitation facilities were not provided and facilities were often dirty and below basic standards. In one company, 110 workers had to share one toilet; in another there were three toilets for 300 female workers; and four toilets for 567 in another. 12% of garment workers and 3% of non-garment workers had no drinking facilities. Ventilation was a major concern. Only 43% of companies complied with the law regarding the establishment of occupational health and safety committees. In some firms, malicious sexual touches by supervisors and requests for sexual favours were reported. Violence by supervisors was reported including blows and in one case being sprayed with insecticide. Employers discriminated against non-single women; in one factory, 60% of women were not allowed to return to work following childbirth.

All the surveys demonstrated violations of core labour standards in companies engaged in trade liberalisation. Freedom of association was often not respected. Anti-union actions were utilised against union leaders, who were often demoted or forced to resign. Union members were threatened in order not to join unions. Even after winning recognition elections, unions faced employers who refused to bargain.

More investments, workers and export processing zones might exist in the country but there was a rise in inequality due to the emphasis on maximising exports whatever the cost was. This mirrored the findings of UNDP reports in 1999, 2003 and 2006 that reported that trade liberalisation would not lead to growth and showed that though there could be more employment, this was often ephemeral and quickly disappeared. However there were lower wages and gender discrimination. Unions would have to strengthen their interventions in order to enable trade to lead to higher labour standards. Education programmes should encourage better recognition of collective bargaining processes and understanding of strategies to strengthen the union movement. Trade unions needed to expand cooperation beyond national borders and decent work should be considered a shared goal for all.

### (b) Bob Kyloh, International Labour Organization

Bob Kyloh referred to the ILO's new Declaration for Social Justice, adopted in June 2008. The ILO has always believed trade liberalisation carries with it the potential to boost globalisation around the world, but this requires policy coherence between multilateral agencies focused on decent work. Fortunately governments have broadly agreed with this idea over the past decade in their meetings at regional and global level. There has been debates at the ILO about what constitutes decent work but the new Declaration provides a global consensus between governments, employers' and workers' organisations that all aspects of decent work are interrelated and should be pursued simultaneously. The Declaration spells out that decent work encompasses social security for all, social dialogue, employment and core labour standards. Policy coherence on decent work is now agreed across the multilateral system.



The new ILO Declaration balances and elaborates upon the WTO Singapore Declaration (1996) by making it clear that the violation of fundamental workers' rights can not be a legitimate comparative advantage, neither be used for protectionist purposes. The Declaration also speaks of the need to strengthen the ILO. It endorses the mandate given to the ILO in the Philadelphia Declaration to examine the social implications of international economic policies and specifically says that as trade and financial market policy both affects employment, it is incumbent on the ILO to analyse social policies implemented by other organisations. The ILO should therefore engage more in the areas mandated by that statement.

It is clear that both the quality and quantity of employment must be addressed. Orthodox trade theory already says that both are affected by trade; the ILO-WTO joint report of 2007 considered the relationship between Trade and Employment. That publication showed that trade theory needed to be augmented in various ways and should be supplemented because it had been developed to address trade between industrialised countries. Trade has increased the responsiveness of employment to changes in wages. It has rendered credible the threats made by employers, to weaken workers' position in wage negotiations, of moving their production to other countries. It is further linked to increased wage inequality in developing countries as well. A new ILO study later in 2008 has provided further evidence of increasing inequality in both industrialised and developing countries.

Therefore it is surprising that it is even necessary to debate anymore whether or not employment quality is relevant to trade. While quantitative repercussions are obvious, quality implications are fully relevant as well. Such issues of inequality need to be discussed in order to consider comprehensively the implications for trade liberalisation policies.

#### **(c) Gabrielle Marceau, WTO Secretariat**

Gabrielle Marceau addressed the trade-labour relationship with regard to the role of the WTO. The question is often raised as to why, if other international standards like health, environment and intellectual property are already linked to the WTO, labour cannot be linked. The answer lays with governments and is perhaps linked to capacities or priorities. Some governments might oppose labour issues for fear of protectionism or of losing comparative advantage.

While trade is essentially good for economic growth, domestic policies of redistribution are essential in order to provide benefits to all. This goes beyond what the WTO can deliver. On the other hand the ILO Director-General has recently proposed that the ILO assesses the labour implications of all the draft Doha agreements.

Social considerations are not part of the standard questions considered in the Trade Policy Review mechanism (TPRM). Sustainable development is mentioned in the preamble to

the WTO and contains specific provisions enabling countries to prioritise environment or health over trade issues. But arguably only prison labour and public morals exceptions can be used to raise labour issues. On the other hand Article 2(4) of the TBT agreement says if national legislation is based on a relevant existing international standard it can be presumed not to lead to an illegitimate restriction on trade but is WTO-consistent. The issue is whether an ILO standard could be covered by this provision.

The Singapore Declaration was very clear in its commitment to core labour standards. The ILO's new Social Justice Declaration renews and amplifies that commitment in its reference to respect of core labour standards by all. Should there ever be a dispute on the subject, the ILO Declaration could be invoked in the interpretation of provisions used to justify labour-related trade restrictions. Furthermore labour issues are increasingly included in bilateral trade schemes, in government procurement contracts and in preferential schemes. In the India – GSP dispute, the Appellate Body had mentioned the labour rights condition of the European Union's preferential scheme as an example of a scheme that could potentially be consistent with the WTO.

WTO agreements do not address the specific issue of labour standards in export processing zones which would require some modification of WTO rules. The ILO needs to be strengthened in order to assist in such cases.

#### **(d) Aileen Kwa, South Centre**

Aileen Kwa spoke of the need to address the issue of trade and development and trade and poverty. Exports need to increase the size of the market in order to realise development outcomes. But as not all countries can increase exports simultaneously, the result is that liberalisation can push down labour conditions as countries increase their efforts to become more competitive. Many countries have experienced this phenomenon even if they have increased exports, as illustrated by the EPZ phenomenon. Two examples illustrate this situation. Firstly in the agricultural sector, very few countries can benefit from liberalisation. In Africa, there is much reduction in employment and livelihoods of small farmers partly due to IMF/World Bank conditionalities and partly to free trade agreements. Secondly in manufacturing, the value added has often fallen, leading to deindustrialisation and shrinkage of industrial base as demonstrated by some Latin American countries. This leads to unemployment or poor employment in such countries.

Is the answer to introduce employment into trade rules or to rethink the trade system?

The answer must be that the trade system must serve people and not vice versa. National and local industries, capacities and economies must be built. The multilateral system must engage in trade regulation but not necessarily enforce trade liberalisation. For example it must regulate in



accordance with a principle of extraterritorial responsibility – i.e. to ensure that one country's trade policy does not impact negatively on another's, as is often the case nowadays in the case of agriculture (both through direct and indirect subsidies). States need to be regulated in order to prevent such practices, to build industries and to build agriculture everywhere. Systemic issues such as deindustrialisation need to be considered before labour standards can be tackled at the WTO. Policy issues of purchasing power and policy space for developing countries must be dealt with in priority in order to improve living standards and attain broad-based development.

### (e) Carla Coletti, International Monetary Fund

Carla Coletti emphasised the vast differences between country situations, a reality that trade unions also have to confront. They can not just seek the lowest common denominator in finding their policy positions but must confront their potential real differences. It is not possible to argue that trade is good for everybody. Trade unions in developing countries indicate that prospects for quality employment – the only way out of poverty and inequality – can be destroyed by market opening; even in highly industrialised countries, workers face threats to their hard-won protections and rights. It is a vicious circle.

Unions are extremely concerned about the employment-development linkage. Much has been said about the quantity and quality of jobs. Institutions like the WTO and the ILO have started addressing such issues in recent years, in view of the shared need to find a coherent solution, and there is consensus that this is extremely welcome. However, the July 2008 failure of WTO negotiations showed that the mercantilist system being used could not lead to agreements that worked well for everybody. There are always victims from trade; there are no simple recipes for success.

The DDA constitutes wishful thinking so far, with regard to the development dimension and the WTO must focus on this dilemma. It needs to change at the systemic level. In addition to the first welcome steps of inter-agency collaboration much more ambitious actions are needed. This is the challenge that must be faced by members countries' governments and the real task facing the WTO as an organisation. Searching for "ambition" must go beyond negotiating a few percentage points here and there, but this fundamental challenge must be addressed. The ILO too must be required to move in the same direction.

## 2. Questions and comments by the audience

Participants raised questions about extraterritorial responsibility. Someone asked whether this was helpful in the search for coherence. If violation of labour standards was akin to a subsidy, that kind of undue subsidy needed to be removed in order to promote labour standards. Using TBTs was a promising path; but what about the interpretations of WTO agreements – how likely would WTO members come to an agreement on a clause to protect decent work?

Another participant asked about the applicability of WTO rules on production processes, citing the cases of tariffs applied to frozen boneless chicken cuts and carbon footprints to ask why such process issues, as well as labour, could not be considered valid for discussion at the WTO.

A third questioner asked why the issue of a "social clause" had disappeared from the WTO agenda, particularly given the way production with low labour standards in China now dominated world markets – why had this not had more impact?

Given that the overwhelming majority of governments had ratified core ILO conventions and implemented national labour codes, someone asked why the respect for such rights was so deficient. Another participant asked what the role of civil society in promoting workers' rights was. Trade unions must also work more effectively to achieve greater respect for workers' rights. The right to information for workers should also be addressed.

The question of the implications of the ILO Social Justice Declaration in the WTO context was raised. There were a number of other related questions: How could the ILO beef up its system of dealing with perpetrators of workers' rights abuses; what "appropriate measures" could be taken?; Should the ILO make use of the provisions in Section 33 of its Constitution more often?

In response, Aileen Kwa said that fundamental trade liberalisation principles of the WTO needed to be rethought. Violation of labour standards could be considered an "undue subsidy"; however simply adding labour standards into a fundamentally flawed system would not help people in the developing world realise their ambitions without a thorough rethinking of the system.

Gabrielle Marceau agreed that trade must work to the benefit of human beings. Pascal Lamy had said that trade was "necessary but not sufficient" to address poverty and development. Labour issues have been omitted in the Doha 2001 Ministerial Declaration but could come back one day. However it would be difficult to raise labour problems until issues like agricultural subsidies have been considered. Developing countries might want some protection from competition with China but this is not so easy to address under WTO rules. Regarding Process and Production Methods (PPMs), in the shrimp/turtle and the Brazilian tyre case, it has been decided that the method of production is important – but environment is specifically referred to in the WTO constitution, which is different from labour/social issues which are not explicitly referred to. The lack of a specific reference to labour measures in the WTO constitution could make it uncertain whether labour issues could be invoked as justification for trade measures; on the other hand, in interpreting WTO regulations, the ILO Declaration could be a relevant reference point, among others, for disputes panels. Furthermore, Article 33 of the ILO Constitution says states could, under some circumstances, take measures to address non-respect of labour standards, as some environmental treaties do.



Bob Kyloh indicated that labour issues are certainly being addressed in bilateral trade agreements regardless of what is happening at the WTO. In ILO discussions over the past decade developing countries have been very positive and proactive in promoting the decent work agenda and a diminishing number of governments have raised protectionist concerns when discussing the implementation of core labour standards. The decent work concept includes both absolute and relative components. The core labour standards are clearly absolute and must be implemented everywhere. But other aspects of decent work, such as adequate social security and a minimum living wage, are relative concepts. Thus, for example, the level of any national minimum wage needs to be determined in accordance with the economic capacity and level of development of each country. Technical assistance is vital to implement labour standards effectively in poorer countries, and a more intense focus on developing modern and effective labour inspection systems should be a high priority. Strengthening trade unions, collective bargaining and

labour inspection go hand in hand. In response to questions about the use of sanctions by the ILO itself he indicated that the withdrawal of ILO technical assistance from a country repeatedly violating core labour standards is possible in theory. But in reality the magnitude of ILO technical assistance in most countries is moderate and thus unlikely to produce much pressure. In responding to the question about Article 33 of the ILO Constitution he noted that it has been implemented only once in ILO history to date but obviously could be used more often if the ILO Governing Body chooses to do so.

### 3. Conclusions and way forward

In closing, Esther Busser emphasised the need for governments to rethink the different instruments that could be used at ILO and WTO. Employment impact assessments provides a further instrument for taking up many of the issues that had been raised during the panel.



## Can Farm Animal Welfare Standards be WTO-Compatible?



### **Moderator**

Ms Jaana Husu Kallio – Director General, Finnish Food Safety Authority Evira

### **Speakers**

Mr Adolfo Sansolini – Trade Policy Advisor, Royal Society for the Prevention of Cruelty to Animals (RSPCA), World Society for the Protection of Animals (WSPA), Compassion in World Farming (CIWF)

Mr Gustavo Idígoras – Minister Counsellor, Agricultural Affairs, Embassy of Argentina to the EU

Ms Sarah Stewart – Special Counsel, International Trade Policy, Humane Society International

Mr Fábio Coelho Corrêa de Araújo – Member of the Technical Group on Animal Welfare of the Brazilian Ministry of Agriculture

### **Organized by**

RSPCA, WSPA, CIWF, Eurogroup for Animals

### **Report written by**

RSPCA, WSPA, CIWF, Eurogroup for Animals

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## Abstract

*Farm animal welfare is a concern of growing importance. Citizens, governments, producers and traders in all continents now consider farm animal welfare as an integral component of their ethics and policies. Legislation and regulations are being established in many countries, and private voluntary schemes have been adopted by companies worldwide, in response to consumer and public demand for improved farm welfare in the end products.*

*These decisions are no longer an exclusive prerogative of industrialised countries. Some Developing Countries' governments and NGOs have started to see positive impacts of raising farm animal welfare standards on the livelihood of small farmers and on the environment, as well as market opportunities in a global market where the demand for higher-welfare products is on the rise. The growing consumer demand for ethically and sustainably produced food around the world represents an important incentive to develop a lasting alliance between farmers and consumers.*

*However mechanisms to improve standards, such as private schemes, labelling and financial assistance to producers have all in the past few years been treated as a potential trade barrier. As the WTO rules do not specifically mention animal welfare, and little discussion has occurred on this issue under the Doha Round, interpretation of the rules has been left to panels. An increasing number of bilateral trade agreements now have references to animal welfare, including those with developing countries.*

*The session's aim is to show the benefits delivered to developed and developing countries using examples from private schemes and in situ methods to raise farm standards, and identify ways to promote animal welfare through international trade whilst remaining compatible with trade rules by bringing together representatives of different constituencies and WTO member states.*

*The recent Forum on Global Aspects of Farm Animal Welfare (22-23 April 2008) and the upcoming Conference on Global Trade and Farm Animal Welfare (20-21 January 2009), organised by the promoters of this session in co-ordination with the European Commission, show that bringing together stakeholders from different constituencies with a shared desire to co-operate for the advancement of animal welfare can produce important shared projects and effective results.*

## 1. Presentation by the panellists

The session was moderated by Jaana Husu Kallio, Director General of the Finnish Food Safety Authority Evira, who said she considered this session of utmost importance. Animal welfare and food production have been discussed before in relation to trade, but the perspective of this panel is completely different than all the previous ones. Therefore the Forum is a great opportunity, which has to be used as effectively as possible. The topic animal welfare and trade couldn't fit better

the Public Forum's title "Trading into the Future": linking animal welfare to international trade does mean looking into the future, namely into the whole baggage of opportunities offered by that link. Not "theory" but "practice" is needed: references and examples, concrete cases in which animal welfare has been successfully combined with trade opportunities. We all have to be aware that all what is said and done on animal welfare and trade is not valid for one continent or another, but for the whole world. Also, we do not have to forget that the session's approach is of open discussion, aiming not at conclusions but at making suggestions. So, that "open" outcome of the panel can contribute to find internationally acceptable ways in which animal welfare can be promoted, and trade barriers not only avoided but even their suspicion overtaken. The panel will offer different points of view pertaining to the issue, in a joint attempt to identify ways to advance farm animal welfare through the rules of international trade.

**(a) Adolfo Sansolini, Trade Policy Advisor, RSPCA, WSPA, CIWF and Eurogroup for Animals**

### Animal Welfare: Consumer Demand and Trade Opportunity

Trade has a huge influence on the way billions of animals live and die. Among all animals, those reared for food production are the most affected by trade rules. RSPCA, WSPA, CIWF and Eurogroup for Animals, representing millions of concerned citizens worldwide, decided to work together on the impact of international trade on farm animal welfare. In spite of the interest increasingly manifested in all continents, animal welfare does not enjoy a single mention in the WTO rules yet. This omission should be corrected in a way that is not trade-distorting and at the same time does not pose obstacles to the improvement of animal welfare. In fact, the rules of global trade should facilitate the adoption of higher-welfare measures and standards worldwide. Slightly different is the situation with Free Trade Agreements. In recent years, references to animal welfare have been included in some FTAs (EU-Chile, EU-Canada, CAFTA, US-Peru), either in the SPS or environmental chapters, producing positive cooperation among the signing countries. Future bilaterals might even be more ambitious in the definition of the objectives to achieve.

Some producers and governments fear that the adoption of higher farm animal welfare methods can generate higher prices which would not be paid by consumers. In this respect, voluntary standards adopted by producers, retailers and food processors play a fundamental role to facilitate change, offering immediate market opportunities for producers who increase the level of care for their animals. Public procurement policies can have a positive impact on production systems too. Major companies around the world are struggling to find enough non-battery eggs, stall-free pork and other higher-welfare products. This shows that market opportunities are already developing faster than production methods. The rules of international trade should value voluntary standards on animal welfare as one of the means to facilitate progress before specific legislation is approved. Co-operation established in



the frame of FTAs should be increased, in order to offer training and capacity building to developing countries where traditional extensive systems can be preserved, keeping jobs in the rural communities and ensuring that farm animals enjoy a better life.

WTO rules should include clear references to animal welfare. While we think that the proposal tabled by the EU for the inclusion of animal welfare in the Green Box was a positive step forward, we accept that cooperation among different member countries should lead to a new proposal, where concerns of possible distortions to trade are tackled and solved before presenting it to the whole membership. We consider the development of dialogue and co-operation among animal welfare NGOs, farmers, governments, consumers and retailers essential to create the best conditions to achieve the phase-out of some intensive farming systems such as battery cages, veal crates and sow stalls, and the expansion of higher farm animal welfare practices.

**(b) Gustavo Idígoras, Minister Counsellor,  
Agricultural Affairs, Embassy of Argentina to the EU**

**A Vision from an Exporting Country**

We consider animal welfare as an important component for food safety, animal health prevention measures and production methods. We have concentrated works not only on the pet welfare but particularly to focus on animals intended for consumption, including good livestock practices as a key requirement to guarantee quality and food safety as a differentiated product to consumers.

We firmly believe that the best mechanism to assure animal welfare is at farm level, particularly with extensive production methods rather than intensives ones. We recognize that for many developed countries like the USA and the EU, animal welfare is becoming a crucial and sensitive topic for consumers, retailers and governments. Nowadays, many governments have implemented several rules on transport and slaughtering. We expect to see in the near future, international and agreed rules introducing standards on system of productions as better animal welfare practices. The OIE (World Organisation for Animal Health) has also developed standards to promote animal welfare through a science-based approach. Argentina actively participates on the revised and updated process, based on the latest scientific information and advice of scientific experts.

We consider that the WTO has a role to play to boost animal welfare standards worldwide. Current rules of the SPS Agreement related to animal health and food safety measures based on scientific evidence to prevent and control epizootic disease have a major impact on the welfare of animals. However, there are no specific mentions of animal welfare in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) or even in the Agreement on Technical Barriers to Trade (TBT Agreement). But if there is a scientific method to confirm a connection between animal health and specific animal welfare guidelines then animal welfare should be acceptable within WTO. The recognition of equivalence rules on animal welfare shall be addressed as a key element to facilitate trade. Members

should also follow OIE recommendations on this matter as a benchmark of the SPS Agreement. At the TBT level, the concept of animal welfare based on a non-discriminatory treatment as a "like product" may be considered as a legitimate objective. A differential labelling could be introduced on a voluntary basis to improve information about production and processing products. In the Agriculture Agreement, animal welfare programs can be considered part of animal health and food safety programs under the Green Box, but no exceptions should be done to introduce payments under the Blue or Amber Boxes. Developed countries should introduce preferential market access to products that comply with animal welfare standards as a key element to boost animal welfare worldwide through recognition of equivalence practices and voluntary labelling.

**(c) Sarah Stewart, Special Counsel, International  
Trade Policy, Humane Society International**

**Improving the Lives of Animals, Farmers and  
Communities through the Multilateral Trading  
System**

Since 1990, the value of global agricultural exports more than doubled. At the same time, consumers around the world are increasingly demanding food produced according to strong farm animal welfare standards. The benefits of this emerging ethical consciousness that is catalyzing reform of farm animal transport and slaughter methods should not be limited to developed countries. Improved animal welfare standards have significant benefits for developing countries too, such as expanded domestic and international trade opportunities, safer food, premium pricing for certified humane products, and mitigation of the spread of diseases like avian flu and foot and mouth disease. In many cases, however, the farm animal sector in developing countries is unable to take advantage of these benefits because they lack capacity and technical expertise to implement stronger standards. Through trade capacity building programs in Central America, Humane Society International (HSI) is working with the livestock industry to set and reach humane standards. Those programmes include assistance to producers in understanding economic benefits of animal welfare through hands-on technical assistance and teaching them pivotal techniques such as low stress handling and the reduction of the transport stress. The results are tangible for the animals, the industry, consumers, and the environment. A first Latin America Farm Animal Welfare Conference was convened in 2008 thanks to the collaboration of HSI, Costa Rican Department of Health, Earth University, WSPA and local organisations. Following the conference, a Latin American Welfare Commission was established.

**(d) Fábio Coelho Corrêa de Araújo, Member of  
the Technical Group on Animal Welfare, Brazilian  
Ministry of Agriculture**

**Farm Animal Welfare, Official Actions of Brazil**

According to the definition of the Brambell Commission, "Animal welfare is a wide concept which includes the physical and the mental state of the animal". Entrepreneurs around the



world have started to realise that adhering to this concept could add value to their products, since the quality of the products improves and so does their image. Nevertheless, it is still a very sensitive matter, if we consider the concerns of the international community that animal welfare could turn into a trade barrier.

The Brazilian legislation on this issue goes back to 1934, when measures for the protection of animals were laid down. This law deals, among others issues, with cruelty against animals and animal transport.

Another normative, which dates back to 2000, defines the Brazilian rules for humane slaughter. It sets pre-slaughter stunning as compulsory and defines the bleeding time, besides laying down the conditions for lairaging and driving the animals to the stunning box.

In consideration of the importance of this issue, which requires the attention and the supervision of the State, the Ministry of Agriculture instituted on 17 March 2008 a Permanent Technical Commission on Animal Welfare, with the purpose of promoting, coordinating, legislating and planning actions for the adoption of welfare principles for farm animals. The Commission also aims to promote studies in the field of animal welfare, as well as to propose new legislation to stimulate the engagement of the producer chain (beef, pork and poultry) in animal welfare programmes, supporting the development of handbooks and protocols of good practices in animal welfare.

The current actions are:

- Stimulating research, by the creation of a Scientific Commission of researchers at the Brazilian Agricultural Research Corporation-EMBRAPA, one of the best research institutions in Brazil.
- Bringing together the representative bodies of the production chain in order to sensitize them about this subject and involve them in the discussion process.
- The process of publication of a Legislative Instruction, with recommendations for animal welfare, is entering its final stage. This is the result of an initial work for farm animals, which aims to educate about handling and transport of animals.

In Brazil there are already legal tools about food organic production. In these laws, the issue has been tackled since 1999. In 2007 a new regulation dealt with the subject of good practices in handling animals and animal welfare.

The Integrated System of Integrated Production – SAPI is a programme implemented by the Brazilian Ministry of Agriculture in 2001, which targets 7 main objectives, among which is the promotion of farm animals' welfare. As in other countries, this system is very advanced in the crop area, whereas it makes its first steps in the animal area. Our country

is developing four pilot projects at the moment, addressing cattle, sheep, goats and bees.

A manual of good agricultural practices has been developed by a Technical Commission for cattle and buffalos, with principles that include animal welfare. The check list is being tested in 75 farms in various Brazilian regions.

As we can observe, the Ministry of Agriculture is sensitive to this issue. It is working hard studying and trying to implement consistent and efficient actions to improve the condition of farm animals in Brazil, such as:

- Appointing the Permanent Technical Commission on Animal Welfare
- Tackling the organic production issue, in the System of Integrated Production and in the Manuals of Good Agricultural Practices
- Improving the performance of Official Veterinary Service – Ministry of Agriculture, Livestock and Food Supply (MAPA) in our slaughterhouses
- Creating Institutional Partnerships, for publicising the subject: MAPA/WSPA - MAPA/UBA (Brazilian Union of Aviculture)
- Revising Legislation: RIISPOA, Rules on humane slaughtering, Law abuses of animals / animal welfare 24.645 of 1934.

## 2. Questions and comments by the audience

A lively discussion followed, with the participation of representatives of different constituencies and countries. Questions were posed regarding the impact of the present WTO rules on animal welfare in other areas such as seal hunt, force-feeding and the ban of practices considered no longer acceptable in some countries. At present, Article XX of GATT can be used to justify measures 'necessary to protect public morals', which can include the ban on the import on certain products, but clearly this definition is vague and there is little WTO jurisprudence as to its meaning and scope.

The absence of farmers in the panel was noted by some of the farmers' representatives in the audience. They asked whether this was a sign that the organisers had underestimated or neglected the role of farmers in improving animal welfare. In response, it was emphasised that the approach of the session was not to exclude some of the stakeholders, and certainly not relevant ones such as farmers but, on the contrary, to include everyone in the discussion on future perspectives of animal welfare and international trade. The choice of the four panellists was aimed to highlight the role of some key WTO members states that for the first time were coming together to express the need to integrate animal welfare considerations in



the rules of international trade. The best way forward to further farm animal welfare is through the involvement of all stakeholders: animal welfare NGOs, farmers, retailers, governments and international institutions.

Raul Montemayor, Vice-president of the International Federation of Agricultural Producers (IFAP) stressed that farmers have done a lot of work on animal welfare, which is important for farmers' welfare too, as a means to reach higher profitability and to lower costs. He also welcomed the principle of an international harmonisation of animal welfare standards and related procedures, in order to avoid any risks resulting from the proliferation of private standards. The OIE was recognised as the organisation better equipped to define global animal welfare standards.

It was noted that sometimes even the term 'standard' is used with different meanings, so it is important to define common objectives, which can be achieved through different tools.

The link between animal welfare and sustainable development, and, on the other side, the environmental dangers of low welfare and factory farming practices, were repeatedly mentioned. Animal welfare must be considered a fundamental and inescapable part of sustainable development and therefore included in any trade issue concerning safeguard of the environment.

The discussion repeatedly mentioned the need to establish an equivalence principle.

Where animal welfare could be included in the WTO rules clearly still is a matter of further debate. SPS, TBT, PPM and the Green Box were mentioned as areas that can already have an impact on animal welfare, but it is unclear what the most effective and non trade-distorting way to proceed should be. Representatives of some exporting countries emphasised the relevance of market access, in order to facilitate trade in higher-welfare products. It was generally agreed that it would be useful to have more data available about the cost implications for higher and lower animal welfare systems in order to define the best strategies to deal with the impact on farmers and consumers.

### 3. Conclusions and way forward

In their final remarks, the panellists and the moderator provided some answers and formulated ideas on possible ways to achieve the objectives of this session.

Mr Sansolini re-affirmed the need to bring together all stakeholders who have a genuine intention to improve animal

welfare, in order to identify common objectives and problems to be overcome. The same approach should be used in relation to the WTO rules, where a proposal should be elaborated involving different countries so to prevent misuses for protectionist aims. At the bilateral level, the possibility to establish a differential tariff treatment based on equivalence should be further explored, with the aim to privilege trade in higher-welfare products.

Mr Idígoras said that the role of the OIE is central to establish global animal welfare standards agreed by a large number of countries. If those standards are not ambitious enough, OIE members should push to improve them. Animal welfare might be incorporated in the SPS Agreement when a link to animal health is scientifically demonstrated. The use of article XX of GATT is an exception, while animal welfare should be the norm. If trade opportunities for higher animal welfare products open up, there is no need for subsidies.

Mr Coelho highlighted the importance of undertaking studies on production costs. A case by case approach should be taken into account, since it is difficult to apply the same rules everywhere.

Ms Stewart emphasised that there are ways to improve animal welfare within bilateral and multilateral trade agreements, such as by integrating animal welfare in the WTO negotiations and agreements.

Ms Husu-Kallio stated that there is no ideal country for animal welfare, but we can learn from each other. There might be different methods to achieve goals and the OIE can play a very important role. The linkage between animal welfare and food safety is now clear but we need more evidence and research to base decisions on science. Consumers demand higher-welfare products but it is unclear whether they are ready to pay more for these goods. More discussions should examine whether the role of private standards in relation to legislation and international standards should be regarded as an alternative or in support.

The speakers and the public affirmed the relevance animal welfare has acquired as an ethical and scientific issue which should be integrated into the rules of international trade. The WTO should facilitate debate among its members, with the involvement of the main stakeholders (animal welfare NGOs, farmers and retailers) in order to identify the most suitable tools to achieve this goal. The outcome should facilitate trade in animal products from higher-welfare systems and prevent misuses. Training and capacity building programmes should take into consideration animal welfare, helping developing countries take advantage of market opportunities offered by the improvement of farm animal welfare.



E.

## Variable Geometries and Critical Mass: Is There a Case for New Approaches to Reinforce Cooperation within the WTO?



### **Moderator**

Mr Gaspar Frontini – Chief Trade Economist, European Commission

### **Speakers**

Mr Pierre Sauvé – Director of Studies, World Trade Institute, Bern

Dr Simon Evenett – Professor, St. Gallen University, Switzerland

Mr Pradeep S. Mehta – Secretary General, Consumer Unity and Trust Society (CUTS) International

Mr Paolo Garzotti – DG, Trade European Commission

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### **Report written by**

Mr Edouard Bourcieu – Chief Economist Unit, DG, Trade European Commission

Thursday 25 September 2008 – 11.15-13.15





## Abstract

*This session was organised by the European Commission, with panellists from the academic world, NGOs and the European Commission. The objective was to discuss possible new ways to move forward within the WTO and in particular identify the best ways in which "variable geometry" approaches could contribute to strengthening the contribution of multilateral trade rules in promoting trade liberalization and economic development. The session aimed in particular to discuss the balance between ambition and inclusiveness and how variable geometries can help accommodate the needs and interests of all members, including developing countries.*

*The panellists pointed out to the limits of the single undertaking, which substituted a "least common denominator" problem to the usual "free rider" problem. It also created difficulties for developing countries to actually implement the agreements they had to sign. They stressed that plurilateral approaches could provide a more progressive approach of negotiations, with positive learning externalities. They discussed useful conditions to put for such approaches to be ambitious and inclusive altogether. Panellists recognised that while intellectually appealing, critical mass approaches had to face several practical difficulties - the main one being that there were little common views between the EU and the US on issues to push forward, not to speak about large emerging countries. Another one was the opposition by developing countries which fear of a divide and rule tactic by developed countries.*

*The discussion with the floor suggested that the interest of critical mass approaches would also provide benefits in terms of political economy as it would make pro-trade business come back into the WTO, which would have positive effects on multilateral negotiations as well. On the other hand, it was recalled that there was already a lot of flexibility in the current system; that large emerging countries would have to be part of plurilateral initiatives; and that the loss of the possibility of trade-offs might be problematic.*

*Overall, the workshop proved to be a useful collective reflection on benefits and risks of such approaches. It raised key questions as regards the dynamics of variable geometries, in particular as for the incentives for non signatories to join later on and their ability to influence the final outcome in a way that could be easier elevated at multilateral level than remaining limited to a plurilateral agreement. This led to envisage the possibility to favour a two-tier approach, based on a multilateral basis and plurilateral top-up, and discuss the usefulness of the participation of all WTO members in the process, with the possibility to opt out at the end of negotiations.*

## 1. Presentation by the panellists

### (a) Gaspar Frontini, Chief trade economist at the European Commission

Gaspar Frontini who chaired the session, recalled that our starting point should be that the WTO must remain the central

pillar of the world trading system. It was the most effective way of opening markets around the world and the only instrument able to provide non-discrimination, transparency of rules, global reach, and a capacity to address systemic issues as well as a strong dispute settlement mechanism. Over the last five decades the GATT and the WTO had made remarkable progress in lowering tariff barriers and progressively liberalising trade. It was definitely a global public good that we should preserve at all costs.

Despite the progress made recently in the DDA and even if the current timing for the negotiations was not unusual for the GATT/WTO system, the time required by multilateral negotiations appears increasingly at odds with the pace of economic change. This progressively led people to put the multilateral system into question. There was a growing sense that the bicycle theory did not apply to trade: the absence of concrete result in DDA negotiations did not hamper trade to grow by almost 10% a year in good times and still 5% even in times of economic downturn; globalisation was at work, mainly driven by non policy forces such as technological change and new business models. Less than half of the growth of the trade to Gross Domestic Product (GDP) ratio was attributable to trade liberalisation. To some extent, the WTO was victim of its own success, with arguably relatively low (tariff) barriers to trade.

Regionalism is challenging the central role of WTO as the main engine for trade liberalisation. The number of FTAs was increasing, with virtually all members of the WTO now engaged in bilateral negotiations. Many countries undertook autonomous liberalisation but often refuse to commit on the same issues in the WTO. Autonomous and bilateral liberalisation was now responsible for most changes on the ground.

Therefore the WTO urgently needed to deliver results. The most pressing objective was to conclude the DDA. Looking beyond this immediate priority, we must think of the capacity of the WTO to move forward in the future. As a member-led organisation, in which every member has an effective right of veto, the WTO could not move faster than its collective ambition would allow. The WTO locked in progressive liberalisation, but in necessarily small and consolidated steps. With 153 members, it had almost become a universal organisation but had probably lost part of the "likemindedness" typical of smaller groups.

There might be a need for those members who see benefit from promoting further trade liberalisation to explore new avenues for the benefit of the wider membership. WTO rules already allowed those who want to go further and faster in areas where WTO rules do not yet fully apply to do so, and road-test approaches that can ultimately be extended to the global system. Such possibilities were used in the past, in connection to both tariff and non-tariff issues. Recent reports had called for an increase in the use of variable geometries and critical mass approaches after Doha to move forward within the WTO.

As in other areas, it would be surprising to reach consensus on this issue without going through an interesting debate about the future of multilateral trade rules and the rationale for such a variable geometry approach. Hence, this session should be seen



as an attempt to have an open and frank discussion exchange of views aimed at identifying the best ways in which a variable geometry approach could contribute to strengthening the contribution of multilateral trade rules in promoting trade liberalization and economic development.

The session aimed in particular to discuss the balance between ambition and inclusiveness and how variable geometries can help accommodate the needs and interests of all members, including developing countries. It also reviewed some of the experiences undertaken so far and possibly draw lessons from experiences of variable geometries outside the WTO (e.g. in other multilateral or regional organisations).

#### **(b) Pierre Sauvé, World Trade Institute, Bern**

Pierre Sauvé presented the main conclusions of the Warwick Commission's report, a key message of which was that the WTO should favour critical mass approaches in the future. Pierre Sauvé stressed that the trouble with the single undertaking was that it forced a large number of WTO members to formally accept obligations that they could not implement. This was not in the interest of DCs, who actually carried the burden of the one-size-fits-all rule and attendant implementation costs. DCs' reluctance to move towards critical mass-based decision-making was difficult to understand - and was probably linked to the "market for voices" in the WTO. The single undertaking was not able to respond to the diversity of interests, needs and capacities of WTO members while plurilateral approaches would, if done within the WTO, provide a more progressive approach, with learning externalities. The single undertaking also impeded the WTO to deliver and adjust to new needs, which fed disinterest in the WTO from the traditional supporters of free trade. Finally, he recognised that while intellectually appealing, critical mass approaches had to face several practical difficulties - the main one being that there were little common views between the EU and the US on issues to push forward, not to speak about large emerging countries.

#### **(c) Simon Evenett, Professor, International Trade and Economic Development, University of St. Gallen, Switzerland**

Simon Evenett explained the quasi-constitutionalisation of the single undertaking actually substituted a problem to another: "we thought we solved the free rider problem and we created the least common denominator problem". We did not create equality at WTO either, but fragmentation. The DDA was a remarkably fragmented round - and at the end of the day a "messy critical mass agreement". The world needed more international codes and cooperation, which had to take place in the multilateral trading system because of its already existing body of law and above all its dispute settlement system. Critical mass approaches should not be a substitute but a complement to the current system. They should be pushed forward after Doha only. They were not fit to deal with every single problem of the WTO.

Key conditions that such approaches must satisfy were:

- the membership should be entirely voluntary
- signatories must extend the benefits to all WTO members (MFN rule)
- as part of the process, consideration should be given to the distributional effects and accompanying policies be developed to address potential adverse effects on third countries
- an accession clause should foresee that acceding country could join on no more demanding terms than the signatories

Such conditions should preserve the rights of the non-signatories. In return, the latter should not impede signatories to conclude such agreements. Critical mass approaches could be used for market access as well as rule-making. On a personal basis, Simon Evenett considered they could apply to any Singapore issue but also trade and security and trade and consumer protection.

#### **(d) Pradeep Mehta, CUTS international**

Pradeep Mehta gave a development perspective on the issue. He considered that it would take time to move towards a new type of architecture for the WTO. He wondered how it would be possible to ensure that the insurance clauses for non-signatories would be followed. He underlined that part of the opposition by DCs was the fear of a divide and rule tactic by developed countries.

#### **(e) Paolo Garzotti, European Commission, DG Trade**

Paolo Garzotti while stressing that there was no EU position on this issue, pointed to several lessons from the comparison with the EU's own experience of variable geometries. Considering the WTO, he underlined that the DDA approach of trade facilitation provided an interesting model in the field of rules. On a personal basis, he suggested that a possible initiative on how to regulate FTAs; the horizontal mechanisms for NTBs; and Singapore issues could be possible candidates for plurilateral initiatives.

## **2. Questions and comments by the audience**

The discussion with the floor suggested that the interest of critical mass approaches would also provide benefits in terms of political economy as it would make pro-trade business come back into the WTO, which would have positive effects on multilateral negotiations as well. On the other hand, it was recalled that there was already a lot of flexibility in the current system; that large emerging countries would have to be part



of plurilateral initiatives; and that the loss of the possibility of trade-offs might be problematic.

### 3. Conclusions and way forward

The meeting underlined a series of questions which remain open:

- How time and context-specific were previous experiences of plurilateral agreements? Are the precedents of ITA, basic telecommunications and financial services agreements replicable to other sectors?
- Does a critical mass approach fit better with rules than market access issues (because of the MFN issue when it comes to market access)?
- How big an issue is MFN and free riding? Is there a risk that after a shift from the free-rider to the least common

denominator problem, one comes back to the free rider problem? What threshold of covered trade or country coverage obviates such concerns?

- What are the dynamics of variable geometries? What are the incentives for non signatories to join later on and their ability to influence the final outcome in a way that could be easier elevated at multilateral level than remaining limited to a plurilateral agreement? One possibility could be to favour a two-tier approach, based on a multilateral basis and plurilateral top-up. The issue of whether all countries should participate in the process and decide only at the end whether they want to opt out is also relevant in this respect, as there would be positive learning externalities from the negotiations.

F.

## Climate Change, Competitiveness and Trade Policy: Opportunities and Challenges For The Future of the Multilateral Trading System



### **Moderator**

Mr Ricardo Meléndez-Ortiz – Chief Executive of International Centre for Trade and Sustainable Development (ICTSD)

### **Speakers**

Dr Moustapha Kamal Gueye – Senior Programme Manager, Environment Cluster, ICTSD

Mr Timothy Brightbill – Partner, Wiley Rein LLP

Ms Julia Reinaud – Policy Analyst, Energy Efficiency and Environment, International Energy Agency

H.E. Mr Servansing – Ambassador, Permanent Representative of Mauritius to the WTO

### **Organized by**

ICTSD

### **Report written by**

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Thursday 25 September 2008 – 9.00-11.00



## Abstract

*The cross-cutting nature of the challenge of climate change requires action beyond the climate regime. Solutions to climate change must also be contemplated within the multilateral trading system, making it critical for the trade regime, as it evolves, to define parameters of responses possible within its mandate, while addressing calls for greater reform, in light of the needed action on climate change.*

*Several trade-related policies and instruments are likely to arise in the process of negotiating the architecture of the post-2012 regime and its implementation. These range from incentive-based instruments for a sustainable energy transition; the development, diffusion and transfer of clean technologies; the creation of markets for low carbon goods and technologies; to the use of border measures to address problems of carbon leakage and competitiveness.*

*As such, governing the use of trade-related tools and instruments in addressing climate change is poised to be a major challenge facing actors and stakeholders in the multilateral trading system in the years and decades to come. While some see trade policy as part of the solution, others are concerned about potential obstacles that trade rules may pose in the search for solutions to global warming, leading to calls, in some corners, for a fundamental reform of the international trade regime so that it is aligned with climate action objectives.*

## 1. Presentations by the panellists

### **(a) Moustapha Kamal Gueye, Senior Programme Manager, Environment Cluster, International Centre for Trade and Sustainable Development (ICTSD)**

#### **Economic and Trade-related Concerns and Issues in the Process towards a Post-2012 Climate Change Agreement in Copenhagen 2009**

As the international community embarks on the road to climate talks in Copenhagen in December 2009, when a new global agreement on climate change is expected to be forged, three categories of economic and trade-related concerns are likely to influence the process and outcomes of the negotiations: incentives for participation by developing countries; leakage and competitiveness in industrialised countries; and trade and development concerns of developing countries.

The first relates to incentives aimed at encouraging participation by developing countries, in particular through transfer of technologies and provision of financial resources to support action on mitigation and adaptation. Developing countries have stated clearly that financing and technology transfer will be essential if they are going to be able to mitigate their emissions and adapt to warming temperatures.

Leakage and competitiveness in industrialised countries is another vital trade-related question. Industry and policy-makers in industrialised countries worry that efforts to reduce

Greenhouse gases (GHG) emissions would negatively affect their carbon-intensive manufacturing sectors, which may be unable to cope competitively with industries in developing countries that do not have comparable obligations imposed on them. Subsequently, concerns about competitiveness loss often also extend to relocation of industries from countries with obligations to those without. Industries generally concerned are: iron and steel; aluminium and copper; cement and glass; paper and pulp; and basic chemicals.

Unilateral trade measures, while not formally part of climate negotiations, could also disrupt or complicate the climate negotiations. Such provisions could include border measures – trade barriers which target economies that lack specific emissions reductions obligations – or requirements that countries purchase carbon offsetting allowances. This is already visible in discussions on sectoral approaches to mitigation, which developing countries are seeing as a backdoor way to address developed countries' competitiveness concerns. It is critical that these concerns be addressed promptly in the relevant fora, including through informal diplomacy, before they emerge as critically disruptive factors in the end-game towards Copenhagen.

The third set of issues relates to the trade and development concerns of developing countries in certain economic sectors that are likely to be negatively affected by either the physical impacts of climate change or the socio-economic consequences of response measures. Related to that is the adaptation needs and modalities of their financing.

The IPCC projects that climate change will result in the decline of rain-fed agricultural productivity by up to 50 percent in certain parts of the world, mainly in developing countries. Tourism, a key economic sector in many small islands and developing states, is expected to suffer from climate impacts on the one hand, and from response measures such as a regulation of emissions from international marine and air transport, on the other hand. These are likely to result in decline of tourism-related employment and contribution to gross domestic product.

Finally, certain developing countries have found themselves caught in the middle of a fight over whether certain agricultural products should have their 'carbon footprint' emblazoned on their labels. Generally referred to as the 'food miles' debate, the labelling of certain products on the basis on the air shipment puts an economic cost on producers from poor countries – the very countries that have been recognised under the climate convention as having a minimal contribution to the problem and that have been virtually exempted from mandatory emissions cuts.

These are the concerns that developing countries have raised in the climate negotiations, as highlighted in their Technology Needs Assessments, and that may feature in their National Adaptation Programmes of Action (NAPA). Seeking appropriate responses to these anxieties in the trading system, and defining adjustment mechanisms that would help economies adapt to the physical and socio-economic impacts of climate





change are likely to be key priorities for a positive engagement of developing countries on the way to Copenhagen.

Dr Kamal noted that the next 16 months will be crucial in building global consensus towards a new climate agreement. The economic architecture of such an agreement, which could have far-reaching impacts on markets over the world, is absolutely essential.

**(b) Tim Brightbill (on behalf of Charles Verrill),  
Partner at Wiley Rein LLP**

### **Analysis of the Consistency of Maximum Carbon Intensity Limitations Applicable to Domestic and Imported Products with WTO Agreement on Technical Barriers to Trade**

Emission of greenhouse gases is a global problem. Any nation seeking to restrict such emissions by its manufacturers should avoid putting them at a disadvantage in world and domestic markets where they are likely to compete with producers that do not bear the cost of emission controls.

One approach being considered in the United States would be the adoption of technical regulations limiting the carbon intensity of basic products, such as cement, aluminium, steel, etc., offered for sale in the United States. Domestic and imported products that exceed the regulation limit could not be sold in U.S. commerce, except pursuant to exceptions that would be available on a national treatment basis. Technical regulations would be based on the quantity of carbon equivalent gasses emitted in the production of a unit of product, such as a ton of steel. The regulation would set a numerical limit on carbon intensity; would set discrete limits for different products and types of manufacture; would require auditable facility measurement but could allow compliance on an average company-wide basis; and would be tightened over time to encourage new technologies. However, there would be no requirement for the adoption of specific technologies.

Tim Brightbill presented an analysis of the validity of such regulations under the WTO Agreement on Technical Barriers to Trade (TBT). The Preamble to the TBT recognizes that “no country should be prevented from taking measures necessary (...) for the protection of human, animal or plant life or health, [or] of the environment (...) at levels it considers appropriate” In addition, TBT Article 2.2 includes “protection of human health or safety (...) or the environment” as legitimate objectives of technical regulations.

Tim Brightbill explained whether a maximum carbon emission limit would be a “technical regulation” as defined by the TBT Annex 1.1, taking into account the WTO Appellate Body statement which states that characteristics subject to regulation are not limited to “qualities intrinsic to the product itself”. Consideration was also given to the TBT requirement which states that technical regulations should not be applied so as to create unnecessary obstacles to trade. Finally, he

evaluated the application of GATT Article III to measures that qualify as technical regulations.

**(c) Julia Reinaud, Policy Analyst, Energy Efficiency and Environment, International Energy Agency**

### **Issues behind Carbon Leakage and Border Adjustments**

For policy-makers, a main concern with implementing uneven GHG constraints is carbon leakage (i.e. an increase in emissions outside the region as a direct result of the policy to limit emission in a country or region in the form of a cap or a tax). Carbon leakage would imply that the domestic climate mitigation policy is less effective and more costly in containing emission levels. When handling this issue, the aim is to address environmental effectiveness; not industrial policy.

Changes in trade patterns and in investment decisions as a result of uneven carbon constraints would be the main indicators of this leakage. Yet drivers of investment are multiple and carbon constrained sectors are not operating in a vacuum. Carbon policy is only one part of the broader industry picture. Defining the counterfactual scenario (i.e. what would have happened in the absence of the climate constraint) is critical for finding evidence of carbon leakage. A slow down of the booming commodity market would certainly accelerate closures – and yet one would surely not attribute them to climate policy.

How significant is the carbon leakage problem for trade-exposed emission-intensive sectors? First, loss of competitiveness and carbon leakage under uneven climate policies are risks restricted to a few industry sectors (and sub-sectors). Second, governments should not speculate on the risk of leakage for sectors, but simulate effects and monitor precise indicators. The EU emissions trading scheme (EU-ETS) has not, so far, triggered observable carbon leakage in sectors studied here (steel, cement and primary aluminium). Several factors related to the design of the system and other circumstances partly explain this situation. In contrast, theoretical models predicted significant leakage rates for some of these sectors.

If governments choose to assist manufacturing sectors in achieving GHG mitigation while avoiding carbon leakage, they will need an objective quantitative basis to justify using a specific measure and to help determine the extent to which these should be used for each sector. This will avoid using CO<sub>2</sub> policy as a (costly) industrial support system. Beyond experience with the EU-ETS, such an assessment is not yet available. Again, establishing a counterfactual analysis can avoid over-compensating industry for emission reduction efforts.

While investment certainty is needed, these measures should be as flexible as possible in order to avoid the lock-in of less efficient policies and commit to on-going assistance. They will also need to be transitional in case governments



decide to use measures without sufficient empirical analysis of carbon leakage expected from a sector.

Ambitious climate policy implies changing relative competitiveness of sectors, encouraging low-carbon innovations and preparing for a new playing field. Without suggesting unnecessary usage of compensation for climate policy costs or trade measures, when designing the appropriate policy, a balance will need to be struck between avoiding carbon leakage, providing long-term incentives for domestic sectors to develop the low-CO<sub>2</sub> production patterns, and defining long-term reduction targets.

Ms Reinaud noted that in doing so, governments will establish the feasibility of a low-carbon economy and provide the prime mover advantage to companies first developing low-emitting technologies.

#### **(d) Ambassador Servansing, Permanent Mission of Mauritius**

##### **What could be the WTO response to climate change**

Ambassador Servansing started by saying that most of the island states such as Mauritius will certainly be impacted by climate change in the future. African, Caribbean and Pacific (ACP) countries depend largely on the agriculture, fisheries, and tourism sectors that will suffer from climate change. There is a need for a global comprehensive policy framework to guide trade policies in the climate change debate. Ambassador Servansing hopes that such a policy framework will be established on the road to a climate change agreement in Copenhagen in late 2009.

If the interlinkage between climate change and the global trading system is becoming more and more obvious, then it is appropriate for the latter to mainstream more comprehensively the negative externalities of climate change in trade policies to deliver a win-win situation for both environment and trade.

"Sustainable development" is certainly inscribed in the Preamble to the WTO agreement as one of the fundamental objectives of the WTO. However, the WTO rule book does not address climate change or the environment specifically. One deliverable that can be contemplated lies in the on-going DDA negotiations as Para 31(iii) of the Doha Ministerial Declaration calls for "the reduction or, as appropriate, elimination of tariff and non-tariff barriers (NTBs) to environmental goods and services (EGS)".

However, the Committee on Trade and Environment in Special Session (CTESS) has not made much progress on environmental goods liberalisation while the Negotiating Group on Services has not yet made much headway either on environmental services. There are many reasons for this state of affairs. The main difficulty is that the Doha mandate never specified or defined environmental goods or services. The work of the negotiating groups are therefore mired in intractable definitional problems which has led some members to propose a list-based approach

on which liberalisation would occur. The list-based approach is itself contested in terms of whether one would look at end-use for environmental purposes only or it will include "dual-use" goods. Others have proposed a "project" approach where goods and services pertaining to an environmental project are liberalised for the duration of the project. However, members have questioned the predictability and certainty that such an approach provides for business investors. The Services negotiation in the Special Session of the Council for Trade in Services is not making much progress either because of the peculiarity of the Services negotiations based on "request and offer" and plurilaterals. Moreover, there are many controversial issues on environmental services relating to classification which have to be clarified.

Both complexity and controversy underpin the Environmental Goods and Services (EGS) negotiations at the WTO. The EGS negotiations are part of the single undertaking and their fate is tied to the success of the DDA round whose outcome is uncertain now after the July failure. Members will not engage seriously in EGS as long as modalities on Agriculture and Non-Agricultural Market Access (NAMA) are not sorted out. So a tactical wait and see approach is adopted.

On the other hand, there is a deep sense of suspicion from developing countries on EGS which is perceived as a developed country agenda for liberalisation of goods and services where they have a competitive edge. The latest EU-US list reinforces such perceptions. The capacity problems of developing countries at large neither prevent most developing countries from actively participating in these negotiations nor understand fully its technical complexity. Only a handful of developing countries have been participating in EGS negotiations.

Yet these negotiations have significant implications for developing countries in terms of S&D provisions that need to underwrite any new obligations and an asymmetry in liberalisation that would favour EGS in the development interests of developing countries. The emphasis of certain developing countries in biofuels and bioethanol is an example.

There is yet another area where a WTO response is relevant. The Committee on TBT provides an important forum to discuss technical regulations and measures adopted by members to address climate change. The WTO has the responsibility to ensure that regulations, technical standards or other labelling schemes do not pose unnecessary obstacles to free trade and the TBT Committee is also an important venue for transparency on the initiatives taken by members in this area. As we work towards an international accord on climate change, issues relating to product standards, eco-labelling, energy-efficiency products, emissions caps etc will assume greater prominence. The balance between the need to avoid trade obstacles on the one hand and enforcement of internationally agreed principles on climate change will need to be harmonised. This can yet be another area of controversy.

Another area in which the WTO might need to intervene is on the question of subsidies. While subsidies for greenhouse gas emissions technologies should not be actionable, those on



fossil fuels should be stopped. Issues of intellectual property and transfer of technology also need to be addressed by the multilateral trading system to encourage the use of climate-friendly equipments.

Thus, while the WTO can provide some sort of a response in the climate change debate, it can only be a part of an overall architecture which has to be put in place to ensure coherence and provide guidance for other multilateral instruments to follow. The problem is that climate change has a compelling agenda but lack a proper global policy framework. Such a consensual holistic approach is a must if one wants to avoid unilateralism, conflictual situations and national tailor-made policy options.

## 2. Questions and comments by the audience

The audience expressed doubts concerning the presentation by Tim Brightbill. Someone said that carbon intensity relates to the production process of a product rather than the product itself. She expressed doubt about the WTO compatibility of carbon intensity. Another person asked Ambassador Servansing if he sees environmental services as

an area that moves forward quicker than environmental goods. He replied that there was a positive signal on this issue during the mini-ministerial conference in July.

## 3. Conclusions and way forward

Ricardo Meléndez-Ortiz, Chief Executive of ICTSD and Chair of this session, concluded by reiterating what Moustapha Kamal Gueye said earlier. As the international community embarks on the road to climate talks in Copenhagen in December 2009, when a new global agreement on climate change is expected to be forged, three categories of economic and trade-related concerns are likely to influence the process and outcomes of the negotiations: incentives for participation by developing countries; leakage and competitiveness in industrialised countries; and trade and development concerns of developing countries. If there is no response to trade related aspects of climate change from the WTO, initiatives popping up at the regional level or in the UNFCCC negotiations are not impossible. Trade and climate change issues can be addressed in other fora, they are not the monopoly of the WTO. The trade and climate change landscape is big and full of opportunities for international cooperation. The more we discuss these issues, the better.



## Consequences of a Failed Doha Round



### **Moderators**

Mr Dirk Vantghem – Director International Affairs, Eurochambres

Mr Stuart Newman – Legal Advisor, Foreign Trade Association (FTA)

### **Speakers**

Mr Jacques H.J. Bourgeois – Professor at the College of Europe (Bruges)

Mr Munir Ahmed – Secretary General, International Textiles & Clothing Bureau (ITCB)

Mr Stefano Mingaia – Director, Fan Gioielli SPA

Mr Elmer Schialer – Deputy Permanent Representative, Permanent Mission of Peru to the United Nations and other International Organizations at Geneva

### **Organized by**

Eurochambres and the FTA

### **Report written by**

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Thursday 25 September 2008 – 9.00-11.00



## Abstract

*In the final two weeks of July all efforts were made in Geneva to try to achieve an agreement on the Doha Development Agenda (DDA) round of multilateral trade negotiations. Unfortunately, officials were not able to reach a consensus and no deal was possible. What will be the consequences of such a failure?*

*This session discussed the macroeconomic implications that the failed Doha Round could have on the global trade agenda and on the existing acquis of the GATT/WTO. Moreover, the panellists addressed the advantages and drawbacks of the multilateral approach in global rule-making and tried to define what could be improved in this approach. The panel also looked at the microeconomic impacts of the DDA collapse, through concrete and practical experiences from companies. Dirk Vantuyghem, Director of International Affairs at EUROCHAMBRES and Stuart Newman, Legal Advisor at the FTA moderated this session.*

## 1. Presentation by the panellists

### (a) Jacques Bourgeois, Professor at the College of Europe, Bruges

Professor Bourgeois presented his thoughts under four, loosely connected topics: (i) 'Twilight of the Gods'; (ii) Would a failed Doha Round be the end of the WTO?; (iii) The needs when the Doha Round was adopted are not going away; and (iv) Are Regional Trade Agreements (RTAs) a way out?

i) When speaking of the Doha Development Round, although the 'patient may be in intensive care', one should not speak of a post-mortem already. In his opinion, it was not impossible that there would be a more or less successful outcome by 2010/11 since by then two very important trading parties will have gone through some big changes (new US presidency and new Commission). However, Cancun has changed the ambition of Doha and caused further erosion.

Some observers have said that the deal currently on offer simply locks in the current status quo. That would perhaps not be a bad thing. For example, under the current agreement under Article 6 (Anti-Dumping - AD), there have been disputes over the "zeroing" method to calculate duties since this increases the dumping margin. The Appellate Body has said that zeroing is not consistent with the AD Agreement. The latest text - proposing an amendment to the Rule - contains a clause to permit zeroing. Therefore, locking in the current status quo may be a good thing.

ii) The current Rules would continue to apply and the organisation would remain in place. The Dispute Settlement system would still operate as calls for protection are getting louder. So the organisation would continue to function but under difficult circumstances.

iii) The needs that existed when Doha was adopted are not going away. The growing impact of Non-Tariff Barriers (NTBs) is real and the WTO is a victim of its own success. This impact is growing because classical barriers to trade have been significantly reduced thanks to the WTO and in real life the obstacles to trade are now different standards that are technical regulations.

The institutional inability of the political branch of the WTO to address issues outside the multilateral trade negotiations round continues to exist. There has been no significant decision taken by the political branch outside the multilateral trade negotiations. Several solutions have been suggested such as critical mass and variable geometry. Other solutions include "soft law" created inter alia in various committees where solutions can be worked out without requiring trade-offs with other areas. These committees have come up with guidelines to deal with problems and put forward solutions.

iv) As for RTAs, one cannot blame some members for trying to address on a bi-lateral level issues that were evacuated from the agenda of the Doha Round. However, it is not sure that the wide-ranging agenda included in RTAs (some look like Christmas trees) is doable. One has to look at the fine print. Professor Bourgeois undertook a study of 30 RTAs regarding rules on competition and government procurement. However, almost all the RTAs that contained competition rules excluded these from the dispute settlement process of the RTA.

Even if RTAs are successful, ratification could run into difficulties (e.g. several within the US). Also, the transaction costs are too high for some companies. So, in conclusion, RTAs are not the way out.

### (b) Munir Ahmed, Secretary General, International Textiles & Clothing Bureau (ITCB)

The consequences of a failed Doha Round would be many and far reaching. In his opinion, the current financial market problems are a case in point that situations can change dramatically due to a lack of multilateral regulation.

The Doha Round negotiations are ultimately an effort to set regulations for trade: anti-dumping, subsidies for agriculture and industrial tariffs, among others. They are essential to help international commerce.

The first consequence of an unsuccessful Round would be the failure to set these regulations in many areas of commerce, agriculture, non-agriculture products, anti-dumping and services. Failure would also weaken existing regulations. The Dispute Settlement system is an example – which distinguishes the WTO from most other agreements. Imagine a series of challenges against agricultural subsidies in the absence of success on agriculture in the Doha Round and imagine the political tensions it would generate and how difficult it would be for some major WTO members to resist domestic political





pressures. This would put the Dispute Settlement mechanism to a serious test.

Second, there would be a loss of opportunities to increase and improve market access and to restore justice to the system. Success would unlock real access to gains on market access. There have been studies that show what this access would mean but those studies are not always reliable – such as how wide off the mark studies predicting the elimination of MFA quotas on textiles were. At the ITCB we have calculated some statistics and we are confident about them. Tariffs on textiles and clothing in developing countries are relatively high. The ITCB has calculated that considering only 29 tariff lines in the US market, a duty saving of 36Bn US\$ will be seen over the proposed implementation period. Duty savings on textiles after the implementation period will be about 6Bn US\$ a year. The savings in the EU will be lower due to the EU's current lower tariffs. Also the fact that developing countries will lower their tariffs, as result of the current Swiss Formula, is unprecedented (e.g. tariffs of 50% being reduced and bound at just 17%).

The WTO Rule book has failed to eliminate some glaring examples of short-changing (e.g. subsidies in cotton have for decades stood in the way of developing countries' prospects from growth and development and has propelled the issue onto the agenda as a moral imperative). It is a litmus test for the system to show that it cares and can restore justice. The failure of the Round would also mean that duty-free access for least developed countries would be lost.

Failure would also mean the loss of mechanisms for setting trade facilitation.

The consequences of a failed Doha Round would be firstly a great missed opportunity and secondly would expose the rule based system to serious strains.

### **(c) Stefano Mingaia, Director, Fani Gioielli SPA**

Stefano Mingaia was nervous to come to the Forum because, according to him, it is well-known that the actions of the WTO and the Doha Round refers to worldwide subjects such as agriculture, raw materials, services and climate; subjects which are essential for the survival of the planet, of countries, of populations. So at first glance, it could appear that the field of jewellery is apart from that because there is nothing as unnecessary as a jewel which is the epitome of luxury not the epitome of need. However, he informed the participants that there are more than 11,500 companies in Italy producing jewellery and 99.9% base their core business on export. So, any question relating to international trade is relevant in this sense to the Italian economy. For example, his company exports 60% of its production, mainly to Russia, Spain and the Emirates.

In his opinion, there are two main problems that could be addressed by the Doha negotiations. One is duties, the other is counterfeiting. A study by the GFMS (Gold Fields Mineral Services) – the World's foremost precious metals consultancy – shows that duties exclude EU jewellery to 60% of potential

consumers. Exports to other countries are burdened by heavy duties but those countries' products to the EU have very low duties. Brazil has import duties of 18%; China has duties of 20%, 35% and 47%; India has duties of 12.5%; Russia and Thailand have duties of 20%; the US has duties of 5.8% whereas the EU has import duties of only 2.5%. There is an evident lack of reciprocity. The collapse of the DDA would erase any hope of lowering these duties. Fani Gioielli knew that progress was always going to be slow but before there was light in the grey landscape; now the light is off.

As for counterfeiting, the consequence of a multilateral agreement on Intellectual Property Rights (IPRs) is very important. Most Italian companies are SMEs and so cannot afford to pay for all the different IPRs protection in all the different countries. So the possibility of finding worldwide-accepted agreements concerning IPRs protection is very important. A failure of such a relevant agenda in Doha is another hope we can see fading away.

The failure of the DDA would not mean an increase in the cost of raw materials (e.g. gold, silver, and platinum) as this is not burdened with customs duties in nearly all the countries in the world or a cost of import since the jewellery is almost all manufactured in Italy. However, a stop on the removal of trade barriers would make jewellery producers less competitive in the world market. For example, for Gioielli's company, the US market does not represent a significant market anymore. Those producers have hoped that the 5.8% duty would be lowered to 3.3% but with the failure of the DDA this scenario is less plausible. These duties impact on the gross profit margins by more than 40%.

The Doha Round could promote the fair way – respectful of the environment and working conditions – the product is produced in. It could also promote the willingness to purchase originals rather than copies. It could also simplify and reduce the cost of IPRs protection. In terms of duties and tariff barriers, it would be good to define whether a world-wide agreement or very largely accepted rules could be useful to keep alive foreign markets that currently are beyond us. Finally, it should try to redefine the term “developing country” as some of them are well-developed.

### **(d) Elmer Schialer, Deputy Permanent Representative, Permanent Mission of Peru to the UN and other International Organisations at Geneva**

Elmer Schialer started by noting that his views were not necessarily those of the Peruvian government – though they would not be too different. The current model predicts stabilisation of production leading to economic growth. Therefore, distortions and barriers to free trade will negatively affect economic growth. The problem is this neo-classical model is based on some basic assumptions that are almost never found in the real world such as perfect competition, perfect mobility of factors, constant returns of scale.

Empirical evidence questions the assertion that trade openness equals economic growth. In any model there is certain



degree of distortion of reality. Also the models used are highly complex. The data also keeps changing as it is very dynamic. However, there is a general consensus that economic growth and trade openness tend to be correlated in a positive way but this should not be taken in such a simplistic way; the real world is too complex.

From a policy-makers' side we see issues such as: when to open up, how to open up, at what speed, in what sectors first, etc. in order to see if this marriage will work.

Studies show the impact of full liberalisation, though figures differ. These figures show: 151Bn US\$ impact per year, 43Bn US\$ per year (80Bn US\$ if services are included) and 40-60Bn US\$ as a one time increase in world output for a plausible Doha scenario. These should be read against the fact that the US intends to subsidise its farmers by 300Bn US\$ over the next five years.

Also one should realise that the gain from liberalisation would amount to around 0.1% to 0.3% of the global GDP for 2007 which was calculated at 55Tr US\$. Moreover, those gains would be distributed in an uneven way within and across countries as well as between developed and developing countries. It has been suggested that the developed world would have an advantage at a 3:1 ratio. One reason for this, is that the current levels of protection for agriculture in high income countries would come down in a very substantive manner. Also a reduction of domestic support in highly industrial countries would result in price hikes in certain products.

Studies show that the larger developing countries (Brazil, China and India but also Argentina and Vietnam) would seem to be those that would benefit the most from trade liberalisation. Most gains from liberalisation would go to the developing world and those countries would see an increase of their GDP of about 0.5% (as opposed to an increase of 0.23% in the developed world). Liberalisation in industrial goods and fisheries will also take place in the developing world.

To use Peru as an example; it is a very small economy, its GDP was 100mUS\$ in 2000, its total trade flows were about 46Bn US\$ and it has a population of 28m with a per capita income of 3400US\$ a year. However, Peru's GDP has grown over the last nine years by 4.7% per year; last year it even increased by 9%. One reason for this was that at the beginning of the 90's policies of opening up trade and investment were undertaken. It has been shown that specifically for Peru's case, GDP growth under Doha could be as high as 13.99% - much higher than under any partial, regional or bi-lateral scenarios.

A success of the Doha Round would not only have an enormous impact on the credibility of the multilateral system and the institution it created, notably the Dispute Settlement Body, but it would also create the way for all the pending negotiations on, for example, IPRs and agriculture. A failure

would create terrible problems. Success would require a lot of political will and we would have to keep on trying.

## 2. Questions and comments by the audience

The first question asked which were the action(s) business could take to avoid failure. The answer given was that it seemed that corporations were absent from the multilateral negotiations while these players had legal and operational power. Often, there is a low profile of business in the negotiations. For example, in the July talks it seemed that Italy was pushing very hard against a deal because of agriculture.

However, Business does play a role in the negotiations at the level of the preparations of the various delegations. Multinational companies also try to obtain/reach common positions between different delegations, e.g. the EU/US Business Dialogue. However, companies have a different base than delegations; they can not wait nine years for negotiations to conclude and so they adjust their policies to changing situation(s).

A representative of the business sector made it very clear that business takes the Doha Round very seriously and has made all the necessary efforts with the objective of achieving a successful conclusion.

How can we secure the sensibilities of all countries?

One participant expressed disappointed with the figures which were presented concerning the potential benefits of a DDA deal. According to him and only as far as the services sector is concerned, they have figures that suggest that the benefits can reach 150Bn US\$ per year. The participant was a little bit disappointed by the fact that there was not so much discussion about the possibility of an increased protectionism if Doha fails.

Counterfeiting was recognized as a problem faced by a number of companies. The importance/significance of design, creativity and innovation is very high not only in the jewellery sector but also in the clothing and apparel field. The reason being that perhaps this is the only thing that is added to the product while at the same time enhancing its value. The protection of intellectual property rights (IPRs) is very difficult. There is a design registration system at the EU level but this has little value in many countries and therefore companies have to pay a lot of money to get protection in other countries such the US. The possibility for private companies to get access to achieve certain rules that would be helpful to them is very difficult.

Were the Doha Round to fail there would be consequences in many areas; mainly missed opportunities. The situation now is much more complicated than during the Uruguay Round and is therefore much more difficult. Life without Doha will go



on but it will not be as 'colourful' as it would otherwise be if Doha were to succeed.

### 3. Conclusions and way forward

According to the organizers, the objective of the session were fully met. It was clear from all the panellists that a failed Doha Round would have serious and profound repercussions. Trade liberalisation is needed to ensure economic growth and developing countries in particular need the benefits of the Doha Round in order to grow in importance.

Bilateral and Regional Trade Agreements are a possible solution but the fact that there are so numerous makes trading under these systems very complicated and expensive; especially in the field of rules of origin and at the Small and Medium Enterprises' level. The multilateral solution is therefore a much more preferable solution.

However, it is also not clear what benefits will be achieved by a successful conclusion of the Doha Round. Moreover, to place

a value on success could also be problematic as several studies that have been conducted arrive at different conclusions.

All businesses are affected, small and large, although it would seem that the larger businesses are finding their own ways around the continuing delay to the negotiations, whereas the smaller businesses are not able to access/influence the process adequately.

To conclude, two things are extremely clear. Firstly, the multilateral negotiations need to continue and succeed as the consequences of failure would be a lack of progress on areas such as increased intellectual property rights, protection and improvements to the regime on agriculture and the Dispute Settlement Process could be at risk. Secondly, the developing world would suffer the most from failure and it is perhaps up to the developed countries and the more highly-developed developing countries to compromise and ensure that the Doha Round be successful.



## Future Challenges of Agri-Produce Trade



### **Moderator**

Mr Bernd Gruner – Secretary General, European Liaison Committee for the Agricultural and Agri-food Trade (CELCAA)

### **Speakers**

Mr Arne Mielken – Senior Trade Policy Adviser, European Livestock And Meat Trading Union (UECBV)

Mr Jean-Michel Aspar – President, COCERAL Geographical Indications

Mr Simon Pettinger – International Trade Adviser at FRESHFEL Europe - European Fresh Produce

Mr José Ramon Fernandez – Secretary General, European Committee of Wine Enterprises (CEEV)

### **Organized by**

CELCAA and UECBV

### **Report written by**

CELCAA

Thursday 25 September 2008 – 9.00-11.00



## Abstract

*International exchange of agri-produce has increased over the last 10 years, and further liberalisation in the area of agricultural policies will most probably provide a further boost to international exchange of agri-produce. However, increased global exchange in agri-produce faces several challenges in the near future. The session intended to address in four panels the different challenges faced by the multilateral agri-trading system.*

*The increased demand coupled with a shortfall in supply due to below average crops over several years led to historically low carry-over stocks for the main agricultural commodities and to high food and feed prices. As particularly the poor urban and rural populations in food importing countries are suffering from the considerable increase in prices of staple crops the question of global food security is a political priority of the international community. Demand is driven by global annual population growth, changing consumption patterns in emerging economies in Asia and increased use of agricultural commodities as biofuel.*

*The session intended to address the issue of global food security from the viewpoint of a particular sensitive product: meat. Where will the future meat come from and under which conditions will it be traded? What degree of interdependency of meat products is acceptable in a globalised world? Should food security issues be addressed at national or global level?*

*The increased use of agricultural commodities as biofuel raised discussions amongst some WTO member states on sustainability criteria for the production and trading of biofuel. The danger of proliferation of different sustainability criteria could impede the commodity trade. Should the multilateral trading system establish harmonised principles for the setting of sustainability criteria? Should the use of staple foods as raw material for biofuels be forbidden as part of a safeguard measure to prevent food crises? Is the establishment of a list of environmental goods the right way forward?*

*A further challenge resulting from facilitation of travelling and the exchange of agri-produce commodities will be the higher risk related to the introduction and spreading of new plant or animal diseases and invading species. As tariffs are decreasing, WTO members are protecting themselves with more complex and protectionist SPS measures, as well as emergency measures to block trade. Are the WTO SPS rules sufficiently clear and applied in a similar manner by all WTO members? This does not appear to be the case, as interpretation widely varies between countries, leading to significant differences in the implementation of SPS measures. As the current Doha Round does not seem to address this matter, agri-food trade feels that these difficulties are likely to remain.*

*In future, international trade of high value added agricultural processed product has a bigger increase potential in value terms than trade in agri-produce commodities, considering a rising middle class in emerging economies and the extraordinary potential of developing and less developing countries to develop local and regional specificities. The particularity and authenticity of high value added food products and beverages lay within the*

*particular human know-how used in agricultural production and preparation of food and beverages, which are specific to the different regions in the world. Geographical Indications (GIs) for wines and spirits in order to facilitate its protection is included in TRIPS (Article 23-4), with its implementation being reaffirmed in the DOHA Ministerial Declaration of 2001. CELCAA therefore addressed the question whether the establishment and implementation of a multilateral register of GIs for high value food products and beverages provides an opportunity to better secure and promote trade to the benefit of the development of the different regions worldwide. Would the international trading system be able to protect the intellectual property adequately?*

## 1. Presentation by the panellists

The moderator Bernd Gruner, Secretary General of CELCAA, noted at the beginning of the session that the European Union is the biggest importer of agri-produce and the second biggest exporter worldwide. In 2006 the total value of EU agri-food exports had been of 71.4 € billion and the total value of EU agri-food imports had been 68.4 € billion. This was the first time since the introduction of the Common Agricultural Policy that the EU had a positive foreign trade balance. In 2007 the foreign trade balance was negative with a total value of 75 € billion for EU agri-food exports and 77.4 € billion for agri-food imports. The session dealt with a number of future challenges which, from the viewpoint of European agri-produce traders, need to be addressed by the international community beyond those issues currently negotiated under WTO multilateral DDA negotiations.

### (a) Arne Mielken, Senior Trade Advisor of the European Livestock and Meat Trading Union (UECBV)

#### Challenges and trade prospects for meat production in a globalised world

Arne Mielken presented current and future trends in beef meat trade and looked at the key challenges of the European meat industry commenting also on the issue of food security from a European point of view. The UECBV represents 16,000 trading and industrial companies dealing with live animal markets, meat plants and slaughterhouses and meat preparation plants as well as imports and exports of meat.

- i) Dependency on beef import from third countries to increase

Projections for the future of beef trade clearly show that by 2013 more beef will be consumed in the EU whilst less is being produced on EU farms – increasing Europe's dependency on meat imports. What was 300,000 tonnes of imported meat in 2002 will almost triple by 2013.

- ii) Cost of production: the key challenge of the European meat sector

What are and will be the key challenges that the European meat sector faces which will influence production and import decisions?





Without any doubt, it is the “cost of production” of Europe's meat industry, which will determine its future competitiveness, its future shape and sheer existence. Although there are many others, four elements need to be particularly stressed:

iii) Food Safety: Recognise & implement high standards across the world!

First, food safety does not happen overnight, it needs to be put in place and then managed, monitored and controlled. The EU reached a high standard level, in particular with the implementation of a full traceability system from the farm to the fork. It is of the highest importance for a fair trade that this high EU standard is recognised at the international level and that imported products into the EU fulfil the same requirements.

iv) Animal welfare: A global responsibility - Alignment with OIE needs to be a priority

On “animal welfare”, even though the current EU requirements are aimed to recognise that animals are sentient beings, more and more private “animal welfare” schemes are circulating through the European continent to provide “private certificates” (e.g. GlobalGap initiative). This trend, driven by the retail sector, also means “private inspections” on the animal condition in the Community that already respect science-based welfare requirements – all of which raises costs in the end. For the UECBV efforts should be concentrated on implementing science-based standards for animal welfare, taking into account the OIE work to create a global level playing field.

v) Animal Transport: Enormous efforts made as cost of production skyrocket

On animal transport, all the requirements that operators have to fulfil such as the purchase of new transporters and the compulsory navigation system, adequate ventilation (someone uses also air conditioning), drinking facilities, temperature measurements, stocking densities, etc. lead to a considerable increase in the cost of production.

vi) No feed import – no livestock – no competitive EU meat industry in the future

On animal feed, it has become obvious that in an increasingly global market, it is becoming more and more difficult to nourish livestock in the European Union, unless there is a review of current risk management measures dealing with low-level presence of not yet EU approved biotech crops. The “costs of production” resulting from a “zero tolerance policy” as the EU currently applies, become immediately exorbitant where the consequence is an interruption of feed trade. This has devastating consequences for the economic operators involved.

It is fair to say that year after year, the EU meat industry is loosing market share in the international market but also in the EU market because of the increase in the cost of production, deriving from growing and stringent EU standards of production on all these issues.

Meat has become a much more global product, shipped across the world where there is demand and purchasing power. However, this trade does not happen in a political international environment which is completely stable and comparable in terms of the national legislation affecting its market and trade.

At the same time worldwide meat consumption will reach nearly half a billion tonnes a year, more than twice the current level, whilst costs of production in Europe rise constantly making the European meat industry less and less competitive. More open markets will further reduce EU growing beef production, but increase our dependency on foreign meat imports.

**(b) Jean-Michel Aspar, President of COCERAL- European Committee of the trade with cereals, oilseeds, feedstuffs, rice, olive oil, oils and fats and agrosupply**

### **Sustainability issue: the particular case of biofuels**

Introduction of requests for sustainable production of the feedstock used for biofuels production may have deep effects on the existing supply chains of the trade sector as current first generation biofuels are mainly produced from various soft commodities which are commonly yet traded worldwide for food or feed usages (such as cereals, sugar beet, sugar cane, oilseeds, soybeans, tapioca, etc.). The need to trace products based on their sustainable production criteria may deeply change the current “multi-origin bulk commodity” product to a “multi-differentiated identity preserved niche market” products with consequent impacts on the supply chains and on the final cost of the products for the final end-users.

COCERAL which represents the EU Grains and Oilseeds Trade Associations recognizes that sustainable cultivation of agricultural food and feed stocks is a pre-requisite to ensure the long term uses of biofuels and other agricultural products but reminds that sustainable production criteria and Green House Gas (GHG) calculation methodologies, as well as rules for verification and controls should remain simple, transparent, non-discriminatory and cost effective. Indirect land use changes penalties should be avoided and replaced by bonus for uses of restored or deteriorated lands.

Worldwide harmonization (at WTO or Codex level) of sustainable production criteria and GHG reduction calculation methodologies and norms are also a pre-requisite to ensure a quick adoption and implementation of such rules, without creating unnecessary additional trade burden, risks or new trade barriers for the concerned operators. For such purpose, the use of “Book & Claim” (tradable certificate) systems, allowing a separation of the certification paper from the product flows (avoiding a negative impact on the existing supply chains) would be the best way to promote quickly the sustainable production of biofuels feedstock's by transferring the full premium to the farmer/producer (better incentive) and allowing other stakeholders to buy “sustainable products” for other non-biofuels uses.



EU Commission and member States should also favour the use of existing schemes such as the Roundtable on Sustainable Palm Oil (RSPO) or the *Round Table on Responsible Soy* (RTRS) which are being set-up by all concerned parties (NGOs, producers, processors, transporters, traders, end-users) as the best way to quickly promote and develop efficient control and certification systems

**(c) Simon Pettinger, International Trade Adviser of Freshfel Europe the forum for the European fresh fruits and vegetables chain**

**SPS – A New Barrier to Trade?**

WTO rules allow the adoption of sanitary and phytosanitary measures by countries in order to protect human, animal and plant health through standards, however since the SPS Agreement concluded at the Uruguay Round of the WTO the number of SPS measures has increased dramatically, and they are increasingly being used as barriers to trade.

The contrast in approaches applied worldwide helps to outline how SPS measures can be used to hinder trade. Europe has a permissive approach to SPS measures, with clear sanitary and phytosanitary measures in place which apply both to EU suppliers and suppliers from third countries. A distinct contrast exists between this approach and that used by many other countries, where the general interdiction principle applies. This is where each SPS measure is liberalising a generally closed system, and everything that is not specifically permitted is forbidden.

Freshfel has found that this asymmetry in trade policy, specifically on SPS measures leads to large differences in trade flows, as demonstrated by the huge discrepancies in trade flows of fresh produce between the EU and China. China exports over 130.000 tonnes of fresh produce per year to the EU, yet the EU exports less than 1.000 tonnes to China. This is in part due to the immense difficulty in negotiating export protocols and the extremely restrictive SPS measures in place. Protocols also remain very inflexible, and thus traders are unable to respond to market demand as appropriate.

Private standards also play a large role, in that they are going beyond national legislation and are placing increased and in part undue pressure on suppliers. Credibility in governmental and WTO rules needs to be restored in order to arrest the multiplication of these expensive private standards, however these standards remain difficult to control and bring under legislation.

To conclude, Freshfel would like to see the SPS issue put back on the WTO agenda. The harmonisation of SPS rules and prevention of SPS measures being used as trade barriers would help to consolidate trade liberalising steps made in other areas. The benefits of tariff liberalisation cannot be fully realised until the situation with regard to SPS matters is resolved, and the restrictiveness of these measures is reviewed and reduced.

**(d) José Ramon Fernandez Secretary General of CEEV – European Committee of Wine Enterprises**

**Geographical Indications – Multilateral register**

International trade of high value added agricultural processed products has a promising increase potential in value terms, considering a rising middle class in emerging economies and the extraordinary potential of developing and less developing countries to develop local and regional specificities.

The particularity and authenticity of high value added food products and beverages increasingly appreciated by the consumers lay within the specific natural conditions and human know-how used in agricultural production and preparation of food and beverages, which are specific to the different regions in the world.

The establishment of a multilateral register of Geographical Indications (GIs) for wines and spirits in order to facilitate its protection is included in TRIPS (Article 23-4), with its implementation being reaffirmed in the Doha Ministerial Declaration of 2001.

WTO must work to stimulate the social and economic development of the local business communities, by facilitating their participation in world trade. GI's concept as intellectual property rights protecting quality distinctive regional products are a useful concrete tool to promote the participation of local business communities in world trade, in particular in developing countries.

The establishment and implementation of a true multilateral register of GIs for wines and spirits is needed to effectively provide an opportunity to better secure and promote trade particularly in those sectors to the benefit of the development of the different regions worldwide.

**2. Questions and comments by the audience**

The first question asked related to the use of private standards and the role of the WTO in this respect. For fruits and vegetables Simon Pettinger from FRESHFEL noted that Private Standards (PS) are a cause of concern amongst growers, exporters and importers. In particular, recent tendencies are to use PS as marketing instrument by requesting increasingly lower residues of pesticides without consideration of international Codex standards, national or European regulations. Compliance with PS is needed to access certain consumer markets and, thus, may be considered as a barrier to trade. However, they are difficult to regulate as they are an issue between supplier and client and, consequently, are outside the scope of the SPS and TBT agreements. It would, nonetheless, be desirable to incorporate certain provisions into international agreements to improve notification procedures and to increase transparency of private standards. Furthermore, international funding should be provided for capacity building in Developing Countries allowing producers to meet these standards.

For bulk commodities like cereals, oilseeds and feedstuffs, Jean Michel Aspar said that PS have been established in order to assist operators throughout the feed and food chain in the



implementation of a quality management system (QMS) based on Hazard Analysis and Critical Control Points (HACCP) principle and traceability and to ensure compliance with food and feed safety regulations. Each PS lays down detailed requirements for the auditing and certification as customers want to be ensured that their suppliers apply correctly their QMS system. The proliferation of national PS and multiplicity of auditing and certification requirements lead to trade distortions and to a cost increase. The trading community request harmonised international rules and criteria for a common recognition of accreditation under the different national schemes. Jean-Michel Aspar noted however that PS are more market-oriented and would be more appropriate in satisfying consumer demands than rigid regulatory requirements that are cumbersome to enforce.

For meat Arne Mielken noted that common rules and criteria for animal welfare have been established by European regulation and he questioned the need of a multiplicity of private labels for animal welfare currently existing in Europe as each audit and certification carries a cost for the operator, which is transmitted to the final consumer.

The second question asked how custom procedures were perceived by the panellists. Arne Mielken referred to current implementation of the modernised customs code in the European Union, in particular the e-customs initiative intending to facilitate import and export procedures with the help of informatics. Unfortunately, not all EU member states have the same capacity of implementing the computerised systems by July 2009 which would lead to a multitude of paper documents alongside with the electronic means. This might create additional costs for freight forwarders which would be passed on in the food chain.

For the fruit and vegetable trade, in view of the perishability of the product, delays in custom procedures due to a lack of harmonisation of phytosanitary controls and the refusal to recognise those carried-out by other countries are a concern.

For commodities' trade delays in custom procedures are causing increased costs due to the waiting time of the ship in the harbour or of the lorry at the frontier. Jean-Michel Aspar highlighted that unjustified and discriminatory use of phytosanitary and safety inspections by custom authorities for political reasons or protection of the internal market should be prevented.

The next question asked if traders would benefit from a conclusion of negotiations on trade facilitation. Bernd Gruner noted the support of traders on one element negotiated under the Trade Facilitation chapter, i.e. that custom costs should reflect costs of custom services rendered and not be part of revenue for the national budget.

Jean-Michel Aspar noted that trade facilitation is an essential element ensuring trade flows and the correct functioning of markets. Recognising the need of ensuring that products are sound, safe and satisfy certain requirements

related to environmental protection and animal welfare, he emphasised that international criteria and rules for feed and food safety and sustainable production should be established in parallel with the abolition of tariff and non-tariff barriers. If safety and sustainability requirements are not applied in a harmonised way in parallel with trade liberalisation it would lead to distortions of competitiveness.

Simon Pettinger noted that for fruit and vegetables lifting of tariffs would have to be accompanied by an agreement in more depth on non tariff issues in order to consolidate the benefits and opportunities resulting from trade liberalisation.

Next, a participant asked what the panellists thought of the inclusion of biofuels into the list of environmental goods. Jean Michel Aspar noted that all products should be produced in a sustainable way. It is a prerequisite that rules and criteria for sustainability be addressed worldwide. Jean Michel Aspar questioned the appropriateness of establishing a list of environmental goods benefiting from tariff reductions in trade in view of the complexity of the issue. Such a list would generate problems during its establishment and further on in its control. How are these products defined and what criteria are used? Are all stages in the production chain considered? Are by-products also considered?

### 3. Conclusions and way forward

Agri-produce traders see the need to address non-tariff barriers in parallel with trade liberalisation in order to avoid new trade barriers and distortions of competition between WTO members. A multiplicity of national rules or standards for food and feed safety, animal welfare and sustainability would increase production costs and the final price paid by the producer. A set of clear and transparent international criteria and rules would allow harmonised application and mutual recognition.

On Private Standards provisions to improve notification and increase transparency should be foreseen at the international level. Furthermore adequate funding should be made available for capacity building within developing countries.

A further request of European agri-produce traders is that SPS should be used as a tool to facilitate trade, and not as a protectionist barrier for markets. WTO would need to implement clearer SPS rules in order to consolidate beneficial aspects of future trade liberalisation.

Conclusions of negotiations on trade facilitation are seen as beneficial for trade as they would establish amongst others clear rules for customs procedures.

European agri-produce traders advocate the establishment of a multilateral register of Geographical Indications under the TRIPS agreement as this would stimulate the social and economic development of the local business communities by facilitating their participation in world trade through the protecting of their intellectual property.

I.

## Changing Power Relations in International Trade Negotiations: Implications for the Future



### **Moderator**

Dr Hilmar Rommetvedt – Head of Research, International Research Institute of Stavanger (IRIS)

### **Speakers**

Mr Dan Kim and Dr Amrita Narlikar – Cambridge University  
Professor Oluf Langhelle – University of Stavanger, Norway

### **Discussant**

Professor Carsten Daugbjerg – University of Aarhus

### **Organized by**

IRIS

### **Report written by**

Mr Arild Farsund and Dr Hilmar Rommetvedt, IRIS

Thursday 25 September 2008 – 9.00-11.00





## Abstract

*The first years of the GATT and WTO were based on relatively stable power relations and the trade interests of a limited number of nation states in the industrialized world. International inter-governmental negotiations were dominated by executives. The Doha Round demonstrates changing power relations in international trade negotiations. Recent developments include new alliances between groups of countries and a growing importance of developing countries and emerging powers like India, China and Brazil. We see greater involvement of NGOs both nationally and internationally. Negotiations are characterized by two-level games where international and national processes intertwine and national parliament(arian)s engage in new ways. The recent rise of commodities prices, especially food and oil, has further altered the power balance. The changing power balance between different stakeholders in international trade negotiations represents a major challenge for the future of international trade. The session discussed questions related to these changes.*

## 1. Presentations by the panellists

**(a) Dan Kim, Centre for International Studies, University of Cambridge, UK (Based on a paper co authored with Dr Amrita Narlikar)**

### Rising Food Prices and the WTO Reforms

This presentation examined the possible role of the Uruguay Round agriculture reforms in recent sharp increases of food prices as well as the effects of these increases on long term price trends. The recent explanations of the increasing food prices focus primarily on the rising middle class in India, China, and Brazil. The economic logic that follows is that as the middle class in developing countries experience an increase in income, they naturally demand more food, and thus dramatically increase the world demand for tradable foods.

While there are multiple factors that affect food prices, Mr Kim said that incomplete and piecemeal market reforms brought by the Uruguay Round and subsequent reform efforts may be a major contributor of the price increases. The rising middle class of China, India, and Brazil cannot be the sole or dominant explanation for the recent trend in food prices. Another popular demand-side explanation seems to focus on the increased demand for bio-fuels, including ethanol, which in turn increased overall demand for agricultural products. However, the increased demand for bio-fuels also cannot be a satisfactory reason for such dramatic price rises, since prices of rice and wheat have risen faster than that of maize. A more satisfactory and complete answer requires an examination to long term supply and production of agricultural products.

The common thread in the world food markets for the past 14 years is the piecemeal reforms of WTO members' agricultural policies. The reforms undertaken by the participating countries have effectively shifted the long term agriculture supply. The theory of the second best is especially

applicable in explaining the food prices. Incomplete and partial reforms may be moving the food markets away from market efficiency, and are at least partly responsible for the recent price trends. Mr Kim said that he holds the European Commission's explanation of rising food prices as valid:

*A boost in demand clearly plays a role in any price increase, but changes in consumption patterns are generally smooth in nature. As a result, demand growth could explain why in some commodities and regions prices may reverse their generally downward long-term trend, but cannot explain why price surges occur in the span of a few months... It is generally on the supply side that the reasons for price surges are to be found. [...] Policy changes also impact upon prices of certain commodities by limiting supply.*

Mr Kim then advocated taking a step further to specifically include the effects of agricultural WTO reforms as a subtle but significant contributor in price surges in the short term and adversely affecting the long term supply trends.

Agriculture markets have been subject to numerous attempts at market reforms both by domestic policy and as a part of international trade negotiations, most notably by the Uruguay Round and subsequent WTO reforms. In considering these reforms, we should keep in mind that the accumulation of WTO reforms was never intended to achieve complete market efficiency. Rather, the reforms were meant to be small steps towards efficiency.

Small steps, by definition, are partial and incomplete reforms. The theory of the second best is applicable as well to incomplete reforms of agricultural markets. Economists Lipsey and Lancaster, in defining the theory of the second best, stated that partial reforms in "an imperfectly competitive economy may well diminish both the general productive efficiency of the economy and the welfare of its members". Therefore, in a market with multiple distortions, partial reforms may actually lead the markets away from efficiency by adversely shifting supply and/or demand. Ultimately the purpose of trade reforms is not merely removing some trade distortions. The goal of trade reform is to improve the general welfare of consumers and producers. Maximizing both producer and consumer surplus while minimizing dead weight losses should be the focus of trade negotiations.

The theory of the second best suggests that the Uruguay Round reforms and their subsequent implementations may have moved the food markets away from efficiency. There are at least two ways to characterise 'incomplete': first, incomplete market reforms, such as lower tariffs without significant reduction of direct domestic subsidies, and second, a case in which some major export/importers reform while others do not.

Mr Kim said that the first instance of evidence of inefficiencies caused by partial reforms is an econometric analysis of the world wheat market between 1995 and 2001. During this period, developed countries were required to



implement Uruguay Round reforms. Using the autoregressive integrated moving average (ARIMA) time series model, the results of Mr Kim and Dr Narlikar's study show that domestic support in the USA, and export subsidies from the EU have had, counter intuitively, negative correlations with world wheat price. This implies that as domestic support and export subsidies were reduced, prices increased. Some distortions were removed, but not enough to encourage more efficient producers to enter the market, a change which would have decreased the price. In the statistical model, Brazilian per capita GDP has a relatively small positive effect on price. Trading volume of wheat had a negative correlation with price, as expected. This econometric analysis suggests that the Uruguay Round reforms, while removing partial market distortions, resulted in a shifting of supply in the unintended direction.

Similar evidence is found in examining the Chinese rice market between 2000 and 2005. Though applied tariff rates were reduced by approximately 40%, domestic rice prices increased by almost 20%, and production decreased by about 5%. Despite the reforms, the prices increased significantly. While it is difficult in this particular case to establish a definite causal linkage between tariff rate and price, it is nevertheless telling that domestic prices increased while partial reforms were instituted.

Mr Kim concluded by offering lessons learned from the Uruguay Round as words of wisdom for the Doha Round:

1. The negotiations of the Doha Round regarding the agriculture markets should take into account the negative experience of implemented piecemeal reforms of the Uruguay Round. Continued piecemeal reforms make little sense given the experience of the past fourteen years of international agriculture trade.
2. The efficiency gains to be made from complete trade liberalisation should be emphasized in agriculture negotiations. In the long run, the only trade liberalisation that increases global food production and decreases food prices is complete liberalisation. So much has been discussed on what is 'fair' for domestic food producers: with persisting high food prices, it is time to also discuss what is in the overall best interest for food consumers everywhere.
3. The total economic effects of the Uruguay Round agriculture agreement come primarily as the result of reforms implemented by developed countries, especially the EU and the USA.
4. As economic power continues to shift towards developing countries, and particularly the larger the emerging players (BIC's) become, the more significant the impact of their trade reforms will be. Therefore, as the economic powers of developing countries grow, the responsibility of choosing the correct and complete reform grows as well.
5. Developing countries, especially Brazil, China, and India, now have the opportunity to attempt complete and

efficient reforms. Current high food prices provide political opportunity and economic incentives to significantly lower domestic protection and tariff barriers at the same time. Instead of choosing to restrict exports, as some have already done in response to rising food prices, more efforts for complete multilateral trade liberalisation are necessary.

### **(b) Professor Oluf Langhelle, University of Stavanger, Norway**

#### **Two-Level Games: The Importance of Domestic Interests in Trade Negotiations**

In this presentation Professor Langhelle discussed the WTO negotiations from the perspective of two-level games and issue-linkages, using Norway as an example. The main focus, he said, is the interplay of domestic and international politics that takes place within the framework of the WTO negotiations. He took as point of departure that political institutions are the mediators of trade interests and policies.

Although many countries follow the dual policies of protection and liberalisation in trade policies, there are few countries that can illustrate these processes better than Norway. Three issues in the trade negotiations in particular, therefore, were chosen as case studies for this presentation: agriculture, fisheries and concern for development. The reason is that these represent cases where opinions within the country of what constitutes Norwegian "national interest" differ and are almost the opposite of each other in terms of trade liberalisation. In the case of agriculture, Norway has defensive interests in relation to trade liberalisation. Harsh environments and poor conditions for agricultural production make Norwegian agriculture vulnerable to foreign competition and food imports. In the case of fisheries, Norway is the second largest exporter of fish and fish products in the world. A long coastline, large fisheries stocks and a fast growing fish farming industry makes Norway highly competitive in international markets. Thus, Norway has offensive interests in relation to trade liberalisation for fish and fish products. In addition, a third interest for Norway has been the concern for developing countries. Although it may seem odd to place this as a Norwegian "national" interest, it has figured prominently in debates in Parliament and it can be seen as a reflection of a generally development-oriented foreign policy in Norway with ambitions of being what some have labelled a "humanitarian superpower". Whether this policy concern is reconcilable with the other interests, and how it is supposed to be balanced against the other interests, however, is more disputed.

During the Doha Round negotiations, there seems to be a growing influence by various domestic constituents on the positions member states adopt. While in the Uruguay Round negotiations it was assumed that national authorities used international trade agreements as a tool for implementing national reforms, in the Doha Round the influence of domestic constituents like import- and export-competing groups, national parliaments, civil society organisations and additional ministries and agencies seems to have been strengthened. This makes the bargaining process even more complicated, since cross-cutting



issue-linkages are more easily brought to the forefront. Issue-linkages play a crucial role in many theoretical approaches to the study of international negotiations, and also in two-level games. Issue-linkages can in principle occur at the domestic as well as the international level and at the intersection between the two levels (so-called synergistic issue-linkages).

In his seminal article "Diplomacy and domestic politics: the logic of two level games", Robert D. Putnam (1988) argues that foreign and domestic policies in international negotiations are fundamentally connected and interact in a number of ways. His main argument is that the politics of international negotiations should be seen as a two-level-game. Instead of explaining foreign policy purely from domestic causes ("Second Image"), or to explain domestic policy purely from international causes ("Second Image Reversed"), international negotiations can "usefully be conceived as a two-level game". Putnam makes an analytical distinction between two phases in this process. The first process (Level-I), takes place at the international level and is between national negotiating delegations. The second process (Level-II), takes place at the national level and consists of discussions within each Parliament on whether or not to ratify the outcome of the negotiations. Although this may not give a correct empirical description of the course of action, the important thing is the interplay created by these two processes. For Putnam, national level consultations and bargaining lead to an initial position to be taken to the international level, a position that is perhaps modified but then brought back again to the national level for ratification. Putnam argues that while international level negotiating may affect the original position taken at the national level, so too would prospects for national ratification affect the discussions and bargains made at the international level. In fact, he says, expectation of rejection at the national level may lead to negotiations being abandoned at the international level without formal intervention from the national level.

Another important aspect of the interplay between these processes is that if there is a large over-lap between possible outcomes of the international negotiations and the possibility of ratification nationally, this will increase the likelihood of reaching an agreement internationally. Putnam calls this "win-sets", and for a given country the "win-set" is defined as "the set of all possible (international level) agreements that would 'win' – that is, gain the necessary majority among the constituents – when simply voted up or down". Putnam's determinants of the national win set are primarily domestic, including domestic political institutions, the distribution of power, preferences and possible domestic coalitions, and the strategies followed by "the Chief Negotiator", or in the case of Norway, the Government.

Norway is a constitutional democracy. Formally, foreign affairs are the prerogative of the executive, i.e. the Government. The prerogative of the Government, however, is modified by the principle of parliamentarianism, constitutional practice and common law. The Norwegian version of parliamentarianism is a negative one: governments need to be accepted by the Parliament, but they do not need a positive vote of confidence. It is also required that the Government have consultations with the Parliament before and sometimes during negotiations in

order to secure majority support for important treaties. Six political parties are represented in Parliament: Socialist Left, Centre, Labour, Liberals, Christian People's Party, Conservatives and the Progress Party. From the first attempts to start a new round of negotiations in Seattle in 1999 up to the present, Norway has had four different Governments, and three have been minority Governments.

The key stated goal for all four Governments in the agricultural negotiations has been to safeguard a national room-for-manoevre in agricultural policy using the measures necessary to maintain viable agricultural production throughout the country. This has also been referred to as the "mandate" from the Parliament. However, what this implies in practice, in terms of public spending and agricultural policies, varies from party to party. The three parties most critical towards the current agricultural policy (the Progress Party, the Conservative Party and parts of the Labour Party) are unable to form an alliance on agriculture because of the traditional left-right cleavage in Norwegian politics. It is this divide that determines the composition and formation of Government. Government coalitions that include the Centre Party (formerly the Agrarian Party) seem to prioritize agriculture over NAMA. The differences between the parties' primary positions on agriculture policies, and also offensive interests being weighted against defensive ones, therefore, play out in the decisions made by the Government. On several occasions during the negotiations, the Progress Party, the Conservatives and sometimes Labour, have argued that too much focus on the defensive agricultural positions could be counterproductive to offensive interests in NAMA. From the very start, fish and fish products have had a central place in Norway's negotiating positions as maybe the most important offensive interest in NAMA. Norway's interests in agriculture and NAMA, however, seem to be contradictory to many developing countries, especially the G20 and NAMA 11. The contradictions between Norwegian positions and developing country concerns are highlighted by the most reform-oriented parties in Parliament. Moreover, Norwegian environmental and developmental NGOs are split on the issue. Some argue from a G20 perspective, others from a G33 perspective and claim these principles are universal and therefore they should also count for Norway.

Despite their differences, all four Governments have followed more or less the same negotiating strategy: to pursue all Norwegian offensive and defensive interests in the negotiations, meaning full liberalisation in NAMA and as much protection as possible in agriculture. The trade-offs and horizontal process in the single undertaking will for the most part be determined by the big players (i.e. G-7). As a small country, therefore, it is important to let others know where you have problems and special concerns, and also to be constructive and creative in the negotiations.

In July 2008, however, Norway seemed more or less ready to accept what, for a moment, several countries thought were agreed modalities. In short, the proposed modalities represented an acceptable trade-off between offensive and defensive interests and also the development



(DDA) concerns. The result was seen as highly problematic for agriculture, but even the Centre Party accepted the deal, with some internal opposition. The deal was seen as acceptable in NAMA, although these discussions did not go as far as many had hoped, bypassing some key issues like sectorials. The farmers' association, however, wanted the Government to reject the proposal, and was happy that it turned out that there was no deal after all. Some Norwegian NGOs supported India's arguments for rejecting the deal (SSM), and also argued that NAMA was too ambitious for developing countries. Most importantly, however, the package was acceptable due to what can be called the first-order interest of Norway in the WTO negotiations: to secure and strengthen the multilateral trade system. This has been perhaps the most important "national interest" from the outset. Norway is a small and very open and outward-oriented economy and the multilateral trading system provides common rules for world trade and ensures access for Norwegian goods and services to other countries' markets on non-discriminatory terms. The WTO system is seen as the main pillar for international trade, and represents perhaps the most important national interest for Norway.

**(c) Professor Carsten Daugbjerg, University of Aarhus, Denmark**

**Comments on Mr Kim's and Professor Langhelle's presentations**

The presentation by Dan Kim drew attention to the role of agricultural policy reform as a factor in the food crisis. A number of reports on the causes of the food crisis have already been published but Professor Daugbjerg said that to his knowledge few, if any, offered analysis on the impact of policy reform on the food crisis. Thus, focus on policy reform is the key contribution of Mr Kim's paper.

Professor Daugbjerg said that he was somewhat sceptical of the illustration of the complete market liberalisation scenario, and said he did not quite understand why complete world market liberalisation would increase supply. It may be so in the long run, if new production potential is realised as a result of better market access, but in the short and medium term, liberalisation would end some subsidised production and thus lower production and as a result increase prices. It must be recalled that subsidies are often introduced to maintain production which is unprofitable without subsidies.

The basic idea of the WTO farm trade negotiations is to move domestic support into less trade distorting categories. The main impact of the Uruguay Round was to move domestic subsidies towards less trade distortion. In other words, it moved domestic support from the amber to the blue box. During the Doha Round farm talks, there is pressure to move domestic support into the green box which is for domestic support schemes which have 'no, or at most minimal, trade-distorting effects or effects on production'. Such payments would be decoupled from production and in contrast to amber and blue box payments, they would not require production. Everything equal, such box shifting is likely to lower production and thus

increase prices. In contrast amber and blue box payments would maintain production.

Historical examples, for instance the EU's sugar policy of the early 1970s, show that introduction of or increase in agricultural support can increase production rapidly. Increase in Chinese agricultural production may be put down to the recent introduction of agricultural support.

So, is the food crisis a case for farm trade liberalisation, more specifically dismantling agricultural support, or is it a case for continued support? In the EU some people argue that the food crisis proves the need to maintain agricultural support.

Oluf Langhelle's presentation is an interesting study of the way in which a small country operates in multilateral negotiations and how such negotiations limit the leeway for the pursuit of national interests in particular in an situation in which such a state has diverging interests. Putnam's two-level game model is applied. Numerous studies have demonstrated that it is a useful theoretical perspective on international negotiating situations.

However, Professor Daugbjerg said he thinks the model has more potential than demonstrated in this study. For instance, it could be applied to analyse in more detail how the Norwegian negotiator operates simultaneously at the two levels – the national and the international level. It could also be applied to analyse how s/he uses developments in the international negotiating situation and international power relations to influence discussions on the national negotiating position. How does the Norwegian negotiator use the win set as a bargaining resource in international negotiations? Putnam, based on Schelling's work, predicts that states with small win sets can turn these into a bargaining resource, whereas countries with large win sets are in a weaker position.

There is a strong tendency in the two-level game literature to focus on national legislatures when bringing in 'national institutions'. Professor Daugbjerg said that the study presented by Professor Langhelle needs to broaden the notion on 'national institution' to include also corporatist institutions and the political processes taking place within these. Apparently, the Norwegian government seems to have large room for manoeuvre, which Professor Daugbjerg said can be explained by the fact that the interest group community seems to be rather divided on trade policy. The study also raises the question of the relationships among government departments. What are the power relationship between the ministries of agriculture, fisheries and foreign affairs/trade? He said that the Norwegian Ministry of Agriculture is not in a position to become a veto-player.

## **2. Questions and comments by the audience**

The first comment from the audience was directed at the presentation by Dan Kim. The speaker emphasised the need for a stronger focus on reforms in rich countries. He suggested that one of the problems regarding efficiency in food markets is related to the unfinished deal from the Uruguay Round. In



that round there was too little focus on reductions in internal support and tariff protections in rich countries. This is still the case when it comes to the Doha Round negotiations. Another problem cited was the weakened possibility for trade offs in this round. Developed countries had made few adjustments in their agricultural policy, while developing countries had voluntarily cut their tariff protection in NAMA. The two groups therefore have positions that are different and difficult to reconcile in a new agreement. This speaker signalled doubt about the possibility that rich countries would make sufficient changes in national agricultural policy. The countries with highest support, like the members of G-10, were least ready to implement the reforms that are needed to create the efficient markets that Dan Kim had said were needed in his presentation.

Another discussant followed up on this comment. He suggested that the duration of the current round led to little dynamism and said that there was no hope for an outcome in line with the outcome in the Uruguay Round. Dan Kim agreed in his response with the suggestion that there was a need for more reforms, and that it could take time before they were politically acceptable. Mr Kim also suggested that high prices for food were a good starting point for implementing new reforms. He admitted that farmers, for instance in the US, would have difficulties accepting his reform proposal. From an economic perspective it is important to highlight the fact that only complete reforms would give comprehensive results in the food market. Other commentators pointed at the fact that agricultural policy in rich countries has other goals than food production only, e.g. goals related to social policy and rural development in general.

National food security was the point of departure for one speaker. He suggested that many countries, rich and poor,

want to protect their domestic markets in order to secure food deliveries over time. Today some poor countries produce food that is cheaper than world market prices. Domestic production is therefore a matter of necessity for many countries. One response to this was related to the need for rules against limitations on exports. If this type of rule would have already existed, the crisis would have been avoided. This led to another response: A re-negotiated agreement would have given poor countries greater ability to produce sufficient food domestically.

The last reaction from the panel was that effects of reforms are difficult to forecast. However, crisis represents a possibility. Crisis may lead to higher prices which in turn may lead to increased production from new or more efficient producers.

### 3. Conclusions and way forward

The session demonstrated the complexity of WTO negotiations. Negotiators need to take into consideration changing power relations not only at the international level between developing and developed countries, but also at the national level between various domestic interest groups. Furthermore, the session illustrated that on the one hand piecemeal reforms may lead to unintended and counterproductive consequences, but on the other hand comprehensive reforms may cause greater difficulties in the process of implementation and adaptation to new framework conditions.

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## Transparency as a Policy Tool



### **Moderator**

Mr Mark Halle – Director, Trade and Investment, International Institute for Sustainable Development (IISD)

### **Speakers**

Professor Robert Wolfe – Queens' University, Canada

Mr Ron Steenblik – Senior Trade Policy Analyst, OECD Trade & Agriculture Directorate

Mr Christophe Bellman – Programmes Director at the International Centre for Trade and Sustainable Development (ICTSD)

Mr Pablo Klein – Counsellor, Permanent Mission of Mexico to the WTO

### **Organized by**

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## Abstract

*Transparency is one of the most important trade-policy principles. It is fundamental to Anglo-American administrative law, and it is found throughout the WTO agreements. But in its application it is not working as well as it might.*

*WTO members are expected to respect their obligations, as best they can. Whether they do so or not matters: one way in which trade agreements make a difference is through the way they reduce uncertainty about future policy for trading partners and economic actors. If nobody knows what the policy is, it cannot have that effect. It is no longer sufficient to simply publish tariff schedules, though this remains an essential element of transparency. At present, trading partners need to have information about a wide range of domestic policies that have the capacity to affect the flow of transactions across borders in a discriminatory way. Consequently, these domestic policies are increasingly subject to WTO obligations. Transparency can be vital for distinguishing between legitimate (WTO consistent) and illegitimate (WTO inconsistent) regulation.*

*This panel asked: why is transparency an important policy tool? What can WTO members do better through fulfilling their transparency obligations than through negotiations or dispute settlement? How does transparency as an institutional principle shape relations between actors in the trading system in a desirable way? Who needs information? In what forum does it need to be used?*

## 1. Presentations by the panellists

### (a) Professor Robert Wolfe, Queens' University, Canada

Professor Wolfe provided context for the discussion with a presentation on evolving notions of transparency. By way of introduction, he observed that Pascal Lamy had written that there are as many as 157 different notification obligations in the WTO agreements. In the WTO Glossary, a "notification" is defined as "a transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other members". The requirements are all inherently ambiguous, since members are asked to notify something that they feel other members might find negative, from a new food safety rule to the level of subsidies to farmers. But the question must be asked, are these notifications actually essential when so many current obligations are regarding activities that are "behind the border" and cannot be seen by trading partners without notification? Actual notifications in some areas are a disappointment (subsidies) and excellent in others (food safety). Why are discussions in some committees perfunctory (subsidies), while other committees are an apparent forum for learning (food safety)?

Professor Wolfe spoke of three 'generations' of transparency:

Generations	Principle
1 Right to know	Access to most government processes and files
2 Targeted transparency	Structured information to further particular policy objectives
3 Collaborative transparency	New technologies that combine information from first- and second-generation policies with a new user-centred orientation

Transparency, if applied intelligently, can accomplish public policy goals more quickly and less expensively than regulation. As an example, Professor Wolfe mentioned problems with some of the first Sport Utility Vehicles produced in North America, vehicles that were prone to rolling over when cornering at speed. Rather than trying to solve the problem through regulation, the National Highway Safety Administration simply posted its ratings of rolling susceptibility, and within a short time the industry took care of the problem.

He then compared notifications of Sanitary and Phytosanitary (SPS) measures, and notifications on subsidies to the Committee on the Agreement on Subsidies and Countervailing Measures (ASCM Committee). SPS notifications, he said, were both more timely and more precise. Having one designated agency in government with the authority to implement the measure, notify its implementation and respond to feedback, was probably a factor in the success of the SPS notifications. The collection and reporting of data on subsidies, however, was more diffuse. Professor Wolfe did not have any comprehensive answer to how the problem could be addressed, but made a few suggestions. As a start, he said that the WTO should review transparency obligations in committees and in new negotiations, and provide better templates for notifications and enhanced procedures for discussion in committees. Additionally, contributions could be made though providing more clarity on what has to be notified, and guidelines on how to estimate industrial subsidies.

### (b) Ron Steenblik, Senior Trade Policy Analyst, Organisation for Economic Co-operation and Development (OECD)

Ron Steenblik addressed the specific issue of transparency in subsidy notifications. Transparency on subsidies serves several purposes, he said. First, it is necessary to effectively administer existing agreements on subsidies, and especially to level the playing field. Big WTO member economies have the resources to monitor other countries' industrial subsidies



while small countries do not. There is thus a public good element to making available information on subsidies in one of the official languages of the WTO, because it reduces the need for each country to expend resources on monitoring all the others. There is also a value for policy makers from the fact that data generates research, and the resulting analyses inform both domestic decision making and the adaptation and improvement of international disciplines. As an example, Mr Steenblik pointed to the numerous studies that have analyzed trends in, and the effects of, agricultural support since the publication of the OECD's PSE and CSE estimates in the mid-1980s.

There is yet another value to internationally comparable subsidy data, however: it facilitates new negotiations on disciplines. In both agriculture and fisheries, the development of international data on subsidies preceded negotiations on WTO disciplines. Might there not be disciplines likely on other sectors in the future? One strong possibility would be fossil fuels, because of the role their use plays in contributing to global climate change. If so, now is the time to start thinking of who might start assembling information on subsidies to fossil fuels, and how.

One possible reform measure to increase transparency on subsidies is to improve the quality and quantity of information reported to the WTO. The Global Subsidies Initiative (GSI) has proposed a new model template for WTO subsidy notifications to address some of the problems inherent in the subsidy notification format that contribute to poor compliance. The template has demonstrated potential to improve subsidy reporting. In 2008, the FiFo Institute for Public Economics of the University of Cologne applied the GSI template, using Germany as the test case. Instead of the 11 subsidies notified by Germany for 2006 (with a total value of € 1.25 billion), the study's conservative approach identified 180 specific subsidy programs that should have been notified (totaling € 10.8 billion). Germany, however, is certainly not the only country that under-reports its subsidies to the WTO. It is estimated that only half of WTO members notify their subsidies on a regular basis.

#### **(c) Christophe Bellman, Programmes Director at the International Centre for Trade and Sustainable Development (ICTSD)**

Christophe Bellmann made three main points. First, he outlined the problems that WTO members are facing with transparency and notification. Without comprehensive information on policies, he said, it is difficult to develop a complete picture of the nature and extent of government intervention in the economy. Part of the problem with current notification requirements at the WTO, of which there are 175 or so for goods alone, is that they exist as complements to existing agreements. Yet information is needed also to inform negotiations on current and future agreements. Too often, countries are negotiating in the dark.

Second, Mr Bellmann spoke about the importance of transparency in the context of negotiations. There is a correlation between the level of information available and the ways in which countries engage in negotiations. When little information is available, countries are more likely to withdraw or take a defensive

approach. Further, the quality of available information affects the quality of the negotiated outcome. Poor quality decisions and outcomes can result from negotiations that are based on poor information.

Third, Mr Bellmann outlined what might be needed to improve transparency. He noted the limitations of the WTO and other intergovernmental organizations in this area. For example, from an exporter's perspective a comprehensive overview of market access arrangements is needed. This includes not only tariffs, subsidies and standards (SPS requirements or technical barriers to trade) but also private standards that act de facto as compulsory standards for many exporters. Information on these types of standards goes far beyond the reach of the WTO. Further, members often do not wish to disclose details of their policies.

This suggests an important and complimentary role for independent institutions in the provision of additional information. In the context of subsidies, he cited the example of farmsubsidies.org, a non-governmental organization that provides comprehensive data on European agricultural subsidies that goes beyond information likely to be captured in official notifications.

#### **(d) Pablo Klein, Mission of Mexico to the WTO**

Pablo Klein, former chair of the WTO's ASCM Committee, praised the GSI subsidy-notification template, but stressed that new incentives and disciplines need to be created within the ASCM's rules to improve notification. This could be done by ensuring legal certainty for certain programs, or by applying effective sanctions for not notifying.

Mr Klein suggested re-creation of a green-light category of subsidies, as existed under Article 8 of the ASCM which expired in 1999 and provided for a non-actionable category of subsidies. This category was to be notified in advance of their implementation to allow members to evaluate their consistency with the requirements of the green category. Article 8 was not an unconditional carve out, or a blank check to subsidize. Green subsidies under Article 8 could still be challenged, although subject to a higher threshold. They were also subject to the committee's scrutiny with respect to their correct classification and their effects on members.

He also supports the idea that penalties for not notifying should be clear. There is a presumption that serious prejudice exists in the case of non-notified subsidies or subsidies where the information provided falls short of the standard in Art. 25.3. The ability of authorities to make countervailing duties determinations on the basis of "facts available", especially when the granting government refuses to cooperate in an investigation, should be strengthened.

Mr Klein suggested expansion of the definition of subsidies subject to notification, so that the determination of whether or not a subsidy is actionable be left to the ASCM Committee instead of being left to the discretion of the subsidizing member. This would not be workable unless there were a quantitative threshold under



which subsidies need not be notified, and if some categories like social security programs could be exempted.

Finally, Mr Klein called for promotion of an environment wherein governments would be more willing to engage in an open policy discussion about such programs.

## 2. Questions and comments by the audience

The discussion was lead by a controversial, rhetorical, question about whether anybody really cared about industrial subsidies, including subsidies at the sub-national level? "Yes we do!" was the resounding response from most everybody else attending the session. As evidence of the rather relaxed attitude towards many subsidies, it was noted that the ASCM had, until it expired at the end of 1999, provided an incentive to pre-notify certain subsidies mentioned in Article 8 of the Agreement by stipulating that notification resulted in non-actionability. These were subsidies for research and development, environmental mitigation, and regional development purposes. Yet during the five years that Article 8 was in force, not one country notified a subsidy for such protection.

Other participants emphasized that transparency is the cornerstone of good governance. Information is a public good and the default action should be to make it available in the most cost-effective manner, for example, from a centralized source. Rather than needing to justify why information should be made available, governments should have to justify, with the potential exceptions where secrecy is both valid and necessary, why they would withhold data.

Frank reporting of trade-policy information is a major challenge for the WTO Secretariat, given that many countries often do not even report their basic and relatively less controversial trade data. Perhaps the WTO should give up the idea of a single undertaking (nothing is agreed until everything is agreed) and concentrate efforts on getting the "house in order", including on the issue of subsidies? During the High Level Panel of this year's WTO Public Forum, Pascal Lamy was critical of the idea that regional trade liberalization could somehow replace multilateralism, asking "What have RTAs done to discipline subsidies?" To make progress on subsidies, there must be advocates for subsidy transparency and reform within each Member economy.

Improved transparency at the domestic level would be the foundation for better reporting to intergovernmental organizations. Governments could be encouraged to put in place domestic legislation and procedures that require reporting by government agencies, provincial governments and businesses to a central, national body. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), for example, includes obligations on governments relating to domestic procedures. This option should be further explored.

The only other way to make meaningful progress on transparency, some participants concluded, was through independent reporting by organizations such as the GSI. The GSI's proposed subsidy notification template was recognised as a practical step towards better reporting, and application of the template to Germany had an important demonstration effect. There was a call for further shadow notifications.

## 3. Conclusions and way forward

Transparency requirements could be a response to the reality of "imperfect information"—everybody would be better off if partners addressed the problem of asymmetrical information. Under certain conditions, the provision of information can be a more effective policy tool than precise and formal rules of behaviour. However, the effectiveness of this tool is likely to depend on how the information is shared with and used by members, not on whether it is made available to the public.

In response, the WTO could:

- adopt improved procedures that reduce uncertainty about what should be reported and improve the quality and quantity of information provided;
- put in place incentives and penalties to ensure proper notification and reporting; and
- present information (for example, from the Trade Policy Review Mechanism or negotiation sessions) in a more user-friendly way that provides better aggregation and analysis of data, or packages the information in a way that is useful for economic actors, for example, giving detailed information on market access terms across countries.

Given the difficulties faced by the WTO Secretariat in improving transparency that stem from member sensitivities, independent organizations will increasingly fill this gap with shadow notifications and databases of information on country and sector policies.

IISD has proposed organizing a joint seminar with the WTO on improving transparency. Options for discussion include:

- changing the format of notifications;
- increasing discussion of subsidy policies in the Trade Policy Review Mechanism;
- providing capacity building for developing countries to improve their ability to discuss and notify information on subsidies; and
- changing some of the rules governing notifications, introducing stronger penalties for countries who fail to notify and strengthening disciplines for specific sectors or types of subsidies.

K.

## South-South Cooperation and Regional Integration: A Gender Perspective



### **Moderator**

Ms Graciela Rodriguez – Global Coordinator, International Gender and Trade Network (IGTN)

### **Speakers**

Ms MariaRosaria Iorio – Head of the IGTN Geneva Office

Ms Luisa Rodriguez – South Center

Ms Esther Busser – International Trade Union Confederation (ITUC)

### **Organized by**

IGTN

### **Report written by**

IGTN

Thursday 25 September 2008 – 9.00-11.00





## Abstract

*The IGTN session highlighted the systemic questioning posed by the Washington consensus from a South-South cooperation and gender perspective. The Washington consensus implemented as a development policy option has not resulted in the creation of wealth but rather in an increased weakening of national production capacities in developing countries and in the least-developed countries. By encouraging the State withdrawal from the economy, it has also negatively affected women struggles for social and economic empowerment. This macro-economic context is also to be read in conjunction with the existing unbalanced global trade rules and the proliferation of North-South trade agreements. The current multilateral trading system faces the challenges of the proliferation of North-South agreements and the deadlock of the negotiations of the Doha Development Round. Meanwhile, North-South agreements slowed down South-South cooperation and regional integration, while often undoing the multilateral rebalancing of trade rules.*

*Panellists highlighted the policy-related issues and constraints to the materialization of South-South cooperation and regional integration from the social movements, including trade unions as well as gender perspectives. The challenges ahead as identified by the participants can be found at the end of the session summary.*

## 1. Presentation by the panellists

### (a) MariaRosaria Iorio, Head of the IGTN Geneva Office

MariaRosaria Iorio recalled that enhanced economic regional integration and cooperation have been part of the efforts made by developing countries to achieve a more balanced international trading, finance and monetary systems for the last 40 years. South-South cooperation has also been considered for many years as a method to respond to the existing inequalities in the world economy.

Attempts towards regional economic integration can be traced back to the 1970s and the 1980s. After the 1980s, a second generation of regional integration and South-South cooperation emerged. However, in most cases, this cooperation has typically been limited to economic integration rather than political integration. Concrete steps have been taken by countries in different developing regions to re-launch both economic and institutional integration processes.

The current deadlock in the multilateral trading system poses new challenges, in particular with regard to the South-South cooperation and the regional integration processes.

The moderator asked the following questions:

- What were the challenges for the actors involved in promoting South-South cooperation in the global

multilateral context of deadlock of the multilateral trade negotiations?

- To what extent could regional integration provide new solutions to social and development challenges, including gender?
- What were the issues of concern with particular relevance to gender perspective?

### (b) Luisa Rodriguez, South Center

Luisa Rodriguez presented a critique of the Washington consensus-based development model, including bilateral and sub-regional trade, investment agreements, and trade negotiations in the World Trade Organization (WTO).

She recalled the ten principles of the Washington consensus, namely fiscal discipline, reset of public expenditure priorities, tax reform, liberalization of interest rates, competition in exchange rates, trade liberalization, liberalization of local FDI, privatization, deregulation, and property rights.

During the 1980s, these principles guided policy advice provided by the World Bank (WB), the International Monetary Fund (IMF), and the United States Treasury Department and promoted a reduced role of the state in the economy through the elimination of marketing boards and subsidies and other, similar methods. In response to the import substitution policies and centralized planning, the withdrawal of the state had been deemed necessary to encourage the financial and economic recovery of Latin America. These principles were developed in response to the Latin American financial and economic crisis of the 1980s.

The trade liberalization component of the Washington consensus promoted the elimination of quantitative restrictions and licensing, while using low, harmonized tariffs. Import competition and increased exports-share in GDP have led to cheaper prices for consumers and increased growth and incomes.

These policies have, unfortunately, resulted in social and political instability, while increasing the deterioration of regional labour markets.

- i) Export-oriented growth and trade openness did not necessarily lead to poverty reduction

Increased exports and trade openness in Latin America did not lead to growth nor to poverty reduction. On the contrary, several studies have shown that economic growth in Latin America was higher during the 1950s to the 1980s, than in the 1990s. The benefits of increased open trade were not equally shared between nor within countries. Countries with supply-side constraints had been at disadvantage to fully reap such benefits. In general, when implemented in Latin America, these policies have resulted in greater income inequalities.





In contrast to their host countries, multinationals involved in processing and transporting agricultural, food, and mineral commodities have benefited from economic and trade openness as market concentration in the above-mentioned sectors has increased. In many cases, this phenomenon has lacked the spill over effects typically expected from foreign investment. In addition, local producers have witnessed reduced benefits and farm-gate prices for their products.

ii) Lack of a social and political dimension

The Washington consensus-based policy advice also lacks mechanisms to contravene social and political crisis. National constituencies perceived such policy advice as external advice that lacked internal ownership and that entailed costs of adjustment that exceeded its benefits. In most instances, the capacity of the state to deal with costs of adjustment was questioned. Market openness has made countries more vulnerable to economic shocks as seen from 1994 to 1999 when ten middle-income Latin American countries, including Argentina and Venezuela, were confronted with increased financial, social, and political instability.

iii) Impact of reform on labour markets

As there was no absorption employment in other sectors, unskilled labour (mostly women in agriculture) have been particularly affected by adjustment programmes. As a direct result, unemployment and informal labour as well as socio-economic deterioration increased throughout the region. However, before opening up to foreign investment and import competition, evidence suggests that national domestic policies and institutions were needed to address income inequality, promote sustainable growth, and ease adjustment costs, particularly as it related to employment of rural and vulnerable populations.

iv) Multilateral trade negotiations

Besides quantitative restrictions, licensing, and tariffs, multilateral trade negotiations have a broader scope than the trade component foreseen in the Washington consensus. For example, the Doha Development Round of multilateral trade negotiations was expected to conclude in 2005 but is still currently under way in 2008.

Agriculture is considered the main stumbling block in its conclusion. Current contentious issues relate mostly to the market access pillar; however, there are still many issues on the agenda that remain to be negotiated, such as non-agricultural market access (NAMA) and services.

Currently [October 2008], there is no clarity with respect to the process ahead. Considering encroaching nation elections in the United States and India, the conclusion of the Doha Round by the end of 2008 seems unlikely.

v) Proliferation of bilateral and sub regional trade initiatives

Slow progress in multilateral negotiations has been frustrating, leading to a steadily increasing number of bilateral and sub-regional trade initiatives. The number of Free Trade Agreements (FTAs) notified to the WTO has significantly increased, passing from 20 in 1990 to 157 in 2007.

The *new regionalism* is characterized by the harmonization of economic policies in new areas, an increased number of agreements among countries in different regions, and North-South initiatives. These North-South initiatives stem from developing countries hoping to attract FDI from developed countries in order to integrate into the world economy and gain potential access to developed countries markets. The European Union (EU), the United States (US), New Zealand, Japan (in Asia-Pacific region), Canada, China, Mexico, Singapore, and Turkey have been particularly active in this respect.

North-South initiatives entail limited commitments for the Northern parties i.e., farm subsidies in the EU and US, while requiring onerous commitments for developing countries. They often go beyond WTO commitments and covered areas that are not on the multilateral negotiations agenda. For example, most North-South arrangements contained far-reaching obligations on investor protection, intellectual property rights, competition policy, investment, government procurement, greater services liberalization, and labour and environmental standards. In addition, many of these agreements restrict Special and Differential Treatment (SDT) provisions as defined in the WTO Agreements but contain very few, yet very limited, provisions to deal effectively with asymmetries.

According to UNCTAD Trade and Development Report for 2007, although North-South agreements could provide temporary gains in market access and higher FDI, they inevitably limit the scope for government intervention to sustain long term growth. North-South trade arrangements could also weaken prospects for potential beneficial regional integration in developing countries.

vi) South-South cooperation

According to the UNCTAD Trade and Development Report for 2007, as agreements were made among countries at a similar level of economic development levels, South-South trade accords might promote greater efficiency, industrialization, and faster integration for the South into the world economy, while facilitating the region's adaptation to initial competition and technological asymmetries.

However, these agreements need to include coordinated action in key policy areas to strengthen growth and structural change, including macroeconomic, financial, infrastructure, and industrial policies. Regional cooperation facilitates policy coherence and allows trade and transit facilitation, dissemination of commercial information, infrastructure, reducing transport costs, and regional management of investment projects, including water and energy.



The ALBA/TCP (Cuba, Venezuela, Nicaragua, Dominica, Saint Vincent and Antigua) is an excellent example of South-South initiative that went beyond trade as the agreement encompassed a wide range of areas of cooperation, including energy, health, and culture.

vii) Challenges for developing countries

Implementation of trade and investment liberalization policies resulting from the Washington consensus have diminished developing countries' capacity to respond to external shocks, overcome supply constraints, reap development benefits from increased trade openness, while still promoting sustainable livelihoods of vulnerable groups.

Remaining challenges that have yet to be faced include: the renewal of a strong public sector, stable national institutions, adequate financial resources, national ownership of policies and an appropriate sector to create these policies.

Coherence between trade and social policies as well as between increasingly complex and contradictory trade regimes (multilateral, sub regional and bilateral) are also a challenge. The proliferation of bilateral and sub-regional trade initiatives will only further reduce the scope for public action in pursuance of development policies.

### **(c) Esther Busser, International Trade Union Confederation (ITUC)**

Esther Busser presented trade unions' thoughts and positions on the current economic model, regional integration, and South-South cooperation. She also gave some examples of concrete trade union programs in the area of regional integration and South-South agreements and cooperation.

She recalled that the current economic model has not delivered the expected benefits to the southern regions and said that the agreement does not put the people's well-being to heart. Ms Busser also noted that many developing countries' development models aimed at attracting FDI while competing for access to developed countries' markets. These strategies are locked in through bilateral trade and investment agreements that increase developing countries' dependence on a few export markets, products, and foreign investors.

These policies have resulted in increased competition among workers worldwide. Dependence on export markets and the opening-up of economies has reduced workers' bargaining power. Furthermore, as a result of trade agreement and the ensuing reduction of policy space and increase in competitive pressure, governments are neither able to create nor to ensure quality of employment.

The trade union movement feels that too much emphasis has been placed on trade liberalization under the assumption that benefits deriving thereof would automatically and equally be redistributed, though this has not yet occurred.

The development model exclusively based on trade liberalization and market opening has not matured into trade and economic development. Developing countries are unable to compete worldwide, while workers had not benefited. As a result, income inequality has increased, while gaps between low and high incomes have grown over time. This inequality has resulted in a gap between capital and labour incomes. While executive pay has increased, income taxes have not redistributed welfare. Two forthcoming International Labour Office reports are to shed more light on this concern.

Furthermore, workers, men and women alike, have to face high production targets, long hours, low wages, precarious contracts, and easy conditions for dismissal.

In the light of the above-mentioned difficulties for workers, development strategies have to move away from reliance on exports into developed country-markets, while increasing efforts towards regional markets and competitiveness before opening to competition with stronger players.

Regional integration processes should also go beyond economic integration and address political and social integration. A coherent regional approach could put employment first, and ensure that workers benefited from regional growth. It could also fuel regional markets and use surpluses to build these markets as well as infrastructure and policy frameworks.

Trade unions definitely favour an approach that would allow national policy space and gradual liberalization and not the one-size-fits-all approach currently used. Flexibility of instruments is important and governments have to be able to use trade policy instruments to foster growth and create employment. Regional integration should be promoted over multilateral and bilateral trade agreements, especially as these agreements limit flexibility for gradual liberalization. Trade unions have been closely involved in regional integration and the regional market in the MERCOSUR (Argentina, Paraguay, Uruguay and Brazil).

A trade union structure and a consultative tripartite structure has been put in place with MERCOSUR taking priority over all other trade liberalization initiatives. Trade unions of the four MERCOSUR countries have consulted to forge strategies towards regional market integration, though trade unions have been much less involved in South-South agreements, especially in agreements between regions.

As it concerns MERCOSUR, trade unions have pushed for commitments in the NAMA multilateral negotiations that would not undermine the MERCOSUR integration process. However, pressure has been put on MERCOSUR, as Brazil has accepted NAMA coefficients and tariff cuts during the WTO mini-ministerial in July 2008.

With regard to Economic Partnership Agreements (EPAs), trade unions believe that there is the need to promote regional integration as a first step before opening markets to the EU as this be done by setting regional integration benchmarks.



In this context, Ms Busser recalled the *Labour's Platform for the Americas*, a comprehensive trade union agenda for decent work and sustainable development in the Americas. It was developed by the Andean Labour Consultative Council, the Caribbean Congress of Labour, The Central American and Caribbean Union Coordination, The Southern Cone Union Coordination, and the National Trade Union Centres of Mexico, Canada, and the United States.

Together, these organizations created a declaration that urged governments to abandon market fundamentalist policies, and place decent jobs and social justice at the heart of their economic policies. This declaration stated that: *"We need new policies designed from a gender perspective, which seek primarily to strengthen democracy, broaden opportunities for citizens to participate in decision-making at national and regional levels, reduce inequality, create decent work with dignified working conditions and full employment for all women and men in the Americas. Ongoing processes of sub-regional integration must be strengthened as an alternative to neo-liberal free trade agreements which have deepened the gulf between the rich and the poor. Regional integration can bring positive benefits as long as they do not disguise efforts by certain countries to dominate others"*.

The Declaration contained the following pillars:

- a. A new democratic consensus based on popular sovereignty and the integration of gender perspectives into all public policies as production, reproduction, and caring were relevant in addressing gender inequalities.
- b. Economic and trade policies and objectives that pursue sustainable development and focused on decent jobs and full employment. Creation of jobs has to be at the heart of public policies, policy coherence, productive investment priorities, fiscal and progressive taxation, and stimulation of complementary production, promotion of local development, sectoral policies and income distribution, strengthening of government capacity, privatization review, access to knowledge, and multinationals' responsibility.
- c. Promoting and fulfilling social and labour rights: increase formal employment, number of labour inspectors and well functioning labour courts, access to social safety nets, promotion of collective bargaining and trade union and inclusive policies.
- d. Implementation indicators: inequality, poverty, unemployment, informal employment, gender equality, child labour, gender development index (UNDP).

In Southern Africa, the Alternatives to Neo Liberalism in Southern Africa(ANSA) initiative has been launched: It was a people-driven development agenda.

Principles are based on endogenous development rather than pushed by the IMF, WB, WTO, G8, and multinationals. People at the grassroots level should be the major players.

Development should put the human rights approach at its heart, including human rights, community rights, and the right to national self determination.

This agenda was based on 10 elements:

1. People-led strategy as opposed to the WB-WTO-donor-led models;
2. Alternative production system primarily based on domestic demand, human needs, and the use of local resources and domestic savings. The horizontal integration of agriculture and industry;
3. A grassroots-led regional integration as opposed to the current fragmentation;
4. A strategic selective de-linking from neo-liberal globalization and the negotiated re-linking to a fundamentally different global production and distribution system;
5. An alternative policy on science and technology based on harnessing the collective knowledge and wisdom of people;
6. Forging strategic alliances and networks with progressive forces at regional, national, and global levels;
7. A politically governed redistribution of wealth and opportunities from the formal to the non-formal sectors of the economy;
8. Women's rights as the basis for a healthy and productive society;
9. An education system that addresses the need for sustainable human development by improving technical, managerial, research and development skills;
10. The creation of a dynamic, participatory, and radical democracy which regards people's mobilization, demonstrations, and hearings as part of the struggle for an ethical and developmental state.

In conclusion Ms Busser stated that:

Trade liberalization and North-South trade agreements have not delivered for workers nor for the poor and especially not for women and youth. Governments and trade unions have lost power through open markets dominated by multinationals.

Development needs to be people-driven and take into account gender and decent work dimensions. Regional integration and regional markets as well as distribution of benefits could be useful tools towards that goal. Multilateral and bilateral trade agreements should not undermine regional integration.

Huge challenges exist if trade unions and governments wish to shift focus, and promote regional integration. The current



approach based on multilateral and bilateral agreements is not necessarily supporting their interests. There are also huge challenges putting productive employment and redistribution of benefits at the heart of public policies. Trade unions feel that these issues were not effectively dealt with in trade discussions. Trade unions are typically more involved in trade agreements, and in developing strategies that aimed at achieving decent and productive as well as gender-sensitive employment policies.

## 2. Questions and comments by the audience

The issues touched upon during the debate related to implementation of trade liberalization both regionally and globally. North-South agreements posed a number of challenges both from a systemic and a practical point of view. These challenges related to unbalanced bargaining power relations between parties, big gaps in levels of economic development, and lack of appropriate institutional follow-up capacity.

One participant noted that loss of policy space in developing countries was not automatic, but rather resulting from inappropriate institutional and human resources capacities. In certain cases, i.e., the EPAs, North-South FTAs resulted from the necessity to comply with multilateral trade rules. Rules of origins could be one of the tools used to promote regional integration as in the case of textiles and the *cumulation* principle. It consisted of taking into account the different stages of the production method and countries involved therein to define the origin of a product. This was a way to support regional economic integration processes. The same principle was thought to be applied in services.

South-South cooperation faces also its own challenges related to similar economic structures of countries involved, existing differences of views on regional interests, and emerging regional powers trying to influence smaller countries in the region; the case of South-East Asia was referred to as an example. North-South processes have impeded regional integration, South-South cooperation, and diverted attention from endogenous to exogenous processes of economic and trade integration.

## 3. Conclusions and way forward

These macro-economic processes continue to negatively affect women's struggle to achieve equality: by pursuing liberal policies and encouraging disengagement of the State from economic policies, many FTAs have increased income inequalities, the number of available jobs, unemployment among less-skilled labour and women, while also reducing access to essential services, i.e., energy, water, health, and education provisions in rural, small farms, and other remote districts of the developing country. These economic policies, coupled with inappropriate liberal trade policies choices, have resulted in further unequal societies at the micro and macro levels.

Main challenges to be faced by actors involved in this processes are the following:

### For Governments:

- a. production capacity;
- b. negotiations capacity;
- c. institutional capacity;
- d. new political and economic policy orientations;
- e. reform and cooperation among and between regions;
- f. consultation mechanisms that allow regular consultation with all stakeholders

### For Civil Society, including women's movements:

- g. continue monitoring and follow-up integration processes at national, regional and international levels,
- h. engage in dialogue with all stakeholders and, in particular, with national authorities to raise awareness on specific gender and development issues;
- i. mobilize public attention and interest on practical consequences of economic, trade, and social policies on people's daily life.



## Addressing Global Environmental Challenges: What to Expect from Future Dispute Settlement Panels



### **Moderator**

Mr Vicente Yu – South Centre

### **Speakers**

Mr Charly Poppe – Trade Campaign Coordinator, Friends of the Earth Europe (FOEE)

Ms Nathalie Bernasconi-Osterwalder – Center for International Environmental Law (CIEL)

Professor Robert Howse – Lloyd C. Nelson Professor of International Law, New York University School of Law

Mr Niall Meagher – Advisory Centre on WTO Law (ACWL)

### **Organized by**

CIEL and FOEE

### **Report written by**

CIEL and FOEE

Thursday 25 September 2008 – 14.15-16.15





## Abstract

*The trade-environment debate has recently gained center-stage with the overwhelming evidence and the increasing political acknowledgement of the changing climate – possibly one of the most important challenges ever faced by humans. But the debate on the relationship between environment and trade is not new. The debate is long-standing, involving cultural and philosophical differences about how to approach environmental and health risks, and sometimes involves tension between environmental protection in the North and export interests of countries in the Global South. Still, new trade-environment challenges stand on the horizon, and they are unlikely to be resolved in WTO negotiations. WTO dispute settlement may therefore gain in importance, and will be called upon to strike a balance between competing goals and interests.*

*The discussion amongst lawyers with different backgrounds and perspectives focused on the future of WTO dispute settlement relating to the environment, and asked whether WTO panels and the Appellate Body (AB) are well-equipped to deal with upcoming challenges. It was noted that the AB had developed a real jurisprudence of WTO law and not just a set of inconsistent decisions, and that the AB had assured an important place within the institutional framework of the WTO system. The AB had demonstrated jurisprudential consistency and predictability and never had the AB overruled itself. Thus, a clear trend of the AB was identified towards integrating environmental, developmental, and trade considerations. In contrast to certain panels, the AB showed itself sensitive to members' environmental policies and regulations, and it was expected that this would continue. In the area of the SPS Agreement, this trend seemed less clear. The discussants agreed that perhaps this would be clarified with the AB's decision in US-Hormones (or Hormones II). Indeed, since the discussion at the WTO Forum, the AB rendered its decision in that case and showed, as expected, a much more nuanced approach to the SPS Agreement than the approaches taken by panels in the EC-Biotech and the US-Hormones cases, striking down most of the panel's findings in the latter.*

*The speakers agreed that environmental trade restrictions can be a problem for developing countries, but that it might be difficult to resolve that problem through dispute settlement. Rather, the issue should be addressed in the relevant WTO Committees.*

*The evolution of case law involving the complex inter-relationship between trade and environment will continue to be of importance and needs to stay on the radar screen of anyone interested in environmental protection and sustainable development more generally.*

## 1. Presentations by the panellists

### (a) Charly Poppe, Friends of the Earth Europe (FOEE)

Charly Poppe, Friends of the Earth Europe (FOEE), made introductory remarks, opening the discussion raising several

important issues. In his view, the environment seems to have become a primary concern for trade policy makers around the world, being nowadays in the center of our collective attention. He stressed the two possible dimensions of this phenomenon: from a positive perspective, this trend might be seen as the realization of superior social values and political imperatives over the trade expansion and market access concerns. On the negative side, the environmental regulations might still be primarily suspected as been an impediment for trade. In his view, the latter has been the predominant vision of trade policy makers in regard to environmental protection measures, exemplified by the numerous cases brought before the WTO.

Mr Poppe pointed out that the outcomes of the cases involving environmental protection measures brought to the WTO have been mixed. Though a few cases have upheld the challenged environmental measures (Asbestos, Shrimp-Turtle, Retreaded Tyres), Mr Poppe found that it was still unclear whether these cases have laid down the proper conditions for the protection of the environment in future dispute settlements within the WTO system.

Recalling the mutual supportiveness agenda between the trade and environment regimes, Mr Poppe stressed the necessity to move away from its ambivalent and sterile character and to recognize the primacy of environmental goals over trade interests. Re-addressing Pascal Lamy's speech in the context of climate change, Mr Poppe considered that WTO law might have to adapt itself within this context. Moreover, Mr Poppe stressed that WTO rules must change, recognizing the prevailing urgency of environmental issues over the need for further trade expansion efforts. He called on trade lawyers and delegates to take into consideration the consequences of their rulings for the people and the environment. Following Mr Poppe's introduction, three of the panellists gave their views on the pertaining questions which are listed below:

1. How would you describe and characterize WTO jurisprudence relating to the environment since the WTO's creation? What are some of the milestones (positive or negative) from your perspective? How relevant is the *Shrimp – Turtle* decision today, including in the context of climate change?

Nathalie Bernasconi gave an overview of the state of play of WTO jurisprudence relating to the environment. She reminded the public of how concerned environmental groups, and some governments, were about the WTO and its impacts on environmental policy making at the time of the creation of the WTO, and that this concern was in large part due to two pre-WTO GATT decisions: the Tuna-Dolphin cases. These were the first to test the Article XX(b) and (g) exceptions clauses, launching the trade – environment inter-linkage debate. Indeed the two panels seemed to put GATT law into a closed box detached of general international law and bluntly ignored and gave little space to environmental considerations. Although the two panel reports were never adopted, they harmed the image of the WTO that was to be created, which in large part was built on the same rules as the GATT.



Ms Bernasconi stressed, however that the situation has changed. WTO panels, and especially the AB have generally been more sensitive and deferential towards the environmental and health measures of their WTO members. Indeed, one could argue that to some extent the place that the environment deserves in the application of trade rules has been restored. Though some suspicion remains, in practice, the overt criticism in this respect has died down.

Ms Bernasconi's presentation was tripartite, focusing on the following three issues:

- i) First, that there has been a decided move away from the "Trade ueber alles" approach demonstrated in the last few GATT panel decisions relating to the environment;
- ii) Second, that the SPS Agreement has evolved on a somewhat separate track; and
- iii) Third, that the *Shrimp-Turtle* decision remains one of the landmark decisions relating to the environment.

Ms Bernasconi noted that with the first WTO AB decision, the Reformulated Gasoline case, the AB moved decidedly away from the closed box approach, opening the door to the rules of interpretation as codified in the Vienna Convention on the law of treaties. With that decision and the later *Shrimp-Turtle* decision, the AB moved further away from the reasoning in the earlier Tuna-Dolphin cases, where the panels had rejected the application of the general exceptions clause in Article XX of the GATT largely based on the view that measures adopted to protect the environment would threaten the multilateral framework on trade in goods. The more deferential approach is still reflected in the most recent *Brazil-Retreaded Tyres* case, where the balance or imbalance between trade and environmental consideration depended, in large part on the interpretation of Article XX of the GATT. This brought Ms Bernasconi to discuss the necessity test, which is incorporated in Article XX(b) of the GATT and which was at the center of the *Retreaded Tyres* case. She recalled that pre-WTO GATT panels adopted a strict least trade-restrictiveness test and that the test had become a major focus of criticism, especially by those who claim that it fails to give adequate consideration to societal values other than trade. She continued that the WTO AB in *Korea-Beef* and later *EC-Asbestos* reaffirmed the least trade restrictive approach but also stated that for a measure to be necessary, the measure did not need to be "indispensable" or "inevitable," but rather that a measure was to "make a contribution to" a goal, albeit significantly closer to the pole of "indispensable". The AB created a three factor balancing test for deciding whether or not a measure is necessary when it is not per se indispensable. The three factors to be considered are: (i) the contribution made by the (non-indispensable) measure to the legitimate objective; (ii) the importance of the common interests or values protected; and (iii) the impact of the measure on trade. (*Id.* at para. 164.) In both cases, the AB affirmed that a member was free to choose its level of protection. (*EC - Asbestos* AB report, para. 174.) The necessity test was further refined in the *Brazil-Tyres* case. In brief, I think we can conclude that *Brazil-Tyres* furthered the flexibility of WTO members to

adopt trade restrictive measures to protect human health and the environment. This decision will be discussed later in the report in more detail so it will not be expanded here.

She concluded that although it is now better known how WTO case law may be applied in environment-related cases, the question of compatibility remains to be determined on a case by case basis, so that it is difficult to predict precise outcomes.

Ms Bernasconi then moved to the next issue, the SPS Agreement, where, she noted the situation was quite different. Without wanting to embark in a detailed discussion on the SPS Agreement here, she said that the SPS Agreement was essential to the discussion on trade and environment/health at the WTO. The *EC-Hormones*, the first SPS case decided by the AB, which concerned an EC import ban on hormone-treated beef, was significant, among other things, because it was the first to examine some of the newly adopted scientific requirements. The AB was deferential insofar as it held that a government need not base its reasoning on a majority scientific opinion. Instead, it had to base its reasoning in good faith on the basis of respectable scientific opinion, even if that opinion was in a scientific minority. The AB also held that a government is permitted to adopt a zero-risk level of protection. Nevertheless, the AB concluded that the EC had not based its measure on a proper risk assessment as required under the WTO and until today, the EC faces economic sanctions. What followed since *EC-Tyres* is a series of SPS cases, in none of which a challenged member has been able to justify its SPS measures.

In contrast to other WTO cases, the panels and the AB dealing with SPS cases have dealt primarily with the scientific requirements under the SPS Agreement, as they relate to the obligation to base a measure on a risk assessment, etc. The more "traditional" WTO principles aiming at eliminating protectionism and unjustified discrimination, or those requiring that trade rules are not to be unnecessarily trade-restrictive, have been non-issues in SPS decisions. Here the focus has been science, science, science. Obviously the idea behind the scientific requirements is precisely that, by scientifically sound measures, protectionism is thwarted. However, science typically does not provide straight-forward answers, and panels and the AB end up deciding between different, and often opposing scientific views of experts. Ms Bernasconi recalled that last year, in a discussion CIEL organized at this Forum, Brendan McGivern referred to *Japan-Apples*, noting that it was a case important for an argument that was actually rejected. In that case, Japan argued that when a government makes an assessment of scientific evidence, some deference should be given to it in that regard. The AB disagreed, ruling that they saw nothing in DSU Article 11 that stated there should be any deference given to the member state. On the contrary, it ruled that DSU Article 11 imposed a standard of an objective review. A discussion may be necessary to determine whether this role is adequate for trade experts sitting on panels and the AB, however talented and brilliant they may be.

Finally, Ms Bernasconi briefly addressed the linkage between MEAs and the WTO. This remains one of the most important issues in any environmental discussion at the WTO, particularly



when thinking about global environmental challenges. She noted that in absence of any success in the Doha negotiations relating to paragraph 31 (1) on the relationship between WTO and Multilateral Environmental Agreements (MEAs), the burden will continue to lie upon WTO panels and the AB. She said that the AB in *Shrimp-Turtle* was very nuanced, taking into account for the interpretation of WTO law, outside environmental treaties, without differentiating between treaties that have or have not been ratified by the disputing parties, or the whole of the WTO membership. By contrast, the Panel, based on Article 31(3) (c) of the Vienna Convention on the Law of Treaties, concluded that unless all members of the WTO are members of the MEA, then the MEA would not have to be considered in a WTO dispute as a “relevant rule of international law applicable in the relations between the parties”.

That panel report in the EC-Biotech case put this conciliatory approach into jeopardy. It remains to be seen how this issue will be resolved in the future. Clearly, the approach taken by the AB in *Shrimp-Turtle* would be preferable. After all, treaty interpretation implies that where more than one interpretation is possible, the interpreter must choose amongst the options available. In the trade and environment context, where one option is in line with other multilateral efforts and standards, would it not be logical, in light of the WTO objectives and the concept of mutual supportiveness, to opt for an interpretation that would accommodate standards and approaches incorporated into relevant MEAs?

Commenting on Ms Bernasconi’s presentation, Professor Howse addressed two key decisions of the WTO in regard to environmental measures. First, with respect to the *Shrimp-Turtle* case, he described its outcome as an enormous breaking point, not only for environmental purposes but in terms of the interests and values of the stakeholders that now have a legitimate voice at the WTO. Secondly, he considered that part of the problem with the *Tuna-Dolphin* case was the notion that even non-discriminatory environmental measures would violate either Article III or Article XI of the GATT because of the product- process distinction. According to Professor Howse, a non-discriminatory measure would not necessarily violate the provisions laid down by Article III of the GATT if the measure addresses policy considerations of health and environment. Professor Howse explained how in the *Asbestos* case the AB made use of health considerations in order to determine whether products were like, particularly when it applied the test for likeness used in previous cases that focused on economic criteria. Professor Howse pointed out that the AB, in that case, emphasized the importance of consumer perceptions in determining whether products were like since consumers can be proven to be worried about the environment and climate change through public campaign polling and other relevant evidence on their conduct. In his view, the resulting ruling of the AB was that a product might well be considered unlike based on consumer concerns for the environment and therefore, measures that address those concerns would not violate Article III.4 of the GATT, and would therefore not have to be justified by GATT Article XX. In the same line, Professor Howse also explained how the AB interpreted the other part of the test

of Article III with respect to the “treatment no less favorable”. Recalling paragraph 100 of the *Asbestos* case, Professor Howse explained how the AB stated that even distinctions drawn between like products might not violate Article III.4 of the GATT if those distinctions were nevertheless even-handed in their treatment of the group of imported products versus the group of like domestic products.

In *Dominican Cigarette*, the AB went even further almost reverting, at least to some extent, to the aims and effects tests. It suggested that in order to establish a violation of Article III.4 of the GATT, it is important to establish treatment no less favorable which really means discrimination. In doing so, the AB concentrated on the issue whether there was a legitimate regulatory purpose or whether the distinction was employed in a manner that was protectionist. Referring to the *EC-Biotech* case, Professor Howse stressed how the panel applied the effects-test since it did not analyze whether the products were like but simply asked whether there was any evidence that might suggest protective discrimination. As he explained, in that case the complainants who were basing their argumentation on Article III.4 of the GATT did not provide evidence that there was some kind of protectionist dimension to the distinction between GM and non-GM products. The panel then refused to analyze whether the products were like because there was no *prima-facie* case of protectionism.

According to Professor Howse, the jurisprudential developments on Article III.4 of the GATT are extremely important because they suggest that if a measure is non-discriminatory (including a PPM measure), Article XX of the GATT would not have to be used in order to justify such a measure.

To relate his argumentation back to Ms Bernasconi’s presentation, Professor Howse referred to the *EC-Biotech* case. As he explained, the case was not brought to the AB. In his view, the AB would have overruled such decision. However, he stressed how the second round of the *EC-Hormones* is currently under the review of the AB. With respect to this case, Professor Howse emphasized on its complexity by describing how it is outweighed by procedural issues. Nevertheless, he stressed how the AB might even want to analyze the substance of the provisions on SPS on risk assessment on *EC-Hormones* which was, in his view, even worse that the analysis on *EC-Biotech*.

Professor Howse also shared with the audience his deep concerns with respect to some of the comments expressed by the WTO Director General Pascal Lamy in interpreting the *Shrimp-Turtle* decision. In his view, the Director General was making interpretations *ex-officio* of WTO law and the AB’s rulings. Professor Howse stressed how these kinds of comments are outside his competence and presumably affect the proper balance of institutional competences within the WTO. In addressing the European Parliament, Mr Lamy noted that according to *Shrimp-Turtle*, before unilateral measures are to be taken, all efforts must precede in order to achieve a consensual multilateral accord. Professor Howse explained how this is a very common mistake when interpreting the *Shrimp-Turtle* case.



Professor Howse agreed with the comparison made by the AB between the treatments of two groups of countries which ultimately showed how Asian countries did not receive the same openness to negotiate an agreement as other western hemisphere countries did. At the same time, however, he stressed how the AB did not impose a duty to negotiate as a precondition in order to impose unilateral measures. In his view, the AB may not interpret at what point the efforts are sufficient to conclude a negotiation. Moreover, he considered that the extent to which good faith and openness to negotiate are present within a negotiating process cannot be determined by the AB. He emphasized how the AB in the *Gambling* case rejected the notion that, to justify a measure under Article XX, there is the need to have previously entered into negotiations in order to conclude an international accord.

Professor Howse was also critical of Mr Lamy's statement that despite its importance, *Shrimp-Turtle* "only deals with shrimps and turtles". In Professor Howse's view, the *Mexico-Stanley Steel* case clarified the nature and importance of the precedent within WTO law. Making use of paragraph 161 of this decision and paragraph 121 of the *Shrimp-Turtle* decision, Professor Howse explained that the AB stressed how not only was this ruling not just about shrimps and turtles and the clarification of Article XX(g) of the GATT but how it applies to the very structure of the article as a whole. In his view, if the AB really wanted to confine its ruling only to shrimps and turtles, there was absolutely no reason why it would have made a ruling saying explicitly that it applies to all of the contents of Article XX.

According to Niall Meagher, it is important to note that the environmental provisions, namely the exceptions within Article XX of the GATT, have been always part of the agreement since the conclusion of the Havana Charter. Therefore, one would have to acknowledge that trade lawyers have been always concerned about the environment. Moreover, in his opinion the trade lawyers that were involved in negotiating the Havana Charter very much saw themselves as concerned with the preservation of the environment. Therefore, he thinks trade lawyers do take environmental concerns very seriously.

Mr Meagher stressed how the exceptions encompassed within Article XX protect the domestic policy-making space with respect to the environment. In his view, the GATT recognizes how the obligations imposed by means of the agreement do not apply to some measures as long as they are not used as a disguised protection. Consequently, the main question concerning the exception clauses within WTO law has been, and will continue to be, the analysis of the relationship between domestic policy space of WTO members for environmental protection and measures possibly being used as disguised protectionism that would not be acceptable under the GATT rules.

According to Mr Meagher, some developments have been made during the last 60 years in terms of how that analysis has to be undertaken. Mr Meagher explained that in the PPM context, there was a discussion seeking to establish the protection of domestic policy space within the substantive obligations encompassed in Article III of the GATT rather than

making use of its Article XX exceptions clause. Mr Meagher explained that while this may not appear to be problematic with respect to environmentally-friendly process-based distinctions, problems would arise if WTO members were to use process-based distinctions for non-environment-related, protectionist purposes. Article III would provide no means of differentiating such measures and, accordingly, the better way to address such measures would be under Art. XX of the GATT.

Addressing science, Mr Meagher shared with the audience his view on the current role given to scientific advice within the WTO procedures. With respect to scientific advancements, Mr Meagher pointed out how science has evolved considerably in recent decades and how WTO Panels and the AB are consistently relying on scientific advice. As he explained, measures taken by the members that are supported by scientific rationales are likely to be considered WTO consistent. This holds especially true when addressing the SPS agreement. Nevertheless, in agreement with Ms Bernasconi's presentation, Mr Meagher pointed to additional complexities involving science that are starting to be relevant, particularly the possibility of multiple but opposite, scientific considerations addressing the same situation or measure. As he explained, science seemed to have been expected to determine, in an objective way, the legitimacy of a given measure. Nevertheless, science is not always "on one side" and this poses its own set of complexities.

2. The most recent AB decision relating to the environment is *Brazil-Retreaded Tyres*. Do you think the decision is a "green" decision? Why or why not? What changed since *Brazil-Retreaded Tyres* and what do you think the case will mean in the climate change context?

After a general description on the environmental issues concerning the production and disposition of tyres, Professor Howse described in detail the *Brazil-Retreaded Tyres* case. As Professor Howse explained, Brazil banned imported retreaded tyres whilst encouraging Brazilians to buy domestic tyres of the same characteristics. Whilst this measure could be interpreted as discriminatory according to WTO law, Brazil argued that there was environmental benefit within its jurisdiction because the final disposal of used tyres as waste was postponed, and its life-cycle extended, whenever a local tyre was retreaded. As a consequence, whenever Brazilian consumers bought imported retreaded tyres, the environmental risk associated with waste tyres was channeled to other jurisdiction i.e. the Brazilian jurisdiction, which was not responsible for the production of such materials but still had to bear with the consequences. Therefore, Brazil alleged health and environmental reasons to justify its import ban.

As Professor Howse explained, since the EC was alleging discrimination because of the fact that Brazilian retreaded tyres were not receiving the same treatment, the analysis went to Article XX of GATT. Particularly important, the AB recognized that the more Brazilian retreaded tyres were consumed, the less environmental burden Brazil had to face by disposing of these tyres. The EC suggested a number of alternatives including other less restrictive measures, but the AB notably stated that these





measures had their own health and safety issues attached to them or were not reasonably available for other reasons.

Nevertheless when the AB went to the analysis of the Chapeau of Article XX of the GATT, it was faced with another distinctive issue of this case -- namely the fact that Brazil only banned the retreaded tyres from the EC and not from Mercosur (regional trade agreement). As Professor Howse pointed out, the question then was the following: if a measure like that is only applied to one of the parties, is it an arbitrary and unjustified discriminatory measure within the meaning of the chapeau of Article XX? The AB considered it was effectively an arbitrary and unjustified measure whereas arbitrary or unjustified were defined with respect to the relationship between the element of discrimination and the purpose for which the measure was taken. Since the discrimination was not appointed to environmental purposes but to the implementation of a regional trade agreement, the measure was considered inconsistent with WTO.

Professor Howse pointed out that the definition of unjustified discrimination used within this case seemed to have obviated the literal meaning of arbitrary or unjustified which in his view, does not necessarily attach to the particular goal of the measure which is environment, but was rather defined in terms of non-protectionist purposes. Professor Howse suggested that the AB may have to qualify its ruling because in a large number of settings the way in which a measure is applied may involve elements of discrimination which are perfectly legitimate but relate to other concerns. He pointed out that the way a measure is applied may differ between the importing country for quite compelling reasons other than the objective that is justified under Article XX of the GATT. Nevertheless, in his view, the AB failed to recognize this situation and did not examine it in a careful way.

Professor Howse also brought up the issue of the interaction between the rights and obligations of a regional trade agreement and WTO law. Professor Howse recognized the importance of the phenomenon of fragmentation. In his view, the AB's ruling in the *Retreaded Tyres* case showed how the AB might have tried to find a simpler solution that did not require a thorough analysis of the issue of fragmentation. In his view, the AB applied the same approach to the *Mexico - Soft drinks* case, which precisely evaded this difficulty between regional trade agreements and the WTO.

Regarding the necessity test of Article XX of the GATT, Professor Howse noted several key issues with respect to the *Brazil - Retreaded Tyres* decision. The first one is that the AB reaffirmed that health objectives are "of the highest importance". Secondly, the AB also stated that protecting the environment was "of importance". Given that the term "environment" is not mentioned within Article XX of the GATT, Professor Howse noted this recognition was very important -- although some interpretations of Article XX would limit its environmental impact. As Professor Howse explained, Article XX(g) has been widely interpreted as the environmental clause within Article XX of the GATT, circumscribed to conservation

and natural resources only. Therefore, when the AB suggested that Article XX(b) could be used as a conduit for a wide range of environmental claims, it effectively broadened the environmental spectrum within Article XX of the GATT.

In the context of the necessity test, Professor Howse also addressed the issue of reasonably available alternatives, noting that the AB had determined that a measure does not have to be making an actual contribution to the objective being served but only to appear rational or reasonable to think that the measure will effectively contribute in doing so. Closely related to the latter, Professor Howse also pointed out that the AB recognizes reasonably available alternatives to be associated to a countries' level of development. He explained how the kind of less restrictive alternatives that a country might be reasonably expected to adopt might be associated to its level of development.

Mr Meagher agreed with Professor Howse on the broadening interpretation of Article XX(b) of the GATT within the case. In his view, the AB tried to make it very similar to Article XX(g), particularly by interpreting the word "necessary" to mean something similar to the term "related to" which is used in XX(g). Nevertheless, although Mr Meagher did not find that interpretation to be a problematic issue within the *Brazil - Retreaded Tyres* case, he voiced his concerns about the application of such interpretation of Article XX(b) to future cases. Mr Meagher explained that there is a reason why the terms used in Arts. XX(b) and (g) are different -- namely to restrict the application of the exception of Article XX(b). As he noted, issues related to health can cover almost every measure. Therefore the term "necessary" was introduced in Article XX(b) in order to limit the application of such exception.

In regard to the standard method to define the term "necessary" within the case, Mr Meagher considered that the AB defined the term in regard to the trade-restrictiveness of the measure therefore pre-empting the analysis of Chapeau of Article XX. In his opinion, this issue seemed unresolved to date.

Nathalie Bernasconi stressed that although Brazil lost the case for other reasons, the environmental arguments it put forward were successful on all accounts. Ms Bernasconi considered the decision to be "green" and development-friendly.

Referring to the new "material contribution test" of Article XX(b), Ms Bernasconi explained how the AB introduced a test that provides that for a measure to be necessary, the measure's contribution to the achievement of the objective pursued needs to be "material, not merely marginal or insignificant". She explained how at first sight this new test appeared as a new barrier for countries to justify environmental measures. However, the AB ruled that there was no necessity to quantify the contribution of a measure to be objective. Such an analysis, as Ms Bernasconi explained, could be undertaken either on quantitative or qualitative terms, therefore facilitating its interpretation.





Ms Bernasconi also addressed the argument that the EC brought to the attention of the AB in the sense that an import ban or any other measure could be only justified if the contribution was immediately observable. As she explained, the AB rejected this interpretation by stating that the resulting consequences of a measure could be only verified after a period of time. In her view, this interpretation very much softened the “material contribution test” by taking into account the reality of environmental regulation.

In addition, Ms Bernasconi pointed out that by accepting that the product targeted by the measure (retreaded tyres) did not have to be same product posing the risk (waste tyres), the AB established the link between the short life retreaded tyres and the risk arising from the accumulation of waste tyres, thereby reflecting a life cycle analysis. In her view this analysis is widely supported by the environmental community. As she further explained, the AB implicitly acknowledged the need for policy space for governments to effectively address the environmental and health impacts of products throughout their life cycle.

Finally, she commented on the analysis of the Article XX chapeau, noting that the AB and the Panel did everything to avoid addressing Article XIV on regional trade agreements (RTAs). In her view, it was very unfortunate to have analyzed the Mercosur issue under the provisions of Article XX and under its introductory clause. She noted that the Mercosur decision pushed Brazil to allow the import of retreaded tyres from Uruguay and other Mercosur countries, leading Brazil to open its borders to retreaded tyres from Mercosur countries. This in turn led the AB to find a violation of the chapeau of Article XX. Ms Bernasconi noted that this case, involving a conflict between a RTA decision that was opposed to the environmental trade restriction and a WTO decision that in principle allowed the environmental trade restriction, demonstrated that the inter-relationship between RTAs and the WTO needed to be further refined.

### **(b) What are the main challenges for developing countries relating to trade-environment dispute settlement?**

Mr Meagher proposed two different perspectives of the same topic: the first being challenges to developing countries' measures and the second is developing countries willing to challenge measures imposed either by another developing country or a developed country. Regarding the former, he noted how effective Brazil had been in bringing its case before the AB and recognized its efforts in presenting very detailed evidence on how the measure was environmentally driven. Nevertheless, he stressed that not every developing nation would be able to do that. In this respect, he recognized that it was especially difficult for poor countries to marshal all the necessary resources and evidence whenever a case is brought to the attention of the WTO dispute settlement mechanism. To relate this back to the previous interventions, Mr Meagher also stressed the fact that whenever applying environmental measures, developing countries will face great difficulties to afford to apply them in the least-trade-restrictive way. Moreover, he stressed how they might not be able to afford to structure their environmental measures in ways that would be WTO consistent.

With respect to developing countries as complainants, he acknowledged the same difficulties on behalf of developing nations, particularly resource difficulties marshaling proofs and resisting political pressures from environmental groups. He stressed how “green” and development did not always coincide, especially when acknowledging the poor people in developing nations whose livelihoods depended on export trade that may not meet the environmental standards of the developed world. In sum, he considered this issue to be a thorny political issue, making it very difficult for developing nations to challenge environmental measures of the developed world.

Referring to the last point raised by Mr Meagher on the cost of measures, Ms Bernasconi stressed that in that context, one of the main concerns for developing countries will be the increase and multiplication of standards. Whether product standards or process based standards, she pointed out the need to use them to correct the disastrous consumption patterns of developed countries. Ms Bernasconi stressed how especially within the climate change context, the issue of standards has become more relevant than ever. As she explained, so far there have been multiple discussions on the topic in the SPS and the TBT Committees and stressed the need to continue addressing these issues within the WTO but not necessarily within the dispute settlement mechanism. In her view, these discussions should focus especially on the costs imposed to developing countries whenever a developed country has imposed measures. She noted that a system has to be put in place to help developing countries implement standards adopted in developed countries, including through the provision of financial aid and technical assistance. Ms Bernasconi stressed the importance of addressing these issues within the WTO's Committees, especially with respect to transparency and cost concerns. In her view, this would avoid the need to go to dispute settlement.

Addressing Mr Meagher's point regarding the capacity of developing countries to comply with the necessity test and its least-restrictive measures requirement within the context of Article XX of the GATT, Professor Howse pointed to statements made in the context of the *Brazil-Retreaded Tyres* case, in particular to paragraph 171 of the decision, which show that the economic circumstances of WTO members will be taken into account.

With respect to the future of the WTO dispute settlement mechanism, Professor Howse stated that the AB had evolved significantly and that there was a very strong affirmation of the idea of precedent authority and jurisprudential key within the AB's rulings, emphasizing that the AB has developed a real jurisprudence of WTO law and not just a set of inconsistent decisions. Therefore, given all of the changes within the AB, Professor Howse concluded that the AB has properly acknowledged its important place within the institutional framework of the WTO system. With respect to the WTO's jurisprudential consistency, Professor Howse also noted how there was no case so far in which the AB had overruled itself. Therefore, he acknowledged coherence and legacy within the WTO's jurisprudence regardless of the fact that the composition of the AB changes.



As a final comment, Professor Howse addressed the SPS Agreement, noting how the cases brought before the AB in this regard have not been key cases and that they have not raised fundamental issues about human life and people's perceptions as consumers and human beings. He suspects that by having asserted human health as a priority issue, the AB will have to address such issues in a more sensitive way than panels have in previous cases, especially *EC-Biotech*.

## 2. Questions and comments by the audience

Much of the discussion focused on the *Brazil-Retreaded Tyres* case. One audience member reiterated that the AB in the *Brazil-Retreaded Tyres* case created a strict link between arbitrary and unjustifiable discrimination and the actual purpose of a measure, and asked Professor Howse to clarify his criticism on this issue. The same person also stressed the importance of appreciating the complexity of reasonable, plausible policies as a whole, especially when serving environmental purposes.

In response, Mr Meagher suggested that both the AB and the Panel were trying to avoid Article XXIV with respect to the Mercosur exemption. In his view, a very different situation would have arisen if there had been a Mercosur-wide ban on imports of used and retreaded tyres. Mr Meagher considered that in that situation it would have been very difficult for the AB and Panel to avoid the analysis of such Article XXIV. Professor Howse addressed the remarks made by the audience by first clarifying his comments on the Article XX chapeau. In his view, there is a distinction between two dimensions of the AB's reasoning: the first concerns the relationship between Regional Trade Agreements and MFN; and the second one concerns differential treatment not related to environmental purposes, thus imposing an analysis on the arbitrariness or unjustified dimension of a measure. In his opinion, the application of a measure is closely related to a country's administrative law structure. Therefore, in his view, the problem is that there can often be differential treatment that might emerge from administrative or judicial processes within a country that are related to other goals or values in that same process but are not directly related to an environmental purpose. Nevertheless, those measures would be equally legitimate. The issue rises, in his view, when acknowledging the importance of protecting a country's administrative structure. A measure based on the administrative goals of a country should not be described as arbitrary or unjustified just because the objectives concerned are not the environmental objectives of the substantive measure being imposed.

On the issue of regionalism, Professor Howse identified two different claims at stake: the first one relating to Brazil's violation of either Article III.4 or Article XI of the GATT and the second claim concerning the differential treatment of the non-Mercosur complainants. As he explained, these two claims were to be addressed separately, specifically making use of Article XXIV, which is specifically intended to address the problem of MFN inconsistencies arising from RTAs. Professor

Howse noted that perhaps the AB had not addressed Article XXIV because it might have been influenced by the way the pleadings were structured in the case.

Another question posed by the audience concerned the *Retreaded-Tyres* case and the issue of injunctions. Ms Bernasconi explained that some of the Brazilian "retreaders" had obtained injunctions from Brazilian national courts ordering that the import of "used" tyres for retreading in Brazil be allowed, despite the government wanting to ban both retreaded and used tyres. These injunctions, of course, vitiated the environmental purpose of the ban on retreaded tyres – against the will of the Brazilian government. Ms Bernasconi noted that it was interesting that this was a situation where the WTO decision against Brazil gave leverage to the Brazilian government to enforce its environmental measures.

One of the final questions concerned the role of science within SPS cases, in which the discussants were asked to further elaborate on the evolution of this issue, particularly on how the standard and burden of proof is evolving in terms of the scientific considerations and its interpretation within such cases. The speakers acknowledged that the issue of the role of science within the SPS Agreement was of great complexity. Ms Bernasconi noted that the panels in *EC-Biotech* and *US-Hormones* seem to have jeopardized some of the sensitive findings made in the original *Hormones* case. The speakers agreed that the second round of the *Hormones* case now with the AB would likely shed light onto this delicate and complex issue, and provide indications how the SPS Agreement would be applied and interpreted in the future.

Different views were expressed with respect to Professor Howse's critique of Mr Lamy's statements regarding the relevance and meaning of the *Shrimp-Turtle* decision. Professor Howse noted that it would be useful to analyze whether the statements of director generals or key representatives of other international institutions have been used as part of the interpretative process in other international dispute settlement bodies or courts.

## 3. Conclusions and way forward

The discussion helped clarify the state of play of WTO jurisprudence relating to the environment and provide insights about possible trends in future dispute settlement. The Center for International Environmental Law (CIEL) and Friends of the Earth Europe (FoEE) will continue to follow the development of WTO case law relating to the environment and assess whether the policy space of WTO members to adopt adequate environmental and health policies and regulation is sufficiently safeguarded. This will be done with a sustainable development lens giving special attention not only to environmental but also to the developmental considerations, including the effects of environmental requirements on market access opportunities of the poorest WTO members.



## Regionalism: The Greatest Challenge?



### **Moderator**

Dr Theresa Carpenter – Executive Director, Centre for Trade and Economic Integration (CTEI) at the Graduate Institute of International and Development Studies (HEID), Geneva

### **Speakers**

Dr Peter Holmes – University of Sussex

Mr Junior Lodge – Caribbean Regional Negotiating Machinery

H.E. Mr Bruce Gosper – Ambassador, Permanent Representative of Australia to the WTO

Dr Vera Thorstensen – Economic Advisor of the Permanent Mission of Brazil to the UN

Professor Simon Evenett – Professor, International Trade and Economic Development, University of St. Gallen, Switzerland

### **Organized by**

National Centre of Competence in Research (NCCR) Trade Regulation, Individual Project 3, Regionalism

### **Report written by**

Dr Theresa Carpenter – Executive Director, Centre for Trade and Economic Integration at HEID, Geneva

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## Abstract

*Regional Trade Agreements have mushroomed in number over the past ten years. Furthermore, the depth of coverage of RTAs is often far greater than has been achieved at the WTO. For example, in bilateral fora, WTO members are often willing to make agreements on matters that they insist are off the agenda in Geneva. Why is this? What are the implications for the multilateral trading system? And what, if anything, should or could be done about it? The session explored reasons for the surge in regionalism; considered the economic importance of the plethora of regional trade agreements; and will examine the extent of the challenge to the WTO posed by regionalism. The session examined the extent to which regionalism represents an alternative to the Geneva-centric system and whether the challenge of regionalism is a threat to the stability of that system. Finally, the session considered the importance of regionalism as a challenge to the WTO relative to other challenges.*

## 1. Presentation by the panellists

The moderator began by stating that the panel was going to consider the extent to which regionalism represents a major challenge to the WTO-centric multilateral trading system. In addition, the moderator invited the panellists to consider specific questions. Dr Holmes was asked to address why WTO members are often willing to make agreements on matters that they insist are off the agenda in Geneva. Junior Lodge was invited to shed light on why the Caribbean countries are participating in bilateral or minilateral agreements with other countries that are far wider reaching than the special and differential arrangements that they replace. Ambassador Gosper was invited to reflect on how the Australian perspective has changed from one that sees RTAs as a systemic threat, to one where RTAs are actively sought, and was also asked to comment on the surge of interest in RTAs within Asia. Vera Thorstensen was asked to reflect on the importance of rules of origin in determining whether regional agreements actually promote trade or not. Professor Evenett was asked to consider the extent to which the growth in regionalism represents a threat to the WTO? The moderator gave her definition of regionalism, which is any trade agreement that is concluded by two or more parties outside the WTO. Although many of the agreements are not at all regional, it is worth considering them all together as these agreements have in common the fact that they are intended to create preferences in favour of the partner countries and against third parties.

### (a) Dr Peter Holmes, Reader, University of Sussex

Dr Holmes introduced his talk by stating that he had recently attended a talk by Richard Baldwin, in which Professor Baldwin had explained why regionalism is not as serious a challenge as some people may make out. Dr Holmes continued that what he had to say was in line with Professor Baldwin's argument and is based on reflections after the Multilateralising Regionalism conference that took place at the WTO in 2007. Dr Holmes began by posing the rhetorical

question, what is it about regionalism that people are worried about? He could think of three concerns.

The first relates to the impact on trade flows, and is a concern that trade diversion caused by an RTA results in a reduction in economic efficiency. The second concern relates to the undermining of the integrity of the multilateral trading system. The third point is that people are afraid that the spread of regionalism is forcing developing countries to negotiate in a less favourable context compared with the multilateral forum. We have the paradox that countries are willing to negotiate, in a bilateral setting, subjects that they have resisted negotiating in a multilateral context. For example, the Caribbean EPA, which contains lots of tricky regulatory obligations, seems to be one in which the Caribbean countries were not at all unwilling to undertake. Regulatory reforms were not forced on them, but were things that the negotiations appeared to be an opportunity to bring about. Dr Holmes expressed that he was interested to learn from Junior whether this is an accurate impression. Another example is the under-negotiation EU-India FTA: India is happy to talk about things that it is not willing to talk in the WTO. According to friends in DG Trade, it was India that wanted to bring about a deeper RTA, positively welcoming regulatory issues onto the agenda, as there are certain regulatory changes that could be made in India in the context of an RTA with the EU which could not be made in the context of a WTO negotiation. In addition, putting it bluntly, if there is a bilateral agreement, it is not necessary to open up to China.

Another concern of RTAs could be related to rules of origin (RoO). However, RoO only matter in cases of high levels of protection. If protection is not high, then the amount of distortion that RoO can induce is not large. If levels of protection are high and RoO prevent the trade increases that the RTA might have brought about, then the restrictive RoO actually diminish the negative effects of trade diversion. There might be some cases where restrictive RoO cause firms to source their inputs from within a bloc rather than from outside, but this is only likely to be a serious matter if the external protection is high.

Where regulatory components are included in an RTA, it is less likely to be trade diverting because regulatory issues have an almost inherently built-in MFN element (in terms of TRPS that is legally obligatory). To the extent that an RTA is an occasion to liberalise the domestic regime, it is likely that any change regulatory will have a positive rather than a negative spillover to other countries, especially if you are opening up a market that is previously closed. The more a market is previously closed, the less the danger of trade diversion. The greater the regulatory element of the RTA, the greater is the chance for the domestic forces in favour of regulatory reform to work. Then the chance that the regulatory reform will be genuinely more market opening. Turning to standards and technical barriers, it is rarely the case that RTAs impose idiosyncratic or tight regulatory standards on a trading partner, hence any regulatory elements are more likely to be positive than negative.





Another potential issue relates to raising transactions costs – is life simply getting more complicated? It is not clear that there is a lot of evidence of that. The existence of RTAs could be considered an encouraging indication of willingness to engage in some form of trade liberalisation. Developing countries are clearly not opening their markets to the EU for the sake of creating trade diversion – they don't want that.

Perhaps the most worrying thing is likely to be the asymmetry in the bargaining power. Perhaps countries negotiating in smaller groups can choose the things they want to negotiate on to suit their own domestic agenda, but they also find themselves bargaining in a rather asymmetrical way. The problem is that until there is some multilateral reform in the rules of RTAs we are stuck with this. Dr Holmes concluded that the solution, in line with Richard Baldwin's proposition, is that we should find ways of incorporating regionalism into the WTO framework, making regulation more multilateral friendly. In the meantime, Dr Holmes expressed that he is much less worried than some people that regionalism is a challenge to the multilateral trading system.

### **(b) Junior Lodge, Caribbean Regional Negotiating Machinery**

Junior Lodge stated that he wished to begin by painting a brief picture of the Caribbean, as this explains the motivation for an agreement such as the EPA. Essentially, the Caribbean is small. Alan Winters once noted that small is beautiful but costly. This is quite true: the Caribbean has high production costs and intra-regional trade is costly. Yet but small has advantages too: the Caribbean is too small to disrupt world trade. Some of the flexibilities that have been secured in the EPA reflect that fact that we could never be considered to be a nuisance or a cause of economic injury to the European Union.

The Caribbean is characterised by export concentration, both in products and markets: over 60% of exports to the EU are in five commodities; and just three countries – the US, the EU and Canada – account for 70% foreign trade. Recognising that, with or without the conclusion of the Doha Round, there is preference erosion (preferences on sugar and bananas are being eroded via disputes) there is a need for the Caribbean to move up the value-chain, and the old way of doing business no longer applies. The big challenge to the Caribbean is to address globalisation, recognising that there are opportunities, but at the same time making sure that there are measures in place to mitigate against any negative impact.

Continuing his explanation of why the Caribbean opted for the EPA, Mr Lodge explained that market access of the EU – even duty-free, quota-free – was not enough on its own: ACP trade with the EU as a share of total trade had declined significantly. Furthermore, Mr Lodge continued, it became difficult to convince partners to seek a waiver at the WTO to grant preferences. The Contanou agreement was waived at the Doha ministerial, and one of the costs of that was that preferences on tuna were reduced by 50%; in addition, the Caribbean was saddled with a new banana regime that in effect resulted in reduced preferences. A new paradigm was needed: the Caribbean needed mature

trading arrangements that are not subject to waivers, are not time-bound and that provide the right time-horizon for economic operators.

The new paradigm is here: at the end of the month, the waiver will expire, and will be replaced by the Caribbean Basin Trade Preference Arrangement. The new paradigm is not limited to the EU: the Caribbean is launching negotiations with Canada, and when the US is ready, the Caribbean will negotiate with the US as well. The rationale is in trying to reposition the economies of the Caribbean with a move up the value chain. Taking the example of rum, Mr Lodge stated that the Caribbean ships bulk rum to Europe, where it is mixed with inferior rum and bottled. All the value-added associated with bottling accrues to European operators. There is now a programme to encourage bottling within the region. Sugar is another example where there was no refining facility within the region. Although the sugar protocol served the Caribbean well in the sense that it created stable prices, it also served to fuel an unhealthy level of dependence. The new agreement is a comprehensive agreement that goes beyond goods to include services, trade defence measures, SPS, TBT, IP, competition policy, government procurement, measures with respect to capital movement, institution arrangements and dispute settlement. There is also an element of asymmetry – there are, for example, food security provision that only the CARIFORUM members are able to invoke. Also, the CARIFORUM members are exempt from the calculation of total trade in the consideration of a multilateral safeguard.

The agreement also allows for differentiation. Although CARIFORUM comprises 15 states, these have vastly different levels of development and per capita income, ranging from the Bahamas with over \$17,000 to Haiti with under \$1,000. Then there are a group of countries that are really micro economies (OECS). Looking at the schedules, the Dominican republic, which can be considered the economic powerhouse of the region, has liberalised 95% of its EU imports, whereas the OECS, Haiti and Belize that can be considered relatively small economies have liberalised 70%. In the middle are the MDCs that have liberalised up to 85% on average. Differentiation is therefore a strong element of this agreement.

Peter Holmes asked about the rationale for the inclusion of non-WTO issues, and in a way this addresses the question of why in the first place we were negotiating an RTA with a major trading partner that happens to be rather wealthy. There are different reasons. The first is a legal one, namely the expiry of the waiver and the need to have a WTO-compatible agreement. Secondly, the world is such that advanced developed countries don't like to seek a waiver. Thirdly, we wanted to remove ourselves from the kind of political machinations that come from a trading partner that has all of the rights and confers its preferences as a magnanimous gesture – this was an important motivation. Fourthly, it is not by chance that the Caribbean is negotiating not only with its trading partners but also with its development partners. The Caribbean has gained considerable development cooperation from the EU, Canada and the US. To have an agreement that combines commitments with development support is a strong inducement for completing a negotiation.





There are other elements. Mr Lodge wanted to share his favourite example, which relates to personal data protection. We were very frank: when the European Union tabled a paper on personal data protection, this was not a term that we were familiar with. After doing some research, we found out how important this was for economic activities based on electronic transfer of data, which is important if the Caribbean is to graduate into services. It is important not to be ideological but to be practical, and to understand the concerns of the negotiating partner. Subsequent to the study, that part of the negotiation was completed within three rounds. The theme of not being ideological also applies to other aspects, such as competition policy, where traditionally we are not exactly prone to be receptive in the WTO. The provisions on competition policy state two things: first, they establish the partners for cooperation; secondly, they define anti-competitive practices. In the view of Mr Lodge, this is rather innocuous. One should not just look at the slew of measures, but rather the depth and understand the nature of the commitment. The reason the Caribbean is unambitious with respect to competition policy is that the region has not yet crafted its own institutions or its own policy.

Mr Lodge ended with two ideas on systemic challenges that agreements like the EPA pose. One idea is related to trade capacity building. The new commitments on IP in CARIFORUM come into place in 2014 (2020 for Haiti). The rationale for that is to allow time for trade capacity building measures to come into effect. Trade commitments are therefore combined with development support. There are a number of agreements in the WTO where there is a facility to support capacity building measures in developing countries, but the WTO has no financing facility to bring such a provision into effect. A strong motivation for having a trade agreement with a major development partner is that there is access to development support. Whilst recognising that there is a lot of energy and political capital invested in the aid for trade programme, as well as initiatives reflected in various iterations of NAMA and the agricultural text, these remain "best ambition" at best.

The final challenge is to bring commitments made in regional agreement back to the multilateral system. The aim of an FTA is to get an exemption from MFN, yet partners insist on third-party provisions. For example, the US-Morocco FTA states that any concession granted by Morocco to any party must automatically be granted to the US, without threshold. In the CAREFORUM EPA, it states that EU must benefit from any provision that is granted to a major trading partner. So we are seeing a convergence between RTAs and the multilateral trading system. Mr Lodge concluded that the perceived danger of RTAs is not as great as one might think.

### **(c) Ambassador Bruce Gosper, Australian Mission and Permanent Representative to the WTO**

Ambassador Gosper began by stating that it is hard to disagree that regional trade agreements are sub-optimal, as there may be systemic implications, negative effects on third parties and higher cost for business. However, many countries

see some benefit from RTAs, either for the types of commercial reasons mentioned earlier, or as an impetus for regional or unilateral liberalisation, or for foreign and security policy issues. RTAs are part of our environment and will continue to be so because of their various incentives and purposes. In the Asia-Pacific region there are over 100 agreements, which is a three-fold since 1990, and 50 under negotiation. Australia is involved, recognising both the benefits and the costs that such agreements impose, and has been for some time. Building on the Closer Economic Relationship that Australia has with New Zealand, Australia has negotiated agreements with the US, Thailand and Singapore, and recently with Chile and a very wide-ranging RTA with the ASEAN countries. Australia is negotiating with Japan, China and the Gulf Cooperation Council, and is involved in exploratory talks with Korea, India and a number of other countries.

Ambassador Gosper explained that the Asia-Pacific region faces some specific challenges when it comes to economic integration, being composed of linguistically diverse countries of different size and at very different stages of development. Furthermore, it is increasingly an important economic centre of the world: the arc that stretches from Mumbai to Tokyo will, within the space of a couple of decades, probably account for well over half of both world production and consumption. For once, the tyranny of distance doesn't act against Australia, as Australia is closer to the activity than either the EU or the US. There are some unique challenges when it comes to economic integration and how it is to proceed from here. These somewhat unique circumstances are reflected in the different rates and ways in which people are approaching economic integration, and it is going to be a long-term process. Two forces are at play, namely a desire to integrate, as well as uncertainty as to what form that integration will take. That tension is reflected in the various approaches to and rates of integration that are being developed in the region. Overlapping agreements occur because groups of countries are negotiating RTAs, for example the two CER participants have negotiated an agreement with the ten ASEAN members, and each also has agreements with the individual ASEAN countries. This gives rise to new challenges such as different rules of origin. A lot of thought has been given to how regionalisation can be used to produce the maximum economic benefit, but these things are not easy, as the ten missed deadlines over the past fourteen years on non-preferential rules of origin testify.

In Australia, the debate on regional economic integration is focused on two particular approaches. One is the proposed Free Trade Area of the Asia-Pacific (FTAAP), which is intended to be an ambitious, region-wide model that is intended to deliver benefits for the Asia-Pacific region. If achieved the FTAAP would certainly inform the multilateral trading system in some important way, but the diversity of the membership that would be implied by such an arrangement means that it is just a long-term goal. The second is the trans-Pacific economic partnership (comprising Singapore, Brunei, Chile and New Zealand, otherwise known as P4). The P4 is a genuinely comprehensive agreement with WTO-plus commitments on services and investment, and seems to be a potential building



block for regional economic integration, particularly as it allows for the accession of non-parties. That the US has begun negotiating to accede to the P4 will heighten interest in this arrangement. Australia and a number of other economies in the region have expressed interest in acceding to this agreement.

Here at the WTO we have been looking at the transparency initiative that has been agreed within the Doha Round and we hope will be consolidated. This will be useful in bringing some clarity to the nature of RTAs as the appreciation of the detail and nature of these arrangements is lacking. A comprehensive view of what they are delivering is not available at the moment. The agreements can move quite quickly and some of them are quite deep and wide and cover many issues other than tariffs and some of the traditional subjects.

It is a long-standing Australian objective, shared by some members of the WTO, that there is a need to clarify and strengthen the rules on regionalism and in particular the definition of "substantially all trade". Australia has a proposal that this level should be 95%, and that no major sector should be excluded. This is a standard that Australia is quite comfortable with, but there is not exactly a wide coalescence on this proposal.

How can FTAs that are comprehensive and high quality support the multilateral trading system? Apart from the obvious fact that they are chipping away at levels of protection and exposing vested interests and pockets of protection in economies, there are various ways in which they may be helpful. For example, the APEC membership over the past four years has agreed some broad best practices and has developed some model measures that members can refer to in their RTAs on issues such as goods, TBT, SPS, RoO, Government procurement, e-commerce, dispute settlement, transparency and trade facilitation.

Looking forward, the idea of multilateralising FTAs is a long-term objective. A high-quality, comprehensive and inclusive plurilateral FTA such as P4 could be an important intermediate step. Sectoral agreements, where FTAs have cultivated convergence, are potentially important. One APEC study looked at 30 FTAs that have been negotiated in the Asia-Pacific region, and noted that at least 23 have well-developed services chapters that were based on principles that have been developed under the GATS, including mode of supply, MFN and national treatment. TBT is addressed in a lot of FTAs, often based on the WTO agreement. Competition policy is another area that could follow this approach. Multilateralisation-friendly procedures and provisions are important, as are accession clauses and 3rd party MFN clauses – these things can contribute to using the process of trade liberalisation and economic integration to extend those benefits and converge with the MTS.

These are some of the thoughts that are increasingly facing policy-makers in the Asia-Pacific region. Ambassador Gosper concluded that, given the scale of activity in the region, it is clear that lot of thought is being given to find the best means to enhance economic integration.

#### **(d) Dr Vera Thorstensen, Economic Advisor of the Permanent Mission of Brazil to the UN**

Vera Thorstensen began by stressing that she had accepted the invitation in her academic capacity, and hence did not intend to be constrained by the need to use diplomatic language. As an academic, she is quite pessimistic about regional arrangements – they are multiplying and are completely without control.

Some aspects of regional arrangements could be compatible with the MTS, namely market access, where they are more efficient; services, where more sectors could be liberalized; and some rules, for example on subsidies, antidumping, subsidies for agriculture, which cannot be part of regional arrangements due to possibilities of circumvention. For the rest, Dr Thorstensen considers that there are no rules. On intellectual property, the hegemon of regional arrangements are negotiating and imposing new rules on members that want to engage in regional arrangements. These IP rules differ from one regional system to another and sometimes are incompatible with one-another.

Turning to areas where there are no multilateral rules, such as investment, competition, social clauses and environment, what we find is the spread of completely different systems being used in regional arrangements. Regarding rules of origin, we see that there is no multilateral agreement on preferential rules of origin, because members have opted not to discuss them in the WTO. There are two different systems for preferential rules of origin, one based on value added, the other based on tariff shift. The cost of implementing these two different systems is huge. Furthermore, because tariffs are being reduced, some sectors – such as textiles, information technology and steel – are using rules of origin to create barriers to trade. Essentially the regional arrangements are following two different paths. For third countries outside either of the paths, the cost of implementing the two sets of rules of origin will be huge.

Dr Thorstensen then turned to consider what is happening within the WTO. In 1996, a committee was created to study the compatibility of regional arrangements with the WTO agreements. Ten years later, the committee concluded that it was impossible to analyse consistency with WTO, and the committee was transformed into the transparency exercise. There is no will to discuss regional arrangements within the WTO committees. What could happen is that instead of discussing them in the committees, they will end up presenting them within the dispute settlement mechanism, and finally it will be the Appellate Body that sets the rules on regional arrangements, because members opted not to discuss them in the committee.

This is despite the fact that there is a mandate to discuss regional arrangements within the WTO. Unfortunately, there is no political will to discuss regional arrangements; instead, the political will is to allow regional arrangements to spread completely without control. This is the world we are facing. Is this a good thing or bad? We have a financial crisis, we have a food crisis, and what might happen is that we will have a WTO crisis, in that the WTO has become irrelevant because regional arrangements are being allowed to spread without control.



**(e) Professor Simon Evenett, Professor,  
International Trade and Economic Development,  
University of St. Gallen, Switzerland**

Professor Evenett began by stating that some presentations are about what is, some are about what should be, and that his presentation today would be about what *could* be. He stated that he intended to look forward some ten to fifteen years, and post the question, what could be the purpose of regional trade agreements in a world where the Doha Round had been completed and the associated tariff cuts and the time had been implemented. In other words, what could be the basis of reciprocity in a regional deal in the future? Professor Evenett suggested that the answer to that question is likely to be quite different to what it is now.

Projecting forward, Professor Evenett conjectured, the industrialised countries will have a maximum tariff rate of 8%. This will mean that the room for trade diversion resulting from an RTA with a northern partner will be very limited. If the leading developing countries continue to cut tariffs, the amount of trade diversion we are likely to see from any future RTA will be very small. The discussions in which we worry about trade creation, trade diversion and rules of origin will be less important. What, then, would there be left for RTAs to do? Certain things, such as liberalising agriculture, seem to be particularly hard to do in RTAs. What is left is some services and a lot of behind-the-border measures, both of which often have strong regulatory components. Starting to think about RTAs some ten years hence, the main question facing negotiators is likely to be how to use RTAs and its negotiation to improve the business environment within the country and to strengthen its regulatory structure.

There are some trade negotiators that are ahead of the crowd: several of the RTAs that have been signed in the past ten years or so contain provisions which consciously require the establishment of regulatory agencies, which requires that they be properly funded, which requires that they be independent. This new potential purpose of RTAs – to develop a regulatory state which helps promote business and promote enterprise – is something that merits further thought. What are the multilateral consequences of such provisions? It is striking that many of them do not involve discrimination against trading partners, as such measures are typically implemented on an MFN basis. This implies that many concerns about the impact of RTAs on the multilateral trading system will disappear.

Not all concerns vanish, because there could be more than one competing regulatory model which would subsequently be hard to aggregate in any type of multilateral agreement. However, looking forward ten years, the basis of a deal in RTAs will shift quite markedly. The question will become, how to use these deals to enhance or to build a proper regulatory state to develop the business environment, the final goal of which is to foster private enterprise and hence economic development.

Another long-term consideration that Professor Evenett wanted to put on the table is that if there is a move into an era

where energy prices remain high, and are increased further by a climate change treaty, then the cost of shipping products long distance is going to get higher. There is evidence that supply chains are shortening in distance. A number of companies are no longer outsourcing to China, but are bringing things nearer. European multinationals are interested in the near-abroad, notably North Africa and Eastern Europe: US multinationals are interested in Mexico and Central America. This new interest in the near-abroad, rather than the far abroad, may give rise to a second generation of RTAs which focus on reciprocal regulatory matters.

To sum up, thinking about trends that are already in place, it is possible to conclude that the purpose of RTAs could change. Professor Evenett emphasised that we need to change the conversation about RTAs away from one that is purely mercantilist rhetoric about market access for trade in goods, towards one that asks how to use RTAs as an instrument for better intergovernmental cooperation and the development of the regulatory state, all of which has a private sector pay-off and a development pay-off.

## **2. Questions and comments by the audience**

Dr Herbert Dieter (University of Warwick) asked Ambassador Gosper to comment on the Australia-US agreement, mentioning that Australian exports to the US have increased less than Australian exports to the EU, whereas US exports to Australia have expanded. Dr Dieter asked whether the Australia-US agreement might be informative of a new generation of bilateral agreements, whereby the smaller country seems to be benefiting less from these agreements. Ambassador Gosper responded by agreeing that the Australia-US agreement was between two entities of very different size, and that on trade figures alone the US has done rather better in increasing exports to Australia rather than vice versa. However, he maintained that not all the benefits to Australia are easy to identify and quantify. For example an increase in the number of professional visas for mode 4 people, leading to gains from services, is important to Australia. Rachel Schaub (Office of the US trade representative), in support of Ambassador Gosper, pointed out that Australian exports to the US had increased by 14% over the period 2004 to 2007, despite an appreciating exchange rate. During a previous period of appreciating exchange rates, Australian exports to the US had fallen substantially. (Cries of “Not good enough, Rachel” from panel members.)

Dr Sheila Page (Overseas Development Institute, London) said that Dr Holmes omitted to mention attention diversion. She observed that what is striking about the five interim agreements signed last year is their complete confusion. Whilst there may be some countries that can negotiate regional and multilateral agreements at the same time, these do not include any ACP country nor the EU. For example, the Caribbean moved an extremely good trade negotiator to Geneva only after the EPA was negotiated. Is diversion [of diplomats’ attention] not a



serious problem with regionalism? Dr Holmes responded by agreeing that it must be the case that there is a diversion of diplomatic attention implied by RTA negotiations, but whether it is a large problem or not was not clear. Further, it could be the case that negotiators learn from negotiating in a smaller group.

Dr Page asked Mr Lodge about the benefits of being able to combine a rules agreement with the supporting aid for it. If this model is applied to aid-dependent countries, isn't there a serious risk of the donor-recipient relationship interfering with the way the negotiations happen? Mr Lodge admitted that there may be a tendency for aid-seeking trade negotiations, but insisted that the aid component of the EPA made it easier to accept disciplines that the Caribbean countries would otherwise have been reluctant to accept. He pointed out that although the sums involved for trade capacity building were "peanuts", a holistic agreement that combines trade commitments on the one hand with, trade capacity building and funding is attractive and is something that the Caribbean countries would like to transport not only into negotiations with other major trading partners but also to the WTO.

Commenting on Professor Evenett's presentation, Dr Dieter observed that although falling MFN tariffs can help reduce the problem, there continues to be relevant tariff peaks in OECD countries, such as the US tariff of 25% on light trucks. Picking up on the point made by Professor Evenett that tariffs may be irrelevant within two years, Dr Page asked what would be his solution for regionalism if tariffs remain relevant? Professor Evenett pointed out that if the terms that were discussed in July go through, all of the industrialized countries will have to get rid of their tariff peaks if they are above 8%. Of course we have to get to the implementation of the Doha Round, which is Sheila's point. Declining to take a position on whether the Doha Round would be concluded shortly due to the proximity of those that know better (Professor Evenett was seated next to Ambassador Gosper), Professor Evenett stated that there may be another benefit of RTAs that could swamp the benefits from further liberalisation in trade in goods.

Dr Thorstensen agreed that in the long run, RoO would be less important, but insisted that right now they are a serious barrier to trade. Two hundred regional arrangements means 200 sets of rules of origin for these arrangement. The duty-free, quota-free access to markets being negotiated for the LDCs, and the GSTP are two more systems. These are barriers to trade, and can be manipulated as barriers. Even on the regulatory aspects, RTAs can be dangerous. Even though there may not be too many competing systems relating to investment and competition, there is still no coordination. The new rules being developed in RTAs should also be examined by the transparency mechanism. Ambassador Gosper agreed with Dr Thorstensen on the importance of rules of origin, and opined that it was time that the WTO stopped debating RoO in such a way that simply entrenches protection. It is time to rule a line under the unproductive discussion and rethink how rules of origin are dealt with.

Dr Dieter stated that he shared Dr Thorstensen's concern that the WTO is at risk of becoming irrelevant, and asked her to elaborate on how she would see this unfolding, given that the current order is characterised by a collapse in global economic governance in IMF. Specifically, could the decline in relevance of the IMF have a spillover back to the WTO?

Alejandro Jara (Deputy Director General, WTO) first picked up on Mr Lodge's point about trading partners putting MFN provisions in free trade agreements, observing that this practice is very frequent, and that Latin American countries have this in one of their treaties. Even within the WTO there are some oddities - for example, when China joined the WTO, one country imposed a condition by which, should China engage in an FTA with another member, any concessions on certain forestry products would not be covered by Article XXIV, but would apply on an MFN basis immediately. Furthermore, service chapters of agreements usually have MFN clauses in them, and any IP provisions are automatically MFN by virtue of TRIPS. More research is required to find out just how prevalent these are and why they exist. Mr Lodge took up this point, mentioning that in the aftermath of the negotiations, he has had to work hard to justify some of the initiatives that have been taken in the agreement with the EU. One piece of research has been to establish the ambit of MFN provisions - some of our critics were dismissive of the ease with which we have inserted MFN provisions within the agreement. Mr Lodge pointed out that MFN provisions are also there in non-reciprocal agreements. This agreement does something that is under discussion at the WTO, namely it affords protection to non-wine and spirit GIs. Citing the example of Guyanese sugar, Mr Lodge added that this chimes in with the Caribbean ambition wanting to move up the value chain. One of the benefits of negotiating with a strong partner that has used GIs as a way of cementing its position in agriculture is that it helps with understanding the marketing imperatives. Does this mean that the Caribbean countries will have a negotiating position within the WTO that is consistent with this? No, but that is not surprising, given the way negotiations take place. Similarly, on Mode 4, we are not hopeful for progress within the multilateral setting, we reserve that for partners such as Canada, the US and the EU. A Geneva-based representative of the European Communities suggested that RTAs should automatically have MFN clauses.

Secondly, Mr Jara continued, the number of FTAs has been overblown, and there is a lot of double-counting and it gives a false impression; this also requires some more research in terms of devising the numbers. Finally, on rules of origin, the rule under Article XXIV is that if a customs union raises tariffs, compensation is supposed to be given to third parties. The same effect can be had by manipulating rules of origin, but this is never assessed and there is never any compensation. Simon is probably right in that a move to a duty-free world is the way to overcome this problem.

Maria Albertini, a PhD student of Bocconi University and a teacher in Brazil, asked whether the spaghetti bowl isn't reducing international trade to a jungle, and whether allowing



regional trade negotiations was not a throwback to the Vienna Convention, rather than making progress towards rules-based trade? Were RTAs not breaking the rules [of Article XXIV]? Professor Evenett replied that more and more RTAs are including principles on RTAs and rules that are multilateral in nature. The literature on multilateralising regionalism points to a possibility that an organic spread of RTAs – not a grandiose WTO scheme – can help the spread of multilateralism. Professor Evenett emphasised the “can”, and not necessarily “will”, but maintained that the spread of RTAs is not necessarily a bad thing. Ambassador Gosper added that no one would argue that these regional arrangements are optimal or that they don’t have systemic implications as well as costs for business, but that the reality is that RTAs are an increasing feature of the world today. Could RTAs be dealt with in a way that is consistent with the strictest interpretation of WTO rules? If so, and if those rules could be elaborated, then so much the better. But whether this could be done with respect to areas such as TBT, services and competition policy is doubtful. In many areas WTO rules are incomplete, but can be built upon in regional arrangements, particularly between open, liberal and progressive economies.

Andrew Hail from the Foundation for International Dispute Resolution said that he was interested in the possibility of a transformational model for RTAs – specifically, is there a possibility that RTAs can be self-correcting in some way? Dr Thorstensen, quoting Professor Joost Pauwelyn, stated that dispute settlement was not the place to resolve questions between RTAs and the multilateral trading system. Professor Evenett replied that looking at telecommunications chapters of RTAs, there are competition principles that are explicitly referred to as a way through which government regulations that are proposed should be examined before being implemented. This suggests that an RTA instrument could be used to require that before a regulation is put in place, it meets a non-mercantilistic test.

Ms Schaub commented that it is necessary to consider whether an agreement is a full or partial scope agreement. Her experience is that partial scope agreements can make countries less willing to engage multilaterally in Geneva, because parties felt the need to preserve preferences towards a preferential trading partner, or are interested in preserving their preferences in export markets. By contrast, an agreement with full coverage can encourage parties to engage more fully in Geneva. This is a missing issue in terms of WTO work, but the impact of RTAs on multilateral negotiations is something that researchers could investigate.

## Conclusions and way forward

Regional trade agreements are part of the environment and will remain so for some time to come. However, the panel and audience were split as to the impact on the multilateral trading system: Dr Thorstensen, for example, thought that regionalism is out of control, but that there is a reluctance within the WTO to take any type of action, despite the fact that there is a negotiating mandate to do so. A move to a zero tariffs on industrial goods would be one way to mitigate the problems related to trade in goods.

Dr Holmes, Mr Lodge and Professor Evenett all concluded that the negative impact of RTAs was less than would be first thought. The new generation of agreements that involve deep integration were less likely to involve discrimination against third parties due to the inherent MFN aspect of regulatory reform. Specifically, looking at RTAs that have been signed within the past five years, it is striking that there are non-commercial objectives embedded in trade agreements and into specific chapters, requiring the creation and proper funding of certain institutions, coupled with provisions for technical assistance to ensure that the institutions function properly and to foster international cooperation between regulatory agencies. Given the current emphasis on private sector development, it is possible that the main benefits of RTAs will be the development of institutions that work properly and well, and that these benefits will swamp any benefits from further liberalisation in trade in goods.

Ambassador Gosper summarized that regionalism is not the cause of the problems in the Doha Round, although it is a concern for the multilateral trading system. The way forward is that regionalism needs to be managed in such a way that it contributes to a healthy multilateral trading system, which is not an easy challenge, but begins by developing a good understanding of what we are dealing with.

The overall conclusion is that regionalism is far from a major challenge to the WTO, but a question of how it is fitted in. There are many positive benefits from regional trade agreements that contribute to the multilateral trading system, albeit some reservations relating to certain areas.

One aspect of the way forward is to develop clauses to multilateralise commitments made in regional agreements. It is an open question as to whether the basis of the deal is changing: that there are other benefits from RTAs, notably in the area of regulatory reform, and another aspect of the way forward is to make the most of this.



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## Linking Multilateral and Regional Trade Agreements: Development Implications of the Economic Partnership Agreements



### **Moderator**

Ms Isabel Mazzei – Head of Geneva Advocacy Office, Oxfam International

### **Speakers**

Dr Arthur Appleton – Appleton Luff International Lawyers

H.E. Mr Roy Mickey Joy – Ambassador of the Republic of Vanuatu to the EU and the Kingdom of Belgium

Mr Kenneth Quartey – President, Ghana Poultry Association

Ms Joy Kategekwa – Policy Adviser Oxfam International

### **Organized by**

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Oxfam International

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## Abstract

*The objective of this session was to draw lessons for the multilateral trading system (MTS) from the new wave of regional trade agreements (RTAs). A question remains as to the role of regional trading agreements and their contribution to the MTS. While the rationale for RTAs in the WTO is to enhance the system and act as building blocks, they should also assist in the attainment of the overall objectives of the MTS including the objective of development.*

*Rules set in newly crafted RTAs will determine the way signatories thereto conduct their trade. As ACP countries and Europe are a majority part of the WTO membership, the trade regime governing their relations has systematic, if not rules-specific implications for any potential outcome of such rules in future negotiations in the WTO, particularly in new issues such as competition, government procurement and investment. In addition, there are clear implications for some of the more specific rules that already exist, such as most favoured nation treatment and the type of interaction envisaged under the enabling clause. Amidst this reality, Oxfam International thought it not only topical, but also timely to discuss implications of RTAs on the MTS, drawing examples from initialled Economic Partnership Agreements with various ACP countries.*

*This session analysed extent, scope and pace of liberalization in the EPAs. It was an opportunity to discuss with experts what some of the challenges are, what lessons can be drawn for the MTS and to respond specifically to the following questions:*

- *What are the rules on RTAs between developed and developing countries?*
- *What would a good case for asymmetry in rules look like?*
- *What are the implications of the EPAs on development prospects of African and Pacific countries in the EPAs still engaged in the process of negotiation?*
- *What are the implications for the multilateral trading system?*

## 1. Presentations by the panellists

### (a) Arthur Appleton, Partner, Appleton Luff – International Lawyers

Arthur Appleton spoke about legal issues surrounding the EPAs noting that from a strictly legal perspective, compatibility of EPAs with Article XXIV remains doubtful particularly related to interpretations to substantially all trade and reasonable periods of time.

On the status of initialled agreements, he noted that initialling an agreement demonstrates authenticity and the definitive nature of the text that it is ready for signature or

perhaps provisional application. It does not impose legal obligations: this status is only conferred upon signature. Upon signature, countries undertake an obligation to not defeat the object and purpose of the treaty. Entry into force takes place upon ratification or at the date agreed after ratification.

He added that while most legal commentaries on EPAs focus on rules, rules of origin need to be addressed as well. The concern is that differing rules of origin across African EPAs and the CARIFORUM and Pacific groupings may risk fragmenting intra-ACP trade, preventing value addition across ACP countries.

Dr Appleton noted that the MFN clause may hinder ACP countries from negotiating FTAs, with non-ACP developing countries, and that this may have potential trade diverting effects.

### (b) Ambassador Roy Mickey Joy, Ambassador of the Republic of Vanuatu to the European Union and the Kingdom of Belgium

Ambassador Roy Mickey Joy raised concerns about the fragmentation of regional integration that could stem from difference in substance between initialled EPAs with only some Pacific States and the current negotiating text before the rest of the 14 Pacific States. Ambassador Joy raised concern regarding political pressures placed on ACP countries to agree to concessions that are not required for WTO compatibility. Rules of origin are still considered problematic, a concern that stems from substantive qualifications made as part of the 'scrubbing' exercise. Ambassador Joy noted that a major development component would be Europe's market opening towards skilled Pacific nationals (for example, carpenters, plumbers, and care givers) for temporary service provision. This opening would have come hand in hand with reasonable quotas, acceptance of PACP qualifications (for example, skilled tradespersons rather than professionals) and entry for reasonable periods of time (for example, two years) to enable an individual to recuperate the cost of airfare. Since parties at the negotiating table have divergent positions on this matter, services negotiations have been suspended for the time being.

Ambassador Joy raised concern about the ability of the Pacific region to take on obligations in intellectual property, emphasizing that cooperation and capacity-building was needed presently. He also addressed issues such as treatment of LDCs within the region, effects on relations with Australia and New Zealand and contentious issues such as export taxes, Most Favoured Nation clauses, Infant Industry support, Standstill and rules of origin.

### (c) Kenneth Quartey, President, Ghana Poultry Association

Kenneth Quartey presented his experiences as a poultry farmer in Ghana and spoke about the importance of development-oriented national trade policy. He explained



the decline of Ghana's poultry industry was owed to poorly managed liberalization in the 1990's that resulted in an influx of cheap imported frozen beef coupled with imported frozen poultry products. This discouraged competition, undermined job creation opportunities, depressed standard of living and working conditions for farmers and agricultural workers and discouraged use of environmentally friendly production methods.

Mr Quartey emphasised that trade policies that are not *in sync* with economic realities of agricultural trade do not work for farmers. He called for increased investments in Agro-business and related sectors. In addition, the problem with subsidies and their dumping effect was noted as depriving farmers in developing countries from attracting the needed capital to develop agriculture and compete effectively in global markets.

Mr Quartey concluded by emphasizing that trade liberalization needs to be properly managed and fairly implemented. Otherwise, distorted markets erode capital and unjustly deprive local industry of investment.

#### **(d) Joy Kategwka, Policy Adviser, Trade and Investment at Oxfam International, Geneva**

Joy Kategwka's presentation emphasized the de-fragmentation of regional integration that has come from different responses to political pressure placed on ACP countries to initial EPAs towards the end of 2007. She noted that prior attempts at integration on the African continent face a threat, as many countries have signed interim agreements individually, mismatched with existing regional integration initiatives.

She noted that initialled EPAs do not address the problem of competitiveness, which make ACP countries weaker and less significant exporters than they could otherwise be. This oversight makes it difficult to envisage an effective utilization of market access opportunities. Important issues like Sanitary and Phytosanitary measures, technical barriers to trade, and increment in useful trade support and capacity building to boost productive capacity as well as rules of origin requirements remain unresolved.

Ms Kategwka raised the problem of Europe's legalization of subsidization in the EPAs by crafting provisions that protect rather than eliminate this major obstacle to fair trade between Europe and ACP countries. This, she noted, was a major contradiction, with Europe retaining its right to subsidize but requiring ACP countries to eliminate the few tools they have left to contribute to industrial development.

She also pointed out various areas of incoherence with the WTO process, and emphasized that countries need the opportunity to use the special and differential treatment given to them in the WTO context.

She ended on a positive note, stressing that it remains possible to have pro-development deals through renegotiation of the contentious clauses in initialled agreements prior to them becoming legally binding accords.

## **2. Questions and comments by the audience**

In the discussion that ensued, participants raised questions regarding fragmentation of regional integration, and expressed concern that ACP countries need to enhance, rather than detract from, ongoing efforts for regional integration.

An issue also arose on how local farmers can cope amidst dumping and cheap frozen products from Europe which in some cases have wiped out local production. It was noted that governments need to have trade policies that enhance the ability of local producers to remain in the market.

Good governance was also discussed, emphasising the need for countries to retain measures of good governance so as to enhance transparency in trade policy making and its implementation.

Furthermore, issues surrounding how far countries must go to ensure WTO compatibility were discussed. Here it was made clear that in the EPA context, WTO compatibility only required a goods agreement along the lines of Article XXIV, but also that there are some options Europe can use such as putting countries on the GSP or GSP+ schemes. In this case it was emphasized that there is no need to get into services, competition, intellectual property and other issues that Europe has put on the agenda.

## **3. Conclusions and way forward**

In sum, the objectives of the session were met. The intention was to link multilateral and regional trade agreements, and point out concerns from a development perspective. With a panel of distinguished experts, we saw the legal, small island state, small farmer and civil society perspectives. As RTAs continue to move at a much faster pace, it is imperative that they bear in mind WTO rights, obligations and flexibilities.



## Improving The Climate Through Trade?



### **Moderator**

Mr Anthony Gooch – Director, Public Affairs & Communications Directorate, Organisation for Economic Co-operation and Development (OECD)

### **Speakers**

Dr Moustapha Kamal Gueye – Environment Cluster Senior Programme Manager, ICTSD

Mr Ron Steenblik – Senior Trade Policy Analyst, Trade & Agriculture Directorate, OECD

Mr George Weyerhaeuser – Senior Fellow, World Business Council for Sustainable Development (WBCSD)

H.E. Mr Fernando De Mateo – Ambassador to the WTO, Permanent Mission of México

### **Organized by**

OECD

### **Report written by**

OECD

Thursday 25 September 2008 – 16.30-18.30





## Abstract

*The aim of this session was to explore the contribution that increased trade and investment in climate-change mitigation technologies (CCMTs) could make towards addressing the climate challenge. The IPCC and the IEA have both identified a significant potential for mitigating emissions of greenhouse gases through the diffusion of existing, commercially available technologies. Trade and investment are clearly important vehicles for facilitating such diffusion; yet various tariff and non-tariff measures continue to pose significant obstacles to the importation of climate-change mitigation technologies (CCMTs). Drawing on work undertaken by the ICTSD, OECD, and others, the session explored the extent and nature of these obstacles, and priorities and procedures for their removal, including through an agreement at the WTO.*

*In order to accelerate a wider transfer of climate-change technologies, and to maximize the potential benefits thereof, it is crucial to understand the nature and extent of these barriers. Of course, simply addressing trade barriers may not be sufficient to ensure the rapid diffusion of CCMTs, but as long as barriers to trade and investment exist, other actions will be more costly.*

*The session was moderated by Anthony Gooch, Director, Public Affairs & Communications Directorate at the OECD. Mr Gooch, in his opening remarks, illustrated the connections between the multilateral negotiations taking place in the areas of trade and climate change. If we cannot conclude a successful Doha Round, what hope do we have to do deal with climate change, where we don't have the benefit of 50 years of experience as we do in the field of trade? The multilateral system is on trial, he noted. "That is not to put even more responsibility onto the WTO, but it is the reality. A lot of people are looking to these processes, to see if we can deliver".*

## 1. Presentations by the panellists

### **(a) Dr Moustapha Gueye Kamal, Environment Cluster Senior Programme Manager, International Centre for Trade and Sustainable Development (ICTSD)**

As Dr Kamal explained, at the multilateral level the most obvious opportunity for reducing or eliminating tariff and non-tariff barriers to goods that can help mitigate emissions of greenhouse gases seems to reside in the Doha Round negotiations on liberalizing trade in environmental goods and services (EGS). Since so-called climate-change-mitigation technologies (CCMTs) can be considered a subset of EGS, many of them would likely be covered by whatever agreement emerges on EGS following the negotiations.

In 2007, a study team led by the World Bank, with a contribution from ICTSD, examined the GHG mitigation technologies in a list of 153 goods proposed in the World Trade Organization (WTO) environmental goods and services (EGS) negotiations, and identified approximately 43 goods that apply broadly to mitigating climate change. Of these, the study team

focused on goods associated with wind energy, solar photovoltaic cells and modules, energy-efficient lighting, and clean-coal power generation. They analyzed how reductions in tariffs and non-tariff barriers (NTBs) would likely impact the consumption and use of these technologies in 18 high-GHG-emitting developing countries: Argentina, Bangladesh, Brazil, Chile, China, Colombia, Egypt, India, Indonesia, Kazakhstan, Malaysia, Mexico, Nigeria, Philippines, South Africa, Thailand, Venezuela and Zambia.

The study concluded that the removal of tariffs and NTBs on the four classes of goods would result in huge gains in trade volumes. The gain would be 64% for energy-efficient fluorescent lights, 23% for wind energy systems, 13.5% for solar photovoltaic (PV) modules, and 4.6% for clean-coal equipment. In many cases, NTBs were found to be far more significant than tariffs in raising the costs of imported climate-friendly goods. After estimating the ad valorem costs of relevant NTBs, the study concluded that NTBs in seven of the studied countries added between 80% to more than 100% to the costs of imported compact fluorescent light bulbs — a kind of good that can reduce the GHG emissions of lighting by 75%. For photovoltaic modules, NTBs in five countries added costs ranging from 53% to 70%. For wind power systems, seven countries imposed NTBs with costs anywhere from 32% to 89%.

Dr Kamal emphasized that reducing tariffs and NTBs will not by itself lead to massive increases in the adoption and use of renewable and energy-efficient technology in developing countries. Additional policies are needed at the national levels to create an "enabling environment". These include support for R&D and other incentives to reduce the high initial cost of deploying these technologies, as well as climate-change policies and their enforcement.

Dr Kamal then reviewed the challenges to defining environmental goods, including those related to climate-change mitigation. The six-digit Harmonized Commodity Description and Coding System (Harmonized System, or HS) makes it difficult to isolate climate-friendly goods. For example, highly efficient "supercritical" coal boilers are not differentiated from standard subcritical boilers. He described the approaches to EGS liberalization that have been considered by WTO negotiators: The "list" approach which would permanently liberalize a list of environmental goods; the "project" and "integrated" approaches, which would allow for temporary liberalization based on an importing country's environmental priorities; the request-offer approach in which countries would ask trading partners to reduce tariffs on selected environmental goods; and the periodic review or "living list" approach, which recognizes that without periodic updates, any list of environmental goods will likely be superseded by newer and more effective technologies that would not benefit from the liberalization process.

Dr Kamal underscored the fact that the trade liberalization for climate-friendly goods would serve the economic as well as the environmental interests of many developing countries. He noted the conclusions of the World Bank study's and the conclusions of an ICTSD study by Dr Veena Jha, "Environmental priorities and trade policy for environmental goods: A reality check", according





to which China has become one of the top 10 exporters of wind-power technology, and nine developing countries, including China, Chinese Taipei, Malaysia and Korea, have become leading producers of solar-photovoltaic components. Looking at the broader EGS categories, Dr Kamal highlighted the fact that Mexico, Indonesia, China and other middle-income developing countries have strong advantages compared with higher-cost developed countries in exporting equipment for heat and energy management, air pollution control, solid waste management and noise and vibration abatement.

While not necessarily advocating for them, Dr Kamal noted that special provisions for trade in climate-friendly goods are likely to appear in bilateral, plurilateral, and regional trade agreements before they appear in a multilateral agreement.

**(b) Ron Steenblik, Senior Trade Policy Analyst, OECD's Trade & Agriculture Directorate**

Ron Steenblik followed Dr Kamal with an overview of some of the types of technologies that appear to hold the most promise for mitigating climate change, and some preliminary results of recent OECD work to identify the types of tariff and non-tariff barriers that exporters perceive to be impeding trade in these technologies.

According to the IPCC's fourth assessment report (2007), the greatest economic potentials for global mitigation are to be found in the building sector, followed by heavy industry and energy-supply. Among the types of technologies that can help mitigate emissions of greenhouse gases in these sectors are solar photovoltaic (PV) systems, wind energy systems, combined heat and power systems, solar heating and cooling systems, and energy-efficient motors and pumps.

Few of these technologies are classified under unique tariff lines, however. Rather, they often represent a cluster of component parts, some rather generic, like pipes and tanks. Moreover, technologies like solar PV systems and wind turbines vary enormously in their size and sophistication. While OECD countries are often consumers of large-scale solar arrays and megawatt scale wind turbines, developing countries often import village-scale or household-scale arrays and wind turbines measured in the watts or kilowatts. Moreover, many of the components of renewable-energy systems (such as inverters and DC-powered appliances) are manufactured in the South.

Over the past year, the OECD has been contacting exporters of these technologies and asked them what kinds of barriers they face to the exports of their goods. The results from these investigations show that tariffs form only part of the story, and may even be a relatively minor consideration for some technologies. Other barriers — technological, institutional, economic, financial, and trade-related — on both the supply and demand sides are often more important.

Some of the non-tariff barriers are technology-specific. They include national standards and certification regimes that

diverge from international norms, burdensome conformity-assessment procedures, and subsidies to domestic producers. Others are more generic, such as barriers to trade in related services. Weak protection of intellectual property rights and cumbersome customs procedures are also concerns commonly mentioned by exporters.

What can be done? On the national side, adoption and enforcement of policies aimed at reducing the carbon intensity of economies is clearly key. Some countries may also need to consider aligning their technical regulations more closely with international standards. Steps at the international and multilateral levels that could help to reduce unnecessary barriers to trade in CCMTs include continuing to work towards an agreement at the WTO on liberalizing trade in EGS, and strengthening complementary programmes in other institutions.

**(c) George Weyerhaeuser, Senior Fellow, World Business Council for Sustainable Development (WBCSD)**

George Weyerhaeuser provided a business perspective on the issues. A common misconception in the climate negotiations is to regard technologies as “silver bullets”. Rather, we should think of them as “silver buckshot”. The problem is that we cannot pick winners in the technology race. It is important to keep this perspective when negotiating any new trade agreement. It would be dangerous to only liberalize trade in a somewhat arbitrary set of climate-change mitigation technologies. There are almost no categories of technologies that will not be drawn upon to mitigate GHG emissions. In Mr Weyerhaeuser's opinion, removing barriers to foreign investment is more important for technology transfer as it encourages learning by doing.

**(d) Fernando De Mateo, Ambassador to the WTO, Permanent Mission of México**

Ambassador De Mateo, the final speaker, observed that liberalizing trade in environmental goods was a necessary but not sufficient condition for encouraging the diffusion of climate-change-mitigation technologies. Foreign direct investment is vital. For example, in Mexico, foreign investment in automobile manufacturing plants substantially increased the supply of cleaner vehicles, and had a tangible effect on the quality of the capital city's air.

However, the benefits of trade are under threat by popular concern about the CO<sub>2</sub> emissions connected with the transport of goods. This concern has encouraged growth of a “buy local” movement, and has been abetted by private carbon-labelling schemes. The premise for this movement, in Ambassador De Mateo's view, is incorrect. Imported goods do not necessarily have a bigger carbon footprint than domestically produced goods. He pointed out, for example, that a bottle of Bordeaux wine sold in New York had a smaller carbon footprint than a bottle of Napa Valley vintage. Not only was the carbon emitted in transporting the wine higher from California, but the oak



cases in which the Napa Valley vintners aged their wines had themselves been imported from France.

Regarding the WTO negotiations on EGS, the Ambassador explained the difficulties in identifying particular goods as more environmentally friendly than others. A gasoline-electric hybrid car might be more environmentally friendly than a standard gasoline-powered car of the same size class, but was it more environmentally friendly than a small compact car? Negotiating a WTO agreement on environmental goods will not be easy. It is likely that we will end up with a plurilateral agreement. To get an agreement on services, there will have to be a sequence of bilateral request-offer negotiations.

## 2. Questions and comments by the audience

Mr Gooch opened the discussion session by posing a question: To what extent do we attach importance to the WTO negotiations to help solve the climate-change challenge?

The first questioner asked whether it is worthwhile to try to identify a separate category of goods as “environmental”, or whether the WTO should simply aim for a good NAMA formula and be done with it? Dr Kamal's answer was that there would be benefits from both, but that there were merits to a separate agreement on EG&S as well. If we are able to single out a category of goods that have a genuine environmental purpose, that will help the climate negotiations; we should see it as part of a larger effort to improve technology diffusion. Mr Weyerhaeuser said that an agreement on EG&S would probably be good and worthwhile, but WTO members should not take a lot of time negotiating one. Mr Steenblik agreed, though he said that a good NAMA outcome was clearly the bigger prize.

Another participant, from the WTO Secretariat, remarked that while competing national technical standards could create a barrier to trade in environmental goods, a *lack* of standards, especially environmental standards, could actually be a problem limiting the demand for environmental services. Ambassador De Mateo, picking up on the point regarding competing national standards observed that differences in technical standards for automobiles made it more expensive for Mexican car-makers to export to multiple markets.

Another questioner solicited views on whether there was an argument to be made that, while freer trade probably is better for economic development as a whole, tackling the climate-change challenge might require newly industrializing countries to pursue infant-industry protection. Mr Weyerhaeuser expressed the opinion that there is a healthy tension between those who put emphasis on the benefits of more open trade, and those who stress the need to develop profitable, but at the same time cleaner, industries in the developing world. It is hard for a new company to emerge in a country without some initial space to grow.

The session ended with an interesting debate on the difficulties created by the limitations of the Harmonized System. One of the participants charged that the Swiss list of proposed environmental goods (circulated in June 2005) was “not serious,” because it included such items as bicycle helmets, locks, and bells. Mr Steenblik pointed out that roofs, ignition keys, and horns all came as standard items on cars, but not on their environmentally preferable alternative, the lowly bicycle — hence the need to list these accessories separately.

## 3. Conclusions and way forward

The session succeeded in elucidating the numerous issues related to the contribution that reducing barriers to trade and investment can make in supporting the climate-policy objectives. While no formal conclusions were adopted, there seemed to be a consensus among the speakers and participants on the following points:

- Cleaner technologies can help to reduce emissions of greenhouse gases.
- There remain impediments to the transfer of these technologies (and related services) as a result of tariff and non-tariff barriers.
- Generally, reducing or removing these impediments to trade and investment would be beneficial.
- Due to the difficulty in predicting what technologies will prove to be the most important in reducing GHGs in the future, it is important that trade negotiators do not waste too much time trying to draw fine lines to distinguish among them.
- Moreover, in order to foster support for a new climate regime among developing and newly industrializing countries, some flexibility in the trading system may be needed so that they, too, can participate in the production of more climate-friendly technologies.

The implications of these findings for the WTO are several. Paragraph 31(iii) of the Doha Development Agenda calls on WTO members to negotiate “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to EGS”. To date, most of the focus has been on tariffs. Yet the work of the OECD, ICTSD, and World Bank suggests that non-tariff barriers also deserve attention. Second, whatever agreement on liberalizing trade in EG&S is reached, it needs to be flexible enough to adapt to new developments in technologies.

Regarding follow-up, the OECD is planning, in co-operation with the World Bank and other stakeholders, to organize a Global Forum (i.e., conference) on trade and climate change in June 2009, to which the WTO Secretariat, and delegates to the WTO, will be invited. One of the topics covered by the Global Forum will be liberalizing trade in climate-change-mitigation technologies.

### III.

# Challenges and Opportunities Facing the Main Actors and Stakeholders of the Multilateral Trading System



A.

## The Missing Link Between Trade Openness and Poverty Reduction: The Role of the Multilateral Trading System



### **Moderator**

Mr Atul Kaushik – Director, Consumer Unity & Trust Society (CUTS), Geneva Resource Centre, Geneva

### **Speakers**

Dr Veena Jha – Visiting Professorial Fellow, Warwick University, UK

Dr Richard S. Newfarmer – Special Representative of the World Bank at the UN and WTO

Professor Simon Evenett – Professor, International Trade and Economic Development, University of St. Gallen, Switzerland

Dr Selim Raihan – Associate Professor, Department of Economics, University of Dhaka, Bangladesh

Dr Mohammad A. Razzaque – Economic Adviser, Economic Affairs Division, International Trade & Regional Co-operation Section, Commonwealth Secretariat, London

### **Organized by**

Commonwealth Secretariat (London) and CUTS International (India)

### **Report written by**

Commonwealth Secretariat (London) and CUTS International (India)

Wednesday 24 September 2008 – 14.00-16.00





## Abstract

*The conception of the relationships between international trade, growth, and poverty reduction has generated a lot of debate due to varying outcomes of trade openness between countries. In many countries, increased international trade has led to higher economic growth, whereas in other countries, rapid liberalization and increased market access have failed to materialize as higher and consistent growth rates. This suggests that the link between trade liberalization and poverty reduction has not been as strong and direct as with economic growth. The session therefore intended to discover both the impact of trade-led growth on poverty under the WTO regime while also analysing the need for pre-conditions and accompanying reforms that are required in order to benefit from trade liberalization. The session discussed the feasibility of poverty alleviation through trade liberalization under the WTO and how trade policy, in the context of the Doha Round, can foster external discipline to help insulate economies against shocks and ensure that the gains from trade are delivered in an equitable manner.*

*The following questions were addressed during the session:*

- *What is the evidence of trade influencing growth and poverty reduction? How well can the experiences of trade-development-poverty linkages in developing countries be generalised?*
- *How important are complimentary policies and institutions in materializing the benefits of trade?*
- *What could be the likely implications of Doha-induced policy change in sectors such as agriculture, manufacturing, and services on the poor in developing countries? To what extent have the interests of LDCs and small vulnerable states, relating to 'trading out of poverty,' been catered for in the Doha Round?*
- *In light of recent Doha Round experiences, can the future role of the WTO be realistically expected to promote trade-led development in poor developing countries and to what degree?*

*The panellists responded to the above questions from various angles and developed competing viewpoints that set the stage for an engaging floor discussion.*

## 1. Presentation by the Panellists

**(a) Dr Veena Jha, Visiting Professorial Fellow, Warwick University, UK**

### Trade Openness and Poverty- the Missing Links

The presentation was structured in five parts. It began with a definition of trade openness and continued by explaining

how openness translates to growth and growth to poverty reduction. Following this series of connections, Dr Jha identified the missing links between openness, successful growth, and poverty reduction and concluded by discussing the role of the Doha Round in facilitating these intermediating variables and presenting several recommendations.

Dr Jha highlighted major strands of definitional aspects of trade openness to understand the term. Openness has been measured by direct trade flows, flows netted out for the effects of size and per capita trade flow; trade policy variables like average tariffs, bound tariffs, and non-tariff barrier incidence; and the quantitative measures of openness index developed by the Sachs and Warner theory, such as exchange rates, institutions, and other indicators of macro-economic stability. Generally, growth is found to be an intermediate variable that links trade openness to poverty. While poverty has various measures, head count ratio is commonly used to describe the link between trade openness and poverty. However, at the same time, reports suggest that while trade openness can lead to poverty reduction directly, the more important effects are to be seen through the intermediating variable of growth.

In contrast, however, there are many other reports which criticize making this type of relationship between trade openness and economic growth. There is no convincing evidence that suggests that trade liberalization is automatically or always associated with economic growth. Instead, at the theoretical level, trade openness can act as a facilitator of growth processes only if it is associated with efficient and focused development policies. Other analysis show that trade openness leads to static gains and dynamic gains. Static gains are those which accrue from international specialization according to the doctrine of comparative advantage. Many economists argue that the theory of comparative advantage can only be used to explain past trends in economic growth, but should not be used as a strategy to stimulate future economic growth because there are constantly shifting comparative advantages. On the other hand, dynamic gains result from the impact of trade on production possibilities at large (economies of scale) and the accumulation of capital. Moreover, trade can also act as a vent for surplus commodities like capital, land, and labour. But, for any country, the greatest benefit from dynamic gains is that its export markets widen the total market for the country's producers. This can typically accrue from multilateral trade liberalization where nations have a larger stake in the market than in bilateral agreements or customs unions. However, various conflicts can arise. For example, while specialization in a static sense can lead to net gains, there can be domestic winners and losers as there will be shifts of resources from one sector to another. This type of situation would generate discontent and, as a result, economies would abort trade liberalization processes.

Roderik's work on trade and development shows that efficient and independent domestic institutions are needed to mitigate the effect of external shocks. However, developing countries typically have weak conflict management capacities





which results in a disproportionate distribution of resources. This is the reason why today, trade liberalization is increasingly accompanied by rising inequalities in many countries, leading to general disenchantment towards trade openness.

In regards to the empirical evidence in the reports on growth, it is not clear whether it is trade that leads to integration or growth that gives rise to integration. When discussing the missing links between trade openness and poverty reduction, trade cannot be assumed to be good for growth; instead, a country's external orientation may be a key determinant in its growth rate. For example, if a country's comparative advantage lies in certain goods, i.e. primary goods, the country's subsequent economic growth can be lower under free trade. However, if trade leads to human capital accumulation and R&D, as well as acting as a channel for the transfer of technology, then free trade can lead to growth. There is no consensus on the benefits of trade liberalization on poverty nor on the mechanisms through which these benefits are realized. Essentially the missing links are verified empirically and then justified *ex post* theoretically. India and the Peoples' Republic of China, two of the most documented examples of trade-led market success, show that both have benefited from a gradual, sequenced approach and that, during the early reform period, trade liberalization is not likely to be the highest development priority. Instead, both countries have benefitted from combining the opportunities offered by global markets with strategies for domestic investment and institution building in order to stimulate domestic entrepreneurs.

Economists do not yet agree on the types of trade policies developing countries should pursue to ensure that economic growth alleviates the worst forms of poverty, which is often a major hindrance to a country's economic growth plan. A panel estimation of 102 countries by Gilbert Niyongabo, a Japanese researcher, reveals that open countries which launched favorable trade policies reached high productivity and income levels. Citing the example of sub-Saharan Africa, he argued that trade policies failed because of low institutional quality as the region has been dependent upon primary exporting products ever since the European colonization. As such, Niyongabo suggests improving economic development by amalgamating trade policies with the practice of good governance.

Corruption is an important element in the relationship between trade openness and economic growth and "impinges disproportionately on foreign transactions". Inflation is another facet of openness, although there remains a lack of sufficient evidence to fully understand the effect. Research published by David Romer suggests that inflation is lower in open economies, as a high cost is associated with real depreciation; as a result, open economies try to minimize the effect. Investment is another important element to growth and is both dependent on, and involved in, the development of an open economy.

With regard to the role of the Doha Round influencing growth, one view is that failure in the Doha Round would deprive developing countries of the opportunity of non-discriminatory market access, a rules-based settlement of disputes, and transparency of trade regimes. However, this view is overly

optimistic of the effect of trade openness on economic growth and on the role of the WTO in providing a level playing field between its members. As mentioned earlier, evidence shows that trade openness does not always guarantee increased and sustained rates of economic growth. Countries that fail to enhance their institutions, encourage investment in the social sector, or promote poverty reduction in their government policies will effectively cut off any possible gains from trade openness. The Doha Round has little to do with the intermediating domestic variables, though it can have a positive effect on variables such as corruption, inflation, and investment. Dr Jha's presentation suggested that both international and domestic institutions can play an important role in linking growth and poverty reduction. In this sense, the successful conclusion of the Doha Round would strengthen the multilateral trading system and help level the playing field, thus aiding poverty alleviation.

**(b) Dr Richard S. Newfarmer, Special Representative to the UN and WTO, The World Bank in Geneva**

### **Trade and Poverty Reduction: The Role of Complementary Policies**

Dr Newfarmer's presentation addressed the question of a role of complementary policies in promoting growth via trade. Corresponding with Dr Jha's discussion, this presentation highlighted the fact that trade openness and growth are strongly linked, but as suggested previously, the causality is not known and results of trade openness vary widely across countries and continents. Furthermore, the ability of trade to foster growth and poverty reduction depends on complementary policies. In the context of complementary policies, the role of 'aid for trade' was stressed.

Dr Newfarmer began the presentation by raising the question "Why does trade matter?" Citing numerous examples, he made the assertion that large-scale integration via trade with global markets is associated with faster growth. A study shows that per capita growth rate was at least 1 to 1.5 percentage points higher for those countries which have a larger export share in GDP as compared to a set of countries which have a decreasing export share in GDP. Nevertheless some empirical work also stressed that while there may be a positive correlation between GDP growth and change in trade openness, experiences vary widely among nations. For example, several countries have shown rapid economic growth without significant change to their trade – GDP ratio; in contrast, there are numerous countries who increased their trade – GDP ratio but did not see significant economic growth.

Trade openness drives growth through several channels, all of which potentially impact the economy's total productivity. For example, trade on the import competition side directly impacts the domestic economy's price level as well as making inputs available at a lower cost to the domestic productive sector; these factors result in total productivity gains. Secondly, through trade openness, the R&D (technology content) of imports increases, adding to the total factor productivity and increased growth rate. The work of Hoekman and Javorcik (2007); Amity (2007); and



Coe, et al (1997); have indicated that technology importation takes place at an increased rate when countries operate in a higher income bracket. Lastly, the act of exporting has an impact on total factor productivity, though there is mixed evidence in support of this theory. Dr Newfarmer argued that, through a mix of these channels, trade impacts total productivity. While partially agreeing with Dr Jha's statements, Dr Newfarmer emphasized the role of foreign direct investment (FDI) and capital inflows in trade openness. FDI is associated with the import of technology and capital. While in practice the capital component of most FDI is relatively low, the technology content can be quite large.

While discussing spillovers to the domestic industry, Dr Newfarmer stated that spillovers tend to occur in the industry on a more vertical basis due to mimicking, learning by doing, and other similar methods. This occurrence may be due to the fact that foreign investors demand local inputs and help suppliers advance technologically; such spillover is a form of externalities associated with FDI. In addition, the introduction of foreign investment into markets can create competition which is beneficial in creating an efficient economy.

Furthermore, moving from issues of trade and growth and trade and investment, Dr Newfarmer focused his presentation on a role of trade liberalization with respect to reducing tariffs. Wacziarg and Welch (2008) took a sample of 81 countries to study the effects of trade liberalization over an extended period of time. Their work found that, after openness, the countries tended to show a higher rate of growth (by 1.5 percentage points) than their pre-reform average rate of growth. However, several countries in the sample did not fare well, despite undertaking trade liberalization reforms. The study concluded that trade reforms must be accompanied by complementary reforms in order to attain the desired growth experience.

There are a number of complementary reform policies that support trade liberalization and reduce domestic poverty: for example, the structure of the economy, patterns of protection, and economic policies. Hoekman, Olarreaga (2007) looked at different episodes of trade liberalization and simulated a global model of openness in several LDCs to stress the theory that different structures of protection in countries determine the benefits of trade liberalization (i.e. protecting the low or high income group of the economy). In addition, the study also emphasized the role of trade facilitation and complimentary practices set to benefit from Doha-inspired trade liberalization.

Dr Newfarmer also highlighted the role of aid for trade saying that there is a need for improvement in trade-related institutions in poor countries as weak institutions lead to delays and higher trade costs. For example, in Least Developed Countries (LDCs), it takes almost 38 days on average to undertake import and export activity whereas in higher performing countries, the time consumption is much less. A one-day delay is estimated to equal a 1 percent decrease in export volume.

A recent study by Gamberoni and Newfarmer (2008) for the WTO which suggests that while there is a huge demand for aid for trade and countries are receiving below-average payments that do not meet their needs, increasing the amount and number of payments is not automatic as there are multiple pressures affecting the system. Despite the good efforts of the WTO, aid flow and its expansion can be potentially tempered. The data suggests that recent increases in overall aid development assistance have stalled, whereas growth in core development assistance was 10% in 2005 and 4% in 2006 (5% average in 2002-2006).

The current global slowdown may put pressure on the budgets of OECD donors and the situation looks to become more severe following increasing financial difficulties in the United States. Likewise, following the recent food and energy crisis, priorities of developing countries have shifted away from trade and finance. Their budget pressures are increasing due to emergency expenditures to support the poor, reductions on food import tariffs, and higher energy costs and interest rates. LDCs are therefore more likely to ask donors for aid in paying these increased expenditures as opposed to expanding trade. In addition, the possible collapse of the Doha Round and the continuation of dire global circumstances will reduce the attention placed on aid for trade and, as a result, will greatly diminish the amount of aid available.

Dr Newfarmer concluded that trade and openness can promote growth and reduce poverty, but results are not automatic and trade reforms by themselves are not likely to be sufficient. Secondly, trade is likely to foster growth provided it is accompanied by companion measures, like adequate investments in infrastructure, institutions, and education. Lastly, Dr Newfarmer asserted that 'aid for trade' can help the process, but both donor countries and developing countries have to make trade the pillar of development strategies and make an argument to the outside world that aid for trade can help harness the global economy, growth, and poverty reduction.

**(c) Professor Simon Evenett, Professor, International Trade and Economic Development, University of St. Gallen, Switzerland**

### **Future of the Doha Development Round (DDA)**

Professor Evenett's presentation focused on the future of the Doha Round, the outcomes of earlier trade rounds, and concluded negotiators should not "let perfection be an enemy of the good". Professor Evenett explains that the reason for raising such a message is that in next 12, or possibly 24, months there will be a good chance to assess the potential outcome of the Doha Round and its conclusion means to the member countries and, more importantly, the developing nations. The speaker clarified that his speech will not be a defense of the DDA by highlighting its already accomplished deals. He agrees that WTO is notorious for its disappointing and unbalanced deliberation process. Likewise, Professor Evenett believes that the substance of the Doha Round is observably



shrinking over the course of deliberations, making a comparison between the Round with a Russian doll which keeps getting smaller and smaller. He hypothesized that if the DDA had been conducted differently, there could have been a better chance of a more significant outcome. However, Professor Evenett also offers that the DDA is one of the finest dilemmas in the multilateral trading system.

As such, Professor Evenett emphasized the importance of thinking realistically regarding trade and development accomplishments; however, he considered it beneficial to look at the agreements made from 1995-1996, when many development concerns were first raised in the WTO. For example, concern was voiced over the TRIPS agreement in terms of how IP rights entered the WTO, requiring a review of the agreement leading up to the Doha Round and resolving, to some extent, the matters raised. In addition, members raised the issue of tariff peaks, in industrialized countries, on special interest goods for LDCs; however, if the Doha NAMA modalities are agreed upon, the maximum tariff rate in industrialized countries will increase to 8 percent, though in many countries, it is currently less. In essence, tariff peaks would cease to be a concern should the Doha NAMA modalities reach a consensus. Finally, the implementation cost of the Uruguay Round was a major concern for developing countries. With this concern in mind, Professor Evenett emphasized that current trade facilitation negotiations in the DDA have proven to be remarkably constructive with integral proposals made from rich and poor countries alike in the hopes of pairing obligations with financial support. Thus, the speaker summarized, the implementation cost of the DDA has been taken into consideration.

Professor Evenett argued that if the DDA is concluded, agricultural export subsidies could be a concern of the past since the Round is currently providing the LDCs with duty-free and quota-free market access to developed countries. Though the DDA is not perfect, the needs and concerns of LDCs are being considered and the WTO system is growing and evolving; thus, it is imperative that the Doha Round reach its conclusion.

However, if the Doha Round is hypothetically finished in 2009-2010, it is important to remember the possible 5 to 9 year implementation period which would follow, meaning that developed countries would finish implementation by 2015 and LDCs by 2019. As such, members are unlikely to launch another round until the second half of the next decade. As such, Professor Evenett submits that the Doha Round, though not perfect for all members, is the only near-term option to deal with current concerns. Thus, members should not make "perfect an enemy of the good". If members abandon the DDA, the current accomplishments will be at risk and LDCs will lose the possible development gains offered by the WTO system.

**(d) Dr Selim Raihan, Associate Professor,  
Department of Economics, University of Dhaka,  
Bangladesh**

**Trade, Development and Poverty Linkages: Lessons  
from Sectoral Case Studies**

Dr Raihan based his presentation on "Linkages between Trade, Development, and Poverty Reduction" (TDP), a project implemented by CUTS International, in which sector-based case studies were conducted in 13 countries throughout South Asia and Africa. Using these case studies, Dr Raihan focused on the countries' individual experiences to define issues that are important to LDCs and vulnerable states with respect to "trading out of poverty". The case studies show that, while several countries have been able to reap the benefits of trade policy reform, others have failed to do so, suggesting that there is no unique model of TDP linkages that could be prescribed to all countries evenly. Since trade policy is primarily sector-based, Dr Raihan presented a sector-level analysis within countries to provide insight on the discourse concerning TDP linkages.

In order to gauge each sector's performance, Dr Raihan distinguished between them on the basis of each sector being import-substituting or export-oriented. The presentation focused on examples of liberalization of readymade garment (RMG) in Bangladesh, Cambodia and Nepal; fisheries in Cambodia, Tanzania and Vietnam; and maize and dairy in Uganda.

The RMG exports in Bangladesh, Cambodia, Nepal, Sri Lanka, and Vietnam, as a percentage of total exports in 2006, were respectively 75.1, 78.0, 11.7, 43.0, 14.7. The statistics clearly suggest that the economies of Bangladesh and Cambodia are relatively less diversified and heavily dependent on the RMG industry. TDP linkages in the RMG industry of Bangladesh have been an important determinant in the country's poverty reduction process. The suitable trade policy measures added by duty-free and quota-free facilities under the Agreement on Textiles & Clothing (ATC) to Bangladesh helped to strengthen the exports capability of the RMG industry. The favourable trend in the sector triggered forward-linkages such as an increase in employment opportunities in the transport and insurance sectors. On the other hand, there was an expansion of backward-linkage industries such as the scope of development of textiles and garment accessories' firms and shops. This created space for indirect employment and further stimulated the poverty reduction process. The sector also witnessed a rise in relative wage rates of unskilled labour and this ultimately translated into an income increase for poor households.

In addition, female empowerment was another factor that worked favourably in poverty reduction in Bangladesh as the majority of workers in the RMG industry are women. Nevertheless, some of the critical concerns of Bangladesh's RMG sector are a dependency on DFQF market access for product placement, the EU's stringent Rules of Origin, high American tariffs, a lack of competency to meet deadlines, a weak physical infrastructure, a lack of accessibility of capital for financing investment, and recently, a shortage of skilled workers. In addition, backward linkage is not strong.

The findings of the case study on the fisheries sector in Cambodia, Vietnam, and Tanzania have shown rapid fisheries export growth. The growth momentum has led to an expansion of a number of backward and forward linkage industries. It has also created huge employment opportunities for both skilled



and unskilled labour in the rural areas, thereby reducing poverty incidence in these countries. However, while income opportunities for the poor have increased, little attention has been paid to their human development indicators and the levels of literacy, education, etc. remain quite low in these countries. The major concerns of the fisheries export sector were found to be related to environmental causes like SPS measures in the developed countries.

The case study of maize and dairy products in Uganda suggested that trade liberalization in these sectors could not work as a channel to increase growth or reduce poverty. When the two sectors were liberalized, they could not compete in the market. The country did not have a formal market or any other form of institutional arrangement with a regulatory framework. This, in turn, gave way to an increase in informal trade and, ultimately, the sector could not survive on its own, underscoring an overall negative impact of trade liberalization in Uganda.

Given the varying experiences of trade liberalization in different sectors across multiple countries, Dr Raihan submitted some broad lessons gained from his sectoral studies. In short, export-oriented sectors of the country gain from trade liberalization supported by an appropriate external environment for their growth. However, though by definition trade liberalization leads to a reduction in anti-export bias (AEB), not all export-oriented sectors benefit from a decrease in AEB. The lack of product diversification can act as an obstacle in attaining higher/faster growth. Countries tend to suffer from either demand- or supply-side constraints. In addition, within the sector, some firms perform better than others. It is important to understand that, in general, import-competing sectors suffer from trade liberalization. However, inefficiency and weak management also contribute much to the sectors' poor performance during the liberalised regime. Finally, the importance of institutional and regulatory arrangements was highlighted in each case.

**(e) Dr Mohammad A. Razzaque, Economic Adviser, Economic Affairs Division, International Trade & Regional Co-operation Section, Commonwealth Secretariat, London**

### **The Missing Link between Trade Openness and Poverty Reduction: The Role of the Multilateral Trading System**

Dr Razzaque tried to link all four presentations by first addressing the question of generalization of experiences of developing countries in terms of linkages between trade and poverty reduction. He then focused on the role of multilateral organizations and discussed the Doha-induced policy changes and, in conclusion, presented some challenges for further discussion.

By and large, most countries had adopted liberal trade strategies to attain higher national growth rates and reduce poverty in their society. The countries abandoned

import substitution policies and actively engaged in the multilateral trade liberalization process. Referring to an earlier presentation, which highlighted varying experiences of developing countries with regards to trade and poverty reduction, Dr Razzaque stated that even in China, the empirical evidence of the impact of trade liberalization is inconclusive. China has experienced growth in its export GDP ratio, rising from less than 15 percent to as high as 45 percent, while its poverty levels have decreased from an estimated 51 percent to less than 7 percent. It is difficult to generalize the cause of growth. Dr Razzaque refers to the findings of CUTS's commissioned study on TDP linkages, where 8 countries from Asia (Bangladesh, Cambodia, China, India, Nepal, Pakistan, Sri Lanka, and Vietnam) and 5 countries from sub-Saharan Africa (Kenya, South Africa, Tanzania, Uganda, and Zambia) were studied. All 13 countries shifted from a restrictive trade regime to trade liberalization, using similar measures of openness, for instance: reducing quantitative restrictions (QRs) and import tariffs; relaxing foreign exchange controls; privatizing SOEs; and adopting different promotional measures for exports.

While tariff reduction alone is not a sufficient indicator of trade liberalization, but when analyzed in these case studies, it suggests that there has been significant trade liberalization in the countries. Using Vietnam as an example, Dr Razzaque emphasized that Vietnam has an average tariff of 17 percent which is either equal to, or much higher than, many of the countries under study. Comparing Vietnam with countries like Sub-Saharan Africa, which are much more open by the tariff reduction criterion, makes Vietnam appear as a relatively closed economy. However, in terms of the national economic performance of these countries as measured by export GDP ratio, Vietnam has outdone all of the 13 other countries with a substantially higher export GDP ratio. In comparison, Zambia did not perform well and its export GDP ratio fell as a result.

Prima facie, there appears to be a positive relationship between liberalization and growth; but, there are significant differences across countries which suggest both the existence of heterogeneity in the countries yet an inability to apply one solution to all. Despite Bangladesh being a closed economy on the grounds of higher tariffs, it has out-performed Sub-Saharan African countries, which are considered relatively more open. The variation in performance of economic growth is significant even among countries that have a similar pattern of average tariffs.

Dr Razzaque presented another analysis in which he compared the level of GDP growth rate and corresponding annual rate of poverty reduction in each of the 13 countries. In comparing Vietnam and Cambodia, it appears that both had similar average growth rates during the period considered in the study. However, in terms of the rate of poverty reduction, Vietnam did better than Cambodia. In comparing three countries – India, Bangladesh, and Cambodia – in terms of growth, Cambodia's growth performance is found to be the best but its rate of poverty reduction is more or less like Bangladesh; though in this concern, India has done better than both Cambodia and Bangladesh.



Dr Razzaque cited an econometric exercise undertaken for 13 country cases where R-square turned out to be 0.54. He emphasized that statistically only 54 percent of the variations in poverty could be explained by economic growth and that the reason for the variation in the remaining 46 percent is unknown. It is likely that other intermediating factors and complimentary policies, as suggested in previous presentations, are determining the relationship between growth and poverty.

In contrast to Professor Evenett's presentation, Dr Razzaque asserted that the development dimension in the Doha Round is nearly ignored. To start, paragraph 11 of the Hong Kong ministerial declaration refers to a commitment by the member countries to withdraw subsidies on cotton in order to create a level playing field for cotton growers. However, since talks have collapsed, no progress on the issue has been made. Second, despite the clear specification in the Hong Kong ministerial declaration to give priority to services where LDCs have comparative advantage, there has been no further progress. Dr Razzaque asserted that Mode 4 of the services is an important channel for LDCs to address poverty effectively in their country. Third, there is little progress on the implementation of S&DT provisions for LDCs. The stringent conditionalities, like Rules of Origin, make the S&DT provisions all the more non-operational. Fourth, even after long-standing demand from LDCs for effective DFQF market access, only limited success has been achieved. Concrete evidence from research studies and a simulation exercise undertaken at the Commonwealth Secretariat finds that 100 percent DFQF market access for LDCs would result in total gains of more than one billion US dollars. When these gains were transmitted to a country like Bangladesh, using a country-based model, it was found that 100 percent DFQF market access could lead to poverty reduction of about 200 thousand households. Evidently, multilateral institutions have yet to perform in ways that enable LDCs to reap the benefits of trade liberalization.

In regard to Doha-induced policy change, Dr Razzaque mentioned that so far, there has not been any concrete decision on agriculture, save for reducing export subsidies within the 13 countries. Several simulation exercises showed that the impact of the reductions alone will be very minimal, whereas if there is greater liberalization in terms of tariff cuts and other support measures, it can adversely affect net food-importing countries in terms of food price increases, thus challenging poverty reduction and increasing food security concerns. Although an earlier presentation mentioned that developing countries have done relatively well in the NAMA negotiations, Dr Razzaque emphasized that LDCs and other vulnerable countries may face preference erosion. Nevertheless, genuine trade liberalization can help LDCs, and aid for trade could be used to trigger trade export in many LDCs and low income countries.

To conclude, Dr Razzaque stated that the issues of a heterogeneous group of countries should be addressed in a need-based manner rather than by generalization. The second challenge is to ensure flexibility in exercising the WTO ruling to address varying concerns in poor countries. The third challenge is to identify ways to make negotiations 'development-oriented.' LDCs are exempted from taking any new commitments in the

areas of agriculture, NAMA, et al. but they are also kept out of the WTO negotiations and their concerns are not discussed. If the WTO wants to encourage development, then the negotiation process needs to be re-designed in a manner where the developmental concerns of the LDC member countries are addressed effectively and the LDCs actively participate in the negotiations. The final point is to make S&DT provisions enforceable and binding. There are 155 S&DT issues that are not enforceable and do not provide anything productive to most of the LDCs. It is important to facilitate the effective participation of all member countries in the talks as otherwise, the real issues that can impact poverty concerns might not be discussed and newer avenues may not be opened to address trade, poverty, and development linkages meaningfully.

## 2. Questions and comments by the audience

The discussion reflected various competing views from the panel and the audience. It brought together different schools of thought with regards to trade policy reforms that are applied by the countries but which often result in different outcomes. Some of the pertinent questions raised from the floor are the following: If trade does not per se lead to poverty alleviation, can there be poverty reduction without trade?; how should a country tackle the problems of unequal wealth distribution following FDI and trade openness?; what is the likely impact of trade on a country's balance of payments and what are the provisions to tackle such phenomena? The panel also provided their views on the type of economic activities that are either able or unable to lead to development and economic growth.

The panellists addressed the questions and gave their final comments as follows.

Dr Veena Jha took up the question of the impact of trade on a country's balance of payments (BoP). She explained that if a country is not export-competitive and does not have enough export-income to cover the cost of its total imports, it is likely for the country to fall into perpetual BoP crises. In this case, the country can adopt different policy actions to restrict BoP problems. Additionally, the WTO permits the use of different provisional mechanisms like quantitative restrictions, or special safeguard measures (SSMs) when a country is suffering from persistence BoP crises. Such measures can help a country to get out of the bad BoP situation. Addressing the question on the role of trade liberalization in poverty reduction, Dr Jha stated that though there is evidence to suggest that trade liberalization can lead to poverty, there is less evidence to suggest that trade liberalization does not result in growth. UNCTAD's 2006 Report on LDCs shows that out of 43 LDCs, roughly 15 countries have had reduced growth effect of trade liberalization. It is indeed, therefore, a case that trade liberalization can lead to a situation where poverty grows.

With regards to the question concerning what kind of economic activity can have a positive impact through trade liberalization, Dr, Jha emphasized that if trade openness can





lead to domestic capacity creation and enhance backward and forward linkages, such an economic activity is most likely to have a positive impact on poverty reduction. The link with investment is also very important. In other words, if openness can lead to investment in areas where backward and forward linkages can be established, it would impact poverty reduction more effectively. Such a strategy for trade liberalization could also address the problem of African countries in making trade work for their economy i.e. by building those isolated sectors that have backward and forward linkages and using export promotion policies to make linkages work for growth.

Dr Richard S. Newfarmer expressed a different view on the question of trade-related BoP problems. He argued that it is acceptable for a country to have trade deficits for a period of time. High trade deficits do not necessarily lead to BoP crises and such a deficit is sustainable as long as the country's capital account is in surplus. In other words, as long as the macro economic balance is in order, the large capital inflows may yield to higher levels of investment and social rate of return. The same balance can also finance the trade flows. Furthermore, relying on FDI to finance the country's trade deficits is engaging a risk capital and, in such a case, there is no risk to the public sector as trade flows are financed by FDI. Trade deficits need not be interpreted as BoP crises as they depend on macro circumstances within the country. With regards to the question "Can there be poverty reduction without trade," Dr Newfarmer said that over a long period of time, poverty reduction cannot take place without trade as proven in some historical episodes. For example, China, in 1978 and again in 1992, experienced a sharp reduction in its poverty level regardless of the fact that its trade coefficients were very small. However, China underwent a process of gradual reforms and liberalized its large, internal domestic market; this internal liberalization allowed the Chinese economy to grow. If China had not opened up its economy in the 1990s to the international market, the country's growth would have hit a wall. North Korea is another, similar example in this context. There are also documented cases of autarky situations where there are no advantages to trade but, essentially trade takes place because one of the trading partners can make a product cheaper than the other. Therefore, over an extended period of time, it is difficult to achieve poverty reduction without trade.

The question on trade and the distribution of wealth is linked to growth prospects. It is a typical occurrence in many countries that with trade liberalization there is also an increase in income inequality. Studies have shown that, in some cases, income inequality in a country can become so severe that the poverty-reducing effects of growth dampen to a point of zero. As such, suitable policies are required to mitigate the effects of income inequality. As a final word, Dr Newfarmer acknowledged the need for more country-specific research in order to formulate suitable policies in countries like Africa so that they may benefit from trading in the global economy.

Dr Razzaque Mohammad gave his final comments on the issue of the appropriate source of productive economic activity. He argued that the economic theory would advise countries

to trade based on the economic doctrine of comparative advantage. However, invariable cases suggest that a labour intensive country would benefit more in its poverty reduction process if trade, or an economic activity, benefits its labour intensive industry and generates employment. For instance, an increase in trade in the RMG sector of Bangladesh has essentially benefited its low income group, which has contributed to poverty reduction, whereas poverty implications have not been distinctive in non-labour intensive sectors.

Professor Simon Evenett used his closing comments to mention that he strongly endorsed the development of complimentary institutions that are, for example, human resource-related, education-related, social welfare, or infrastructural-related but he would be cautious in saying that a country should undertake all sorts of complimentary policies before initiating liberalization. There are a number of countries that would not benefit in either scenario – either by implementing complimentary policies or undertaking liberalization. Some countries have already applied numerous reforms in the past and now policy advisors must examine how these previous reforms have performed while also taking into account the political interests that prevent domestic reforms from taking advantage of the opportunities offered by globalization. While an external agency can support the reform process, it is important to remember that the principle drivers of development are domestic and often driven by political will; external factors are less responsible in the process.

Dr Selim Raihan, in concluding the floor questions, recommended that while studying the impact of trade policy reform on poverty reduction and development, it is important to distinguish between the static gains and dynamic gains (short-run impact and long-run impact) of trade reforms. Studies have shown that there may be some undesirable impact from trade liberalization on an economy in the short-run but that trade will be beneficial in the growth process of the economy in the long-run, as long as there are no structural rigidities in the economy. However, many LDCs and low income countries suffer from such structural rigidities and thus, the role of complimentary policies is essential for removing these structural inflexibilities and permitting the benefits of trade liberalization. It is likely that, without suitable complimentary policies, the negative effects of the short-run may perpetuate in the long-run.

### 3. Conclusions and way forward

Concluding the panel, the session's moderator, Atul Kaushik avoided identifying formal prescriptive recommendations due to the ambitious and competing issues covered by the panellists. However, Mr Kaushik highlighted the key points emerging as possible proposals relevant to the WTO and noted the contentious and problematic viewpoints that were made.

While there is a lot of evidence in trade analysis to point to indicators for measuring trade liberalization, these reports do not show an essential link between growth and poverty



reduction. Likewise, trade, in itself, is not necessarily good for growth as positive growth requires the union of at least several key channels including: the reduction of corruption, and an increase in investment and infrastructure. If a country is able to improve some of these channels, then the linkages will be stronger and outcomes will be better for both trade liberalization and poverty reduction. However, as the panellists argued, there is no consensus as to what is required in order for trade liberalization and poverty reduction to manifest.

Several presentations suggested an existence of a strong correlation between trade openness and growth. However, as mentioned in Dr Raihan's presentation, different countries have different experiences and levels of success regarding openness, poverty reduction, and growth. In terms of factor productivity, trade is not the sole element for achieving positive results, as other factors, FDI for example, could possibly work more effectively. Both openness and poverty alleviation depend upon the structure of the economy, the pattern and level of protection,

as well as the economic policies, to name a few elements. An additional lesson can be drawn from the CUTS' commissioned project which shows that export-oriented countries tend to benefit from trade liberalization. Thus, reforms in these countries should focus first on reforms to induce more competitive sectors. In addition, as Dr Razzaque stated, the "development dimension" of the Doha Round is neglected and it is important to give adequate attention to developmental issues in the Doha Round of negotiations.

In contrast to Dr Razzaque, Professor Simon Evenett's presentation stressed the urgent need to work on both the trade-poverty linkage question as well as the conclusion of the Doha Round, emphasizing "do not let perfection be an enemy of the good". While the conclusion may contain less than what was originally desired, he said, the Doha Round needs to be concluded in order for all members, particularly developing countries, to benefit.

**B.**

## The New 'Geneva Consensus' Defining People-Centred and Development-Oriented Trade Policy: Can A Human Rights Approach Help?



### **Moderator**

Mrs Caroline Dommen – Director, 3D→ Trade - Human Rights - Equitable Economy

### **Speakers**

Professor Robert Howse – Lloyd C. Nelson Professor of International Law, New York University School of Law

Professor Olivier de Schutter – UN Special Rapporteur on the Right to Food

H.E. Ms Angélica Navarro Llanos – Ambassador of Bolivia to the UN and the WTO

Mr Ibrahim Salama – Chief, Council and Treaties Branch, Office of the High Commissioner for Human Rights

### **Organized by**

3D→ Trade - Human Rights - Equitable Economy and the office of the UN High Commissioner for Human Rights

### **Report written by**

3D→ Trade - Human Rights - Equitable Economy

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## Abstract

The objective of this session was to explore what human rights tools are available to ensure that trade and other – social, environmental, cultural – policies can work in a mutually-supportive way to improve standards of living and sustainable development for all. In particular, speakers in this session explored how a human rights approach can contribute to the challenges and opportunities that the WTO faces today, including that of ensuring that trade and globalization do not leave some countries or some people behind.

Professor Robert Howse stressed the equal status of human rights law and WTO law and discussed how human rights law might influence the interpretation of trade law during WTO dispute settlement proceedings. In order to ensure that WTO adjudicators apply human rights law correctly, Professor Howse advocated the active participation of human rights bodies and lawyers in relevant WTO litigation, as well as human rights training for members of the Appellate Body and legal staff of the WTO. In his capacity as the Special Rapporteur on the Right to Food, Olivier De Schutter outlined four key contributions of a human rights approach to WTO rules and policies. Human rights can a) frame the terms of the debate and bring to light neglected dimensions of trade liberalization, b) provide a framework for impact assessments that evaluate the gains and losses of trade liberalization; c) highlight States' human rights obligations in trade negotiations as well as the implementation of new trade rules; d) ensure that trade agreements contain the flexibilities necessary for all to be able to enjoy their human rights. Ambassador Navarro drew on the Bolivian experience to highlight concrete examples of the links between human rights and trade, demonstrating that many violations of both civil and political and economic, social and cultural rights are a result of trade and economic policies. She stressed the need to change global economic rules, presenting recent initiatives put forward by Bolivia to this effect. Finally, Ibrahim Salama noted that despite the continued divide between the two worlds, there are numerous processes underway within the human rights world – including the elaboration of human rights indicators, human rights impact assessments, and criteria for development partnerships – which are helping to establish the missing links between trade and human rights.

The discussion that followed highlighted, *inter alia*;

- that a human rights approach is not inherently opposed to liberalization;
- the importance of using empirical evidence to demonstrate the links between trade and human rights (and the utility of human rights impact assessments, indicators etc to this end);
- the advantage of a human rights approach because of its accountability and redress mechanisms;
- the importance of not equating human rights with property rights;
- the difficulties in bringing human rights into trade fora;

- a general dissatisfaction with the social clause approach;
- that both WTO and human rights legal provisions contain language that needs to be clarified; and
- the importance of creating better understanding between the trade and human rights communities, including through promoting awareness of human rights legal standards in WTO dispute settlement proceedings, engaging trade and human rights experts in *ex ante* and *post hoc* human rights impact assessments of trade and economic policies, and fostering interaction between the Geneva-based secretariats.

The session was moderated by Caroline Dommen, 3D → Trade - Human Rights – Equitable Economy.

## 1. Presentations by the panellists

### (a) Professor Robert Howse, New York University School of Law

Human rights law and WTO law are legal regimes of equal status. Despite this *de jure* equality, the relationship between these two legal regimes is characterized by fragmentation. Although a few human rights norms have *jus cogens* status that would trump any conflicting treaty provision, treaty regimes are not hierarchically ordered. So how do they interact?

In line with the Vienna Convention on the Law of Treaties<sup>1</sup> and the practice of the WTO Appellate Body,<sup>2</sup> one would expect that, in relevant cases, human rights norms would come into the WTO through the process of interpreting the WTO legal provisions themselves.

Indeed, the Doha Declaration on TRIPS and Public Health, as well as numerous other WTO flexibilities, reflect an unacknowledged debt to human rights consciousness in the WTO.<sup>3</sup> The amendment to the TRIPS Agreement<sup>4</sup> following the Doha Declaration was only possible by interpreting health as a human right.<sup>5</sup>

The possibility of human rights law influencing the interpretation of trade law is reaffirmed by the WTO's Appellate Body's

1 Which provides, *inter alia*, that, in interpreting treaties, "any relevant rules of international law applicable to the parties" must be taken into account (Art. 31(3)(c)).

2 Such as in the Shrimp/Turtle Case.

3 Paragraph 4 of the Doha Declaration states that the TRIPS Agreement, "can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all."

4 Known as the 30 August Decision or the TRIPS Waiver. See WTO, Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, 2003, [http://www.wto.org/english/tratop\\_e/trips\\_e/implem\\_para6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm)

5 The 30 August Decision allows for the exportation of a drug under a compulsory licence, enabling a generic medicines-producing country to export medicines to countries with insufficient pharmaceutical manufacturing capacity of their own. For the full text of the 30 August Decision, see WTO, Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, 2003, [http://www.wto.org/english/tratop\\_e/trips\\_e/implem\\_para6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm)





use of non-WTO legal norms in WTO dispute settlement proceedings. However, can we trust or expect WTO adjudication to rule on cases in a way that is consistent with the spirit and practice of the human rights regime?

In order to ensure that WTO adjudicators do not make a mess of human rights, international human rights bodies must provide interpretive suggestions to the Appellate Body. In addition, if human rights are an issue in any WTO litigation, relevant human rights lawyers should be permitted to submit an amicus brief to WTO adjudicators. Members of the Appellate Body and the legal staff of the WTO should also be given training on the meaning and nature of international human rights norms. There has been some progress in bringing the human rights culture to the WTO but human rights law as a whole is still considered by many trade lawyers as soft law; nothing more than vague and utopian aspirations. An effort to educate the relevant players in the system about the relevance of human rights law must be made.

Finally, although there is nothing inherently inconsistent between WTO law and human rights law, the way WTO law is implemented is often incompatible with the realization of human rights. To this end, legal challenges to the way that WTO law is implemented within domestic legal systems could be made, using both internal constitutional norms of human rights and international human rights instruments.

### **(b) Professor Olivier De Schutter, UN Special Rapporteur on the Right to Food**

Professor De Schutter's presentation focused on the value of a human rights approach to WTO law, with a particular focus on the right to food.<sup>6</sup> The four key contributions of a human rights approach are its ability to first frame the terms of the debate, second, assess the equity of the distribution of gains of trade liberalization, third highlight States' obligations and fourth ensure that Members use the flexibilities that WTO offers.

- Framing the terms of the trade liberalization debate

The human rights approach enables us to pay attention to issues that would otherwise be neglected by trade. For instance, conventional wisdom at the WTO asserts that trade supports food security by promoting the free flow of agricultural products from regions of surplus to regions of deficit. However, food will go to regions where there is a *solvent* demand and there is nothing to stop food being exported from countries with a starving population. For example, while India is a net exporter of food, 231 million people in the country remain undernourished.<sup>7</sup>

Second, at the core of the theoretical justifications for international trade is the belief that the specialization of each

country according to comparative advantage will ultimately lead to a global increase in food production. However, the quantity of food produced does not guarantee the end of hunger. The availability of food on the market must be coupled with its accessibility<sup>8</sup> or affordability. If specialization according to comparative advantage further impoverishes the rural areas, already hungry rural populations will suffer further violations of their right to food.

Thirdly, it is often claimed that trade liberalization will contribute to food security through poverty alleviation. This argument rightly assumes that the main obstacle to the realization of the right to food is not a global lack of food, but the insufficient incomes of those who are food-insecure. However, the 'trickle-down' effect, according to which wealth from liberalization will trickle down from the rich to the poor, has been challenged on both theoretical and on empirical grounds.<sup>9</sup> What is clear is that different forms of growth are not equivalent from the point of view of their poverty-reducing impacts. For instance, as shown by World Bank studies, growth which benefits the agricultural sector will generally have a greater positive impact on food security than other forms of growth.

- Equal distribution of the gains from trade liberalization: the need for impact assessments

Professor. De Schutter argued that a human rights approach enables us to assess whether the gains of trade liberalization are equally distributed within countries. Human rights oblige us to assess the possible impacts of trade liberalization, particularly on the poorest and most vulnerable sectors of society. By basing impact assessments on human rights, we provide States with a sound, and universally agreed, analytical framework with which to evaluate the impact of trade agreements on social goods and human rights.

Second, human rights impact assessments should also take into account process issues relating to trade agreements; are the negotiations transparent? Are national parliaments, civil society, and trade unions involved?

Third, the use of human rights impact assessments may be empowering for individuals and communities who, on the basis of the results of such assessments, will be able to mobilize and formulate claims where their human rights are threatened by trade negotiations.

- State obligations: to trade *and* human rights

A human rights approach forces States to take its human rights obligations into account when negotiating trade

6 De Schutter will release a report on the impact of the WTO on the right to food by the end of 2008.

7 FAQ, Hunger on the rise: Soaring prices add 75 million people to global hunger rolls, 17 September 2008, <http://www.fao.org/newsroom/en/news/2008/1000923/>

8 According to the General Comment on the Right to Food, accessibility means that food has to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: 1° Non-discrimination, 2° Physical accessibility, 3° Economic accessibility (affordability). See Committee on Economic, Social and Cultural Rights, General Comment 12: The Right to Adequate Food (Art. 11), 1999, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)

9 See for instance, Howard Nye and Sanjay G. Reddy, Making Trade Policy Work for the Poor: Shifting From Dogma to Detail, 2002, <http://ssrn.com/abstract=944616>





agreements, particularly the right to food when negotiating on agriculture. In addition, given that States have obligations to both their own populations, and people outside their territories, negotiators must ensure that they are not making proposals that will lead to violations of human rights in other countries.

- Ensuring the necessary flexibilities

In order for human rights to be respected, protected and fulfilled, trade agreements must include adequate flexibilities. For example, the Special Safeguard Mechanism is essential to ensure that, in the case of import surges, the livelihoods of farmers selling on the domestic market are protected. Furthermore, the Marrakech Ministerial Declaration must be revitalized to ensure that the food needs of least-developed and net food-importing developing countries are protected in cases of rapidly increasing prices on international markets.

### **(c) Ambassador Mrs. Angélica Navarro Llanos, Ambassador of Bolivia to the UN and the WTO**

Ambassador Navarro drew on the Bolivian experience to highlight concrete examples of the links between human rights and trade.

A significant part of the violations of civil and political rights in Bolivia have been a result of economic and trade policies originating from the Bretton Woods Institutions. For example, during the peak of “autonomous” liberalization, the Bolivian government privatized the public water system in Cochabamba. Within weeks, the US company which took control of the water supply increased rates by 200% or more. Workers earning the average minimum wage were required to pay up to quarter of a family’s revenue just to have water. The city revolted, resulting in clashes with the police, which left more than 100 people wounded.

A second example stems from the privatization of the country’s natural resources in the 1990s. When the government’s plans to sell natural gas to the US through Chile were revealed, people living in the capital demonstrated, demanding the restitution of the country’s natural resources. The government of Gonzalo Sánchez de Lozada responded by killing 67 civilians and wounding more than 400 others.

The examples above show that economic and trade policies have a direct impact on the violation of human rights. However, developed countries generally only show concern in the later stages of this problem – meaning when governments violate the civil and political rights of their population. Rich countries do not question the economic and trade policies that are at the root of these violations.

Economic, social and cultural rights are also affected by economic and trade policies. How can article 12, which obligates State parties to ensure the right of everyone to the enjoyment of the highest attainable standard of physical and mental health be fulfilled in conditions of, for example, extortionately high water prices?

The second example, regarding the privatization of natural resources, also has a direct impact on the enjoyment of economic, social and cultural rights. The privatization of hydrocarbons undermined the ability of the state to guarantee access to education, health and other services – that are fundamental to the enjoyment of human rights – because of reduced government revenue. Foreign companies received 82% of profits, giving just 18% to the government. Now, under Morales, this has been reversed, providing funds that have been used to improve education, health and other areas. The fulfilment of human rights is possible to achieve, but governments must have the flexibility to do so, which is why it is so crucial that WTO flexibilities are preserved and used.

There are also numerous examples from the current Doha Round of negotiations which demonstrate the link between trade and human rights. Recently, two developed countries put forward a proposal for tightening export provisions and restrictions for all WTO members. At the beginning of the current food crisis, Bolivia issued an export restriction, essential for protecting the right to food of poor majority,<sup>10</sup> which could have been affected by this proposal.

Given that trade and economic policies have such significant impacts on civil, political, economic, social and cultural rights, it is clearly time to change global economic and trade rules. To this effect, Bolivia has put forth two proposals in the WTO negotiations. First, the country has demanded the inclusion of a reference relating to food aid; specifically that food aid should never create food dependency in the recipient country and that the maintenance of independence should be monitored by UN agencies.<sup>11</sup> Second, in conjunction with Venezuela, Cuba and Nicaragua, Bolivia has requested that basic services, such as health, education and water, energy, telecommunications – all crucial to the fulfilment of human rights – are treated in a different category in the negotiations and possibly even withdrawn completely. Civil society organizations have been highly supportive of the initiative.

In conclusion, Ambassador Navarro emphasized the need for human rights to take precedence over trade – trade is a means, not an end in itself, and human rights should be at the core of what we are doing and negotiating at the WTO.

<sup>10</sup> This restriction was essential because the price of a litre of oil had risen from less than \$1 to more than \$2. Considering that 60% of the population of Bolivia lives on less than \$1-2 per day, this price rise had a huge impact on the ability of the population to enjoy its right to food.

<sup>11</sup> This proposal reflects Bolivia’s history – after receiving food aid from the US in the 1950s, Bolivia remained dependent on American wheat for the next 60 years, having previously been self-sufficient. What started as the provision of emergency food aid, ended in a situation of dependence where small-scale Bolivian producers were pushed out of production by imported, subsidized agricultural products, compromising the right to food and food sovereignty.



**(d) Mr Ibrahim Salama, Chief, Treaties and Council Division, Office of the High Commissioner for Human Rights, former member of the Working Group on the Right to Development**

It is clear that trade needs human rights in terms of the sustainability of its impact and that the two disciplines have a lot in common. What explains the continuing divide between these worlds? As well as differences in balances of power, experience required, and institutions, these two sets of norms are based on fundamentally different logics; there is no need to deserve your human rights but you need to deserve your gains in a trade setting. This fundamental difference in nature may help explain why trade specialists look at human rights as just as set of aspirations.

In addition, there remains a fear caused by the word "rights." This is exemplified by the fact that the Millennium Development Goals, which are effectively economic, social and cultural rights, had to be called goals instead of rights.

Moreover, the institutions do not efficiently link together. There are numerous human rights bodies highly relevant to trade, including the Committee on Economic, Social and Cultural Rights, Special Rapporteurs on issues like the right to food or the right to health, the Working Group on the Right to Development and the Office of the High Commissioner for Human Rights. However, they remain very far apart from the WTO.

Despite this, great breakthroughs are occurring with regards to bringing human rights into trade, such as:

- Human rights indicators are being developed, making human rights issues almost as quantifiable as trade (although not without resistance from different member States).
- Human rights impact assessments, such as those elaborated by Simon Walker, similarly help to de-mystify human rights and quantify them in terms that development practitioners can understand.
- The Working Group on the Right to Development has started to develop criteria for assessment of development partnerships. Those criteria are tools which will enable the trade community to have a checklist regarding what should be integrated into a trade policy from a human rights point of view. In this sense the right to development is starting to work as a transformer between two languages and logics.

Among the criteria for the right to development is the obligation to evaluate to what extent a development partnership includes *ex ante* impact assessments and social safety nets in case of negative impacts, and to what extent it provides a participatory process for affected populations, as well as a system of periodic evaluation and assessment, allowing for adjustments if necessary. Impact assessments, social safety

nets, and criteria for the right to development can help to establish the missing links between trade and human rights.

Mr Salama cautioned human rights activists against claiming superiority of human rights *vis-à-vis* trade. It must be remembered that human rights law is often seen as a weaker part of international law compared to trade law. Within this weak part of international law, economic, social and cultural rights are seen as less strong than civil and political rights. And the right to development is perceived to be at the very bottom of this hierarchy. The best approach, as exemplified by the Working Group on the Right to Development, is to include representatives of the WTO and other international financial institutions in human rights discussions.

## 2. Questions and comments by the audience

Caroline Dommen, 3D→Trade - Human Rights - Equitable Economy reflected on Mr Salama's point about human rights activists not claiming superiority. She asked whether the human rights community should in fact be more assertive in defending human rights, referring to the lack of assertion that lead to the Doha Declaration on TRIPS and Public Health which *allows* States to take measures to promote public health even though such measures are *required* by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

Mr Salama answered that instead of prioritizing human rights, the question must be how to integrate trade and human rights. The human rights indicators, impact assessments and criteria for the right to development all aim to establish the empirical evidence needed to convince the trade community to take human rights into account.

Peter Davis, student at the Graduate Institute of International and Development Studies, Geneva asked that since Human rights ideals can be used to violate property rights, whether there was a case where human rights should overrule property rights.

Professor Howse responded that Human rights always involve a balance between different rights and policy goals, as illustrated by laws limiting freedom of expression in the context of hate speech. Despite this indeterminacy, there now exists a large body of jurisprudence and expertise on how to strike these balances. It should also be noted that indeterminacy is also prevalent in WTO law, as exemplified by the concept of 'like products', a term which, in practice, is determined on a very contextual basis. The claim that human rights law is too vague and indeterminate to be applied in a context like the WTO, simply does not hold.

Ambassador Navarro added that with regards to the conflict between human rights and property rights, it is essential to have one's priorities right – is one going to prioritize human rights over land and property rights or vice versa?



Simon Walker, OHCHR then asked what the added value of a human rights approach in comparison to a social development approach was and why we should be looking at the right to food instead of food security. According to him there are risks to a human rights approach. Political risks include the hostility human rights generate, as exemplified by the hostility in previous years to the idea of having a human rights panel at the WTO Public Forum. There are also normative risks. For example, what if someone starts claiming the right to free trade, against another's' right to health? Although this position cannot be justified at the international level, some national norms do include the right to free trade. Given these risks, what makes a human rights approach worth adopting?

Professor De Schutter responded that a human rights approach is advantageous because it provides accountability and redress mechanisms that can in principle be brought before a court of law. In addition, economic, social and cultural rights have become hard law, backed by a large body of jurisprudence built by the Committee on Economic, Social and Cultural Rights. However, beyond non-specialist circles this development is not well-known, with civil and political rights remaining dominant. It is crucial to open a communication channel between the trade community and the human rights community and assert the equal weight of both sets of norms. There remains the risk that human rights might be annexed by the trade community. Given the risk of having human rights dealt with by non-specialists, there must be no introduction of a social clause within the WTO.

Ambassador Navarro added that there is currently no dialogue between the WTO and the different human rights organs that exist in Geneva. For example, why was the Committee on Economic, Social and Cultural Rights not involved in the Doha Declaration on TRIPS and Public Health? Dialogue is imperative – after all, the WTO and the human rights bodies are just metres away from each other, in physical terms at least.

Kimmo Sasi, Council of Europe asked what would be the consequences if a poor person living in a city in India argued that the Indian government's high import duties on food prevented him from being able to access cheap food and thus violated his right to food, and ultimately to life.

Dale Honeck, Trade in Services Division, WTO in a similar vein to the above asked whether there had been studies on the human rights consequences of not liberalizing. He gave the example of the liberalization of telecommunications that has allowed foreign service providers to start operations in country X, bringing telecommunications to rural areas and reducing overall prices for telecommunications. Despite this, foreign competitors risk eviction, even though this would clearly have negative consequences for the population and for human rights. Has thought been given to the human rights consequences of not liberalizing?

Professor De Schutter answered that a human rights approach does not favour liberalization or protectionism. What human rights do require is accountability of governments. There must be more transparency through the use of impact assess-

ments, indicators to evaluate commitments, and flexibilities allowing countries to react to situations that may affect human rights as they occur. These mechanisms would promote compatibility between the norms of trade and human rights. Trade *per se*, in most cases, will have a very indirect relationship to a human rights violation. In most cases a violation will be a result of a trade regime plus policy measures adopted at the national level which may or may not protect the human rights of a country's population. In the hypothetical Indian case presented above, the solution may not be to lower the tariff, which would threaten food producers, but maybe to provide food-for-work programmes to insulate the urban poor from the impacts of high prices.

Ana Maria Mülser Parada, Consul-Adjoint, Consulate General of Brazil, Paris, asked how human rights could be put on the WTO's agenda after two missed opportunities one is with regards to the Doha Declaration on TRIPS and Public Health, which, despite being a rights issue, was explicitly not framed in human rights language. Another failed opportunity was with regards to the social clause.

Professor Howse responded that first, the Dispute Settlement Body has called for more openness to non-commercial values and one should focus on them to encourage more openness to human rights arguments. Second, according to him a social clause may not be the best avenue. The ILO protects workers rights already, and the trade embargoes on Burma, which aim to enforce ILO standards to protect workers' rights, have been accepted by the WTO. It is very significant that there is no opposition to these embargoes which seek to promote the realization of human rights. Given the above, it may well be a waste of energy to enact a social clause at the WTO.

Ambassador Navarro added that the following example may serve to emphasize how difficult it is to bring human rights into trade fora. Five years after the Doha Declaration on TRIPS and Public Health, during negotiations on intellectual property and health, one industrialised country trade negotiator asserted that, only 'over his dead body' would the right to health be included in a sentence with TRIPS and intellectual property.

Then, Professor De Schutter stated that the social clause was seen by some developed countries as a way to integrate human rights of developing country workers in the WTO by conditioning market access with human rights benchmarks. A route, such as that proposed by advocates of the social clause, may be highly problematic he emphasized. Second, the five years since the Doha Declaration on TRIPS and Public Health have demonstrated that it is not enough to proclaim flexibilities; people have to give countries the financial means and capacity to use them.

Finally, Mr Salama recommended that human rights be brought into trade through human rights impact assessments. He noted that impact assessments must be carried out by independent experts, not member states, on a case by case basis and that they must be carried out jointly by experts from different disciplines. He emphasized that rights frighten people and that in order for the trade world to accept human rights, it may be



necessary to take the rights language out of the impact assessments and other measures designed to promote human rights. In order for this to happen, the secretariats of the trade and human rights bodies must be willing to work together as well as member States.

Professor David Diaz, Université de la Méditerranée, Marseille provided his view on how to prepare governments to make responsible commitments in the WTO that are coherent with the Millennium Development Goals. The first task is to make governments aware of the need for coherence between human rights and trade. There must be coherence at the national level; representatives of different ministries must meet with human rights activists and trade experts.

Gloria Carrión, ICTSD asked how a human rights approach could be operationalized in the context of the *realpolitik* of trade negotiations. She gave the example of the recent CAFTA-DR negotiations (with the US) in Nicaragua, despite the fact that civil society (including the private sector, non-governmental organizations and social movements) were invited by the government to be involved, in the end,, it was the larger private sector actors who had direct access to the negotiators and who saw their interests represented in the final agreement. Furthermore, she noted that the Central American countries negotiating space was eventually limited by the power of its negotiating partner.

Ambassador Navarro answered that a human rights approach is being operationalized in Bolivia, with the government and civil society all pushing together for the inclusion of human rights in the constitution and at the level of international institutions. The new constitution, which will be voted on in a referendum on 25 January 2009, even includes rights that are not explicitly included in the International Covenants on human rights, such as the right to water and the right to essential services.

### 3. Conclusions and way forward

The variety of proposals put forward by both panellists and members of the audience helped to demonstrate the utility of human rights to international trade in general and the WTO in particular. The overarching conclusion of the session was the need to promote dialogue between the human rights and trade bodies, both here in Geneva and in national arenas. In this regard, avenues for action include:

- Promoting awareness and openness towards human rights in the WTO's Appellate Body, including through training programmes for WTO adjudicators and increased participation of human rights experts in WTO legal proceedings;
- Using human rights impact assessments, indicators and criteria to evaluate trade, development and economic policies. Such assessments must be carried out by independent experts from both trade and human rights bodies and can help to:
  - promote accountability by highlighting States' human rights obligations in both trade negotiations and implementation;
  - ensure that trade agreements include the necessary flexibilities to promote improvement in standards of living and sustainable development goals;
  - highlight the potential negative consequences of trade agreements, particularly on the poorest and most vulnerable sections of a population, and thus indicate where international trade commitments must be coupled with national policies to ensure international trade promotes the well being of all;
- Making some changes to global trade and economic rules to ensure that the WTO rules promote human rights through, for example, amendments regarding food aid and services.



C.

## Should the Doha Agenda on Agriculture be Revised in Light of New Challenges Facing Farmers?



### **Opening remarks**

Ms Elisabeth Gauffin – Vice President, International Federation of Agricultural Producers (IFAP)

### **Panel of main negotiating groups**

H.E. Mr Ujal Singh Bhatia – Ambassador, Permanent Representative of India to the WTO

H.E. Mr Eckart Guth – Ambassador, Permanent Representative of the European Communities to the WTO

Mr Paulo Estivallet de Mesquita – Deputy, Permanent Representative of Brazil to the WTO

Mr David Miller – Agricultural Minister-Counsellor, Permanent Mission of the United States of America to the WTO

### **Closing remarks**

H.E. Mr Crawford Falconer – Ambassador, Permanent Representative of New Zealand to the WTO and Chairman of the Special Session of the Committee on Agriculture

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## Abstract

*The main objective of this panel was to discuss and examine the relevance of the Doha Development Agenda (DDA) in the face of unforeseen events since the DDA was set in 2001 -namely the food crisis, the global energy crisis and pressures of climate change and other environmental issues. Ambassadors from the G-4 nations – Brazil, EU, India, USA – and the Chair of the Agricultural Negotiations in the WTO were asked to respond to the following questions:*

- *Should the Doha negotiating agenda for agriculture be revised in light of new challenges facing farmers and governments?*
- *Would any new investments in smallholder agriculture to meet food security and climate targets be compromised by the draft deal that is currently on the table in the WTO?*

*Even though there was no agreement over the content of the current DDA, a general consensus was reached that the current round should end and another agenda should not be drafted before this happens. The panel also agreed on the need to take into account these new challenges, making sure farmers, and in particular smallholder farmers' needs and vulnerability is addressed, in order to reach to a more balanced agreement. There was agreement on the fact that trade is not an end in itself and that the WTO cannot directly address all these challenges. Therefore, a holistic approach has to be put forward in order to face increasing global challenges.*

## 1. Presentations by the panellists

Elisabeth Gauffin (Sweden), Vice-President of IFAP and Chair of the session, introduced the panellists and noted that the international community was currently rallying behind a new agenda marked by the need for increased investment in smallholder agriculture in developing countries and sustained productive capacity in developed countries. This new agenda is also looking at environmental considerations like conserving biodiversity and addressing climate change effects. A lot has changed since 2001 when the DDA was drafted, events that the WTO negotiators could not have foreseen. Is the WTO negotiating agenda still appropriate to meet these new challenges? For example, would any new investments in smallholder agriculture to meet food security and climate targets be compromised by the draft deal that is currently on the table at the WTO?

### **(a) Ambassador Ujal Singh Bhatia, Permanent Representative of India to the WTO**

Ambassador Ujal Singh Bhatia, noted that an outcome based on the existing Doha Agenda would not touch upon many of the new challenges facing farmers around the world. At the same time, he would not support the revision of the Doha Agenda to incorporate the new challenges. It has taken

seven years to reach our current level in the negotiations, he said. Ambassador Bhatia acknowledged that there is indeed a new challenge in the spotlight, marked by several global crises and marked by the mismatch between growth of consumption and production. He also deplored that the Doha Round does not tackle the situation of smallholder farmers properly. He pointed out reasons for this mismatch: increased demand caused by growth in some emerging countries, diversion of food crops to other purposes (e.g. fuel), unpredictability of the weather due to climate change and increased petroleum prices. All these factors have been heightened by the influx of speculation and export restrictions put in place to tackle price volatility. There is nothing in the Doha agenda to bring comfort on these issues.

Food security is linked to entitlements or purchasing power and the solution to reaching food security is through enhancement of social entitlement, therefore boosting employment and reducing poverty.

There is a need to invest in local food production through infrastructure development, well-functioning markets and incentive-based agriculture production to efficiently relay price signals. In most countries, this means inciting small-holder agriculture. Governments have a crucial role to play in this regard. Governments have followed the "laissez faire" path for too long, and this system does not deliver food security. The lack of tariff protection on food crops, he added, has increased import dependence, affecting food security in many developing countries. The key response to challenges facing developing countries, which have global effects, has to be incentive-based agricultural production.

The Doha Round is ambitious in aiming to reduce trade distortions at the global level. The Doha Round will have played an important role in the transformation of global agriculture if it leads to meaningful commitments for addressing distortions. Eliminating cotton subsidies in the US for instance, will dramatically help cotton farmers in developing countries, especially Africa.

To conclude, the Ambassador recommended strongly that in order to get a supply response from farmers in developing countries, putting them at the centre of policy formulation is key. He added that even though the Doha agreement touches on important points, it fails to address all the challenges e.g. high and volatile prices, climate change, environmental degradation, water shortages and insufficient productivity. It is still important to adjust to these challenges by including a differential set of rules for developing countries in the Agreement.

### **(b) Ambassador Eckart Guth, Permanent Representative of the European Commission to the WTO**

Ambassador Eckart Guth, suggested that negotiations under the Doha Round are close to a successful conclusion. He recalled the historical context that led to the establishment

of international trade rules. The creation of several incentive instruments, such as price support, import restrictions, export subsidies and credits aimed at supporting farm income, stabilising internal prices and ensuring affordable prices for domestic consumers, led to distortions in agricultural markets. These mechanisms have been mainly initiated by developed countries. At that time, agricultural trade was not included in the GATT rules. These distortions were to the detriment of those countries which enjoyed a comparative advantage in agricultural production and to those countries which lacked the capacity to mobilise their production potential. The Uruguay Round witnessed a shift in trade talks in the sense that it enabled the integration of agriculture into the multilateral trading system.

The EU, noted Ambassador Guth, has significantly reformed its agricultural policy, which gives encouraging signals for the success of international trade negotiations. These reforms include the decoupling of farm support from production and substantial reductions of export subsidies over the last 10 years, resulting in market opportunities for both developed and developing countries. The EU has become the largest importer of agricultural goods.

He reemphasised the EU's willingness to go further in this direction in the context of progressing the Doha Development Agenda (DDA). Ambassador Guth recalled the main elements of the DDA which include: strengthened rules and specific commitments on support and protection to avoid trade distortions, improvements in market access, reduction and phasing out of export subsidies, reductions in trade-distorting domestic support and special and differentiated treatment for developing countries to effectively take into account their development needs.

He noted that despite the new challenges since the launch of the round in 2001, the overall trade and development objectives of the DDA remain fully valid.

He outlined the EU's proposals to advance the negotiations, the key elements of which are as follows: 60% average cut in the EU's farm tariffs, an 80% cut to EU's trade distorting agricultural subsidies, and elimination of all remaining export subsidies by 2013. Furthermore, all the economic estimates suggest that developing countries are the biggest beneficiaries of the DDA in terms of GDP growth. Ambassador Guth called for more market-oriented and less trade-distorting agricultural policies in both developed and developing countries.

Ambassador Guth suggested the following would be positive results for farmers from a successful conclusion of the DDA: the reduction of trade-distorting measures should allow a better mobilisation of countries production potential and achievement of food security; stricter food aid rules should avoid the displacement of local and regional production; import and export restrictions should lead to reduced food price volatility; stable food prices should provide security for farmers in developing countries to plan medium and long-term investment; better functioning agricultural production and trading systems are a prerequisite to respond to growing food demand. The DDA is also aimed at increasing aid-for-trade. The EU, Ambassador

Guth claimed, will contribute two billion Euros per year for this from 2010 and beyond.

He added that many instruments need to be deployed in order to improve investments in agricultural research and technology and to increase productivity, improve infrastructure, and provide education and training to rural populations. He concluded by warning against any revision of the Doha Agenda; this would only be a pretext to delay the negotiations to the detriment of farmers.

#### **(c) Paulo Estivallet de Mesquita, Deputy Permanent Representative of Brazil to the WTO**

Paulo Estivallet de Mesquita outlined the effects of trade-distorting subsidies. He highlighted the fact that the abundance of labour-intensive agricultural products from developed countries in developing countries' markets (in particular in Africa) is mainly due to the fact that these products are subsidised. This is what the WTO should help redress. However, Mr Estivallet de Mesquita warned against the limits of what can be achieved by a trade multilateral system. Regarding the incorporation of some of the new challenges into trade rules, he said that there are policy instruments which are good at imposing a fair resource allocation. He also insisted that solutions to the challenges require the collaborative efforts of several multilateral institutions. The role of the WTO is to monitor international rules and ensure the improvement of resource allocation.

The current rise in food prices should serve to remind us of a lesson from the past. In the seventies, trade policies led to distortions in the marketplace. This needs to be avoided. There is no need for an immediate trade policy response as the high level in food prices is not directly linked to trade but to other factors. Therefore, these challenges should be tackled via other international fora. In many cases, food prices have been multiplied by a factor of three. It is thus difficult to envisage a major increase in a near future. Increased investments in particular in infrastructure, transport, storage and agricultural research are critical.

#### **(d) David C. Miller, Minister-Counsellor for agricultural affairs at the US mission to the WTO**

David C Miller said that when addressing the question posed by IFAP, it is important to bear in mind the role of the WTO which is not equipped to carry out much of the work that could be done by such organisations as the FAO, the Consultative Group on International Agricultural Research (CGIAR), and National Ministries of Agriculture e.g. agricultural research or extension services.

Mr Miller explained why the DDA is the right framework. First, it represents the most ambitious framework ever developed (150 countries) since the creation of the WTO and GATT. Second, this round offers the opportunity to eliminate or significantly reduce trade barriers, thereby generating economic growth and development and thus alleviating poverty around the world. Third, given the importance of global food security, concluding



an ambitious DDA that leads to increased market access for agricultural products and reduces trade distorting subsidies that would generate new trade flows and thus reduce poverty is essential.

The mini-ministerial meeting in July, Mr Miller claimed, resulted in tremendous progress in the main negotiating areas. According to him, a successful conclusion of the DDA, would continue to close the gaps and achieve success. In this context, upsetting the balance reached in the Doha Round is not to be undertaken lightly. He added that these Doha Round negotiations are much closer to the finishing line than to the beginning. A positive outcome will bolster confidence in the multilateral trading system and trade liberalisation will give a new impulse to development and economic growth worldwide, Mr Miller concluded.

## 2. Questions and comments by the audience

In the discussion that followed, interventions were made by farmer leaders from the IFAP network and other participants. The points raised during the discussion include the following statements.

The agricultural sector is severely affected by the food crisis, climate change and soaring input prices, especially in developing countries. Therefore, despite the unprecedented participation by these countries in the negotiations, developing countries need to have more input and influence on the outcome of the deal.

Farmers disagreed with Mr Lamy's statement that part of the solution is to drive down prices so consumers buy more. This is not a sustainable approach and does not help farmers. Increased food prices represent an opportunity to attract more investment into agriculture to overcome hunger and poverty. We should talk about "food chances" instead of "food crisis".

Given the encompassing nature of the agricultural sector, it cannot be treated from a market access perspective only. The WTO has to take into consideration how market access relates to the issue of livelihoods and food security. Therefore, issues related to policy interventions to be put in place as well as differential strategies in agricultural negotiations to be agreed upon, are indeed critical to solve.

The issue of the Special Safeguard Mechanism (SSM) embraces the concerns of all farmers from developing countries. However, the SSM issue is not just a developing countries issue; there are many exporting countries from the developed world for which this is an important issue. A multilateral system such as the WTO needs therefore to come up with multilateral solutions as fast as possible.

Farmer empowerment is key in these multilateral negotiations on agriculture. There is obviously an investment deficit in developing countries, especially in regard to small-

holder agriculture. Unless this deficit is addressed through significant investments in developing countries to empower farmers, to increase productivity and to ensure well-functioning markets, a sustainable solution to the crisis will not be found.

The WTO rules cannot guarantee price stability for farmers. The focus of the WTO is mainly on removing distortions and opening markets. This is not enough to guarantee income stability for them, as there are other factors in play.

In order to achieve food security, there is a need for a well-functioning world trading system. However, the last two years have shown that in some respects, the world trading system is not well functioning, because, a certain number of countries around the world have imposed export taxes on both agricultural commodities and inputs. Traditionally, the WTO is looking at reducing import taxes and tariffs and prohibiting export subsidies. The WTO fails at prohibiting export taxes and import embargoes. Despite the urgency to come to an agreement to conclude this round, there is a need to recognize and address these issues.

Unfortunately, the debate within the WTO is increasingly focused on issues of interest to the developed countries. Rather, there is an urgency to think of the type of mechanisms needed to support small-holder and family agriculture making it more competitive.

At the global level, there seems to be awareness of the negative effects of export subsidies and global embargoes. Regrettably, in NAMA, the EU proposals have been ambitious in the beginning and then have been adjusted to other partners. There are still continuous efforts in getting better rules on export taxes. There are some discussions around the need for internal subsidies instead because export restrictions tend to put downward pressure on domestic prices and embargoes tend to exacerbate price volatility. Therefore, there is a need to tackle these issues.

The developing countries are the biggest winners in this agreement, especially, in agricultural production. Less distorted prices will, in the medium-term, benefit the producers in the developing world because stable and higher prices will provide incentives to stay in production and to produce food for the local populations.

Without the signing of the current deal, the EU will not be restricted in its commitment to eliminate export subsidies. Temptation within the farming community as well as in the agricultural ministries, in such a context of crisis, will be to refer back to export subsidies. However, there is willingness from the EU community not to step in this direction and to negotiate this matter in the current talks. Regarding export subsidies, there is an obvious link between export taxes and import taxes. They both increase or magnify the effect of domestic policy on the international market. Pursuing a policy based on national price stability, will increase price volatility internationally.

The case of agriculture in the negotiations is very complex. Even under the best of scenarios in the negotiations, there would still be high import tariffs in a number of countries. The challenge remains for the exporting countries.

The answer to the question of whether high prices are an opportunity is complex. The main objective of international trade is to lower prices in some places and increase them in others, thereby, striking a balance worldwide. Low international prices have had a depressing effect in developing countries. There has been a supply response to higher prices, in Brazil for instance. However, in many other countries the increase in food prices has not been sufficient to cover the large rise in input costs and thus to stimulate production.

If we want to turn the food crisis into an opportunity by getting a supply response from farmers and thus enhancing food production in developing countries, the centrality of small farmers in developing countries has to be recognized. There is also a need to invest in rural infrastructure in most developing countries. Unfortunately, the international community has not been playing the positive role it was expected to play. For instance, structural adjustment programs imposed on LDCs by the IMF have had negative impacts on them (socially and economically). One of the reasons also being the diversion of large tracts of land from staple foods to cash crops. As a result, the role of the IMF and the World Bank has been called into question. Over the last decades, the total amount of expenditure of the WB on agriculture has been less than 10% of its budget. The recent re-examination of its policies was thus most welcome.

On export restrictions, it is too easy to say that there is no mandate in the Doha Round on export restrictions. This issue should be addressed in a more global context of reducing distortions, improving the functioning of markets at both the domestic and international level, in order to tackle the current challenges.

The issue of subsidies can only be addressed in a multilateral forum and the WTO is obviously the right framework where this issue can be addressed. It is not possible to discuss it within the framework of bilateral or regional free trade agreements.

Ambassador Crawford Falconer, Permanent Representative of New Zealand to the WTO and Chairman of the Special Sessions of the Committee on Agriculture, acknowledged that the new challenges needed to be dealt with, but suggested that addressing them - and how they interact with trading rules - would be more feasible if the present negotiation round was concluded first and used as a foundation. He strongly warned against envisaging a new agenda while the existing one was still on the table.

Concluding the existing negotiation is not an end in itself. It is meant to serve as a platform to pave the way for future progress. According to Ambassador Falconer, it is not possible to aim for a new model within the multilateral process. This is highly desirable but not very feasible. If we want to be successful in dealing with the interactions between climate change and the

international trading rules, there is a need to have a base and to know what framework to work within. Therefore, concluding the on-going trade negotiations by coming to a convergence of views is critical should we want to deal with other issues.

Ambassador Falconer regretted that no matter what the outcome of the trade negotiations will be, it will unfortunately not have a short-term response to address the food crisis.

To answer the first question posed by IFAP on whether new investments in smallholder agriculture to meet food security and climate targets might be compromised by the draft deal that is currently on the table in the WTO, Ambassador Falconer sounded quite optimistic. He said that the current negotiations are very unlikely to provide agreements that would fundamentally impede the capacity of small farmers to meet the objectives of food security and climate change, even though there are a few elements that still need to be settled. He assumed that the latter would probably fall into the green box.

A number of issues from the floor were addressed to Ambassador Falconer. His answers to the questions can be summarized as follows:

The issue of different treatment for developing countries is a critical element in the overall balance of the DDA agreement.

There is a need to reconcile the different objectives by supporting developing countries using such mechanisms as aid-for-trade, special and differentiated treatment, and duty-free quotas. Reduction of subsidies on the one hand means as a counterpart, opening up markets on the other. Therefore, countries need to share the same global vision should they want to achieve a fair agreement.

The SSM is a way to overcome the competitive disadvantages among countries. It has become even more important in the context of the food crisis. He recognized that the negotiations on SSM have proven to be difficult. He reassured the audience by saying that it will be part of the final agreement even though there is uncertainty over its content. The SSM issue is not just a developing countries issue; there are many exporting countries from the developed world for which this is important.

The WTO rules cannot guarantee price stability for farmers. The focus of the WTO is mainly on removing distortions and opening markets. This is not enough to guarantee income stability for them as there are other factors in play.

On the one hand, he does not underestimate the remaining obstacles in the negotiations but he is convinced that there is not much room for changing the principle positions. The final adjustments will be difficult to achieve.

### 3. Conclusions and way forward

This side event was very well attended and there was a productive exchange of views between the Ambassadors and



agricultural stakeholders. Farmer leaders raised several issues which will hopefully be seriously considered by the negotiators in trying to conclude the DDA.

Mr Gauffin urged panellists to keep farmers' interests and sustainability concerns at the forefront of negotiations. There is no consensus on the Doha Development Agenda, but there is no denying that significant new challenges affecting global infrastructure have developed since the drawing up of the DDA in 2001. There are real issues and new elements to be taken into account such as resource allocation, sustainable growth and investments. IFAP welcomes a framework that farmers can adapt and adjust to. Global problems which need global solutions through international agreements that are inclusive.



D.

## The “Fourth Freedom”: Reaping the Gains of Economic Migration



### **Moderator**

Professor Joost Pauwelyn – Director of the Centre for Trade and Economic Integration (CTEI) and Professor of International Law, Graduate Institute of International and Development Studies, Geneva

### **Speakers**

Professor Joel Trachtman – Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University

Mr Bimal Ghosh – Former ILO, IOM and UN official, Emeritus Professor at Columbia's Graduate School of Public Administration

Ms Mina Mashayekhi – Head, Trade Negotiations and Commercial Diplomacy Branch, UNCTAD

Mr Vincent Chetail – Lecturer in International Law and Research Director at the Programme for the Study of Global Migration, (HEID) Geneva

### **Organized by**

CTEI and HEID

### **Report written by**

CTEI and HEID

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## Abstract

*The GATT/WTO system has traditionally focused on liberalizing trade in “things”; first goods, then capital and services. Free movement of “persons” or labour, including economic migration, remains an under-stimulated freedom (other than its limited coverage under GATS Mode 4). Yet, economists tell us that the potential gains from this “fourth freedom” are much higher than any benefits to be derived from further liberalization of goods or services. However, how can these economic benefits be balanced against the political, social and cultural costs often referred to? Can and should the WTO play a greater role in this effort? If so, how should WTO rules interact with the activities at, for example, the International Labour Organization (ILO) or the International Organization for Migration (IOM)? Or should migration rather be kept in the exclusive domain of domestic politics? What would it take to establish a grand bargain whereby rich countries are willing to open their labour markets? If agreement amongst 153 members at the WTO is too difficult to achieve, should this be a topic for free trade agreements or bilateral deals? This panel put the economic evidence on the table and discussed how to balance the gains and pains of economic migration. In addition, it examined the optimal strategies to achieve international progress on the issue, as well considered the different fora and normative tools available.*

## 1. Presentations by the panellists

The moderator proposed that the panel discussion take place through questions to the speakers, as opposed to monologue-style presentations. He said that format would foster debate and facilitate building bridges between the speakers' views on the topic of economic migration.

The moderator started with a brief introduction to the panel topic. He emphasized that, while the WTO has been relatively successful in liberalizing trade in “things”, when it came to labour flows, the results have been rather modest, as reflected in GATS Mode 4 commitments. He stated that the objective of the panel was to examine this mismatch, and to discuss ways to further international cooperation on economic migration.

### (a) Economic evidence for the benefits of liberalizing movement of persons

In order to set the stage for the discussion, the moderator proposed that the speakers start by addressing the potential positive effects of economic migration. More specifically, he suggested that they bring economic evidence to the table as to the extent to which, if at all, more liberalized movement of persons would be economically beneficial.

Professor Joel Trachtman emphasized that both simulation models and examples of economic history indicated that the world would be significantly wealthier with the liberalization of migration. He suggested, without entering into the complexities of economic models, that movement could make people

more productive, increasing total welfare. He mentioned that simulation models show that economic migration would have significantly greater positive global welfare effects than the complete liberalization of trade in goods. Professor Trachtman also referred to the lessons of the 19<sup>th</sup> and 20<sup>th</sup> century, where migration had been a tool of wage-convergence and development.

Professor Bimal Ghosh mentioned that both common sense and theory suggested that economic migration from labour-abundant to capital-rich labour-short countries was a win-win situation for both sending and host countries. In the real world, however, other surrounding factors invariably play their part, which explained why economic migration entails both benefits and costs. The challenge is to maximize these gains and minimize the losses for all concerned. He explained that trends related to labour markets, social security systems and demography all indicate that economic migration has a positive role to play in host (industrial) countries, while at the same time benefiting the sending (developing) countries and the world economy. In terms of historical evidence, Professor Ghosh mentioned the experiences of Italy, Sweden and Ireland in the mid-19<sup>th</sup> and early-20<sup>th</sup> centuries. He pointed to emigration as a key factor in the improvement of the economic situation in those countries as well as in the reconstruction and prosperity of war-ravaged Western Europe in the 1950s and 1960s. He posited that the liberalization of economic migration would not only lead to efficiency gains and increased global income, but also cut back some of the current 'losses' involved. Professor Ghosh said that the current human, financial and social costs of migration had been amplified by a mismatch between rising emigration pressures and dwindling opportunities for legal entry. He alluded to rising irregular migration, including human trafficking, widespread human rights abuse and the increasing costs linked to immigration control. Professor Ghosh concluded that more international cooperation to reduce the migration mismatch would help reduce some of these costs.

Ms Mashayekhi reiterated the large-scale development gains that could be generated by facilitating further temporary migration. She referred to an estimate by the World Bank saying that that an increase in economic migration flows equal to 3 per cent of the high-income-countries' labour force could generate global output gains of US\$365 billion by the year 2025. These gains, as Professor Trachtman had previously mentioned, would largely exceed the gains from total trade liberalization. Ms Mashayekhi also noted that migration was not a 'North-South' phenomenon: significant migration flows occurred between OECD countries as well as between developing countries. In that regard, she referred to the situation of the Gulf countries, which had attracted large scale immigration flows from South-East Asia. In concluding her intervention on this point, Ms Mashayekhi argued that any discussion on the potential gains of migration would have to recognize that migration was already happening today, since about 200 million people lived and worked outside their countries of origin, and that migration flows were needed in – and consequentially beneficial to – destination countries. She mentioned phenomena such as ageing populations in Europe

and increasing skill needs, particularly in the services economy, as examples of this dynamics.

### **(b) The importance of international cooperation**

The moderator found agreement among the panellists as to the likely gains from freer economic migration. A remaining question, according to him, was how to guarantee that those gains were achieved in practice. In particular, Professor Pauwelyn asked whether we did need international cooperation to achieve those potential gains.

Professor Ghosh said the answer was a clear and categorical “yes”. He considered that economic migration was an integral aspect of the interpenetration of markets in a globalizing world. In that sense, he thought that migration definitely called for transnational cooperation.

Professor Joel Trachtman argued that collective-action problems had prevented further liberalization of movement, notwithstanding the historical and economic evidence that economic migration would be welfare-enhancing. In his words, economic migration had been falling between the cracks of political economy. Professor Trachtman raised a number of reasons why governments had been reluctant to engage in formal commitments to liberalize. For instance, governments might face opposition from workers whose type of labour is scarce. Furthermore, skilled workers from developed countries would not necessarily be interested in moving to the south. Those factors, in the view of Professor Trachtman, would limit the possibilities for large-scale ‘north-south’ reciprocity in migration issues. He noted also that developing countries would have some reasons not to insist too much on liberalization. As an example, he said that developing countries might wish to retain their more skilled working-force, and thus avoid the brain-drain problem. To him, one way to reduce barriers to economic migration would be to facilitate coalition-formation between liberalization’s stakeholders. According to Professor Trachtman, international cooperation could stimulate further liberalization by changing the dynamics of domestic and international political-economy. He proposed two concrete strategies that, in his view, would facilitate liberalization. Firstly, he supported a source-country income tax to skilled migrants abroad (the so-called ‘Bhagwati tax’), on the basis that such tax would provide incentives for sending-states to support liberalization. Secondly, and more importantly, he proposed that intra-sector reciprocal arrangements to liberalize migration and cross-sector reciprocal arrangements – for instance, under GATS or investment negotiations – could help break the present deadlock.

### **(c) Restricting movement of persons: a ‘historical novelty’**

Professor Pauwelyn stated that the previous discussion underscored in different ways the role of international cooperation in liberalizing economic migration. He asked the discussants to explain the extent to which international law had historically facilitated or restricted the movement of persons.

Professor Vincent Chetail explained that, while migration movements had been historically irregular, they had nonetheless taken place for a long time. Moreover, international law had traditionally considered admission and expulsion of aliens as an essential element of state sovereignty. Yet, historically, significant restrictions to and prevention of economic migration were rather recent phenomena. Professor Chetail explained that migration controls had expanded in the context of World War I, were made more rigid in the 1960s, and became mainstream in the late 20<sup>th</sup> and early 21<sup>st</sup> century. He observed that, as a development in parallel to the rise of migration controls, the rise of ‘international migration law’ had taken migration policies away from the exclusive domain of the sovereign state. On the other hand, according to Professor Chetail, there was still a need to discipline through international regulation states’ increasingly stringent policies concerning migration. That would be especially important in light of the notion that economic migration could increase overall welfare, as the previous discussants had highlighted.

### **(d) An ‘international who’s who’ of economic migration**

The moderator, noting that Professor Chetail had touched on the progressive development of international migration law, asked Professor Bimal Ghosh, a former official at many of the organizations that deal with migration, to briefly explain who was doing what when it came to economic migration.

Professor Ghosh said the system is very complex. He first noted that the concept of ‘economic migration’ was not strictly a legal concept, and that it was mostly used in the migration literature to imply economically motivated migration. However, he cautioned that the bulk of current migration flows are driven by mixed motivations. In other words, migration flows often stem from economic distress, including a feeling of ‘relative deprivation’ and political problems in the source-countries, as well as the wage differentials between source and destination countries. Professor Ghosh argued that, in order to have a more complete picture of the issues at stake, one should focus on ‘international migration’ broadly as opposed to pure ‘economic migration’.

Professor Ghosh remarked that, if economic migration basically implies labour migration, then the organization that would first come to mind for its competence to deal with it was the International Labour Organization (ILO). He stated that, given the ILO’s mandate, the organization had long been concerned with labour migration. It follows, thus, that the ILO would be well placed to call for freer and more orderly migration flows. And indeed in the late 1940s and the 1950s, which he called the golden era of economic migration, the ILO, together with the EEC (now EU) and the OEEC (now OECD), had championed freer movement of labour and dealt with labour migration in a relatively comprehensive manner. In this context, Professor Ghosh made a specific reference to the ILO’s 1949 Convention on migrant workers. However, in more recent years, he explained, the organization has focused mainly on the protective aspects of economic migration, such as migrants’ rights. Although its 2004



annual conference recognized the need for a global framework for orderly migration, there has been little effective follow up.

Next, Professor Ghosh turned to the International Organization for Migration (IOM). Despite the specific historical context of its origin, its relatively limited membership of 125 states and the fact that it is still outside the UN system, the IOM was the only inter-governmental organization at the international level that was exclusively concerned with migration. And, given its broad and flexible mandate, the IOM could be considered as an appropriate forum for advancing orderly economic migration, including through normative action. In fact, between 1995 and 2000, Professor Ghosh recalled, the IOM served as the executing agency for a global project supported by the UN and several European governments to promote a new cooperative multilateral arrangement for this purpose. He also referred to the two successive inter-governmental meetings held at the IOM which generally endorsed the initiative. The project's consensus-building efforts found further support from a series of meetings organized in 2000 in various capital cities and university centres in Europe and the United States. However, since then, coinciding with changes in its secretariat, the IOM seems to have lost interest in the matter. Professor Ghosh underscored the critical importance of a favourable political climate for advancing the agenda of liberalization. Without political consensus, he warned, it is difficult to move ahead.

Professor Ghosh then spoke about the role of the United Nations (UN), whose Charter gives a broad enough mandate to include migration questions. He mentioned the Convention on the Protection of the Rights of All Migrant Workers and their Families, which was a UN-sponsored initiative. However, the UN only had a small staff working on migration issues. He then referred to some of the recent UN initiatives to promote closer international cooperation on migration for development. First, the UN encouraged a few like-minded governments to set up a Global Commission on International Migration and, subsequently, discussions were held within the framework of a High-Level Dialogue (HLD) on migration and development. These efforts, however, did not make much headway. The Global Commission shied away from the idea of an international framework for interstate cooperation and at the HLD there was no agreement on the UN taking any new multilateral initiative on migration. It was left to individual governments to set up an informal Global Forum on Migration and Development (GFMD). A UN voluntary fund for new migration related activities was also not endorsed, although it was agreed that the Secretary-General's Special Representative for migration issues would continue his assignment.

In summing up his points on the ILO, the IOM and the UN, Professor Ghosh emphasized the need to build bridges between these three organizations, each of them promoting an awareness of the need for a harmonized global approach to migration. Other inter-governmental institutions, including GFMD as well as international civil society, should be encouraged to join in these consensus-building activities. Thus, he added, when the conditions would be right, a

UN-sponsored conference could be held to adopt a global framework for inter-state cooperation on migration, including economic migration as a subset of the arrangement, as well as the possible establishment of a World Migration Organization.

In concluding his intervention on the topic, Professor Ghosh addressed the role of the WTO. He recognized that the WTO's rich experience in trade negotiation and bargaining procedures could be highly useful in any discussion of freer economic migration, given that trade-related migration offers a series of potential areas of reciprocity between developed and developing countries. It was also possible to envisage cross-sectoral tradeoffs – access to developed countries' labour markets in exchange of access to developing countries' markets in specific products and services. However, he expressed doubts as to whether the WTO could rightly take on any major initiative on economic migration as a whole. First, he said that the WTO's plate had been more than full with 'trade issues'. Second, he argued that the WTO's mandate would not allow it to tackle the question of international migration appropriately. To illustrate, he stated that in its anxiety to keep away from migration issues the organization opted for a new category of trade-related mobility of 'service providing natural persons' under GATS Mode 4, as distinct from migrants. And, yet at the same time in order to meet the exigencies of GATS Mode 3 (commercial presence) the WTO linked Mode 4 to labour market tests. Professor Ghosh said that the creation of this murky hybrid has led to confusion between trade-related mobility and employment-related labour migration. Many developed countries are thus fearful that liberalization under Mode 4 would open the flood gates for labour migrants from developing countries and are therefore cautious about making horizontal commitments under Mode 4. Instead, they focus mainly on the movement of high-level personnel under Mode 3. Many developing countries, on the other hand, believe (equally wrongly) that Mode 4 is the key to open the golden gates for their migrants to have access to labour markets abroad, and have felt frustrated that Mode 3 had hijacked progress in commitments under Mode 4.

Summing up, Professor Ghosh envisaged a threefold role for the WTO: facilitating liberalization of trade-related mobility under Mode 4 by correcting the present anomaly; contributing to the inter-agency efforts in consensus building for closer inter-state cooperation on economic migration; and making available its rich experience in negotiating procedures to all parties engaged in the migration debate together with active exploration of potential areas of trade-offs between openness in economic migration and trade liberalization.

Ms Mashayekhi both recognized the difficulties surrounding Mode 4 liberalization under the GATS, and reiterated the importance – and great development potential – such liberalization could entail. According to her, a closer look at the challenges could also help to overcome current impasses. A reality check reveals gaps between regulations at the national level and international efforts: frequently, national migration regimes are more open than the respective international commitments, including those under GATS. As for international



cooperation in the field, besides the Global Forum on Migration and Development (GFMD) to which Professor Bimal Ghosh had referred, and which is a state-led process, Ms Mashayekhi said it was important to mention the Global Migration Group (GMG). She explained that the GMG was an inter-agency group, currently chaired by UNCTAD, which aimed to promote a more coherent and stronger leadership to improve the overall effectiveness of the United Nations, and the international community's policy and operational response, to the opportunities and challenges presented by migration.

Ms Mashayekhi also explained that UNCTAD's work on migration has been highlighted as part of the implementation of the April 2008 Accra Accord. Along with other mandated organizations, the Accra Accord mandates UNCTAD to conduct research and analysis on potential benefits and opportunities of trade, investment and developmental links between migrants' countries of origin and communities abroad, and to analyze the potential of migrants' remittances to contribute for development, while respecting their character as private funds.

#### **(e) A call for coordination**

Professor Pauwelyn inferred from Professor Ghosh's previous points that there seemed to be a lack of coordination among the different international organizations active on the field of migration. He stated that also the question of normative fragmentation could be related to that of institutional fragmentation when it came to migration. He asked the discussants to address those points.

Ms Mashayekhi agreed with the moderator that both the policy and the normative frameworks with regard to migration were fragmented. She emphasized the need for international cooperation both in achieving more liberalization and in sharing the benefits of liberalization between countries. Regarding the role of the WTO in advancing liberalization of migration flows, she said that she was more optimistic than Professor Ghosh. Ms Mashayekhi recalled that tradeoffs between the interests of developed and developing countries could lead governments to commit to further liberalization. On the other hand, she recognized that some developing countries have high expectations with regard to commitments under GATS Mode 4. She also lamented that the lack of clarity in the coverage of the GATS, in particular with regards to the definition of foreign services suppliers, had allowed some to promote restrictive interpretations which effectively reduced the potential benefits for developing countries. At any rate, given the sensitivity and complexity of migration issues, and notwithstanding her belief in the usefulness of the WTO, Ms Mashayekhi said that in her opinion it is unlikely that GATS negotiations alone would lead to significant liberalization, which, for her, reinforces the need for coordination. She mentioned, as important examples of cooperation, bilateral-labour-movement agreements such as the arrangement between Spain and Ecuador, which offer a holistic approach to realizing the development benefits of circular migration. Under that arrangement, sending and receiving countries closely cooperate at all stages in the migration process, including when: (i) determining the type of migrants

that were needed in the receiving country; (ii) selecting migrants that would benefit from the scheme (for example, assessing the necessary qualifications); (iii) assisting the migrants during and after their stay abroad (for instance, ensuring that rights at work and social conditions were respected); and (iv) re-integrating them into the source country upon return. Ms Mashayekhi also explained that many bilateral arrangements contained important co-development provisions, under which receiving countries contributed to promoting development in the source-countries. She referred to investment and technical assistance in the countries of origin, such as micro-credit and other initiatives for financing productive activities, as examples. Finally, she pointed to the area of recognition of qualifications, including through conclusion of mutual recognition agreements, as another area where coordination is important.

Vincent Chetail compared the international law of migration to a giant puzzle with scattered pieces. According to him, moreover, it is as if people are sliced into different categories, such as 'workers', 'refugees', 'service providers', and so on. He outlined the specific regimes of refugee law and migrant workers law, and argued that there are two deficits in these norms: a universality deficit and an effectiveness deficit. Professor Chetail agreed with Ms Mashayekhi on the potential liberalizing role of the WTO when it comes to economic migration. On the other hand, he advocated for a rights-based approach to liberalization. In that sense, he emphasized the importance of expanding the process of ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and their Families. He called for a balance between liberalization and the protection of workers' rights.

Professor Bimal Ghosh considered that, while that multiplicity of organizations tackling migration questions and the lack of adequate cooperation among them was a constraint, this ought not be the central problem. To him, the question is more of a political nature than of management or administrative coordination. He therefore lamented more the lack of a conductor to launch in concert with the actors a forward-looking policy initiative than the lack of horizontal coordination among the existing organizations.

#### **(f) An exercise of institutional imagination: the way forward**

The moderator declared that the panel seemed to have identified potential for more liberalization of economic migration. That potential, he said, could remain untapped for a number of reasons, as the discussants had argued. Professor Pauwelyn considered that one crucial remaining question, if one believed that liberalizing migration could increase welfare, would be as to how one could materialize that potential: How could one reap the potential gains from economic migration, taking into account the constraints that the panel had identified? How should one deal with coordination-problems? Was a new international organization necessary? He asked the panellists to address those concerns.





Professor Chetail argued that we were likely to see, at best, incremental developments as to the liberalization of migration and the enhancement of migrant workers' protection. In the short-term, he proposed soft-law instruments as a first step, a step towards possibly developing disciplines based on the reality that we are not likely to see a major breakthrough any time soon. As for issues of content, Professor Chetail stressed the need for a holistic vision. He cautioned against the danger of replacing the protection of workers by a 'pure liberalization' agenda. Though he recognized the important role that trade negotiations – and, in turn, the WTO – could play in the future of international migration, he cautioned against magic formulas. In concluding, Professor Chetail also mentioned that the 'Bhagwati tax', so long as it enabled one to strike a balance between the interests of sending and receiving states and did not unduly restrict migrants' rights, could be given further thought.

Ms Mashayekhi agreed with Professor Chetail that there was a need for a balanced approach. She stated that a new international organization could be one long-term outcome, but she saw neither room nor political will for such project presently. Ms Mashayekhi emphasized, however, that there are many possible tradeoffs in terms of economic interests that could be made concrete at present. She mentioned that while developing countries could be interested in more remittances, developed countries might be interested in having access to more workers to address labour shortages. She noted, moreover, that national reforms and legislation were moving towards more openness in developed countries such as Australia, New Zealand and Canada. Another key aspect was the growing 'south-south' dimension of economic migration, coupled with increasing flows from 'northern' to 'southern' countries. In that sense, Ms Mashayekhi said she would expect progressively more liberalization. Nevertheless, as she had recognized before, she recalled that migration is a sensitive issue. Thus, according to her, developed countries are still reluctant to bind themselves to liberalization at a multilateral level. That, she argued, would imply that bilateral and regional deals would be at the root of gradual liberalization. Broad liberalization under the aegis of the WTO would not be, in her opinion, realistic in the short-term. She suggested that, as possible avenues to overcoming or alleviating current resistance to Mode 4 commitments, a number of mechanisms could be created, such as a possible special-safeguards mechanism for the movement of persons. Such a mechanism could grant receiving countries some flexibility to temporarily restrict Mode 4 commitments. Another option could be to make deeper commitments subject to flexibility after a specified period should they cause economic problems, thereby inducing countries to agree on more liberalization while guaranteeing some margin of manoeuvre.

Professor Trachtman raised a number of elements that could be considered for future liberalization of economic migration. He noted that bilateral agreements on migration issues have been a useful tool to manage movement of persons. By contrast, he explained that those agreements tend not to include significant commitments to liberalize. Professor

Trachtman argued that the lack of specific commitments would be one more indicative of the need to find incentives to make liberalization more attractive. In his view, reciprocity, a mechanism on which trade-lawyers and trade-negotiators were well-versed, could provide such incentives. Having made the case for reciprocal arrangements, Professor Trachtman outlined a number of points for consideration. He advocated MFN as an attractive principle for consideration, both for efficiency and effectiveness reasons. He also mentioned that, as other speakers had pointed out, the story of liberalization should be one of gradualism: perhaps one could start with a framework agreement, and positive-lists with occupation-based commitments. On the other hand, Professor Trachtman said that it would be worthwhile to consider a safeguards-type mechanism granting countries the possibility to contain migration in certain contexts. In turn, a migration-fee could address the receiving-countries' concern that immigrants might be costly. Professor Trachtman asserted, moreover, that he would favour a prohibition on restrictions to emigration and a right of return for migrants. He took issue, based on liberty-concerns, with the economic literature's preference for temporary rather than permanent migration. He suggested that a mechanism such as the so-called 'Bhagwati tax' could compensate the costs of the sending-country with workers' training and education, while allowing the migrant herself to decide on the question of her return. To conclude his intervention, Joel Trachtman argued that the issue of a new international organization must follow, not precede, decisions about whether to establish more normative commitments on economic migration.

## 2. Questions and comments by the audience

There were several constructive comments and questions from the public. Participants from the public underscored that economic migration had a significant security component, and raised concerns about the impact of security considerations on the liberalization of economic migration.

Professor Ghosh agreed with the concerns brought up by some participants, and said that security did have an impact. He referred to the 2004 UN protocols on migrant smuggling and human trafficking as evidence that nations tend to move faster when it comes to punitive, reactive or security measures than when it comes to liberalization. He argued that, given that reality, there was indeed a need to explore the potential of security-related reciprocity between countries to facilitate negotiation on further liberalization.

Professor Trachtman, in turn, argued that possible agreements to further liberalize economic migration would most likely contain security-exceptions. Yet, he believed that the existence of security-exceptions would not necessarily hamper the process of liberalization. In that respect, he referred in support to the relatively scarce use of the existing security exceptions in the GATT and the GATS.



Lastly, Ms Mashayekhi reminded that security aspects could be dealt with through bilateral agreements and bilateral cooperation.

Participants from the public were concerned that economic migration could lead to downward wage-convergence, and would mostly affect the local people with the lower voice in the political process.

Ms Mashayekhi said that it was important not to treat economic migration as a panacea. Even recognizing that the potential gains were large, she said emphasis on development of the source-countries should be the most important objective. She said that the sometimes negative perception of migration in destination countries originated, among other factors, in the largely irregular nature of migration. There is, she said, therefore a need to stop abuse by employers, who use irregular migration in order to boost profits. In her view, this has led to downward pressures on wages to the detriment of migrants and local workers alike.

Professor Ghosh described two successive scenarios. He said that within the next 10 to 15 years, nations would be impelled to reach an understanding on a common policy framework to bring the prevailing mismatch between the increasing pressure for emigration and the dwindling opportunities for legal entry into a more dynamic harmony, although tension would continue at least for the first few years. Following this period of 10 to 15 years, the scenario would change progressively, with the world migration situation becoming more stable due to the confluence of two major factors: (i) improvement in the economic and social situation, including rise in wage and income levels, in many, though not all, developing countries such as China, India, Mexico and the Philippines; and (ii) gradual adjustments in the demography, social security systems and life style in rich countries. Thus, for a large part of the world, the situation might

not be much different from what is seen today within the OECD or even the EU region.

### 3. Conclusions and way forward

The discussion unveiled the potential benefits of economic migration. It also pointed to some of the reasons why we do not see more liberalization happening on a multilateral scale, despite these potential benefits. According to the panellists, at present liberalization is happening incrementally, and is mostly targeted at specific sectors and migrants through bilateral and regional agreements. There was agreement, however, that some further developments can take place in the future, consistently with a set of multilaterally harmonized norms and principles.

The discussants recognized – more or less optimistically – that the WTO has a role to play in the future of the international law of economic migration. In general, panellists warned against exclusive focus on migrants as ‘service suppliers’ or ‘workers’, and called for holistic migration policies that take into account the other human dimensions of migration. On the other hand, panellists agreed on cross-services-sectors’ reciprocity, and reciprocity in WTO negotiations more generally, as a powerful mechanism to facilitate multilateral liberalization. In order to allow that reciprocity to more fully play its role, the discussants suggested a number of strategies to make liberalization more attractive to both source- and destination-countries in the context of WTO negotiations.

E.

## The Future Role and Interaction of Main Actors and Stakeholders in Achieving Free Trade Within the WTO Framework



### **Moderator**

Mr Kwame Owino – Institute of Economic Affairs (IEA), Kenya

### **Speakers**

Ms Miriam W. O. Omolo – Trade Programme Officer, IEA, Kenya

Ms Viviana Munoz-Tellez – Programme Officer-Information and Access to Knowledge, South Centre, Geneva, Switzerland

Mr Atul Kaushik – Director, CUTS Geneva Resource Centre, Geneva

### **Organized by**

IEA

### **Report written by**

IEA

Thursday 25 September 2008 – 11.15-13.15

## Abstract

*Free trade is the passage of goods and services across borders without barriers. Global free trade has been the subject of various debates since the inception of the Bretton Woods institutions, the GATT and currently the WTO. The WTO provides the framework within which free trade can be achieved, engaging several players at international and national level working towards freer trade for the overall improvement of global well being. This process has experienced obstacles and is wrought with challenges. In this session, a presentation was made where the main actors and stakeholders in the multilateral trading framework were identified. Comparisons were made about the nature of interactions between state and non-state actors in a process where trade policy making has been institutionalized as opposed to a weaker, less regulated framework. The discussions then focused on challenges of free trade under the current WTO framework and the opportunities that arise for future trading.*

## 1. Presentations by the panellists

Kwame Owino, Programmes Coordinator, Institute of Economic Affairs moderated the session. He explained the role of IEA, which is a public policy think tank involved in research and analysis with the aim of facilitating dialogue both in Kenya and outside Kenya. The IEA aims to ensure non-state actor participation in the public policy-making process. He noted that the WTO is a unique organization with a multiplicity of actors with direct or indirect influence over its activities, agenda and outcomes. He pointed to the concern that there may be too many voices at the WTO, and that this could result in real or imagined threat of derailing the principle purpose of the WTO, which is to set rules for conducting multilateral trade. Furthermore, the current status of the Doha negotiations requires significant reflections if a positive outcome is to be achieved.

### (a) Miriam W. O. Omolo, Trade Programme Officer, Institute of Economic Affairs

Miriam W. O. Omolo made a presentation based on a paper entitled "The Future Role and Interactions of Main Actors and Stakeholders in Achieving Free Trade within the WTO Framework". The presentation identified the key stakeholders involved in the multilateral trading framework and articulated their different roles in achieving free trade. This was in order to draw connections and identify overlaps to chart how players can interact in the future. The presenter noted that while there are many other factors that affect trade liberalization, there is very little literature examining the role of players in the multilateral system and the influence they have on trade liberalization.

She commenced by saying that free trade has been a focus for many countries and has been the subject of various debates. The WTO has been a central focus as the organization providing the framework within which free trade is to be achieved. It can be agreed that achieving free trade has remained elusive and several questions are being raised as to why this is happening. First, is it because "development" has not been defined? Can we attribute these difficulties to a disconnect between the

substance of negotiations and the notion of "development"? Do the negotiation processes and the main actors and stakeholders actually hinder the achievement of free trade?

Ms Omolo provided background on the history of free trade: the Physiocrats believed in the existence of a natural order free, from manmade laws, that result in harmony and the development of the human condition. They emphasised individual rights, and believed that the individual who knew his/her interest would act accordingly. Hence, they developed the concept of *laissez-faire*, *laissez-passer*, where individuals would follow their pursuits, as they wanted. The Physiocrats believed that land was the only productive sector of the economy and the only source of net surplus. The main contributors of this doctrine were Francois Quesnay, Victor Riquetti, Marquis Mirabeau, Jacques Claude Marie Vincent, Marquis Gournay and Anne Robert Jacques Turgot among others. Classical Economists, led by Adam Smith, were the first to provide a coherent framework for understanding free trade. If a good was more cheaply produced abroad than at home, it was better to import it. Classical Economics, at first, advocated free trade according to absolute advantage. However, David Ricardo criticised the notion of trade according to absolute costs, since some countries would not be **most** efficient at anything, and would not be able to participate in the global market. Ricardo brought forward the theory of comparative advantage, arguing that regardless of absolute efficiency, every country, because of differences in the abundance of factors such as labour, capital, natural resources, or technology, would be **comparatively** better at producing **something**. The terms of trade between nations would be determined by comparative differences in resources, rather than absolute differences, and as a result, international trade would encourage trade in goods produced at the smallest opportunity cost, and would lead to welfare gains.

The Neoclassical economists advanced the theory of free trade, by making four conclusions that have shaped international trade to this date.

1. Free trade of final goods between nations leads to an equalization of the rewards to the factors of production between the two nations.
2. An increase in the price of a final good increases the rewards to the factors of production used intensively in its production.
3. An increase in supply of factors of production results in an increase in the output of the final good that uses this factor of production intensively.
4. Countries export the goods and services that intensively use abundant factors of production.

The GATT was and the WTO is based on the Neo-classical theory of international trade where it is assumed that all countries gain from trade, and more trade implies more gains.



There are several organizations involved in international trade; key among them the WTO, the World Bank, the International Monetary Fund (IMF) and the United Nations Conference on Trade and Development (UNCTAD). The WTO is the world's largest trading bloc, and is the legal and institutional foundation of the multilateral trading system. It operates on five basic principles: non-discrimination, reciprocity, enforceable commitments, transparency and safety valves. Article III of the WTO agreement spells out its functions.

The World Bank, also known as the International Bank for Reconstruction and Development (IBRD), was created to finance the reconstruction of economies that were affected by the second world war. The core function of IBRD was to lend, provide development research and development assistance. Trade policy and trade liberalization was a prominent work area for the World Bank in the 1980's during the structural adjustment lending period. The Bank's focus was helping countries overcome bottlenecks and gaps in infrastructure to achieve economic growth. However, in 1982, the chief economist of the Bank shifted this thinking towards the role of markets in economic growth process.

The IMF is the multilateral organization that administers the international monetary system and has primarily focused on macroeconomic policy frameworks and balance of payment disequilibria.

Lastly, UNCTAD addresses the place of developing countries in international trade. Developing countries have called for a conference that identifies problems and proposes international actions that specifically address the problems of developing countries. UNCTAD was established in 1964 with the objective of promoting development-friendly integration of developing countries into the world economy.

Ms Omolo spoke about three factors that can be used to determine the effectiveness of an organization from the article by Vines "*The WTO in Relation to the Fund and the Bank: Competencies, Agendas and Linkages*". These are:

1. competencies in research and policy advice so an institution can carry out research and provide leadership while giving policy advice and ensuring that the advice be adopted;
2. ability to monitor compliance with agreed solutions and enforce when necessary;
3. adequate resources to achieve its mandate;

Using the highlighted criteria, Ms Omolo said that the WTO can be considered effective since it does have a clear mandate and is able to enforce commitments. It is however not an intellectual leader. Resources for the WTO still are a challenge, since both capitals and permanent missions in Geneva are not able to provide the necessary support needed to run day-to-day WTO business.

The World Bank, on the other hand, when re-orienting its focus towards markets as the pillars for ensuring free trade, increased both its financial and human resources to examine the implications of unilateral and non-discriminatory trade liberalization policies. As a result, the World Bank produced approximately 300 articles between 1988 and 1996 on international economics or trade policy. The Bank, therefore, provided intellectual leadership in trade policy research.

While the role of the IMF on macroeconomic policy issues for member countries is very clear, there has been no definitive role in achieving free trade. From a macroeconomic policy regime point of view, first it conducts research (macroeconomic analysis) and offers policy prescription to its members. It therefore provides intellectual leadership. The IMF also advises member economies on macroeconomic policy actions. Furthermore, conditionalities were placed on loans, and these had to be satisfied: in cases of non-compliance, there were sanctions. From this view, the IMF can be considered as an effective organization. However, from a free trade point of view, there is no clear mandate, even though the macroeconomic policies put in place result, often, in trade liberalization as a 'side effect'.

Lastly, UNCTAD has a clear mandate and has been able to influence several trade related issues affecting developing countries. The research capacity and inputs from UNCTAD are very important for the current Doha Development Agenda negotiations. However, UNCTAD is not able to advocate for the implementation of policy recommendations, nor for monitoring and or sanctions. The reason for this is that as an intergovernmental organization, UNCTAD relies on member government funding; this presents the challenge of "*biting the hand that feeds you*" and the resource challenge when large projects need to be undertaken.

#### i) The Role of State Actors

State actors, namely governments and their agencies, are central to the trade policy-making process. The differing structures of the trade policymaking process within WTO member states affects the speed with which agreements can be reached at the WTO.

In the United States (US), for example, the authority to develop trade policy and to negotiate trade agreements is constitutionally vested in the President and the Congress. The trade policymaking process in the US has come to involve many different levels both inside and outside government, including the executive branch consultative process, the congressional consultative process and the official advisory committee. The *executive branch* of the process involves 18 federal agencies, statutorily coordinated by the Office of the US Trade Representative (USTR) within the executive office of the President. Consultations with stakeholders are carried out at the official advisory committee level. It is at this level where consultations with stakeholders take place. In this system, trade policy-making is institutionalized and the government can be held accountable.



In Kenya, the process of trade policy-making is not embedded in the constitution. The Ministry of Trade takes the lead in the negotiations in collaboration with other Ministries. Stakeholders have a consultative forum within the Ministry of Trade, but these consultations are not structured and take place only "when need arises". The Attorney General (AG) provides legal opinions on bilateral, regional and international trade agreements and treaties and at the negotiations level. Once trade agreements have been made, the office of the AG is responsible for the drafting and publication of the bills for parliamentary debate. Parliament can either pass or reject the bill presented before it. The challenge presented here is that there is no mechanism to check and ensure that the negotiation team only signs an agreement that reflects the national interest. Furthermore, drafted trade related bills tend to be subject to intervention of vested interests.

In scenarios where the trade policy-making process is not institutionalised, there is a risk of political interests taking over the national interest. Furthermore, taking advantage of development opportunities brought about by international agreements is made difficult due to lack of transparency and susceptibility to vested interests taking over.

#### ii) The Role of Non-State Actors

Non-state actors represent a broad category of stakeholders involved in the trade policymaking process who do not fall into the category of 'states'. They can broadly be divided into 'civil society' and 'private sector'. Participation of civil society can be divided into three categories. The first is substantive participation, where a consultative process has been institutionalized and has become permanent. Issues covered are comprehensive, and they come from the national level up to the grass root where actors are consulted, so that the consultative process is all-inclusive. Secondly, adjectival participation does not cover a whole spectrum. In this case, opinions of actors consulted do not help shape negotiators' positions. A third kind of participation is sporadic participation. It occasionally occurs when the negotiators feel that the input of actors will be helpful.

Participation of non-state actors in developing countries such as Kenya, Mexico and Uruguay, has remained adjectival or sporadic. In most developing countries, there are no formal structures for government and private sector interaction in the process of trade policy making; however, strong sectoral associations tend to have representatives who advocate for their interests.

#### iii) Challenges of Main Actors and Stakeholders in Achieving Free Trade

Free trade has remained elusive for main actors and stakeholders for several reasons:

- i) Development has remained undefined and as a result, negotiations have not ensured that agreements reached are development oriented.

- ii) The true measure of the effectiveness of an institution is not easy to gauge since organizations can be effective in one aspect while being ineffective in another. For the example, the WTO is considered effective since it is able to enforce agreements. However, in terms of resources, the WTO has little funding compared to other international organizations and furthermore, the permanent missions in Geneva that form part of the WTO's resources face both funding and staffing challenges. Michalopoulos<sup>12</sup> (1998), found that by 1997, 74 percent of members (membership was 131) were from developing countries, only 64 countries had permanent representation in Geneva and 26 others were represented by missions or embassies elsewhere in Europe. The average size of a mission for a developing country was 3.7 persons as compared to 6.7 persons per mission for developed countries during the same period. UNCTAD offers strong intellectual leadership but is unable to enforce its recommendations to countries that contribute funding.

- iii) Most developing and least developed countries do not have institutionalized trade policy making processes and as a result domesticating international trade agreements to ensure gains has not been possible.

- iv) Non-state actors have remained indifferent to the negotiations processes. Especially the private sector has not taken a front seat in driving the negotiations agenda, while trade facilitation directly affects the private sector.

- v) Capacity of both state and non-state actors to fully comprehend the issues under negotiations has remained a challenge.

- vi) Most government ministries and agencies have not effectively coordinated the activities around the trade policy formulation process.

The most important opportunity for main actors and stakeholders to achieve free trade is through developing an integrated collaborative framework where international organizations can capitalize on their strengths with the objective of achieving free trade. The WTO is the key organization examining issues related to trade liberalization. Other organizations such as the World Bank, the IMF, UNIDO, UNFAO and UNCTAD can examine their roles and see how to complement each other in achieving free trade. The WTO's objective is to ensure that countries follow agreed upon trade rules, while UNCTAD is concerned with development-friendly integration of developing countries into the world economy. WTO and UNCTAD can collaborate to achieve development-oriented free trade. The stalled negotiations are an indicator of the weak

<sup>12</sup> Michalopoulos C. (1998) "Developing Countries Participation in the World Trade Organization" World Bank Policy Research Working Paper No. 1906.



link between WTO and UNCTAD: the development role strongly advocated by UNCTAD is not strongly embraced at the WTO. Agriculture forms the backbone of several developing and developed country economies. The UN FAO could work closely with WTO on agriculture. Under industrial goods, the WTO could work closely with UNIDO, while an appropriate organization can also be identified to work on services. The important question arises on the effectiveness of the UN bodies in terms of resources, enforceability and credibility; however, the framework within which an integrated framework can operate should be subject of current WTO debates.

The Bretton Woods institutions are not left out of the trade liberalization agenda. The original role of the World Bank was to finance the reconstruction of the post war economies. The role of the World Bank has changed overtime and remains relevant. The main question for the Bank is: what are the development consequences of WTO Agreements and how can the Bank help finance measures needed to deal with this impact? Answering this will ensure the relevance of the Bank in the current multilateral system. A main concern is that the Bank advocates neoclassical policies for market oriented economies; this approach is not likely to work in all cases since development requires both government interventions and market-oriented activities. The Bank is an effective institution since it has country presence and resources to carry out its mandate, it is an intellectual leader, and importantly it can enforce compliance through sanctions. The IMF, on the other hand, is likely to remain irrelevant if it does not re-invent itself to fit into the multilateral trading system.

Institutionalizing the trade policy-making process is one of the ways to ensure proper coordination between activities of government ministries and its agencies and effective consultations with non-state actors.

**(b) Vivian Munoz-Tellez, Programme Officer- Information and Access to Knowledge, South Centre, Geneva Switzerland**

**Comments on Ms Omolo's presentation**

Ms Munoz-Tellez gave her comments and views on the presentation made by Ms Omolo. According to her, while there is still a strong debate on the relationship between free trade and development, there is greater understanding that free trade policy has a great impact on development, and that development is holistic and not limited to economic development.

Following the presentation, Ms Munoz-Tellez said that free trade has been defined as lowering trade barriers in order to expand global trade for the overall well being of individuals. This means that free trade should result in overall development, but the Doha Development Agenda has remained stalled because the definition of development has not been agreed. This also raises the question of whether the neoclassical theory, under which the WTO operates, holds true, since most countries have not seen any tangible gains from trade. Currently, low-income

economies have not been integrated into the global economy and the poorest segments of the world population have not benefited from international free trade. Is the current trading framework conducive for sustained growth?

The different actors have different roles to play under the current multilateral trading system. The question of coherence and coordination is important in order for free trade to lead to development. There is a need for an integrated framework where there are well-defined working relationships between the WTO and other organizations such as UNCTAD, World Bank, UNIDO and FAO among others. Intergovernmental organizations should actively participate in the various WTO committees given the expertise they bring with them. For example, the Convention on Biodiversity (CBD) has competence on issues of biological resources, but it has not yet obtained an observer status under the TRIPS Council. This means that when issues of biodiversity are discussed, expert opinions from CBD will not be taken into account.

Technical assistance is a key area where there should be more coordination between the WTO, other intergovernmental organizations and non-governmental organizations. There should be more responsible technical assistance where organizations are held accountable on the technical assistance they provide. Most organizations tend to provide similar technical assistance to the same country with little coordination. For example, WIPO and WTO could provide technical assistance to a country while they do not consult each other on how to coordinate their activities for greater impact. In contrast, the International Trade Centre (ITC), UNCTAD, WTO and UNDP have developed an integrated framework where they assist low-income countries to integrate into the world economy. It is important to examine the framework under which these organizations operate, and how such a framework could be adopted for better coordination with other intergovernmental agencies and non-governmental organizations interested in ensuring that there is full participation of all countries in global trade. The objective should be to ensure that all players gain positively from global trade, and in cases where there are losers, that there be mechanisms put in place to ease their losses.

The national trade policymaking process should be strengthened and institutionalized if stakeholders' voices are to be heard, since it is at the national level that stakeholders' voices can be reflected in the national position.

**(c) Atul Kaushik, Director, Consumer Unity Trust (CUTS)-Resource Centre, Geneva, Switzerland**

Atul Kaushik said that the role of stakeholders in achieving free trade is an under-researched area. Examining the specific role of different actors and stakeholders is important, he said, in determining how roles complement or contradict each other in an effort to achieve free trade. However, interactions of main actors and stakeholders are just one aspect that affects the achievement of free trade. It is important to clearly state that trade is a component of development and not an end in itself. Different stakeholders have different roles to play in achieving sustainable development. They include actors on issues of

food security, financial services, poverty and hunger, human rights and the millennium development goals, among others. These roles have not been given a place within the WTO framework.

The various stakeholders are constrained from effectively participating in the WTO because first, the WTO is a club of governments; hence, the governments decide what goes to the WTO. Other actors or stakeholders can only find a voice in the WTO through their governments. Second, the WTO members have further constrained themselves by signing an agreement that they can only negotiate on areas where there are agreements to negotiate, such as the Agreement on Agriculture, Market access under the GATT, and geographical indications under intellectual property rights. Bringing in new issues such as supply and demand for food, climate change, human rights or WTO participation in the development process requires further negotiations by member governments. Lastly, the WTO has held the tradition of consensus building in letter and in spirit, there has been no voting since the GATT. This implies that actions of the WTO are within what is agreed. The WTO has different agreements with other agencies such as the UN, World Bank, UNCTAD and WIPO. These are normally cooperation agreements. Thus, these agencies cannot assert their voices beyond the agreed form of cooperation. WTO interaction with these organizations is limited to information sharing and cooperating to deliver technical assistance.

In order for the other actors and stakeholders to be effectively involved, they must first be involved in the national processes where they can find a voice within government. Their voices are then brought to the WTO by their government. A second option will be for the stakeholders' voices to be heard from the outside in such a way that it reverberates into the decisions taken by governments and the WTO. For example, research carried out by the Food and Agricultural Organization (FAO) on the current food crisis has fed into governments discussions that have ended up being adopted by the WTO.

## 2. Questions and comments by the audience

Following the presentation and discussions, several questions were asked by the audience:

A representative of the Chemical Industry in France asked how Small and Medium Enterprises (SMEs) could make their voice heard at the WTO and actually benefit from the WTO outcomes. All members of the panel gave a response to this question. In summary, they said that the gaps that exist for the participation of SMEs cannot be answered horizontally since SMEs are defined differently depending on the level of development. In a developing country like France, SME is defined as a small and medium enterprise with a different threshold for the size of employees in an enterprise. In a developing country like Kenya, there is a category called "MSE", which means Micro and Small Enterprises. Effectiveness of SME or MSE influence on trade negotiations depends on how well organized they are at the national level and whether they have strong associations

that can lobby governments to include their positions in the national position. On the other hand, SMEs could benefit from WTO negotiations if there are institutionalized trade policy-making processes in their countries, which ensure substantive interactions and consultations with governments.

A participant asked about the value added by non-state actors to the negotiations since they bring different interests to the table and in most cases they tend to make the negotiations antagonistic. In response, the panel said that the net contributions made by non-state actors have increased after the WTO came into being compared to their role in the GATT. They have been able to advocate for issues that affect the poor and in most cases decisions taken have been softer because of agitation and noise from state actors. Non-state actors appear to be antagonistic because they have not been heard at the national level. In turn, they resort to avenues at the international level whereby they hope to be heard. At the WTO, there are no formal sessions where the stakeholders can be heard and as a result, most non-governmental organizations adopt more confrontational approaches such as demonstrations in order to be heard.

## 3. Conclusions and way forward

The main conclusions of the discussions were that development should be more clearly defined under the current WTO trading framework. It should also be clearly understood that free trade is a component of development and development is multidimensional.

International organizations are fundamental in contributing to free trade through intellectual and institutional support. An integrated framework where key organizations provide various supports will be important in driving the WTO agenda. The role of the WTO must be defined in relation to other development agencies such as the UNIDO, FAO, UNCTAD and WIPO. Human rights must not be left out in this process.

The debate on the trade policy-making process and national constitutions must be examined and an agreement reached on whether supra-national agreements supersede national constitutions under the WTO framework. This pertains to countries such as the US and EU who have entrenched their trade policies in the constitution, making it difficult to negotiate issues like agriculture that seriously affect developing countries.

Since voices of stakeholders can only be heard through their respective governments, institutionalized national trade policymaking processes would ensure effective participation of both state and non-state actors. Above all, there must be genuine interest by all players in achieving free trade that positively affects development.

Achieving development-oriented free trade within the WTO framework is likely to remain elusive given that development, which is multifaceted, has not been defined at the WTO. Members are only bound to the extent of what has been agreed to be negotiated.

F.

## Why GATS Commitments and GATS Rules are Essential For Increasing Trade in Services in the Future?



### **Moderator**

Mr Pascal Kerneis – Managing Director, European Services Forum (ESF)

### **Speakers**

Mr Hamid Mamdouh – Director, Trade in Services Division, WTO Secretariat

Ms Myriam Van Der Stichele – Senior Researcher, SOMO - Centre for Research on Multinational Corporations

Mr Falou Samb – International Trade Centre

Mr Lode Van Den Hende – Lawyer, Herbert Smith LLP

### **Organized by**

ESF

### **Report written by**

ESF

Thursday 25 September 2008 – 16.30-18.30



## Abstract

*Services account for more than 50% of GDP in more than 85% of WTO members and account for more than 20% of global exports. The liberalisation of trade in services generates new export opportunities, helps attract foreign investments, improves access to world class services, and contributes to the local economy of all WTO members.*

*Taking a commitment that is bound under the WTO rules sometimes requires adopting new national legislation that reform a specific services sector and open the domestic market to foreign services suppliers. More commonly however, taking such a commitment results only in agreeing to adhere to a current practice that the committing country has already integrated into its national regulation. It has, therefore, no national political implication or price, but it can have a real impact on the increase in trade and investment in services as it gives the legal security to the trade transactions and the investments of the companies.*

*The session dealt with an important and growing part of the future trade, and covered most of the sub-themes of this year Public Forum, namely:*

*the challenges for the WTO as an organisation to reduce trade barriers in services; to ensure the implementation of the schedules of commitments by the WTO members: to keep the WTO Dispute Settlement Body as the reference in dispute settlement among members about the correct interpretation and application of the GATS obligations and related services commitments, (though this has not yet been challenged); and to confirm its role in providing trade-related technical assistance in developing countries on trade in services matters;*

*the challenge and opportunities for the services companies to use the WTO services commitments as a tool to secure their investment, and to strengthen the competitiveness in the services sectors all over the world*

*The Session was moderated by Pascal Kerneis, Managing Director of the European Services Forum (ESF). It was attended by approximately 100 persons. During the introduction of the session, the Moderator introduced the speakers and underlined that the objectives of the session were as follows:*

- *To show the importance that service companies give to GATS Commitments in providing legal security to their investment, and their preference to the WTO global schedule of commitments, instead of liberalisation through regional or bilateral free trade agreements;*
- *To show that services companies favour multilateral WTO GATS Rules that are applied all over the world to all competitors instead of discriminatory domestic rules or various bilateral regimes that give unfair preferential market access to competitors in a global economy;*
- *To demonstrate that services companies support a multilateral WTO disputes settlement system that gives them*

*legal security through a fair and transparent interpretation and application of the agreements;*

- *To discuss why appropriate technical assistance towards developing countries could be a tool for a better understanding of the GATS rules and commitments and attract investments in infrastructure services necessary for the sustainable economic development in the near future.*

*However, ESF tried to balance the panel as to allow diverging views to be expressed, as introduction to the debate.*

## 1. Presentations by the panellists

### (a) Hamid Mamdouh, Director, Trade in Services Division, WTO Secretariat

Mr Mamdouh began by reminding the audience of the importance of services in enabling the entire world economy. Services provide approximately 60% of the jobs in the world, 60% of the Foreign Direct Investments, and 20% of the international trade in services. He also stated the value of binding commitments through the WTO system which means that committed countries must respect the multilateral rules, i.e. the GATS treaty itself, its annexes, their respective schedule of commitments, the various additional rules like the Domestic regulation disciplines, etc. It does not mean that the countries cannot adopt new regulations; rather, the commitments do not allow new legislation to be introduced that will discriminate foreign suppliers. The services companies that decide to invest in a specific market usually act with a long term perspective. They want to serve that market and are, therefore, looking for a long term legal security of their investment. The GATS commitments are one of the tools that provide such a security.

### (b) Myriam Van Der Stichele, Senior Researcher, SOMO - Centre for Research on Multinational Corporations (NGO Representative)

The presenter first reacted to the financial crisis by saying that it shows that the functioning of free markets can change and fail dramatically, and that regulatory capacity and governmental intervention is still needed. Since many services are very important to societies, it is important to look into the following questions when making GATS commitments:

1. What does making GATS commitments really mean? Making commitments in particular sectors will have serious political implications and consequences for local businesses since:
  - i) Governments will have to apply several GATS rules (if no exemptions are made) such as Art. XVI which prohibits limitations to be imposed (e.g. on the number of service operations and service suppliers as well as on foreign ownership). Even if this means that efficient foreign service suppliers come in, they can become dominant at the expense of local businesses.





- ii) During the bilateral GATS negotiations on requests and offers, the regulatory capacity of governments can be undermined. Some of the EU requests demand eliminating existing prudent legislation or measures to stimulate domestic economic development. These rules and requests result in deregulation and are very costly to reverse. Given that pressures from international competition mean that services companies are sometimes taking risky strategies, e.g. in finance, governments need to better assess before making commitments whether efficiency gains are made, and whether GATS rules will undermine regulation needed.

2. Do GATS commitments matter in attracting services investment and make efficiency gains? Research literature does not give conclusive evidence that GATS and other investment agreements attract more foreign direct investment and trade in services. The existing efficiency arguments can be contradicted by some practices and by looking at who is benefiting from the efficiency, e.g. the lack of credit by foreign banks to small host country companies.

3. Is the WTO's role to reduce barriers balanced? While governments are binding restrictions on their regulatory capacity, there is no guarantee that foreign business will come. Technical assistance to better understand GATS rules will not rebalance that but should be about how to encourage services that really increase efficiency and sustainable development for all.

4. What trade in the future? Lack of regulation could result in concentration at the global level. This raises the business argument of whether there will enough competition and variety to keep business competitive? Is it good for the rest of business if business becomes too dependent on a few service companies?

In conclusion, Ms Van Der Stichele expressed the view that before agreeing to GATS commitments, governments and business need to have a look at the long term. Sequencing is needed, as has been called for during different sessions at the WTO Public Forum, more accompanying frameworks, and reconsideration of different parts of the GATS agreement and negotiation process where GATS rules are too restrictive or unbalanced.

#### **(c) Lode Van Den Hende, Partner, Herbert Smith LLP**

Lode Van Den Hende reminded the participants that his firm represents the interests of developing countries in cases that were handled by the WTO Dispute Settlement Mechanism (Ecuador for banana case, Antigua for the gambling case). He underlined the fact that the distinction between goods and services is more and more blurred and that what has strongly contributed to the success of the banana case was the fact that

Chiquita was, in fact, a services company, and that its trade (logistics, i.e. moving banana by trucks, ships, etc.) was suffering. He emphasised that the GATS was an essential legal tool to the WTO Dispute Settlement Understanding and even if there were few cases directly classified as "services," many cases were in fact using the GATS to ensure that the trade in goods is effectively respected. He also defended the case that the GATS was not a treaty that diminished the national sovereignty of the signatory countries, since it does not prevent the national legislators to act. The GATS and its related commitments are not lowering the regional or national standard, since the regulators are only asked to regulate all players on their markets in the same way. It does not imply that they adopt international standards.

#### **(d) Falou Samp, Trade Policy Analyst, Regional Coordinator for Africa, CSEND - Geneva**

In his presentation, Dr Falou Samb first stressed the very importance of negotiations in trade in service. He mentioned the importance for the developing countries and the least-developed countries (LDCs) to get more involved in the current negotiations. Any gains should be "*through negotiated specific commitments*".

The presentation focused on the following key aspects:

1. On the Measures that discourage exports, Dr Samb mentioned the GATS Article XVI on the six limitations, in particular quotas and economic need tests. He also indicated the need for the developing countries to better use the GATS Article XIX on the sectoral coverage in trade in services and on the use of conditions in opening the market to foreign suppliers. Dr Samb finally suggested that the use of a "NAMA-wise" formula could be of interest to increase the coverage in sectors and modes of supply.

2. On the measures that encourage imports, the presenter reviewed the different modes of supply to distinguish between modes that are rather imports-oriented and other that support more specifically policy restrictions.

3. On the measures that encourage home production, the presenter discussed the derogations from the national treatment obligations and suggested that developing countries should strike a balance between the desire to safeguard "*policy space*" and the need for effective openness and returns from it. The regional integration and the need to develop infrastructures constitute policy options for the developing countries on the priority clause for their economic development: putting the trade in services first or the trade in goods first?

4. On the Trade-related Technical Assistance (TRTA), Dr Samb mentioned issues such as the regulatory issues; the governance issues: coordination, monitoring and evaluation; the role of the private sector and civil society; the new linkages to build up with the *Aid For Trade*; and the *Enhanced Integrated Framework (EIF)* to develop productive capacities.

5. On the systemic issues, the presenter mentioned the conflict between regionalism and multilateralism, with an interesting angle from the GATS: the Mode 4, for which the need is to shift the debate and make it technical rather than political. In this context, it is interesting to note the position of the developing countries on Mode 4 and which is supported by the importance of the workers' remittances in the financing of development. The discussion on a possible waiver or *Enabling Clause* in the GATS is also to receive full attention.

In conclusion, Dr Samb reiterates the need for having an empirical assessment on countries and sectors of interest to the developing countries and the LDCs. In this context, we need to reach new levels in the delivery of the TRTA activities, including on awareness raising (Information gap/deficit on the true potential of the GATS to deliver on development).

## 2. Questions and comments by the audience

Some questions were related to the link between the financial crisis and the GATS commitments. Some feared that the lack of conclusion of the DDA might lead to a proper "systemic risk" of raising protectionism, since the promises of liberalisation have not been transformed into international obligations. There is, therefore, a potential that many countries will come back to their current practice, notably in financial services, and abide only to the level of their GATS obligations, that were, in fact, rather low in 1994 and 1997.

A discussion on the fact that the biggest companies got more support than small- and medium-sized companies involved Ms Van Der Stichele and Mr Mamdouh. It is true that most of the time, the foreign investors are effectively large foreign companies, in particular in the financial services sector. However, this is not always the case in other services sectors like business services and professional services. Mr Mamdouh argued that the most important aspect was the fact that all players were submitted to the same rules, thanks to the WTO system. Otherwise, the law of the stronger will effectively apply, to the probable detriment of the SMEs. Mr Van den Hende reiterated that the liberalisation does not lead to deregulation: does prevent regulation, and in fact the practice show that, as far as the services negotiations are concerned, the liberalisation has led to more regulation in many countries, since the countries that undertook commitments took that opportunity to introduce regulation in sectors that were not regulated so far. The typical examples are China and Vietnam WTO accessions.

A question on mobility of natural persons (so-called "Mode 4" in the GATS) was raised, and in particular, the necessity for the developed countries to open up their borders to allow developing countries to take profit of their main asset, i.e. cheap labour and workforce. The panel responded that much progress took place in the current GATS negotiations, showing that many developed countries have effectively understood the request of the developing countries. It was specified that developing countries would probably have to be more specific, to be more

technical, and less political as suggested by Mr Samb in his presentation, and come up with specific work positions, specific numbers, etc. It was also underlined that developed countries also have Mode 4 as a priority, but only few response have been given so far, even if that was an obvious mean to transfer expertise and know-how to the developing countries' markets.

Some references to the LDC modalities for the services were made, arguing that it was important to allow the LDC countries to benefit a special and differentiated treatment. Response was made that, in the long term, it was certainly not in the interest of the LDC to be permanently out of globalisation. The Special treatment should be a tool to develop faster, not to be excluded from the multilateral rules. A question on the EU European Partnership Agreements brought up the problem of compatibility of these EPAs with the WTO rules, since it is meant to be compatible with Article 5 of the GATS, any RTA (Regional Trade Agreement) should cover at least 60% of the market. Ms Van Der Stichele argued that Art. 5 should be amended, as already requested by many ACP countries. It was mentioned that, for the moment, only one EPA has indeed been fully completed, including services commitments. The others are still in negotiation. As for the 90% coverage, there is no jurisprudence so far, and the panels (if so asked) will likely look at this issue on a case by case basis.

Finally a remark was made on the cost and complexity of the Dispute Settlement System, which seems to be prohibitive for the small countries. Van Der Hende responded that it was true, but that assistance was available, and that the existing cases demonstrate that when there is a good case, it is often worthwhile to use the system.

## 3. Conclusions and way forward

The session was well attended and participants reported to be happy with the content and discussion. The objectives of the session have been well achieved, since many participants talked about the necessity to conclude the WTO Services negotiations, considering the failure that took place in July as an immense missed opportunity of the services negotiations where many countries had given positive signals at the "Signalling Conference" that took place on 26 July.

Many agreed that the WTO is an essential tool to better regulate services and increase trade in services in the future. A large number of participants also called to swiftly conclude the current DDA round, to avoid the "Unctatisation" or "UN-isation" of the WTO.

Additionally, many agreed that the FTAs and the RTAs that are proliferating around the world – although few effectively trigger services liberalisation – do not mean a reduction of the role of the WTO and the multilateral system, providing that the system, i.e. the WTO, will effectively survive another failure of the negotiations coupled with a worldwide economic crisis!



## The Duty-Free and Quota-Free Market Access Decision: Challenges and Opportunities



### **Moderator**

Mr Daniel Pruzin – Journalist, WTO Reporter, Bureau of National Affairs

### **Speakers**

H.E. Mr Mpho Malie – Former Minister of Trade & Industry, Cooperatives & Marketing, Kingdom of Lesotho

H.E. Dr Debapriya Bhattacharya – Ambassador, Permanent Representative of Bangladesh to the WTO

Mr Cass Johnson – President, National Council of Textile Organizations

Mr Pradeep S. Mehta – Secretary General, CUTS International

### **Organized by**

WTO - Development Division

### **Report written by**

WTO - Development Division

Thursday 25 September 2008 – 14.15-16.15

## Abstract

*The Duty-free, Quota-free Market Access Decision (hereafter referred to as the Decision) adopted at the Hong Kong Ministerial Conference in 2005 represented an historic opportunity for the poorest countries to use trade as a tool for economic development and poverty alleviation. The Decision stipulates that developed country, members shall, and developing country members in a position to do so should, provide duty-free, quota-free (DFQF) market access for at least 97 per cent of products originating from LDCs defined at the tariff-line level. The Decision calls upon these countries to progressively increase coverage to 100 per cent DFQF market access for products originating from the LDCs at the tariff-line level.*

*Since its adoption in Hong Kong, the Decision has attracted considerable debate between the developed, least-developed, and developing countries. It has, in fact, also been cause for debate among the LDCs themselves. While there are a number of countries which have taken or are taking steps to implement the Decision, there are still some members who have yet to implement it. At the same time, while the WTO membership remains committed to the provision of DFQF market access to the LDCs, some members have concerns regarding the implications that increased market access to the more competitive LDC exporters could have on their importing markets. Similarly, some developing countries are concerned about possible implications on their exports of those product lines where increased market access may be granted and on which they are equally competitive.*

*The LDCs themselves recognise that the benefits allocated to them will depend largely on the effective implementation of the Decision. As a result, the LDCs have been pursuing different issues related to the Decision in a number of negotiating fora in the WTO. These include ensuring effective implementation of the Decision; ensuring that the rules of origin are simple and transparent so as to facilitate increased market access; ensuring that products of export interest to the LDCs are included in the initial 97 per cent tariff-lines which will be offered DFQF market access; agreeing to the time-line by which members will fully comply with the 100 per cent DFQF market access, and finally, the need to address the supply-side constraints of the LDCs in order for them to benefit from the increased market access opportunities.*

*The key objective of the session was to raise awareness among the key stakeholders and the general public on the challenges and opportunities of implementing the Hong Kong Decision.*

## 1. Presentations by the panellists

### (a) Mpho Malie, former Minister of Industry, Trade and Marketing, Kingdom of Lesotho.

In response to Lesotho's experience with preferential schemes, Mpho Malie, hailed the contribution that such schemes, including the EU's Everything But Arms (EBA) Initiative and the

African, Growth and Opportunities Act (AGOA) had made to Lesotho's economy. In particular, AGOA had helped to increase job opportunities, export earnings as well as foreign direct investment (FDI). AGOA has resulted in the creation of 37,000 jobs in the textiles and apparel sector during the period from 2002 to 2004. This had eased unemployment which at one point had stood as high as 40 per cent. Being a labour intensive sector, the increased job opportunities in the textiles and apparels sector has also encouraged gender sensitivity with an increasing amount of women currently employed in the sector. Additionally, work ethics and discipline had improved. From 2002 to 2004, export earnings in the textiles sector increased from US\$100 million to about US\$400 million, making Lesotho the largest Sub-Saharan exporter of apparels to the USA. The increased FDI flows have enabled Lesotho to open up a fabric mill, currently the largest of its kind in Sub-Saharan Africa. In addition to the opportunities, AGOA has also provided capacity-building programmes, including human resource development-training for Lesotho customs officials in the U.S. SPS centers have also been opened up in Ghana, Botswana, and Kenya to help those trading under AGOA to comply with SPS standards.

However, to benefit from the initiative, Lesotho has had to meet certain conditions, which previously prevented the country from immediately benefiting from AGOA. That explains why Lesotho welcomed the multilateralisation of DFQF market access. Rules of origin have also limited Lesotho's ability to fully benefit from AGOA, but Mr Malie was pleased to say that the rules had been somewhat relaxed.

### (b) Dr Debapriya Bhattacharya, Ambassador of Bangladesh to the WTO

In regard to Bangladesh's experience with preferential schemes, as well the opportunities and challenges that the Hong Kong Decision posed for the country, the Ambassador highlighted that Bangladesh is unique in its status as a major competitive textile and clothing exporter. Bangladesh has benefited from a number of DFQF market access initiatives provided by countries including Australia, Canada, Japan, New Zealand, Norway, and Switzerland, many of which currently meet the Decision's threshold of providing DFQF market access to at least 97 per cent of LDCs products at the tariff-line level. Under the Canadian scheme, Bangladesh has expanded its exports five-fold during the period from 2002 to 2007. Additionally, the rules of origin criterion of the scheme have helped facilitate market access and despite the fact that the rules of origin under the initiative are relatively more stringent, Bangladesh has also benefited from the EU's EBA initiative.

While the Hong Kong Decision allowed for countries to initially provide DFQF market access for 97 per cent of LDC products, the commitment agreed to at Hong Kong was DFQF market access for 100 per cent of products originating from the LDCs at the tariff line level. Though some countries have implemented the Decision, Bangladesh is concerned that the United States, which imported almost 50 per cent of all LDC exports, has not yet done so. For countries like the US, the initial 3 per cent that could be excluded from DFQF market access,





covered 300 tariff-lines. For Bangladesh, whose export structure was comparatively more diversified than that of other LDCs, the 3 per cent exclusion could potentially prevent access for all of its exports to the US. The 3 per cent exclusion list was critical to Bangladesh and as a result, Bangladesh tabled a number of proposals in an attempt to discipline the 3 per cent through an anti-concentration clause. This ensures that the 3 per cent excluded would be spread across tariff lines and HS chapters and would, hopefully, prevent a particular sector from being targeted and excluded. In order to make DFQF commercially meaningful, Bangladesh had advocated the ideal of a minimum threshold covering at least 80 per cent of LDC exports in the DFQF coverage. He reiterated the need to agree to a timeline by which members would fully comply with the provision of 100 per cent DFQF market access.

It was true that many countries that have implemented the Hong Kong Decision have done so largely on the basis of unilateral measures taken. According to Amb. Bhattacharya, agreeing to the DFQF market access at the multilateral level would reinstate a balance to the provision of DFQF market access and address the disparity that currently existed, that is of some LDCs benefiting from such schemes and others not. He emphasised the need for DFQF market access to be universally available to all LDCs.

It is important to remember that the Decision does not necessarily represent realized market access; rather, it represents potential market access. To realise the increased market access, supply-side constraints would need to be addressed if the LDCs were to effectively take advantage of the increased market access opportunities. This was where initiatives such as Aid for Trade and the Enhanced Integrated Framework have a critical role to play.

#### **(c) Cass Johnson, National Council of Textile Organisations (NCTO)**

In response to what major problem the U.S. had in implementing the Decision, Cass Johnson stated that the US textile industry, as well as the coalition of 23 textile sectors from around the world and his organization, had real concerns. These concerns relate to the loss of market share in the U.S. market, African LDCs (which were AGOA beneficiaries), and the textile-producing countries in the Andean, CAFTA, and NAFTA. In the past five years, there have been an increasing concentration of apparel trade from five countries - Bangladesh, Cambodia, China, Indonesia, and Vietnam which represent over 50 per cent of apparel imports in the U.S. The so-called "Big Five" were the sole winners of the quota phase-out in 2005. In particular, in the past three and half years, Bangladesh alone has increased its exports to the U.S. by US\$1.6 billion, without preferences, and had become one of the most powerful players on the world apparel market. The increased market shares of the Big Five apparel exporters have, however, been at the expense of other suppliers. While Bangladesh and Cambodia have increased their exports by billions of dollars, exports from other countries have fallen by billions of dollars. The impact is not a zero-sum game. For

example, while the imports of apparels from the Big Five have increased by US\$18 billion since 2004, those from other countries have fallen by US\$10 billion over the same period. The large share of the displaced exports have come from the preference receiving countries, including the Caribbean Basin Initiative (CBI) with export losses of US\$1.7 billion, NAFTA with losses of US\$2.5 billion, the Andean region with losses of US\$100 million, and AGOA countries with losses of US\$600 million.

There is concern that giving duty-free benefits to new powerful textile exporters, like Cambodia and Bangladesh, will only compound and accelerate the problems already faced by the preference receiving countries, potentially causing a development crisis in these countries. Moreover, the U.S. Congress has concerns about the implications to Africa in providing DFQF market access to Bangladesh and Cambodia and on the US's free trade partners, which are important from a national security point of view.

#### **(d) Pradeep S. Mehta, Consumer Unity & Trust Society (CUTS)**

Pradeep Mehta said that the issue of Bangladesh and Cambodia within the LDCs group was that of competitiveness, which allowed the two LDCs to outperform others on the basis of MFN market access to the U.S.

## **2. Questions and comments by the audience**

A participant from Bangladesh noted that there are countries other than the Big Five, whose U.S. exports have been increasing since overall world trade in apparel began expanding. In his view, the point of "Big Five" expansion at the expense of others was invalid. Moreover, the DFQF decision was agreed upon for all LDCs, including Bangladesh and Cambodia, even though the latter two countries had since become competitive.

Mr Johnson responded by noting that while the U.S. apparel market had indeed expanded by US\$8 billion over the past two and half years, the imports from the Big Five had increased by US\$18 billion during the same period. At the same time, the imports from AGOA, LDC beneficiaries, and Haiti, as well as the preferences partner countries in CAFTA and NAFTA had declined. He expressed concern that providing Bangladesh and Cambodia with DFQF market access for all products in the U.S. market would have real development impacts on other countries. The NCTO would submit a list of tariff-lines which should be placed on the 3 per cent exclusion list to the consultative process for the implementation of the Decision. Furthermore, the organization was of the view that the Big Five should not dominate the entire U.S. apparel market because of the market distortions occurring over the past 10 years.

Ambassador Bhattacharya retaliated, stating that if the U.S. wishes to review the Hong Kong Decision, it should submit a



formal proposal to that effect. Otherwise, the implementation of the Decision by each preference-giving country could only be judged against the fulfilment of the Decision. He also stressed the importance of adequately supporting the LDCs both in terms of market access and through the provision of Aid for Trade, so that all countries could grow together. Furthermore, Bangladesh is ready to look at the list of products from the LDC beneficiaries of AGOA that it is directly competing with.

Mr Malie noted that Lesotho is ready to negotiate with Bangladesh and Cambodia on those tariff lines of major concern for the AGOA LDCs for possible inclusion in the 3 per cent exclusion list of the U.S.

A participant from the WTO Secretariat raised a question whether the periodic but frequent renewals of AGOA by the U.S. Congress have affected the certainty of investment in Africa. He asked whether African countries would be competitive against Asian exporters, especially Indonesia, Vietnam and India, even if they were granted DFQF market access.

Mr Malie, in response noted that while the short time spans for the AGOA initiative have caused some sense of insecurity and unpredictability, AGOA have now been extended until 2015. Furthermore, there are plans within the U.S. Congress to review the initiative with the aim towards bringing AGOA into conformity with the agreement reached in Hong Kong.

Mr Johnson said that African countries' competitiveness needs to be complemented by initiatives like Aid for Trade which should focus on Africa before preferences were eroded.

A participant from Lesotho commented that Non-Tariff Measures (NTMs) are increasingly being used to protect markets in developed countries, and that, according to economic literature, they are becoming a new and more stringent barrier facing LDC exports.

Ambassador Bhattacharya in response said that an additional measure impeding effective market access for LDC exports related to anti-dumping and countervailing duties. He recalled that LDCs in their Maseru Ministerial Declaration adopted in February

2008, had called for a total ban or moratorium on the application of anti-dumping duties on products from LDCs. Furthermore, he noted that all unilateral preference arrangements would always have serious pitfalls regarding the discriminatory and arbitrary application, the lack of predictability, the issue of rules of origin, and other conditions attached to the arrangements which were often so called "WTO plus". They could never be a substitute for a multilateral mechanism.

The moderator stated that the panel discussion had largely focused on textiles, and asked whether the preference initiatives had been successful in diversifying the economies of LDCs into areas other than textiles and clothing.

In response, Mr Malie indicated that the Government of Lesotho looked beyond textiles and clothing and is investing resources to help farmers produce beans and asparagus, which were being exported to Europe. It had also strengthened the mining sector and initiated the electronics industry to attract FDI inflows.

### 3. Conclusions and way forward

The discussion highlighted the benefits that the LDCs have harvested from the already existing trade preferences, including benefits stemming from the developed countries which have already implemented the Hong Kong Decision, in the form of increased employment opportunities, increased export revenues, and FDI inflows. However, the panellists and participants acknowledged many challenges remain in turning the potential market access under the Hong Kong Decision into realised market access for LDCs. These challenges include resolving the 3 per cent exclusion list; the time-line for providing DFQF market access for all products originating for all LDCs; addressing NTBs; and instituting complementary measures to address LDCs' supply side constraints through Aid for Trade and the Enhanced Integrated Framework. Overcoming these challenges will be crucial for LDCs to attain effective and meaningful market access for their products, ending their marginalisation and thus accelerating their integration into the multilateral trading system.



## A GSP for Services: An Essential Tool or A Gimmick?



### **Moderator**

Dr Esperanza Durán – Executive Director, Agency for International Trade Information and Cooperation (AITIC)

### **Speakers**

Mr Elly Kamahungye – First Secretary, Permanent Mission of the Republic of Uganda, LDC focal point on Services

H.E. Ms Elin Østebø Johansen – Ambassador, Permanent Representative of Norway to the WTO

Mr Pascal Kerneis – Managing Director, European Services Forum (ESF)

### **Organized by**

AITIC

### **Report written by**

AITIC

Thursday 25 September 2008 – 14.15-16.15

## Abstract

*This session focused on the relevance of market access preferences to LDCs in the service sector as a means of stimulating development and furthering LDC integration into world markets. WTO members have recently agreed on the use of a waiver for granting such preferences, but the actual coverage and content of the waiver remains to be negotiated.*

*Elly Kamahungye (Uganda) presented LDC expectations from the waiver, a tool which would allow non-LDC members of the WTO to undertake more liberal commitments in favour of LDCs without having to fear an invasion from service powerhouses such as India, China or Brazil. Ambassador Elin Østebø Johansen (Norway) explained the stage reached by the negotiations on the waiver: temporary and to benefit all LDCs, with work to continue on scope and content. Pascal Kerneis (European Services Forum) doubted that a waiver was the appropriate instrument to promote LDC development and integration into world markets. He said that priority should be given instead to the reinforcement of LDCs' domestic service industry, in particular using mode 3.*

*The discussion that followed illustrated the difficulties faced by LDCs to develop their services industry in the concrete case of tourism. Most participants agreed that RTAs, another exception to MFN treatment, would not be sufficient to respond to LDCs' expectations in terms of Special and Differential Treatment (S&D).*

## 1. Presentations by the panellists

### (a) Dr Esperanza Duràn, Executive Director, AITIC

#### Introduction

Since the beginning of the Services negotiations in 2000, WTO members have mulled over how to provide special and differential treatment (S&D) for developing countries, and especially for LDCs. The modalities for S&D for LDC members in the negotiations on trade in services (TN/S/13) adopted in September 2003 called on WTO members to "work to develop appropriate mechanisms with a view to achieving full implementation of Article IV: 3 of the GATS and facilitating effective access of LDCs' services and service suppliers to foreign markets". The recent declaration adopted by LDC Ministers in Maseru, Lesotho (WT/L/719), was more specific, referring to "developing an appropriate [...] legal mechanism to ensure that preferential and more favourable treatment to services and service suppliers of LDCs is exempt from the MFN obligation in Article II of the GATS".

The principle of a waiver as the mechanism to be used to that effect was now more or less accepted, as reported by the Chairman of the services negotiations, Ambassador Fernando De Mateo of Mexico in his latest report (T/N/S/34).

The objective of the AITIC-organised session was to give an opportunity to a representative from the LDC community to explain what the waiver could achieve for LDCs. What type of

preferences should be granted? In which sectors and for which modes of supply? The answers to these questions would assist in articulating a clearer understanding of the value of the waiver for the LDCs, how it could be used and what results it might produce.

Responding to these expectations would be the shared responsibility of preference-granting countries and the private sector. The proof of the pudding is in the eating, thus the value of any preference should be measured against the actual trade it generates in favour of services and service providers from LDCs.

### (b) Elly Kamahungye Kafeero, First Secretary, Permanent Mission of Uganda

#### The Views of Least Developed Countries

Mr Elly Kamahungye, services focal point for the LDC Group, stated that while services have been the most dynamic sector of world trade, trade in services remained largely dominated by developed countries. LDCs are still net importers of services. Developing exports in this sector requires some sort of S&D treatment for LDCs in the importing markets.

The movement of natural persons, mode 4 of services trade under GATS, is of particular importance to LDCs as they have an abundant and cheap labour supply. However, the potential of other modes of supply should not be ignored. If market access for mode 4 were to be granted on an MFN basis by importing countries, this would not confer any particular advantage to LDCs and they would probably be unable to compete.

WTO members accept the logic of this argument and have settled for the use of a waiver as the means of granting preferential treatment to services and service providers of LDCs. Even if an amendment had initially been the preferred option of the LDCs, they are now convinced that similar results can be achieved with a waiver. As the waiver is not mandatory for all members and does not create any obligation for those who do not use it, the chances of it being accepted were much higher.

LDCs have high expectations from the waiver. Meeting these expectations requires that the waiver not be watered down. The aim should be to create real market access for LDC services and service providers. LDCs expected from the outset that each of the parties to the negotiations would play its part in the process and that none of them would raise objections.

The LDCs have done their homework and identified the various sectors and modes of supply of interest to them to be included in the waiver. LDCs welcome the assistance of their development partners in furthering this research.

### (c) H.E. Ms Elin Østebø Johansen, Permanent Representative of Norway to the WTO

#### The Views of Preference-Granting Countries



Norway is fully committed to supporting LDCs and helping them to develop service industries and reap the future benefits of cross-border trade in services. Ambassador Johansen said that Norway has played a coordinating role in advancing work on a mechanism to provide S&D to LDCs, as requested by the modalities adopted in September 2003. To this end, Norway has convened a small, informal working group of eight countries, including developed, advanced developing and LDCs.

This group eventually agreed on a two-step framework. The first step involved the selection of a waiver as a legal instrument that would be acceptable to all members and that would provide preferential treatment to LDCs. The second step of the process was engagement in actual negotiations on the waiver, following a ministerial agreement on the modalities for agriculture and NAMA. As the July mini-ministerial did not produce the expected results, it is now unclear what the status of the issue is, and when negotiations will begin.

The group of eight reached some common ground on potential substance for the waiver. The principles agreed upon by the group include the following elements:

- the waiver would be temporary, consistent with Article IX of the WTO Agreement, and of a duration to be decided through multilateral negotiations;
- the waiver should be non-discriminatory, i.e. the same preferential treatment should be offered to all LDCs;
- any WTO member – developed and developing alike – should be able to make use of the generalised waiver for granting preferential treatment to services and service suppliers from LDCs;
- the scope of the waiver would be market access, i.e. it would waive the obligation to grant market access on a Most Favoured Nation basis, to enable WTO members to grant preferential market access to LDCs.

Within these limits, each member would be free to voluntarily and autonomously offer preferential treatment to LDCs in any sector or mode of supply.

One issue of major concern to some members, both developed and developing, is the effect such treatment might have on other members. The dilemma is that the arrangement should not adversely affect other members while at the same time, the nature of any preferential treatment is that others are negatively affected. Many countries have expressed the view that any preferential treatment granted to LDCs should not affect the MFN nature of the schedules of specific commitments.

Another potentially difficult issue is the introduction of differences between developed and developing countries evoking the waiver. There was agreement in July that the waiver should be available to all members. However, full

agreement was not reached on whether the scope of the waiver would be the same for both developed and developing country members. An important question was how to effectively differentiate between members in a voluntary and autonomous arrangement.

Three main options for the implementation of the waiver were discussed: (i) to open to LDCs only sectors or sub-sectors that had not been bound in a member's schedule; (ii) to open partly bound sectors/sub-sectors more to LDCs than to others, with fewer restrictions than indicated in schedules; (iii) to create or modify quota systems for market access. The last would perhaps be most feasible in modes 3 and 4 (commercial presence and movement of natural persons), since some members already operate quotas.

There are many questions raised during work on this issue. Granting trade preferences in services, an area involving qualitative regulations and measures instead of quantitative tariffs, is complex. Which potential preference granting countries could offer the most effective preferences? Would the waiver risk further strengthening existing economic imbalances? Nevertheless, Norway firmly believes that trade preferences have worked reasonably well over the past 30 years. The time is ripe, she said, for the establishment of a mechanism comparable to the enabling clause for trade in goods to trade in services.

#### **(d) Pascal Kerneis, Managing Director, European Services Forum (ESF)**

##### **Views of the Private Sector**

As business does not like uncertainty and exceptions, one of the greatest strengths of the WTO has been that it provides security to trade regimes of its members. This is the main reason why the European services industry has been opposed to emergency safeguard measures in the area of services. For the same reason, the ESF does not favour special preferences being granted to LDCs. If the only developmental advantage that could emerge from the Doha negotiations is an exception to the rules, something is wrong.

From a developmental point of view, ESF argued that the General System of Preferences (GSP) and the Cotonou Agreement had not worked. Granting to LDCs a "round for free" was a major mistake, Mr Kerneis said, as it would contribute to further marginalization of these countries. In the services sector, the way forward is to give greater security to investors. No company would invest in a country unless it is reassured that its investment will be secure.

In the LDC modalities, a critical element is the importance attached to the strengthening of the services industry capabilities in LDCs. This does not mean that LDCs have to be granted preferences. It simply means that when LDCs have a trade interest in a sector, the markets of other members in this sector have also to be open. But this does not require the



other members to close their markets in this sector to services or service suppliers from a different origin.

Mr Kerneis doubted that a waiver would work. Most developed country markets are already widely open, making it difficult to introduce preferences in favour of LDCs. Some quotas or licenses might be introduced for LDCs, but it remains unclear whether those who benefit from these licenses would be competitive and would survive in highly competitive markets.

Preferences were already addressed in the context of regional trade agreements (RTAs) covered under Article V of the GATS. This was the approach of the EU with the Economic Partnership Agreements (EPAs). In the Caribbean region, for example, quotas have been granted under mode 4.

Implementing a waiver would require a significant amount of effort. This could be doubted to be worthwhile. Priority should be given to strengthening domestic service sector of LDCs, rather than the illusory competition in the cut-throat markets of developed countries. This would require technical assistance and capacity building efforts.

## 2. Questions and comments by the audience

Responding to questions from the floor, Mr Kamahungye agreed that LDCs face many supply-side constraints. He said that the example of mode 2 for tourism was revealing. The tourism packages sold in developed countries leave scant returns to the developing countries that are the tourist destination. A member of the audience asked if modes 2 and 3 could be linked to a rebalancing of profit sharing? A link between modes 3 and 4 for tour operators would also increase the ability to move people around. This illustrates that much more work is needed to make the waiver operational.

Preferential market access should support poverty eradication. At the moment, remittances under mode 4 were three times the total volume of Official development assistance (ODA). But mode 4 offers thus far did not respond to LDC interests because they had to apply indistinctively to trading giants like China, India or Brazil. A waiver might also contribute

to the development of trade among LDCs, since in Africa most LDCs are also neighbours. The EPAs are not a panacea, since more than ten LDCs are not ACP countries and what is valid for the Caribbean would have no value in Eastern Africa where requirements and interests are different.

Ambassador Johansen agreed that efforts should be started as soon as possible to fill the waiver with specific content. RTAs between LDCs and big trading powers could be extremely unbalanced and could undermine the multilateral trading system. LDCs have first to pass a certain threshold before they can start to benefit from international trade. Unless efforts are made to better integrate LDCs into markets, no country will realise that trading with LDCs is worthwhile. Furthermore, market opening in developed countries has been at times somewhat theoretical, given the amount of red tape such as visa problems

Mr Kerneis agreed that linking modes 2 and 3 could improve market access. He remembered trying to purchase a travel package from a local agency in Uganda and finding the price charged prohibitive. A solution would be to open an agency in Europe to sell tourism packages. As the EU market is opening, African travel service providers are welcome to do so. If this requires support and assistance, this could also be provided. Mr Kerneis expressed conviction that the development potential of foreign direct investment under mode 3 was much greater than under mode 4 regardless of the volume of remittances.

## 3. Conclusions and way forward

There was no obvious conclusion from the discussion, since the diverging views of the speakers were very difficult to reconcile. It was clear, however, that WTO members would continue their discussions on a waiver for LDCs, as part of the negotiations on services. Many would agree, however, that if a waiver could contribute to re-establishing a level playing field for LDCs, it would not in and of itself be sufficient to transform LDCs into world class exporters of services. More would have to be done in terms of giving real market access content to the waiver, as well as in the export capacity and technical assistance areas. Responding to these expectations will be the shared responsibility of preference-granting countries as well as the private sector.



I.

## Small and Medium Size Exporters in Developing Countries: Expectations from the WTO in the Emerging Global Trading Environment



### **Moderator**

Mr Rajesh Aggarwal – Senior Adviser, Business & Trade Policy, International Trade Centre (ITC)

### **Speakers**

Mr Eddy Yeung – Chief Operating Officer, CIEL Group, Port Louis, Mauritius

Ms Subhashini Abeysinghe – Economist, Economic Intelligence Unit, The Ceylon Chamber of Commerce, Sri-Lanka

Mr David Rasquinha – Chief General Manager, Project & Trade Finance Group, Export-Import Bank of India, Mumbai, India

Mr Alexander Keck – Counsellor, Economic Research and Statistics Division, WTO

### **Organized by**

ITC

### **Report written by**

ITC

Thursday 25 September 2008 – 14.15-16.15

## Abstract

*Small and medium enterprises (SMEs) in least developed and developing countries are endeavouring to spot and seize new market opportunities for their products and respond to the challenges of the emerging world trading system in order to be successful in the global market.*

*The last decade has seen economic liberalisation taking shape in most developing countries as a result of autonomous liberalisation, Uruguay Round Agreements and/or regional and bilateral free trade or preferential agreements. With the relative decline in the importance of tariffs in providing real market access, issues such as non tariff measures including private standards and trade in services are becoming increasingly important in bilateral and regional trade agreements. The businesses in these countries, therefore, find themselves in a position that they have to constantly adjust to the evolving trading environment to be successful in the global market place.*

*During the session, the business community represented by Chairpersons of Chambers of Commerce and/or leading Trade Associations from developing countries in Africa, Asia and Latin America and economies in transition will reflect on:*

*"What should be the WTO's role in dealing with emerging issues, such as, (i) non-tariff measures, including the proliferation of private standards, which may assume even more significance pursuant to the climate change debate, (ii) regionalism and bilateralism, and (iii) facilitating trade in services".*

## 1. Presentations by the panellists

### (a) Eddy Yeung, Chief Operating Officer, CIEL Group, Mauritius

#### Trading into the future

Eddy Yeung began by providing an overview of some recent developments in the textiles industry. The market evolution has been drastic over the years from a suppliers' market to an extreme buyers' market. Quality standards that were previously considered the norm are no longer accepted, driving higher expectations of suppliers. Large retail chains are investing a lot of resources to design their own private standards and build their image on ethical values. Retailers use their capacity to order in large volumes as leverage to impose exclusive and restrictive terms in their commercial contracts, and very stringent and demanding quality standards. Imposing these standards on suppliers also serves to retain the market dominance of large retailers over their competitors.

Lead times are reducing from year-to-year resulting in suppliers needing surplus capacity in order to meet the reduced time demands, which can be very costly during low seasons.

Penalties for late delivery are getting harsher. The penalties for one day's lateness can include the cost of airfreight charged back to the supplier; a second lateness can be penalised with

a reduction of order by 15%; and in many cases, the penalty is the cancellation of orders completely, with all the goods left with the supplier.

It is increasingly common for payment options to include 90 days open credit terms. As a result, insurance coverage is more difficult to obtain. As not many customers are well rated, the cost of insurance coverage is high, the risk is enormous, and significant debts are unavoidable every year.

Private standards are often inconsistent with norms and sometimes not economically viable for SMEs. They place high costs on human resources, equipment, expertise, and product wastage (e.g. in testing). And the risk taken to do business is increasing day-by-day restricting business only to the suppliers that have strong financial resources.

### (b) Subhashini Abeysinghe, Economist Intelligence Unit, Ceylon Chamber of Commerce, Sri Lanka

#### Small and Medium Size Exporters in Developing Countries: Expectations from the WTO in the Emerging Global Trading Environment

Subhashini Abeysinghe presented the results of a recent survey undertaken for Sri Lanka's services sector. The survey identified many strengths of Sri Lanka's services sector including the high quality of services, an educated and trainable workforce, technological leadership, brand identification, specialisation, and unique expertise.

The most significant challenges to the services sector identified by the survey were the need for domestic policy reform for more enabling exchange regulations and the importance of developing regional markets. The other key challenges identified by the survey included difficulties in obtaining travel documents; difficulty in attracting professionally skilled employees; regulatory and licensing barriers in foreign markets; inability to obtain adequate financing; market access barriers in foreign markets; difficulty in identifying suitable local partners in foreign markets; difficulty establishing credibility; lack of market information; and insufficient commercial trade contacts.

#### Survey Findings Top 10 Challenges

Challenge	Percentage
Exchange control regulations in Sri Lanka	51%
Difficulties in obtaining travel documents	38%
Difficulty in attracting professionally skilled employees	35%
Regulatory licensing barriers in foreign markets	33%
Inability to obtain adequate financing	30%



### Survey Findings Top 10 Challenges

Market access barriers in foreign markets	29%
Difficulty in identifying suitable local partners in foreign markets	29%
Difficulty establishing credibility	26%
Lack of market information	25%
Insufficient commercial trade contacts	17%

Four of these challenges can be addressed within the WTO – difficulties in obtaining travel documents; regulatory and licensing barriers in foreign markets; market access barriers in foreign markets; and lack of market information.

However in describing Sri Lanka's defensive interests, Ms Abeysinghe emphasised "We are already open but we are not ready to open". Meaning Sri Lanka's current regime is open to foreign service-providers but is reluctant to make legally binding multilateral, regional, and bilateral commitments because Sri Lanka lacks the enabling regulation.

The difficulties Sri Lanka faces in developing the right regulatory framework for services includes poor awareness and expertise among the public and private sectors on Services agreements; poor recognition given by policy-makers to services exports; lack of lobbying and participation of the manufacturing and agriculture sectors; and difficulty in creating private sector interest in the WTO process. An increase in awareness is needed to address each of these points and to elevate developing countries' level of comfort in making commitments on trade in services.

### (c) David Rasquinha, Chief General Manager, Project & Trade Finance Group, Export-Import Bank of India, Mumbai, India

#### Regionalism and Bilateralism: Role of WTO

There has been much debate on whether bilateral and regional agreements serve as "building blocks" or "stumbling blocks" for an open international trading system. On the one hand, the expansion of bilateral and regional agreements erode the existing preferences, therefore reducing the obstacles and acting as a catalyst to multilateral liberalisation. On the other hand, there is evidence that bilateral and regional agreements introduce discrimination.

In order to increase compatibility between regionalism and multilateralism, Mr Rasquinha made a number of suggestions. For instance, he proposed that global standards for preferential Rules of Origin could be developed. Also, building developing countries' analytical capabilities and negotiating skills is critical in the face of growing regionalism. Tools could be developed

to assist developing countries in bilateral and regional trade negotiations, including a systematic checklist to analyse how the elements of bilateral and regional agreements compare with WTO rules; and a guide that would help facilitate implementation of bilateral and regional agreements including the requisite legal and legislative requirements.

### (d) Alexander Keck, Counsellor, Economic Research and Statistics Division, WTO Secretariat

Alexander Keck provided comments in response to the other panellists' presentations:

#### i) Eddy Yeung's presentation

Trade costs are affected by many issues such as buying power, standards, transport services, customs, and infrastructure etc. There is ongoing work within the WTO in all these areas including cooperation on competition policies (although not currently part of the Doha Agenda); proliferation of standards has been addressed through the Agreement on Technical Barriers to Trade and through WTO dispute settlement; negotiations on services (e.g. transport, business, financial, telecommunications); and Aid for Trade programmes.

#### ii) Subhashini Abeysingh's presentation

It is difficult to measure the importance of trade in services and to understand and remove obstacles to it because data is lacking and adequate measurement tools have yet to be developed. More information gathering, like the survey Ms Abeysinghe presented, is needed.

#### iii) David Rasquinh's presentation

Under a new transparency mechanism adopted in December 2006, the WTO Secretariat has a mandate to prepare factual reports on notified regional trade agreements. Whilst these reports cannot form value judgements, they could function to alert other WTO members of some of the rules and practices in regional trade agreements that may adversely affect non-parties to the agreements.

## 2. Questions and comments by the audience

On the issue of proliferation of private standards participants agreed the WTO, through the Agreement on Technical Barriers to Trade should provide a good basis for raising the issues and resolving disputes. In addition participants discussed how Aid for Trade could boost technical assistance and infrastructure development that can assist the expansion of productive capacities, and the reduction of trade costs. Regional development banks can also work with SMEs to upscale their certification, packaging and labelling standards to facilitate exports. But the mounting market dominance of large retail chains may need to be addressed through effective



cooperation and implementation of competition and anti-trust regulations.

On the issue of trade in services, participants recognised that transparency, surveys like Sri Lanka's, as well as dialogues between business, policy-makers, and researchers are needed to gain a better understanding of the difficulties of developing country SMEs in taking up global market opportunities.

During the discussions, forum participants also expressed the view that the WTO might need to take a more proactive approach to regional trade agreements in future.

### 3. Conclusions and way forward

From the discussions, two common themes emerged. Panellists agreed on the need to create more effective involvement for the private sector in the WTO by keeping pace with the evolution of business practices. They also agreed on a strong role for the WTO in providing transparency, predictability and legal certainty of international trading regime, which is much valued by the private sector.



J.

## Russia, Central Asia and Caucasus (CIS) and the WTO: Challenges and Opportunities



### **Moderator**

Ms Natalia Shpilkovskaya – International Centre for Trade and Sustainable Development (ICTSD)

### **Speakers**

Ms Olga Ponizova – Eco-Accord, Russia

H.E. Mr Muktar Djumaliev – Ambassador, Permanent Representative of the Kyrgyz Republic to the UN/WTO

Mr Dimitry Lyakishev – Head of Trade Policy, Permanent Mission of the Russian Federation, Geneva

Mr Hassan Karimov – Expert, Foundation to Support Civil Initiatives, Tadjikistan

### **Organized by**

Eco-Accord

### **Report written by**

Eco-Accord

Thursday 25 September 2008 – 16.30-18.30



## Abstract

*The debate on global trade rules and wider questions of sustainable development is still dominated by North/South divisions. The Central Asia and Caucasus (CIS) region does not get nearly as much attention despite the fact that some of the fiercest negotiations about WTO accession and the conflicts that result are with the countries of the former Soviet Union. In this session we would like to explore some of the specific problems of the region with regard to international trade rules.*

*The region is rather diverse –the Russian Federation is rich with oil and other raw materials, and some countries of Central Asia are comparatively poor. Countries differ in economic and social indicators and in the level of civil society development. All these newly independent states are at the complicated period of transition from centralized to market economy and to democratic society. All the countries are facing the immediate problem of integration into global economic structures, particularly into the WTO. Governments of the region's countries consider their accession to the WTO as a major precondition for accelerating economic growth and attracting investment.*

*This raises difficult questions regarding the optimal conditions for accession to the WTO. It is also unclear if the terms that are generally listed for developing countries would be the same terms for the CIS region.*

*During the Session the following questions were addressed:*

- 1. What can CIS countries expect from WTO membership? What benefits and risks do they foresee?*
- 2. How has WTO accession influenced development of Newly Acceded Countries of the region? Did WTO membership help them to accelerate economic development, improve governance, and eradicate poverty?*
- 3. What difficulties do countries of the region have during WTO accession process?*
- 4. Do WTO rules meet the needs and specific situation of CIS countries? Do the Doha Round negotiations meet needs of Recently Acceded Countries?*
- 5. What can be done to make WTO membership for CIS countries work for sustainable development? How can the role of civil society be strengthened?*

## 1. Presentations by the panellists

### (a) Olga Ponizova, Eco-Accord

#### Current status and problems of WTO accession for countries of the region

Five of the twelve CIS countries are already WTO members - Armenia, Georgia, Kyrgyzstan, Moldova, and Ukraine. Six

others, Azerbaijan, Belarus, Kazakhstan, Russia, Tajikistan, and Uzbekistan, have observer status and are negotiating their accession. The majority has engaged, or is engaging in, long negotiations for WTO accession. Only Kyrgyzstan had an unusually short period (two years) while the other CIS countries have needed many years (Ukraine needed fifteen years). In the majority of countries, the process has not yet been concluded.

As a rule, larger countries with more complicated economic structures need more time to negotiate terms of accession. The time taken also depends on the nature of the requirements that WTO members put forward to a candidate country and how persistent a country-candidate is in protecting national interests. For example, WTO members did not set difficult or unacceptable conditions for Kyrgyzstan because of the small scale of its economy and its orientation towards exports of raw materials. On the other hand, because of the economic depression in the country at the time, there were no forces at the national level lobbying for protection of the domestic market.

During the 1990's, the WTO accession process for countries of the region started, and was marked by a sharp and unprecedented period of dramatic transformations from totalitarian societies and centralized economies. The economic situation in this period has dramatically worsened. In almost all countries of the region, GDP has sharply decreased (by 30%), as have industrial production (39%), agricultural output (31%) and fixed capital formation. Inflation rates have rocketed, revealing the instability of the financial systems, and foreign debt has grown. Economic indicators have fallen unevenly in different countries, but all have been through severe and painful crises. Currently the situation is getting better, but still development problems are very acute.

Having become independent, countries of the region need to develop their independent economies and integrate into the framework of the global economy and global economic structures as sovereign nation-states. The WTO is one of the organizations they wish to join.

It is important to ask what countries of the region expect from WTO accession. Multi-stakeholder discussions in the region organized by Eco-Accord have highlighted the following benefits that are likely to be gained:

- access to the trade dispute settlement mechanism;
- opportunities to participate in the development of new international trade rules;
- improvements in national legislation and creation of a favourable environment for trade and investments, contributing to the development of national economies;
- the creation of conditions for better access to the world markets for machinery, equipment, technology, information, mineral and raw materials and transport communications;



- the creation of conditions for increasing the quality of national goods and services because of higher standards and the influence of competition;
- the creation of better conditions not only for economic development, but for improvements in social and environmental conditions;
- improvements in management systems, including environmental management;
- political advantages due to demonstration of the desire to integrate the country into the global economic system.

At the same time many experts and activists worry about the price the country and society should pay for accession to the WTO. This question excites a broad spectrum of the public in the CIS region. Common concerns of the CIS countries are as follows:

- To a certain degree WTO membership restrains the possibilities for states to institute national economic policy.
- There is a danger of bankruptcy for some national industries and manufacturers, as well as danger of increases in unemployment and development of social tension. National producers have a low ability to compete with international producers unless they receive essential support from the government and have sufficient financial resources and management capacity for their effective development. Entire sectors of CIS countries could be plunged into crisis, particularly small and medium-sized enterprises and agriculture.
- The CIS countries as yet have insufficient capacity, expertise or qualified human resources to participate in the WTO effectively and protect their self-interests in international trade.
- Trade liberalization can have an adverse impact on the environment by promoting imports of environmentally-harmful technologies and goods into the country, over-exploiting biodiversity, increasing waste production, increasing growth in the mining sectors and depleting natural resources.

Olga Ponizova spoke about *problems CIS countries have acceding the WTO*: In the WTO there is no special regime for economies in transition – in contrast to the majority of international organizations which recognize the category of transitional countries in addition to that of developed and developing countries. Therefore, in most cases terms of accession for CIS countries more closely correspond to those appropriate for developed countries and don't meet the development needs that are unique to CIS countries. For example, commitments of southern countries of the region such as Armenia, Kyrgyzstan, Georgia and Moldova, who

joined the WTO recently, match the accession commitments of developed countries, rather than those of developing countries. Also CIS countries do not benefit from the privileges accorded to members who joined WTO during the Uruguay Round. Countries are often imposed upon by "WTO+" obligations. In some cases the accession process is dominated by political issues; sometimes terms proposed are not related to trade.

Another problem is low capacity of governments to negotiate accession. First, states must have personnel that are able to negotiate effectively with existing member states. They must understand the legal agreements as well as the trade and economic interests of their country. Significant economic analysis may be required to prepare the initial memorandum describing the trade environment of the country. And states must have the capacity to develop and administer the laws and processes required to meet trade obligations. All this takes a high level of internal knowledge and capacity. The situation worsens with language problems – all working documents are in English, knowledge of which is growing in the region, but so far not fast enough. Russian is still widely used in the region but as opposed to the UN system, the WTO does not use Russian as a working language.

It was pointed out that additional difficulties arise from lack of coalition-building within the region. International assistance does not always meet the needs specific to a situation, and is mostly concentrated on technical issues. There is a lack of expertise and research on key issues related to WTO topics, in particular as a consequence of WTO accession.

In general there is low awareness among stakeholders about the WTO, accession and membership issues, and the potential influence that membership can have on sustainable development. Some governments undertake consultations mostly with business and experts, rather than involving Non-governmental organizations (NGOs) and other civil society groups in debates.

NGOs from the region have very little participation in international discussions on trade issues and are under-represented at main global international trade forums such as WTO ministerial conferences, UNCTAD conferences and the WTO Public Forum. The main reason for this is a lack of funding - many international organizations and foundations support participation of NGOs from developing countries, but don't consider NGOs from Eastern Europe, the Caucasus and Central Asia the regions eligible for such an assistance. Another obstacle relates to visa problems. Olga Ponizova stressed that for this event 3 participants from EECCA Network on Trade and Sustainable Development, including 1 speaker, were unable to get a Swiss visa, and thus could not participate even after having received funding support to attend.

Olga Ponizova shared the position of the Network on Trade and Sustainable Development of Eastern Europe, Caucasus and Central Asia on preconditions to get maximum benefits from the WTO accession. To do so, countries need:

- to provide favourable accession terms (contributing to sustainable development, but not to limit policy space to address urgent economic, social, and environmental aims);
- to participate in the elaboration of multilateral trade rules based on country's interests; and
- to develop effective national policy based on multi-stakeholder discussions.

The Network considers it necessary to recognize specific difficulties and development needs of the countries of the region in the WTO accession process and in the Doha Round. It is also important to increase the scope and quality of capacity building programs for countries of the region, both the newly-acceded and acceding countries, including those for civil society groups. It is necessary to promote the exchange of expertise and information within the region. More country-focused research on trade and sustainable development is also needed. Support of civil society and NGO initiatives on trade and sustainable development is crucial. Wider participation of NGOs in international debates could be provided.

**(b) H.E. Mr Muktar Djumaliev, Ambassador, Permanent Representative of the Kyrgyz Republic to the UN/WTO**

Ambassador Djumaliev presented the experience of his country in the WTO. Kyrgyzstan was the first CIS country to accede to the WTO, in December, 1998. Kyrgyz WTO membership was met with criticism from some CIS countries. Kyrgyzstan has adopted a number of fairly liberal commitments that were subject to criticism and were also used as arguments to justify its long and difficult WTO negotiation process.

However, relatively rapid WTO accession was primarily due to the fact that at the time Kyrgyzstan had a liberal trade regime. The average level of import tariffs was less than 10%, and there were no export restrictions. Agricultural subsidies were insignificant. The service sector needed fast liberalization to attract foreign capital and technology.

The WTO accession process brought Kyrgyzstan's foreign trade into conformity with international standards. Kyrgyzstan also secured guaranteed access to the WTO member markets and was recognized as a market economy. As a result, for example, the U.S. lifted the Jackson-Venika Amendment against Kyrgyzstan, to which the republic was subject when it was part of the USSR.

Currently, WTO accession requirements are noticeably more demanding. WTO members ask applicants to take increasingly liberal obligations. For example, more than 50% of products to be imported to Ukraine will have zero import tariffs. As a result of WTO accession, the weighted average import duties in Georgia, Moldova and Armenia are less than 10%. Georgia is willing to unilaterally go further in its liberalization efforts and refuses to join any initiatives to obtain preferential treatment regimes.

Ambassador Djumaliev spoke about trade barriers in the CIS countries. After its WTO accession, Kyrgyzstan faced unilateral and unfriendly trade restricting measures imposed by its CIS trading partners. There were several reasons for such actions:

- CIS countries feared that third countries would flood their markets with goods through Kyrgyzstan;
- CIS countries feared that the liberal WTO accession requirements for Kyrgyzstan could become an informal WTO accession standard for the rest of the CIS countries;
- CIS trading partners expected that Kyrgyzstan as a WTO member would impose its own level of obligations on them within the context of bilateral negotiations.

Immediately after Kyrgyz accession, the Government of Kazakhstan took steps to strengthen their customs units and imposed a 200% tariffs on goods that were sensitive to Kyrgyzstan, and tightened customs procedures. Uzbekistan expressed concerns with regard to Kyrgyz WTO accession, tightened border procedures and stepped up customs controls at the border. In 2001, Ukraine, with which Kyrgyzstan had free trade, imposed unilateral anti-dumping measures on the products of one of the largest CIS manufacturers of electric bulbs: this measure caused huge damage to both the manufacturer and the national economy.

Today, many issues that came to the surface immediately after Kyrgyz accession were addressed during consultations - both in the framework of multilateral and bilateral talks. Kyrgyzstan succeeded in making Ukraine abolish the anti-dumping duties, and make this a condition of WTO accession. To date, Kyrgyzstan has economic ties with about a hundred nations of the world community, of which 74 countries are WTO members. Despite some difficulties in foreign trade faced after WTO accession in 1998-2001, starting from 2002, Kyrgyz trade turnover has been steadily growing.

Projections made by those who opposed Kyrgyz accession indicated that liberal conditions in the service sector would hinder development: these did not come true throughout the past eight years. Moreover, since 2004 the services sector has been steadily growing and accounts for more than 35% of GDP. The prediction that a liberal trading environment would not be conducive to foreign investment did not come true either. On the contrary, since 2001 the investment inflow has been steadily growing, with a dramatic increase in 2006-2007, while the amount of FDI exceeded 200 million U.S. Moreover, in 2008 Kyrgyzstan expects considerably increased investment flows, taking into account the progress that came with high-level political arrangements with Russia on financing investment projects in Kyrgyzstan worth 1 billion USD.

In 2000-2005, the share of revenues from customs duties (taking into account some stagnation in 2002-2004) increased slowly but steadily. There was a considerable increase in the influx of customs duties in 2005. Moreover, in 2006-2007,



revenues from customs duties increased by more than 50%. Of course, WTO membership itself does not lead to automatic positive economic effects, and Kyrgyzstan is no exception. After WTO accession, it was found that domestic producers were not prepared to undertake foreign trade activities in the context of the multilateral trading system. Having obtained access to the markets de jure, domestic producers faced stringent international norms and requirements de facto, with respect to certification and quality of goods, sanitary and phytosanitary measures.

One of the most important benefits of Kyrgyz WTO membership is that now the country is a full-fledged party to the Doha Round negotiations that will establish new rules and procedures for the liberalization of trade.

Muktar Djumaliev talked about Newly Acceded WTO members. In their WTO accession process, the newly acceded members adopted a series of stringent commitments which they are not always able to meet. Therefore, this group is negotiating reduced commitments within the Round Doha process. The Group initiative is not to undertake new tariff reduction commitments both for agricultural products and NAMA. In NAMA, the proposal is to reduce tariffs according to a "Swiss formula", as proposed by the United States and supported by the U: a method for calculating the rate of tariff reduction separately for developed and developing countries.

Improving the provisions on trade promotion provided for in Articles VIII and X of GATT, is also one of the major issues in the negotiations. These regulations cover simplification, harmonization and transparency of customs procedures and transit. The talks also deal with technical assistance for the modernization of customs systems and the use of common rules and procedures of cargo clearance.

In the Doha Round negotiation process, Kyrgyzstan, Moldova and Armenia were able to establish their own group of small low-income countries. They also succeeded in reaching a preliminary agreement with WTO members that commitments for tariff reductions (for both agricultural and industrial products) resulting from the Round will not be extended to this group. The group of recently acceded WTO members is also trying to gain the same conditions, which is rather doubtful since the list of newly acceded members keeps growing.

Muktar Djumaliev came to the conclusion that WTO membership supports, but does not guarantee export expansion, rapid industrialization, technological development, economic growth or improved living conditions. To achieve these goals a country has to have effective national macroeconomic policy and developed market mechanisms in place. There is no doubt, however, that Kyrgyzstan is already receiving benefits from WTO membership and can continue to receive them in the future. The country no longer faces unfair trade practices by WTO members and most of the contentious issues that remain are resolved in informal bilateral consultations. There is a role for the private sector to be involved in a proactive

manner, and these actors should know their rights under the WTO framework and be ready to inform the government in a timely manner of violations of their rights.

In this regard, Kyrgyzstan is quite successful. The private sector is represented by the Association of Exporters at the Inter-ministerial Commission of the Government and takes part in the work formulating the negotiating positions in WTO. Members of the Commission hold workshops in WTO trade policy with the participation of international experts from the WTO Secretariat. In this way, the Government constantly monitors problematic issues faced by Kyrgyzstan's producers, and uses the WTO dispute settlement mechanism to influence measures of trading partners.

The Government of Kyrgyzstan should be proactive in defending its negotiating position in the Doha Round negotiations within the Group of small low-income countries, as this would allow Kyrgyzstan to adapt its national economy to the new WTO agreements after the Round concludes and ensure access to the markets of WTO members on more favourable terms.

In the regional context, the EurAsEs countries should coordinate to develop a common position in the Doha Round. This would allow them to benefit from Kyrgyz membership. In this case, their interests in the Doha Round process may be represented by Kyrgyzstan as a fully-fledged participant in the negotiations.

One of the proposals in favour of EurAsEs, may be the inclusion of reservations in the package of Doha Round documents that all exceptions applicable to the recently acceded WTO members would also apply to countries that would accede after the completion of the Round. This would allow the EurAsEs countries after their WTO accession to get a grace period to meet the Doha Round commitments.

**(c) Dimitry Lyakishev, Head of Trade Policy,  
Permanent Mission of the Russian Federation,  
Geneva**

Dimitry Lyakishev spoke about the state-of-play and the prospects for Russian accession. He underlined that Russia has finalized market access talks with all interested WTO members and that the results of these talks were being reviewed by the WTO Secretariat. As for internal work on bringing Russian legislation in full compliance with the WTO rules, Mr Lyakishev said it is underway, with a set of 5-6 laws and regulations being finalized. These pieces of legislation have quite specific scope. Most of them are aimed at enhancing the level of protection of intellectual property rights. As further steps, a decision was taken by the Working Party on Russian accession to continue discussions on all outstanding issues in the beginning of November.

Dimitry Lyakishev also emphasized the significance of Russia's accession to the WTO for the economy of the whole EECA region, taking into account the dominant economic

position of Russia in the region as well as traditional economic ties between the CIS countries. There is large potential for the growth of intraregional trade and economic cooperation, and this evidently requires further development of the relevant legal background. It would be most logical that this background be based on WTO rules. Firstly, some of the countries of the region are already WTO-members and have implemented these rules in their national legislation, while others are seeking membership and thus it is in their interest to implement reforms. Secondly, these rules are most universal and internationally recognized. In this sense much depends on the further progress in Russia's accession to the WTO.

**(d) Hassan Karimov, Institute for Entrepreneurship and Services/Foundation to Support Civil Initiatives, Tajikistan**

Hassan Karimov expressed that there is no question now about whether Tajikistan should join the WTO. Globalization has become a significant process and the Republic cannot be insulated from the rest of the world. The most important thing is to lose as little and gain as much as possible by being a member of the global market. It is important to examine the conditions, forms, commitments and concessions that will be necessary in order to permit fair terms of entry while at the same time protecting the national interests and specific characteristics of the country.

According to Mr Karimov, gains from Tajikistan's WTO accession would be most remarkably the benefits of MFN treatment, the dispute settlement system, and entering a regime of regulated trade restrictions. Foreseeable losses include reduction of the share of local producers in home market due to new competition, balance of payment disproportions and the immediate effects of removal to government support.

There are questions surrounding the exact status of Tajikistan on entry into the WTO. Membership imposes specific commitments, the character and terms of which depend on the status at the time of accession. Tajikistan is one of the least developed countries in the region with a GDP per capita equal to USD 561 in 2007, showing little growth from where it stood in 2000, at USD 159.60.

Tajikistan needs to minimize the negative and maximize the positive factors related to entry into the WTO. This needs to be considered at the national level in political, economic and legal areas as well as at the external level when negotiating with the WTO Working Party.

## 2. Questions and comments by the audience

The discussion focused on three main issue blocks:

- Regional co-operation in the region and the WTO.

- Consequences of accession to the WTO and difficulties of the accession process.
- The role of the civil society in trade policy.

The session participants discussed the issue of regional trade agreements. The question emerged as to whether any RTAs exist in the region. The panellists said yes. The EurAsEs is a regional integration process aimed at accelerating integration and closer economic and political interaction. It is comprised of six countries: Russia, Belarus, Kazakhstan (since 1995), Kyrgyzstan (since 1996), Tajikistan (since 1998), and Uzbekistan (since 2006). The Eurasian Economic Community was established immediately after the fall of the Soviet Union. The Community fulfils functions associated with establishment of the common customs border of the Community members, development of tariffs, price parameters and other components of the common market.

Questions emerged on harmonisation of WTO rules, the customs union and the Eurasian Economic Community. According to Muktar Djumaliev, it is worth waiting until all the member countries accede to the WTO. As soon as any of them becomes a WTO member, Kyrgyzstan will immediately launch the process of review of tariffs with WTO members. The discussion participants expressed that in order to avoid potential conflicts, it is appropriate to accede to the WTO initially and only then negotiate creation of economic unions between the countries, promoting development of a freer market in the region. The closer positions the countries will have in the framework of the WTO, the easier and quicker their regional integration will be. Therefore, members of the Eurasian Economic Community should coordinate their conditions of accession to the WTO, including *inter alia* levels of external tariff rates.

The participants also discussed the importance of swift accession to the WTO. There is a widely accepted view in the region that non-membership in the WTO is associated with rather high losses, in particular due to lack of opportunities to participate in development of international trade rules and due to lack of access to the dispute settlement mechanism. Some participants asked whether Russia intends to accede to the WTO as soon as possible, as the country faces a lot of requirements in the course of its accession negotiation and given that Russia considers some of these requirements to be unacceptable and hesitates to agree to a number of them. In response, the participants were told that Russia will continue the negotiation process. Dmitry Lyakishev argued that the problem is not associated with Russia's membership in the organisation, but rather it is associated with its accession conditions. According to a broad circle of stakeholders, accession conditions for Russia and other countries should promote development and should not restrict policy space for the achievement of national aims

The issue of influence of accession on poverty reduction provoked high interest. Many experts consider trade liberalisation as a major factor for accelerating development and improving living standards.





Did this hold true for Kyrgyzstan?

Mr Djumaliev said that it is rather difficult to assess a share of poverty reduction that might be attributed specifically to WTO membership. In general, equal terms of trade on international markets and trade development provide good preconditions for poverty reduction in Kyrgyzstan. However, so far there are no clearly visible positive impacts of trade liberalisation on improvements in the country. According to Hassan Karimov, in the long-term, Tajikistan's accession to the WTO will positively affect poverty reduction, but so far remittances from Russia represent the key factor of growth, international experts assessing remittances at the level of 36% of GDP. Olga Ponizova argued that trade liberalisation cannot automatically address social and economic problems of countries. To combat poverty efficiently, it is very important to know how liberalisation was conducted, on what conditions a country acceded to the WTO and how efficient are underlying national reforms to support these efforts.

The participants discussed the issue of a transition period to fulfil WTO accession commitments and the difficulties associated with it. Kyrgyzstan was granted a transition period, but it is important to note that in general terms the transition was not difficult since at the time of accession the country's economy had been already substantially liberalised. Difficulties arose within the transition period in ensuring that all ministries and agencies were aware of the commitments and are able to fulfil them. During this period, the inter-agency commission was established and members of the commission were sent to training in Switzerland and the Netherlands. Now, all commissions operate fairly well. However, the Government now faces new emerging problems, associated with the stricter conditions that apply now upon completion of the transition period.

In the case of Russia, it is too early to discuss transition period difficulties for two reasons. First, any commitments would emerge only after accession. Some commitments stipulate transition periods but only time will show whether they may ease adaptation of the national economy to new conditions. Second, the process of Russia's accession to the WTO becomes more and more protracted and the delay would allow the country to prepare to operate in the framework of WTO rules.

Answering the question about specific agreements that would pose particular implementation problems to Russia, Dmitry Lyakishev said that the range of the most difficult agreements includes the ones that do not exist for other WTO members but were invented for Russia alone.

The participants discussed effects of WTO accession for agriculture - an economic sector of major importance for all countries of the region. Mr Lyakishev said that Russia does not expect very substantial negative effects for the sector. The level of tariff protection is not expected to decrease very seriously. Results of ongoing Doha negotiations on reduction of tariffs and state agricultural subsidies may produce more important

benefits for national agriculture. However, countries of the region share serious concerns about potential consequences.

The discussion participants said that after its accession to the WTO, Russia would become a rather influential actor. One participant inquired about what particular group Russia would plan to join upon accession, or if it would plan to establish a group of its own such as a group with CIS countries? According to the Russian Federation representative, this is not easy to say. However, many believe that Russia would manage to balance interests of different WTO groups and arrange a positive dialogue.

A representative of a non-governmental organisation noted that countries of the region underestimate the importance of coalition building in the WTO. At the same time, negotiations in the WTO are shaped by coalitions established by a base of common positions. As a result, countries of the region should pay more attention to efforts in this sphere, and use their WTO membership for maximum protection of national interest.

The discussion participants particularly focused on the roles of civil society in trade-policy making and WTO. They noted a growing public influence in the last decade in countries of the region, including their influence in WTO-related matters. For example, in Kyrgyzstan, a special intergovernmental commission was established, including private sector and civil society representatives. No step should be made without the agreement of this commission. Russia has followed the same path. Since 2000, representatives of the Ministry of Economic Development of Russia conducted about 600 meetings on these matters with different unions of exporters, importers and producers. In addition, regular consultative meetings are held with the Russian Union of Industrialists and the Russian Federation Chamber of Commerce, representatives of research organisations and NGOs.

However, many believe that co-operation between governments and civil society on trade policy matters is still clearly insufficient. It is necessary to enhance policy debates and ensure a broader engagement of NGOs in the dialogue.

### 3. Conclusions and way forward

1. Specific difficulties and development needs of the economies in transition of the Eastern Europe, Caucasus and Central Asia should be recognized in the WTO:

- Terms of accession should contribute to sustainable development and correspond to the level of development of a country. Accession negotiations should deal with trade issues, and not be dominated by political and other factors.
- For recently acceded countries, liberalization measures prior to the negotiations and current development should be taken into account while negotiating liberalization within the Doha Round. Recently acceded countries



should have more policy flexibility, of the kind that is allowed for developing countries and, in some cases, for LDCs and other vulnerable developing countries. These countries should be allowed special flexibility, including exemption from further tariff reductions for certain key products of vital importance for food security, livelihood security and rural development that they already have liberalized. The RAMs would also be required to make lower tariff reductions and would be provided longer implementation periods.

2. To get maximum benefits from WTO accession, countries should undertake proper actions at the national level:

- Countries in the process of accession should ensure integration of their national interest of sustainable development into WTO accession agreements to the extent possible;
- A careful assessment of the costs and benefits of accession and the economic, social and environmental consequences for the country should be undertaken in order to elaborate country positions on WTO and national policies to get maximum benefits from WTO membership and mitigate possible negative aspects. This should be developed based on multi-stakeholder discussions;
- It is necessary to identify actions for enhancing the competitive capacity of the national economy and for protecting local producers during liberalization;
- More active participation in WTO negotiations is needed. Country positions based on national interests should be elaborated by multi-stakeholder discussions;

- A key task is to build capacity of national experts on WTO issues;

- Exchanges of information and experiences between accession and newly acceded countries (including developing countries) on WTO-related issues should be arranged;

- It would be wise for EurAsEs countries to coordinate their positions on WTO accession and within the Doha Round.

3. To get maximum benefits from the WTO accession countries should undertake proper actions at the national level:

- Increase is needed in the scope and quality of capacity building and public awareness programs for countries of the region, both the newly-acceded and acceding countries, including those for civil society groups, with the goal of promoting exchange of expertise and information within the region;
- Priority should be given to promoting more region- and country-focused research on trade and sustainable development;
- To support civil society and NGO initiatives on trade and sustainable development. More participation of NGOs from the region in international fora should be encouraged.

**IV.**

# **The Way Forward for the Multilateral Trading System**



A.

## Six Decades of Multilateral Trade Cooperation: The Way Forward



### **Moderator**

Mr Alejandro Jara – Deputy Director-General, WTO Secretariat

### **Speakers**

Mr Patrick Low – Director, Economic Research and Statistics Division, WTO Secretariat

Ms Celine Charveriat – Deputy Advocacy Director, OXFAM International

Mr Felix Peña – Trade Specialist, Argentina

Professor Ann Capling – University of Melbourne

### **Organized by**

WTO - Economic Research and Statistics Division

### **Report written by**

WTO - Economic Research and Statistics Division

Wednesday 24 September 2008 – 14.00-16.00



## Abstract

*The subject matter of this panel was shaped in part by the Secretariat's 2007 World Trade Report Entitled "Six Decades of Multilateral Cooperation: What have we Learnt?". In over 380 pages, the Secretariat's report explored the genesis and evolution of the multilateral trading system, focusing on both achievements and challenges.*

*The report starts by reviewing the conceptual and theoretical foundations of the case for international cooperation, seen from a multi-disciplinary perspective. It then goes on to examine a range of achievements and challenges facing the system. Among the issues examined is the role of the WTO in promoting market access, the evolution of the dispute settlement system, the challenges of accommodating a diverse membership with particular emphasis on developing country participation in the system, and the challenges of regionalism. The Report also makes tentative observations about how the negotiating and rule-making agenda of the WTO has evolved over the years, and raises questions about how agenda formation might be addressed in the future.*

*The panellists in this session continued this discussion and looked to the future in terms of a systematic analysis of the challenges facing the trading system today and in the years to come. Their main focus was on decision-making in the WTO, the participation of developing countries and managing regionalism.*

## 1. Presentations by the panellists

The session was moderated by Alejandro Jara, Deputy Director General, WTO. In his introduction, Alejandro Jara noted that he hoped that the focus of the discussions would be on looking forward. He stressed that the WTO is at a crossroads, with the eventual completion of the Doha Round and rapidly changing world. He emphasised that we are at a determining stage in international trade relations.

The presentations by the panellists were based on the questions posed by the moderator, this was followed by a questions and answer session.

### (a) Patrick Low, Director, Economic Research and Statistics Division, WTO Secretariat

Patrick Low began his discussion stressing the crucial challenges faced by the WTO including: managing trade relations among a growing and diverse membership; responding to regionalism; and issues related to decision-making; and how the WTO agenda is decided.

He then went on to discuss why nations see it in their interest to co-operate. It was noted that we must look at history to move forward successfully. While in the second half of the nineteenth century international trade cooperation thrived, the first half of the twentieth century faced the opposite, when

economies shrank, cooperative arrangements crumbled, trade policy were often protectionist, and countries eventually went to war. Lessons learned from that period bolstered the determination of post-war leaders to craft international cooperative arrangements in the economic sphere that would increase stability. Implicit in this approach was a recognition that institutions, such as the GATT/WTO, are needed to sustain economic stability.

He stressed that the motivations for cooperation varied across countries. If cooperative efforts are to succeed negotiating packages must contain something for everyone. Failure of any party to appreciate this imperative will discourage agreement. Moreover, he highlighted that even positive agreements can prove to be fragile, they may be incomplete in the sense that negotiating parties could not come to full closure on every detail. He stressed that sustaining agreements is of great importance and that the international community must act towards that goal.

In order to establish successful agreements, he recommended that focus should be placed on the following issues: changes in power relationship; finding similarities in objectives; transaction costs of change; size of different groups; and distributional consequences of international co-operation.

### (b) Celine Charveriat, Deputy Advocacy Director, Oxfam International

With regard to the state of trade liberalization, Celine Charveriat noted that GATT/WTO has achieved modest success in achieving liberalization over the past 60 years. She noted that we face the same issues as the 1950s when developing countries raised concerns of trade policies such as, preferential market access, special and differential treatment, balance of payments restrictions and issue of preferential erosion. She stressed that the majority of issues remain the same because of the continuing failure of the WTO.

Energy crises, food price increases, climate change and geography of trade are changing the dynamics of the trade negotiations raising the question whether the Doha Round is relevant. She quoted the Financial Times article entitled "Multilateralism not dead as a Doha" (30 July 2008) stressing that Doha addresses the world of the late 1990s when food prices were low, interest in global warming was minimal and when the US and the EU had far more economic might than the likes of China, India and Brazil.

In terms of the future, she noted that the international community could restart a new round of negotiations "saving WTO from Doha". She emphasised that the longer the round drags, the less relevant it seems. However with this option the achievements of the round will be lost and a new mandate could be equally paralyzed. Either way she noted that political will is crucially needed to confront reforms.



**(c) Felix Peña, Trade Specialist, Argentina**

The process of trade policy formulation differs from country to country and depends on cultural circumstances among others. He argued that since economic activities and problems had globalized, every country needed to find strategies on how to act and react to these global circumstances, having in mind the respective national interest. In this regard, the WTO has fulfilled an important role. He praised WTO's increased transparency and improved diffusion of information.

He highlighted that rules were the only way to live together in a peaceful manner. However, he cautioned that rules needed to be updated regularly. With regard to the WTO, a rules-based organization, there is also the need to update its rules and working procedures continuously.

The changes occurring in the international system both in the financial sector and trade system are unprecedented, he called for the need to adjust the trade system to new realities, such as adapting preferential trade agreements. The proliferation over the past years of preferential trade agreements has raised questions about trade relations today and their likely future directions. Steps need to be taken to ensure non-discrimination and transparency in the financial system. He also recommended the creation of an independent body to evaluate the impact of preferential trade agreements.

**(d) Ann Capling, Professor, University of Melbourne**

Over the years the WTO has done much to address criticisms about exclusivity and lack of transparency in its decision making process, but she noted it is important to rethink the way negotiations are structured and to reconsider the concept of the single undertaking. She stressed that the principles of consensus and single undertaking have become an obstacle to agenda formation.

She recommended possible solutions such as organizational reform; introduction of a voting system; or the reintroduction of the flexibility which characterized decision-making prior to the Uruguay Round in the form of critical mass decision-making. The critical mass approach suggests that not all members would necessarily be expected to make commitments in the specific policy area concerned. Among the criteria for considering a critical mass approach to defining the agenda are the need to identify a positive global welfare benefit, to protect the principle of non-discrimination, and to accommodate explicitly the income distribution effects of rule-making. She concluded by informing the session that a recent government initiated review of trade policy in Australia recommended the country to include work on the critical mass idea as part of its post- Doha agenda.

**2. Questions and comments by the audience**

Most of the questions and comments from the floor touched upon future challenges facing the trading system, issues related to decision-making and the WTO agenda and reform.

With regard to WTO reform and agenda, the main questions raised noted that there is no way to structure and steer discussions amongst 153 members in a manner conducive to consensus. The general observation was that the decision-making needs to be revamped.

While addressing this concern Ann Capling underlined the implications of decision making by single-undertaking in multilateral negotiations. She argued such a practice slows the pace of negotiations and agenda formation. In order to avoid such problems in the future, she again emphasised the introduction of the concept of "critical mass" decision-making. As a result, decisions are taken by a group of countries representing a critical share of the organization's membership.

Patrick Low elaborated on this issue, emphasising the necessity for such a decision-making mechanism to be self-enforcing in order to avoid free-riding problems.

Celine Charveriat added that decisions taken by consensus and the single-undertaking in multilateral negotiations also impart non-negligible pecuniary implementation costs to small poor countries who, more often than not, do not benefit directly from these agreements.

Felix Peña noted that the problems with the Round resulted essentially from the increasing difficulty of reaching consensus among an ever-growing multiplicity of issues and actors. Thus the format of multi issue negotiations leading up to a single undertaking might not be the optimal option for the future of the WTO.

The importance of rules and the rules-based system was also a reoccurring theme in the discussion. Felix Peña noted that the consolidation of the rules based multilateral system was necessary, especially given the potential rise of protectionism. He emphasized the regulatory role of the WTO as the greatest possible public good of the global system.

Patrick Low emphasised that the transparent rules based system with the Dispute Settlement Mechanism still remains the best system, especially for small developing countries.

Ann Capling, referring to regionalism, argued that it should be seen as a complement rather than a substitute to multilateralism and called for better rules on this relationship.



Celine Charveriat noted that in order to increase its effectiveness, more compliance, in terms of notifications and a better, effective and empowered dispute settlement body with improved access for weaker developing countries was needed.

### 3. Conclusions and way forward

The session was highly informative where it was noted that institutions are notoriously path-dependant; achieving change in the purpose or design of institutions is very hard to achieve. But there could be precedents for critical mass decision making in the WTO system. There was a consensus for the need to adapt the trade system to new realities with greater political will.

There was a general view in this session that the following matters need to be addressed in the contemporary trading system: the need to improve the management of agenda setting, decision-making and participation in global trade; and finally the need to understand, and respond to, the increasingly complex relationship between the multilateral system and the growing number of preferential trade relationships.

The world's new leaders should collectively seize the chance to take the WTO in a direction where it can regain momentum. The weight of experience over six and a half years suggests that there is a crucial need to reform the trading system.

B.

## Making Future Trade Policy Relevant to Future Trade Reality



### **Moderator**

Ms Jacqueline Côté – International Chamber of Commerce (ICC)

### **Speakers**

Mr Knut R. Sørliie – Assistant Director International Affairs & Trade Policy, Confederation of Norwegian Enterprise (NHO)

Mr Gregor Kündig – Member of Executive Board, Head of International Affairs, economiesuisse, Swiss Business Federation

Mr Alex Capri – Partner and Regional Leader, Asia – Trade and Customs, KPMG

Mr Fredrik Erixon – Co-founder and Director of the European Centre for International Political Economy (ECIPE)

### **Organized by**

ECIPE and ICC

### **Report written by**

Lucy Davis – ECIPE

Wednesday 24 September 2008 – 16.15-18.15



## Abstract

*At a time when confidence in the ability of the WTO to deliver a meaningful trade policy is at a low and questions are being raised as to its future, this session sought to bring back the focus to the priority needs of the world's traders, as one way to ensure the organisation's future relevance.*

*The session addressed the changing realities of the global trading system and asked whether global trade policy is keeping pace. Increasing fragmentation of production chains in particular poses questions as to whether trade policy negotiated today will be relevant to the future needs of global business. The heart of trade policy making should be facilitating cross-border trade by businesses. Business perspectives were brought to the session by the Regional Leader of KPMG's Asia Trade and Customs Unit, as well as two European-based business associations.*

*Questions addressed included:*

- *How does the fragmentation of production chains affect the needs of global businesses?*
- *What currently are the most significant impediments to global production chains and how should policy-makers be responding?*
- *How relevant is the WTO to these businesses and is the organisation responding as it should?*
- *In short, are business and the WTO singing from the same song sheet?*

*It was concluded that such questions are not just unavoidable, but could help WTO negotiators navigate through the mounting number of issues being brought to the table, by focusing on what is economically as well as politically of practical importance to today's businesses. However, there is a discrepancy between the trade policy of the WTO and trade logistics. There is a real danger of the WTO becoming irrelevant in the near future if it does not respond to changing business realities and requirements.*

## 1. Presentations by the panellists

**(a) Knut R. Sørliie, Assistant to the Director of International Affairs & Trade Policy, Confederation of Norwegian Enterprise and Member, ICC Commission on Trade and Investment Policy**

**What are the priorities for business within today's global trading structure, and how do they relate to trade policy priorities?**

Knut Sørliie addressed the complexities inherent to global businesses in determining first what their priority needs actually are from trade policy and second, how they should relate to the WTO. He made five main points.

First of all, determining priorities is not straightforward. Companies have different trade priorities depending on sectors and countries. They also may not know what is covered by the term "trade policy", which has expanded to cover new areas from barriers at the border to barriers behind the border. This has raised the complexity and sensitivity of trade policy. What is certain though, is that we are witnessing a globalisation of companies. For these companies, national policies matter for their operations while a well-functioning global trading system is fundamental to their success.

Second, after 7 years of multilateral trade negotiations, it is understandable that the business community faces WTO fatigue. It can be difficult to motivate companies and convince them results are just around the corner. This has led some to argue that the WTO should concentrate on rule-making and play down issues of market access, because it is illusory to expect any significant new market access in goods or services in the present system.

Third, despite the previous conclusion, the WTO is still very relevant to business. Although it moves very slowly, it does not keep up with globalisation process and has not yet delivered, we need global rules that can lock-in and capture achievements, so that the trading system can deliver predictability and freer trade. The most efficient way to liberalise trade is undeniably the unilateral route. But the unilateral route carries the risk of backsliding in crisis situations. Herein lies the value of the WTO.

Fourth, the bilateral route has gained popularity among both political and business circles in recent years. But bilateral preferential trade agreements have some significant flaws: many exceptions from free trade and different rules of origin. These agreements need to be better disciplined through the WTO.

Fifth, we can at best expect a moderate Doha outcome. After a conclusion of the Doha Round, it will be time for the WTO membership to start a reflection on the functioning of the WTO-system. At a time when trade protectionism is increasing, including investment protection, green protection, non-tariff barrier protection, and even new suggestions to bring up core labour standards in a post Doha agenda, it is all the more important to have a global trading system that works and that can deal with these new challenges.

**(b) Gregor Kündig, Member of Executive Board, Head of International Affairs, Economiesuisse and Member, ICC Commission on Trade and Investment Policy**

**The fragmentation of production chains: a global trade development**

Gregor Kündig began with a general overview of trade developments in the last century.

The rapid pace of globalisation in recent years has attracted much attention, but globalisation itself is not new. The process of international economic integration has been underway for decades. Cocoa for instance has been imported from Ghana and other African and Latin American countries to Europe as early as the 19th century. In recent years, the division of labour has been facilitated by more open economic policies, trade liberalisation in a growing number of countries and technical advances in transport and communication.

The “value chain” for any particular business – the value added by different processes or activities at each stage of production – is now often truly global. This makes sense for business, constantly trying to increase efficiency as growing competition in domestic and international markets forces firms to lower costs. More than half of world manufactured imports are intermediate goods e.g. primary goods, parts and components, and semi-finished goods. The ratio of imported intermediate goods to domestic intermediate goods in industrialised nations varies between less than 10 percent in the case of Japan and the U.S. to up to 40 percent and more in countries like Austria, the Netherlands, Czech Republic, Belgium, Switzerland and Ireland.

Multinational firms (MNEs) play a prominent role in globalised value chains. Cross-border trade between multinational firms and their affiliates - often referred to as intra-firm trade - accounts for a large share of international trade in goods.

These general considerations can be illustrated by two case studies on supply chain activities across borders presented last year at a seminar in Tokyo and reported by the United Nations Conference on Trade and Development (UNCTAD).

A case study on Microsoft in Egypt revealed that domestic partners have largely benefited from their association with Microsoft and are leveraging that partnership to drive growth in the Gulf market. The Gulf market is vast and does not, at this stage, contain the necessary qualified and skilled human resources to implement all the IT projects that are being undertaken. In this reciprocal relationship with its partners, Microsoft is benefiting as it is able to find trusted companies to do the work according to its world standards.

In Mexico, first-tier suppliers of Volkswagen, such as FTE Mexicana and Johnson Controls, have helped second-tier suppliers to improve quality through certification in order to enter or remain in the Volkswagen global value chain. For these suppliers, it was problematic to fill out quality requirements that were more demanding than local standards. These first-tier suppliers consider themselves as a key factor for Volkswagen, as their contribution to cost reduction, product and process improvements is essential for the auto industry competitiveness.

The following are a few conclusions on how trade policies should be adjusted in order to effectively contribute to the establishment of new production chains and strengthen existing ones.

- Review recently introduced security requirements, which are becoming an increasing burden on international trade. The marginal share of world trade which is risky can be more effectively dealt with by specific risk-assessment measures.
- Simplify, harmonise or abolish completely rules of origin.
- Build on the progress to date in trade facilitation. The key element is to ease border controls. This is very important in the case of supply chains, where time elements play a major role.
- Review WTO rules on tariff escalation.
- Tackle more rigorously the enduring protectionism in services trade.

### (c) Alexander Capri, Partner and Regional Leader Asia, KPMG Trade and Customs

#### Trade policy and Customs Management: Coping with the business challenges

Alexander Capri provided first-hand experience of problems facing traders in Asia, particularly related to complex domestic law and incongruent rules in overlapping free trade agreements (FTAs). He focused on four main issues relating to businesses.

- *Rules of Origin* : Determining an article's country of origin can be difficult in today's world of fragmented production chains, especially if different FTAs have different rules on “substantial transformation”, i.e. in which country did significant change in description and use of the good occur? This makes it difficult and costly for companies (especially smaller ones) to keep track of goods and validate their compliance with varying rules of origin, which necessitates sophisticated administrative and accounting procedures.
- *Tariff Classification* : Product descriptions issued by the World Customs Organisation (WCO) in the Harmonised Commodity Description and Coding System are technical, complex and often subject to differing interpretations. i.e. is a Swiss-army knife classified as a magnifying glass, paper cutter or ball point pen?
- *Competition Policy* : Often now part of FTA negotiations. But (particularly developing) countries may be required under these FTAs to adopt competition policy laws which their economies are not yet ready for.
- *Trade Facilitation* : Problems in trade facilitation, rather than tariff barriers, act as the main hindrance to small and medium scale enterprises. UNCTAD estimates that about 20 to 30 different people are involved in a single customs transaction, 40 documents are processed and several repetitions of data elements occur. There is therefore a huge need to simplify and streamline procedures around the world.





As the WTO has not yet responded effectively to any of these issues, it is not very relevant to everyday business in Asia. Meanwhile, the “noodle bowl” of Asian FTAs continues to proliferate and complicate these four issues further.

#### **(d) Fredrik Erixon, Co-founder and Director of ECIPE**

#### **What needs to happen at the WTO in order to maintain the relevance of trade policy?**

Fredrik Erixon made three main points.

First, today's globalisation would have been impossible without the multi-lateral trade liberalisation led by the GATT and now the WTO. The non-discrimination principle encouraged by these organisations has been indispensable in increasing global integration among producers and consumers.

Second, world trade is thus in excellent shape, but the world trading system is not. It is, in fact, on the verge of losing all relevance, because it is disconnected from modern business. This discrepancy risks jeopardising all the gains of the post-war trading system. For example, business product cycles are getting shorter, while trade rounds are getting longer; the share of global commerce is increasing for products not covered (well) by the WTO – i.e. energy, services; and the world economy is now predominantly driven by investment-led innovation, rather than trade.

Third, what should be done? In the short term, the era of big WTO-led trade liberalisation is over. But this does not mean that the WTO is obsolete. Now, the issue of importance is “saving the WTO from Doha”. The priorities of a more effective WTO in the future should be:

- An updated agenda with more useful rules, i.e. Trade Defence Instruments, subsidies, current account imbalances, environmental regulation.
- A more effective liberalisation agenda : build coalitions to press ahead liberalisation, using a sectoral approach.
- Governance reforms : re-think the institutional structure and the role of members.

## **2. Questions and comments by the audience**

Discussions were centred around the needs of businesses and the ensuing responsibilities they have in terms of lobbying for more effective rule-making, as well as recommendations for the future of the WTO.

### **i) Business needs**

The point was made that businesses are asking why all attention on the WTO has shifted to the agriculture negotiations.

Some are even referring to the WTO now as the “World Agriculture Organization”. A certain amount of frustration has been expressed, particularly from burgeoning services sectors and small and medium scale enterprises, concerning the lack of progress at the WTO caused by agricultural disagreements and the perceived lack of concern over other issues. For small and medium size enterprises (SMEs), a key consideration was predictability and legal certainty in international trade rules. This should be considered as an urgent matter at the WTO. The resulting “noodle bowl” of overlapping FTA rules for example, and ensuing trade implications, is precisely why businesses should be convinced of the importance of the WTO rather than its irrelevance.

Despite the technical work done in the World Customs Organization on the harmonization of non-preferential rules of origin, WTO members had until now been unable to find a solution to a number of political issues necessary for these rules to be finalized. Completion of WTO non-preferential rules of origin would be helpful to business.

Taking a European example – in a recent study, the Swedish services industry identified mode 4 and domestic regulation as the two most important issues for the future growth of the sector. Neither of these two issues are being covered well by the WTO at present. And yet, services are now the basis of future economic growth in most large economies around the world.

Businesses are therefore losing interest in the WTO and that is the reason why there is a need to consider how interest can be re-ignited. However, if businesses do not support the WTO, where do we go from here in terms of the future of the organisation? This raises the question of what responsibilities global businesses themselves must take on in order to ensure the WTO's continued relevance.

### **ii) Business responsibilities**

One of the main problems with engaging businesses is that they tend to discount liberalisation commitments, taking tariff rates for granted and neglecting the need to push governments to ensure effective compliance with WTO rules. This is not necessarily out of ignorance of its importance, but related to the need of business decision makers and investors to make effective business decisions.

The business community needs to recognise that the predictability that comes from bound tariffs has a value. An enhanced perception of the need for multilateral tariff binding through the WTO could thus be passed on to governments as an economic priority.

It does however also need to be recognised that this is not a straightforward process. While binding rules increase predictability, businesses are also keen to see greater market access coming from trade negotiations, rather than only the implementation of existing levels of market access. Therefore,



they may be reluctant to express too much support for binding rules fearing to discourage further market opening.

### 3. Conclusions and way forward

The session successfully raised a wide range of important issues to today's global business community, the bulk of which are not perceived to be dealt with effectively by the WTO. The result is a growing sense of alienation from multilateral trade negotiations by businesses and traders. Most of the issues can be boiled down to matters of trade logistics, trade facilitation and domestic rules and regulations. Rather than further discussion of structural reform, a number of priority issues emerged from the session as suggestions for WTO focus in the coming year:

- A trade facilitation agreement has almost been completed in the Doha Round, and would be of huge benefit to businesses and world trade in general according to economic predictions. Why not complete this first, as a matter of priority, sign the deal and then move on to other issues? This would deliver a boost to world trade and restore confidence in the ability of the WTO.
- Straightforward reform of anti-dumping procedures would also bring benefits to producers and be relatively easy to agree. At present, producers are informed of measures only a couple of weeks (or sometimes even days) before they enter into force. This leaves little time to adapt working procedures appropriately. Greater advanced warning would be beneficial, particularly to importers.
- On a more general note, the WTO could be made more effective and 'business-friendly' through the inclusion of trade and industrial associations in decision making processes. The dissemination of information to traders regarding compliance obligations, for example, has been effective in the US, where associations are more closely involved in trade policy.
- Encouraging unilateral liberalisation is also essential, especially given that "horse trading" in WTO negotiations is not always productive. Switzerland provides a good example of country with complete absence of any trade remedy laws, such as antidumping, an environment very well accepted by business.



## Public Services and the GATS: Trading Into or Trading Away the Future?



### **Moderator**

Mr Svend Robinson – Public Services International

### **Speakers**

Mr Roberto Bosch – Counsellor, Permanent Mission of Argentina to the WTO

Professor Robert Stumberg – Director, Harrison Institute for Public Law, Georgetown University

Ms Myriam Van der Stichele – Centre for Research on Multinational Corporations

Mr David Robinson – Executive Director of CAUT/ Education International Consultant

### **Organized by**

Educational International / Public Services International

### **Report written by**

Monique Fouilhoux – Education International

Wednesday 24 September 2008 – 14.00-16.00

## Abstract

*The principal objective of this session was to consider the potential challenges and opportunities facing governments and key stakeholders with respect to the potential impact of GATS commitments on the delivery and development of public services. Panellists examined the ways GATS disciplines could affect regulation of water and sewage services, financial services, and education services. In addition, the discussion considered how the development of new disciplines on domestic regulation could affect public services.*

*Panellists concluded that the current round of GATS negotiations could lead to greater coverage of public services, and that WTO members need to be fully aware of the risks posed by this. In particular, it was noted that some GATS rules can work contrary to development objectives. It was agreed that members need to adopt a precautionary approach with respect to GATS coverage of public services. It was also concluded that ambiguities in the new disciplines on domestic regulation could lead to a narrowing of policy space, which governments need to regulate public services to meet domestic needs.*

## 1. Presentations by the panellists

### (a) Roberto Bosch, Trade negotiator for the government of Argentina

Roberto Bosch provided a brief overview of the current state of play in the GATS negotiations. Mr Bosch indicated that following the collapse of the July mini-ministerial meeting, it is unclear what the next steps will be. The failure to reach a deal on the July package was followed by the proposed deadline of October 15 for the submission of revised GATS offers, but the latter is now off the table. It is unlikely that there will be any renewed discussions on GATS until there is more movement in the agricultural and non-agricultural market access negotiations.

Mr Bosch then turned to the main part of his presentation which focussed on the privatization of public services and the GATS. He noted that the GATS does not necessarily force governments to privatize public services, but he argued that in areas where members have commitments, domestic privatization can trigger GATS disciplines. To illustrate this, he used the example of Argentina's experience with water services.

In the 1990s, following the advice of the IMF, Argentina privatized the public water utility in Buenos Aires. A consortium led by two French companies took over the water utility. Residential water rates increased sharply and the company failed to meet new investment and upgrade requirements, despite posting healthy profits. The government has considered the privatization a failure and is re-nationalizing the water utility.

Mr Bosch argued that if Argentina had taken commitments on water and sewage services in the GATS, plans to re-nationalize the water utility would have run afoul of GATS rules on market access. He concluded that members need to develop

a precautionary approach when making commitments in public sector services.

### (b) Professor Robert Stumberg, Director of the Harrison Institute for Public Law at Georgetown University

Professor Stumberg presented an analysis of the draft on disciplines for domestic regulations under the GATS negotiations. He noted that the first draft of the domestic regulation disciplines explicitly would have required members to submit non-discriminatory measures to a "necessity test" --- the requirement that domestic regulations must be no more burdensome than necessary to achieve domestic policy objectives. Direct reference to a necessity test was removed in subsequent drafts as a result of concerns raised by many members, but Professor Stumberg argued that principles similar to the necessity test exist in the present draft.

He suggested that, depending upon their interpretation, the following principles proposed in the most recent draft could in fact constitute an operational necessity test: requirements that licensing procedures are as "simple" as possible; the principle that domestic regulations be "pre-established"; the requirement that regulatory measures be based upon "objective" criteria; the principle that measures must be "relevant" to the supply of services to which they apply; and "transparency" rules that require laws and details of laws to be publicly available.

Professor Stumberg provided several examples from the United States of how each of these principles could be used to call into question specific regulations enacted in the public interest. He noted, for example, that the necessity that licensing requirements be "relevant" could affect U.S. state regulations with respect to coastal development where environmental and aesthetic considerations not directly related to the provision of a service have to be considered.

He further argued that the draft domestic regulation text raised serious concerns about tilting the regulatory balance against the public interest. He concluded that the current operative principles in the draft text need to be removed or clarified so that their application does not jeopardize the public regulatory process. He also suggested the domestic regulation negotiations may have lost their initial focus and that it may be more productive to re-focus the talks back to the mandate of the earlier working party on professional services.

### (c) Myriam Van der Stichele, Senior researcher at the Centre for Research on Multinational Corporations

Myriam Van der Stichele examined how GATS commitments on financial services could affect public services. She argued that the current global financial crisis demonstrates that deregulation and liberalization of speculative financial products can lead to tremendous financial instability. She said GATS commitments on financial services should not be made, or at least not until



adequate regulations are in place and the role of the public sector is reviewed and strengthened.

Ms Van der Stichele suggested that financial services deregulation and liberalization can have a direct impact on the ability of governments to develop their public sector. She argued that financial services themselves have a public function, and should not be treated only as a commercial sector. In addition, financial liberalization can also lead to the weakening of public services. For example, the financial crisis resulting from liberalization has led to a massive bailout in countries around the world, which will divert government funds from public services. Also, big international service providers help facilitate tax evasion, undermining the public budget for public services.

She also noted that the entry of foreign banks into domestic markets, facilitated in part by GATS liberalization, has in many cases failed to provide universal access to financial services. Citing an UNCTAD study, she said foreign banks have been shown to fail to provide credit to small and medium-sized industries and domestic industries in developing countries, and fail to serve the poor. They also undertake “cherry picking” – funding only profitable activities or sectors.

Ms Van der Stichele concluded that at present, especially in light of the financial crisis, there is no appropriate context for making financial services commitments or for making requests for such commitments, since there is an absence of regulations and an absence of taking account of the state of regulation in the countries concerned. Commitments under GATS, she argued, can increase financial instability. The liberalization of speculative financial products has been shown to result in immense instability and crises. If commitments are made in the WTO, various GATS provisions prohibit or constrain the ability of the country to take action.

**(d) David Robinson, Trade consultant at Education International and associate executive director of the Canadian Association of University Teachers**

David Robinson provided an analysis of education services and GATS. He noted that education remains one of the least committed sectors among Member concerns.

Mr Robinson noted that some members are prepared to make commitments on education services in the current round with the belief that this will stimulate new investments in their domestic education sector and help build capacity. However, he also warned that there are potential risks in making GATS commitments in education services. He gave the example of South Africa, which in the mid 1990s overhauled its regulations governing the operation of foreign higher education providers in its market. The new rules set out new performance requirements to better ensure that foreign investment met local needs, but these new rules would have likely violated GATS market access and national treatment

provisions if South Africa had made commitments in education services.

He also argued that members should not rely too heavily on the GATS exclusion for public services. The exclusion for “services provided in the exercise of governmental authority” has been shown to be far more restrictive than most members have assumed. Mr Robinson said that negotiators clearly sought to restrict the scope of Article 1:3 by qualifying the governmental authority exclusion by two criteria, both of which must be satisfied for the exclusion to apply. These criteria are that a service must not be supplied on a “commercial basis”, and must not be “supplied . . . in competition with one or more service suppliers”. Neither of these critical criteria is further defined in the GATS text. All services that do not clearly fit within this scope are covered by the GATS.

Mr Robinson noted that there is increasing pressure from several WTO members on countries to make specific commitments on commercial higher education services. He suggested that because of the ambiguity in Article 1:3 and because of the increasing blurring of public and private higher education in many countries, commitments made in “commercial” education services may also expose much of the public system.

Finally, he argued that the development of new disciplines in domestic regulation poses some serious challenges and concerns. Education services are highly regulated in most countries in order to promote quality, to protect students, and to ensure that domestic social, economic and cultural priorities are met. Most countries require both domestic and offshore education providers to obtain accreditation to operate. In addition, providers commonly must meet specified quality standards in order to maintain their authorization to grant degrees and diplomas. If commitments are taken in education services, domestic regulation disciplines could affect the domestic ability to enact and enforce these important rules and procedures.

Mr Robinson concluded by arguing that members need to adopt a precautionary approach. He suggested that cross-border provision of education be done outside GATS, and that other international instruments based on educational rather than commercial motivations may be a better way to regulate this.

## 2. Questions and comments by the audience

During the discussion, participants took up many of the points raised by the panellists. A representative of the government of Bolivia indicated that his government is concerned about the potential impact of GATS on public services. He would like to see an exclusion from the GATS of any services that are basic human rights, such as health, education, and water.





There was discussion about the respective roles of UNESCO and the WTO in the cross-border provision of education services. Participants generally supported the view that it would be more appropriate or desirable for UNESCO to develop multilateral guidelines for international “trade” in education.

Svend Robinson from Public Services International, who chaired the panel, criticized the draft text on services issued in July by the Chair of the Doha services negotiations, Ambassador Fernando De Mateo of Mexico. The text called on countries to bind their present level of liberalization and national treatment into GATS commitments and to increase market access in areas which are not so liberalized. Mr Robinson argued that binding the current levels of liberalization into commitments and asking for a level of ambition for services similar to the one in NAMA and agriculture was contrary to Doha’s development agenda.

On the issue of domestic regulation, those taking part in the discussion agreed that there is some ambiguity in the current draft text that could be interpreted more restrictively than it would be desirable. However, there was no consensus on whether the way forward would be, as Professor Stumberg argued, to refocus the negotiations on individual professions, as was done in accounting, rather than attempting to develop new across-the-board rules.

### 3. Conclusions and way forward

The session met its objective of providing an important opportunity for governments and stakeholders to consider the future development of GATS and the potential impact on public services. The main conclusion from the session is that members need to carefully assess their current and potential GATS commitments against their domestic public policy objectives with respect to public services. GATS commitments in sectors that are normally within the public domain can have the effect of narrowing policy space and weakening domestic regulations if members are not fully aware of all potential implications. Consultations with all stakeholders and domestic regulatory authorities are crucial before any commitments are taken. Finally, members also need to consider the potential impact on public services of commitments taken in other sectors, such as financial services, and in other areas of negotiations, such as domestic regulation. For these reasons, members should take a precautionary approach in GATS negotiations.



## Markets For Raw Material And Energy - What Role For the WTO?



### **Moderator**

Mr Reinhard Quick – Vice-Chair of the BUSINESSEUROPE WTO Working Group

### **Speakers**

H.E. Mr Eckart Guth – Ambassador - Permanent Representative of the European Communities to the WTO

Mr Zhang Xiangchen – Deputy Permanent Representative of China to the WTO

Mr Jun Kazeki – Counsellor, Mission of Japan to the WTO

Mr Dmitry Lyakishev – Head of Trade Policy Section in the Russian Mission in Geneva

### **Organized by**

BUSINESSEUROPE - The Confederation of European Business

### **Report written by**

BUSINESSEUROPE - The Confederation of European Business

Wednesday 24 September 2008 – 14.00-16.00

## Abstract

*Various raw materials (including most industrial raw materials) have seen price increases in recent years. One main factor behind these increases is the growing demand from emerging economies. At the same time, trade and investment restrictions (export taxes, export licences and dual pricing schemes) are on the rise around the world.*

*Due to this global rise in demand and growing protectionism, the competition for and costs of raw materials and energy have been increasing over the past years. However, whereas securing a level playing field for access to fossil, mineral and renewable raw materials and energy is an essential precondition for the competitiveness of WTO members' economies, this has become increasingly troublesome.*

*Therefore access to raw materials and energy will be a major issue in the years to come – for business and consumers alike. However, instruments or policies that create trade distortions in the market for raw materials and energy are currently very difficult to address under existing WTO provisions. Trading these materials will have to be organised in a multilateral way. The session therefore set out to answer the question: What is the role for the WTO in the markets for raw materials and energy? What are the possibilities for the WTO to reduce trade distortions in the markets for raw materials and energy?*

*The panel was composed of representatives from raw material exporting and importing countries, who provided a mix of views that allowed a balanced discussion of the issues from all angles. It was moderated by Professor Reinhard Quick, Vice-Chairman of the BUSINESSEUROPE WTO Working Group.*

## 1. Presentation by the panellists

### (a) H.E. Mr Eckart Guth, Ambassador, Permanent Representative of the European Communities to the WTO

Starting his intervention, Ambassador Guth noted recent high prices for food, energy and raw materials. This has been due to the natural growth in demand of developed and developing countries but also due to restricted policy applied by exporting countries. These price hikes naturally have negative consequences for countries dependent on the import of these commodities, most notably food and energy in developing countries. He suggested long-term strategies as a possible remedy for those problems. These would have to be backed by the right international trade rules as well as stable multilateral and bilateral relations. In this context the WTO has to play a key role although WTO rules in general do not deal with energy and raw materials as a distinct sector. However, the basic rules of the GATT and GATS should apply to such products and related services.

As a first issue, the WTO should deal with measures introduced by producing countries which aim at retaining products for the domestic use at lower than international prices.

These industrial policy measures damage the competitiveness of consuming industries in developing and developed countries alike. He quoted the example of 20 countries that have put in place measures that affect the export of important raw materials for EU industry like metal, food, oil, gas and chemicals. Today, more than 450 restricted measures are in place.

Ambassador Guth highlighted that some of these measures could be tackled under WTO provisions. Firstly, export restrictions are essentially illegal to the WTO. Secondly, export taxes have similar effects as subsidies for domestic industries. Therefore highest attention has to be paid to the elimination of export restrictions as part of the commitments for new WTO members in their accession negotiations. In parallel to the WTO, the EU is putting access to raw materials high on the agenda in its bilateral relations, and developing a consistent EU policy for trade in raw materials which would benefit both exporting and importing countries.

Concerning energy trade and energy policy, he underlined that most of the trade measures also apply to these areas. The energy sector, however, has some specificity which makes its international trade more complex. Issues include affordability, security, climate change, investment and high technology questions. The trade policy instruments are ranging from competition issues, including rules on state trading, pricing, subsidies and rules on transit, to investment measures covering both goods and services in exploration, extraction and distribution.

The EU has to deploy a wide range of external and trade policy instruments in order to achieve secure and predictable energy imports. Ambassador Guth outlined three main avenues for potential use in the WTO framework in order to secure a more predictable international regime for energy trade:

1. Reconstitution of existing GATT rules in WTO rulings to counter restrictive energy export policies.
2. Tackling of energy issue in the framework of the Doha Round, in particular in the services and environmental goods negotiations.
3. Integration of energy issues in the commitments of newly acceding countries to the WTO. The fact that Russia, central Asian countries, Iraq, or Libya are currently seeking accession will make WTO rules on energy even more relevant.

Ambassador Guth concluded that markets for raw materials and energy are highly complex, mainly due to their close links to development, environmental, geopolitical and security concerns. Even if open markets remain the most efficient way to allocate resources, those will have to be governed by transparent, efficient and predictable rules. The WTO should play an increasing role in the establishment and enforcement of such trade rules.



### **(b) Zhang Xiangchen, Deputy Permanent Representative of China to the WTO**

Zhang Xiangchen started by referring to a trade dispute on coke between China and the EU. He explained that the measures introduced in 2004 related to the control of production and exportation of coke. These measures resulted in the reduction of the supply of coke to the EU market. However, an agreement could be reached in the end, settling this issue to the interest of both sides. But, the whole process of the negotiation demonstrated the complexity of the issue. He continued by describing the dilemma China is currently facing: on the one hand, maintaining the supply to their trading partner, but otherwise also responding to environmental pressure at home. In the future, the WTO will have to be able to provide a solution to this problem.

He underlined that China is very much dependent on energy imports from other countries and therefore also strongly affected by price increases they have to accept. Against the background of globalization, however, developing countries like China are now in the stage of industrialization and therefore need more energy. However, those countries are also currently implementing development strategies for cleaner economic and environmental structures to reduce consumption in energy.

The next round of WTO negotiations will have to deal with issues such as climate change and energy. Mr Xiangchen complained, however, about the lack of mutual trust and confidence between importers and exporters. In this context, the biggest players could play a more important role than for instance the WTO.

### **(c) Jun Kazeki, Counsellor, Mission of Japan to the WTO; Chairperson, WTO Committee on Subsidies and Countervailing Measures**

Jun Kazeki's presentation focused on access to raw materials, export duties and export restrictions. On export duties he related to an early survey, by the OECD in 2002 which was based on WTO Trade Policy Review country reports of 100 WTO members. This revealed that 39 WTO members, mainly developing countries, applied export duties. Regarding industrial raw materials such as mineral products, metals, precious stones, 17 members applied export duties.

The two main reasons for applying export duties were fiscal revenue on the one hand, and promotion of downstream processing industries by providing domestic manufacturing and processing industries with cheap raw materials and other inputs. Another alleged reason was environmental protection or preservation of natural resources.

He underlined that WTO disciplines on export duties were not clearly defined as obligations for scheduling and notifications generally were not assumed by WTO members.

However, the recent WTO accession process introduced certain disciplines on export duties including scheduling.

On export restrictions, Mr Kazeki quoted the results of a, 2003 OECD survey, based upon WTO Trade Policy Review country reports of 100 WTO members. This showed that in case of existence of multilateral agreements or arrangements, the legitimacy of export restrictions was well recognized, particularly in areas such as security, life, public health, safety and social reason. However, questions remained where export restrictions were applied for economic or mixed reasons in the absence of certain international arrangements. He cited as cases the examples of metal products, metals and precious stones, where the alleged reason was generally conservation of natural resources.

On the other side, importing countries argued that export restrictions by dominant producing countries discriminated against foreign buyers by raising the level of export prices and making it difficult for buyers to obtain essential raw materials. In some cases, export restrictions also aimed at the promotion of downstream processing industries.

Mr Kazeki also referred to article XI of GATT 1994 as a key provision which stipulates a general prohibition of quantitative restrictions. However, there are certain exceptions to this general prohibition such as Article XX, in particular Article XX (g) "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption".

He concluded that in the global economy, trade distorting measures on raw materials could easily affect global markets. The WTO therefore had an essential role to contribute to a multilateral solution by providing security and predictability.

### **(d) Dmitry Lyakishev, Head of the Trade Policy Section at the Russian Mission in Geneva**

Dmitry Lyakishev focused his presentation on the perspective from an energy exporting country. He underlined the WTO's advantage which was its pure focus on commercial perspective. If Russia joined the WTO, one of Russia's major interests would be to ensure a stable legal environment for its international trade and investment. Russia has specific interests related to trade in energy and access to raw materials for two main reasons:

1. Energy and raw materials would be, at least in the short term, the core of Russia's exports. Russia is also an important transit country, and key producer of some key energy intensive goods like steel, aluminium or fertilizers. It has therefore a vital interest in internationally recognized rules. The same applies to its major trading partners, considering recent challenges on world markets with some governments shifting to more protectionist policies.

2. Some existing WTO rules relevant for important rules for Russia are interpreted by some WTO members in a special way, as there are some grey zones in some WTO legislation.

He identified four groups where Russia is interested in achieving clear rules:

1. Market access conditions for energy products and energy services, and enhancement of the climate investment in the energy sector;
2. Access conditions to national energy resources;
3. Rules on energy pricing policies and market access for energy intensive products; and
4. Role of state in regulation and trade of energy products.

He described that GATT and GATS provisions are regarded as a solid basis for energy regulation including energy pricing issues. In practice, however, the WTO does not provide any special provisions in this field so that the applicability of the non-discrimination and transparency provisions seems to be arguable for some members.

There are attempts to make use of principles of security of supply and diversification of sources which are implemented via restrictions of import share from one source into the imports or consumption. This refers to goods such as gas, electricity and nuclear fuel which seriously affected Russian export interests. The compatibility with WTO rules such as MFN and quantitative restriction ban at least need to be scrutinised.

He also mentioned that Russia is often accused with regard to energy pricing by claiming that the distinction to the internal price for gas was a hidden subsidy for domestic industry. This issue has been widely discussed with regard to Russia's WTO accession negotiations and a common understanding had been achieved with a large majority of Russia's major trading partners. As Russia is not yet a member of the WTO, Russian energy-intensive goods are still a target of high anti-dumping measures. Moreover, anti-dumping investigations would be calculated on the basis of higher gas prices in third countries instead of the lower prices in Russia, which automatically lead to higher anti-dumping margins. It would be doubtful if the WTO limited the right of state to regulate energy prices, especially since energy prices are regulated in almost all countries in the world.

Transit rules in the energy sector would also lack clarity in their WTO definition, for instance applicability of article V in the GATT (pipeline transit of gas / rules on access to pipelines). Consequently the added-value of being a WTO member is not very high in this field. Some countries would therefore search for alternatives like regional agreements in order to have legal certainty (e.g. Energy Charter Framework).

He concluded by stressing that Russia has a strong interest in clarifying the rules of the game in relation to energy and access to raw materials. He questioned, however, if that could be best achieved in the WTO framework or by special trade arrangements. In any case, such new rules should not be established in the course of accession negotiations with new members, as in that case they would only oblige to those.

## 2. Questions and comments by the audience

The moderator, Professor Quick, started the discussions by stressing that BUSINESSEUROPE, representing the European business community, opposes export duties or export restrictions. Such measures are increasingly used and should therefore be tackled in the framework of the WTO. BUSINESSEUROPE has already made several calls to deal with that issue in the ongoing Doha Round.

The discussion was launched by a comment that the markets for raw materials and particularly energy are marked by oligopolistic patterns which lead to the question of how this could be raised in the WTO and Doha framework. Ambassador Guth agreed that particularly in the energy sector a natural economic tendency for creating monopolies and oligopolies exist. However, looking at the complexities of the Doha Round, he militated against including all the Singapore issues (competition, investment, transparency in government procurement, trade facilitation) in the negotiations although the competition issue would have to be tackled. Besides this, another possible solution to soften this problem would be a larger diversification of imports, for political as well as for technological reasons.

The discussion then turned to how China would respond to energy supply and energy security concerns given its continued growth and accordingly growing energy demand. Zhang answered that China was firstly working on improved energy efficiency, and secondly the development of other technologies like nuclear energy.

Responding to a question from an OECD representative, Ambassador Guth agreed that the trend and support for biofuels has contributed to the increase and volatility of agriculture products. However, this would not explain all price changes which are also linked to long term effects of diminishing stocks, increasing demand, delayed supply respond and also some speculative elements in the market.

On the specific issue of export duties, the question was raised if those were specifically tackled already in current WTO law. Mr Kazeki agreed that a clear definition is lacking, basically also as the WTO traditionally has been dealing with import questions. In the past multilateral negotiations have been focused on market access and not on the elimination of export restrictions.

The panel was also questioned if the WTO could tackle energy subsidies in the future and what policy options existed to





allow governments protection from rapid and large fluctuations of global energy prices. Mr Lyakishev explained that at least in Russia's case export duties on energy goods have a fiscal nature. Domestic regulations also provide for fiscal incomes. It would be too early to definitively assess the situation unless clear and equal rules had been developed in the WTO.

Ambassador Guth welcomed that the existence of export restrictions and export taxes is not denied. He reiterated his example that the EU is facing problems linked to export restrictions and taxes for about 450 products. For this reason, they have introduced in the Doha negotiations the ambitious proposal to eliminate export taxes although it has not yet gained sufficient support. On double pricing for energy, he cited examples from Argentina which were clearly protectionist national industrial policy.

Finally, the panellists discussed what impact the global financial crisis would have on the Doha negotiations. For Mr Xiangchen a successful conclusion would send out a positive signal to the world economy. Ambassador Guth added that

WTO members should be aware of the big contribution they could do to the functioning of the multilateral trading system.

### 3. Conclusions and way forward

The session provided a very important overview of the state of play regarding access to markets for raw materials and energy. All panellists agreed that this issue will become increasingly important in the future, where multilateral approaches will have to be developed. The WTO will have to play a key role in that debate, as it will be the right forum to address these issues.

The session fit very well into the overall programme of the 2008 WTO Public Forum – 'Trading into Future'. With tariffs becoming lower, it is mainly non-tariff barriers which will be the major hurdles to free trade in the future. The session gave very interesting inputs on where to direct the WTO's future role and activities.

E.

## Building Sustainable Commodity Chains in Africa



### **Moderator**

Mr Bernward Geier – Founder, Colabora

### **Speakers**

Mr Edward Millard – Sustainable Landscapes Manager, Rainforest Alliance

Mr Michiel Leijnse – Global Brand Development Manager Lipton, Unilever

### **Organized by**

Rainforest Alliance

### **Report written by**

Mr Bernward Geier, Rainforest Alliance

Wednesday 24 September 2008 – 16.15-18.15



## Abstract

*This session shared the experience of the international NGO Rainforest Alliance in partnering with business to show how "Trading into the future" can be assured through promoting sustainable agriculture.*

*The two presentations on the topic from the Rainforest Alliance and its business partner Unilever sparked off and engaged a lively discussion. Among the many issues raised were capacity building and roll- out obstacles of the successful experiences made. Also the question of future perspectives and how the roll- out could be financed were addressed.*

*The audience appreciated very much the panel with its practical information and "down to earth" demonstration of a successful case study showing that "trading into the future" can be done in a sustainable way.*

## 1. Presentations by the panellists

### (a) Edward Millard, Senior Manager, Sustainable Landscapes, Rainforest Alliance

Edward Millard provided a short overview of the diverse activities of the Rainforest Alliance, which has as NGO the mission to transform land use, business practices and consumer behavior.

The Rainforest Alliance was founded in 1987 and was the first organization to implement a certification program for responsible forestry management. Later Rainforest Alliance helped to create the now well established and respected Forest Stewardship Council (FSC). In 1992 Rainforest Alliance used similar best management principles to create, together with a coalition of conservation NGOs in Latin America, a certification program for sustainable agriculture. The Rainforest Alliance is active in almost 60 countries worldwide with staff working from the USA, Central America, Africa, Europe and Indonesia. Last year's organizational budget was over 21 million US Dollars.

Mr Millard focused then on the sustainable agriculture activities in Africa, which are a comparatively new undertaking of the Alliance. Yet the Rainforest Alliance certifies already over 3.000 operations with a total of 40.000 hectares. The Alliance is operational in 7 African countries covering 5 crops with tea, coffee and cocoa being the most important.

More details were given on the activities with coffee in Ethiopia. The first certification of the Alliance took place in 2006. Especially the certified wild forest coffee is very popular and KRAFT and TCHIBO are the main buyers of the coffee.

A next example was given with cocoa in Côte d'Ivoire, where 600,000 smallholders produce cocoa. Here the first certification took place last year with so far 2,000 farmers on 13,000 hectares certified. The business partner with this

project is KRAFT, which launched its first product (a chocolate drink) with certified Rainforest Alliance cocoa this year.

Mr Millard addressed also some challenges for the scaling up of the successful programs in Africa. Required improvements of the management systems and on the farm as well as the inspection for the certification are significant cost factors. It is also difficult to organize so many smallholders to supply volumes for large brands. A precondition is long term commitments on all sides. Under capitalization of the farmer groups and lack for extension services are further bottlenecks.

It was highlighted that standards and certification offer a lot of opportunities. They are accessible to and affordable for small scale producers through group certification systems and they are a tool to bring social and environmental management into mainstream markets. They also create brand differentiation and stimulate companies as well as industry initiatives (e. g. via the Ethical Tea Partnership).

Mr Millard stressed that many benefits are coming out of the Rainforest Alliance programs. The farmers get (new) market opportunities, access new knowledge and technologies and improve the quality of their product, which in consequence results in better prices. The projects also help to strengthen the organizations of the farmers. This leads further to improved living conditions – not only because of the attractive price payments but also of the requirements of the standards.

On the ecological side the project helps to achieve the aim of best agriculture practices and has for example a direct environmental positive impact through shade trees planted.

Also along the value chain remarkable benefits can be noted. Exporters can offer a stable supply of commodities from a sustainable production. Manufacturers as well as importers can manage their supply chains covering supply and reputation risk. Consumers can be sure of responsible practices at origin.

Mr Millard concluded that certification of sustainable agriculture is a market model to drive sustainable practices and develop premium quality and price markets.

### (b) Michiel Leijnse, Global Brand Development Manager, Lipton Tea, Unilever

#### Unilever and tea sustainability

Michiel Leijnse focused on the sustainability strategy for the Lipton Tea brand. Unilever buys about 300,000 tons of tea, which it markets in more than 130 countries. All in all there are 600 different types of tea, which come from 750 estates all around the world plus from over half a million smallholder farms. All in all, 2 million people depend directly on tea production.

Mr Leijnse stressed a fundamental structure problem in the tea industry by the fact that in real terms prices have gone down about 35 % in the past 25 years. Yet, he also highlighted that a recent survey showed that 6 % of consumers say they take social and environmental factors into account when choosing what brand they buy.

Describing the engagement he emphasized that they have been working for the past 10 years towards achieving sustainability in their own estates (Lipton Tea Gardens).

Among the achievements so far Michiel Leijnse highlighted that 97 % of the energy comes from renewable sources, that 600,000 trees were planted and that on the social side free housing, schools and a hospital is offered to the 25,000 people employed, which in turn means that 100,000 people are dependent on the Lipton Tea Garden production.

He also explained why Unilever and Lipton have chosen third party independent certification. On the one hand it gives them the credibility and the possibility to share their sustainability engagement and story with the consumers. Yet, it is also seen as a precondition to roll out to the entire supply chain as Lipton has made a commitment to switch over time the whole tea production to sustainable agriculture systems and get it all certified. He also explained why Lipton has decided to choose the Rainforest Alliance certification program. They have looked at all the different certification programs like organic, fair trade and Utz Certified, but concluded that Rainforest Alliance offers a "logical fit" with Lipton's own experience. They like that this program focuses on how farms are managed (people, planet and profit). The cooperation also enables Lipton to work on an international scale and with both large scale plantations and small farmers. They support that along with the certification and the program comes a market based premium for the farmers.

He confirmed that all tea used in PG tips and Yellow Label tea bags in Western Europe should come from Rainforest Alliance certified farms by 2010. As a next goal the certification should be expanded to all the tea bags from Unilever globally by 2015.

Likely the biggest challenge remains the fact that Lipton/Unilever work with so many smallholders in their tea supply chain. A roll out with the sustainable agriculture system and certification programs to so many suppliers needs careful planning and is a huge challenge with regard to human and financial resources. Mr Leijnse concluded with the vision of Lipton and Unilever, which includes

- to lead the change in the tea industry towards sustainability
- to improve the lives of up to 2 million people

- to reinforce the bond between consumers and our brands
- to show that Rainforest Alliance certification means that every cup of the Lipton tea is a step towards a better life for tea farmers, their families and the environment.

## 2. Questions and comments by the audience

The presentations were followed by over 50 minutes of lively discussion and exchange of opinions. Among the issues addressed were further elaborations on the challenges to roll out such an ambitious program like the sustainable tea and what it takes with regard to capacity building.

The presented bottlenecks also sparked off further discussion around this issue.

The relevance of such case studies and the strategy for WTO were highlighted.

Among the more critical questions was the issue whether the premium prices are not an incentive to increase modern culture or compete with subsistence crop production.

Another intervention addressed the potential danger of consumer confusion with too many certification programs and labels.

And another one wondered whether the farmers (especially the smallholders) can carry the cost burden of inspection and certification. This led to a more general discussion of how such a program and its foreseen roll out can be financed. Poor infrastructure and lack of human and financial resources were identified as major bottlenecks.

## 3. Conclusions and way forward

The session was considered by the participants as very different and special within the conference program because of its presentation of concrete and successful examples on how business-NGO partnerships can make sure that "Trading into the future" can happen in a sustainable way with win-win constellations for all stakeholders.

Considering the positive feedback it is recommended that WTO makes sure that in future public fora more concrete and solution oriented presentation sessions are offered. Rainforest Alliance and its seal using partner Lipton/Unilever appreciated the fruitful networking opportunities of the forum and intend to participate again at next year's WTO forum.



F.

## The Food Price Explosion: What Can The WTO Do?



### **Moderator**

Ms Anne Laure Constantin – Institute for Agriculture and Trade Policy (IATP)

### **Speakers**

Ms Arze Glipo – Asia Pacific Network for Food Sovereignty

Mr Brad McDonald – International Monetary Fund (IMF) Representative in Geneva

Mr Olivier De Schutter – UN Special Rapporteur on the Right to Food

H.E. Mr Ujal Bhatia – Ambassador, Permanent Representative of India to the WTO

Mr Wally Smith – Canada's Dairy, Poultry and Eggs Sectors (SM-5)

### **Respondent**

Mr Wally Smith – Canada's Dairy, Poultry and Eggs Sectors (SM-5)

### **Organized by**

IATP

### **Report written by**

IATP

Thursday 25 September 2008 – 9.00-11.00



## Abstract

*2008 was marked by a sudden global surge in food prices, raising concerns about the ability of the world to feed itself in the 21<sup>st</sup> century. It affected particularly the poorest countries in Asia, Latin America and Africa. Governments everywhere implemented emergency trade measures to address their people's food security needs.*

*In order to contribute to the debate about the contribution of the multilateral trading system to supporting food security and sustainable development in this new context, this session explored the following questions:*

- *What are the causes of the price increases?*
- *What have been the impacts of multilateral trade rules on developing countries' production capacities in the past two decades?*
- *Which multilateral trade rules are needed to address the causes of the crisis?*
- *How should WTO members work together towards crafting this new set of trade rules?*

## 1. Presentations by the panellists

### (a) Arze Glijo, Asia Pacific Network for food Sovereignty

Arze Glijo stressed that the food crisis put the irrelevance of the Washington Consensus in the spotlight. The dramatic rise in food prices in recent months has shaken the poorer countries in Asia, Africa and Latin America. Several explanations have been offered on the causes of the food crisis. However, lost in these analyses are the links of the food crisis to the dominant free trade paradigm and the policies of absolute trade liberalization, deregulation and privatization. These policies, which the IMF, the World Bank and the WTO have imposed, have been the hallmark of developing countries' economic and trade policies in the last three decades.

"Long before food prices actually exploded, a long running agrarian crisis fuelled by the development strategy of trade liberalization had already deprived millions of poor people access to their food entitlements", she said.

WTO trade rules in particular, bear close scrutiny because many developing countries have experienced dramatic surges in food imports as a result of the drastic reduction of their import tariffs or the removal of import controls. Many are now facing less than half of their WTO final bound rates. Some have applied import tariffs hovering only at around 5% -7% including Indonesia and the Philippines. Ironically, Ms Glijo said, while the trade rules have demolished the protective policies of developing countries, their rich counterparts have been allowed to carry out subsequent domestic subsidies (in average around \$360 billion per year), which are responsible for dumping and various

import surges. "And the power of global corporations expanded enormously under globalization. Transnational agribusiness corporations such as Cargill or ADM have even made a killing out of the food crisis", Ms Glijo said. She also highlighted that the rapid rise in biofuel production and use - which has been identified as one of the major drivers of food price explosion - was driven by the rising market power and concentration in the international market.

Meanwhile, WTO rules are encouraging export promotion, the intensification of which is resulting in even more disastrous consequences. Indeed while exports of some developing countries and LDCs have grown, their poor subsistence producers - the majority of farmers in these countries - have failed to benefit. For example, in Thailand, which is a major exporting country and has exhibited dramatic increases in its food exports, more than 3 million households are heavily indebted with each family having an average debt of US \$600-\$900. Moreover, Thailand's rising food exports have been accompanied by increasing exploitation of its natural resources, including the over-exploitation of dry land areas and the conversion of mangrove forests and coastlands to massive shrimp farming.

Free-trade advocates in certain countries and institutions have called for the conclusion of the Doha Round as a way to solve the current food crisis. However, only if the Doha negotiations secure the widest possible policy space for developing countries' agriculture will they truly support the development agenda of poorer countries, according to Ms Glijo. Indeed, adoption of policies that protect developing countries from import surges, agricultural dumping and other unfair trade practices of developed countries and multinationals like Cargill and ADM would greatly benefit developing countries.

Governments in Asia need to act urgently to move their countries towards food self-sufficiency, including by revisiting damaging export-oriented growth strategies. It is also hugely important that developing countries' debts be cancelled, she said. Public policies are needed to regulate markets, and multilateral trade rules have to allow that. Agriculture needs to be treated in an international framework that puts human rights - and especially the right to food - at the centre. "Agriculture needs to return to its function as a provider of life rather than a source of huge profits for transnational corporations", Ms Glijo concluded.

### (b) Brad McDonald, International Monetary Fund (IMF) Representation in Geneva

Brad McDonald stressed that the global food crisis requires global solutions and cooperation. His assessment was based on recent IMF studies which have analyzed five main factors that may have led to the current situation: among those the fact that inventory levels for major food crops have reached historically low levels. The volatility of food supply has contributed to very low inventories over the past few years. Moreover, slow yield growth, increasing demand for corn and rapeseed oil for biofuels production, higher energy and fertilizer cost, strong crop D&S



substitution effect and temporary food export restrictions imposed by some 35 countries have contributed to the problem.

Mr McDonald also discussed the impact of speculation on commodity markets on the current food crisis. On this topic, he said: "Speculation can in principle increase or reduce future prices and spot prices from the levels justified by fundamentals. Whether that possibility has been a reality is an empirical question that must be examined carefully using actual data. Speculative positions and commodity prices have indeed moved together; they are positively correlated. The subsequent question is whether there is a causal link between the two and, if so, in which direction. Statistical analysis, at least so far, finds little evidence that speculation has been behind the increase in food prices".

Mr McDonald argued that trade policy is not the cause of the food crisis but can have a role in solving it. Developing countries cannot address the issue of food security by reducing trade and relying on food self-sufficiency. They have to consider opening their market and it is in that sense that the current WTO negotiations could help, reducing trade distorting policies, allowing a more stable international food market and thus encouraging farm and rural development in developing countries. In that context the broad direction of the DDA, which supports considerable market opening, firmly addresses export prohibition and restrictions, strengthens disciplines on food aid and provides additional exemptions for domestic support for developing countries, is positive.

### **(c) Olivier De Schutter, UN Special Rapporteur on the Right to Food**

Olivier De Schutter introduced his presentation by highlighting the paradox behind the current crisis: the short-term effects of higher prices are very destructive for poor people (recent FAO figures show a significant increase in the number of hungry people as early as late 2007), but in the long term, high prices may also be opportunities for farmers to be able to earn a better living. According to Mr De Schutter, "The problem is not so much high prices *per se*. Rather, the problem is the fact that States who have been addicted to cheap food and who have under-invested in agriculture as a result are not prepared to a surge in food prices". He also stressed that the volatility, rather than the level of prices itself, was the central problem. Finally, the gap between farmgate prices and consumer prices should also be addressed as a matter of priority. These paradoxes make it hard to craft comprehensive and coherent solutions to the crisis.

There is a consensus on the fact that trade liberalization policies that started in the 1990s have ruined the rural sector in developing countries. Low agriculture prices and the persistence of high levels of domestic subsidies in industrial countries made it impossible for farmers in developing countries to stay in business, and therefore agriculture has been neglected in development strategies. The current system is not sustainable and we have to reverse course dramatically.

However, there is no agreement on what should be done to do this. Some argue that agriculture should be treated like any other sector - this is the case of the Cairns group at the WTO for example. Mr De Schutter stressed that the specificity of agriculture is often not taken into account by those who advocate this approach. In developing countries, 60 to 80 % of the population depends on agriculture. Furthermore, in many developing countries, the farm sector is currently unable to respond to market incentives due to the lack of investments in agriculture over the past decades.

Mr De Schutter looked in particular at three main arguments used to support the contribution of trade liberalization to food security, and highlighted their limits:

1. If trade is open, food will go from surplus regions to regions that are in deficit. But the truth is food travels where the purchasing power is. Some exporting countries have large segments of their populations which are hungry.
2. Trade liberalization will allow for the most efficient allocation of productive resources. But the question is who will benefit? The majority of the hungry people are small-holder farmers. We would be failing in combating hunger if we only reward the most productive producers without paying attention to the distributive consequences of trade liberalization and specialization according to the comparative advantage.
3. Trade liberalization will contribute to combating poverty by promoting economic growth. However, some studies show that trade liberalization increases inequalities and levels of poverty in certain countries, and imposes adjustment costs that have severe impacts for the poorest people. In particular, in agriculture, trade liberalization may favour the most productive farmers, to the detriment of small holders who represent the vast majority of farmers in the world.

Deepening the reform programme in the framework of the DDA will contribute to food security only if it benefits smallholder farmers, rather than make them more vulnerable. The conditions are not gathered yet for this to happen. Mr De Schutter said he agreed with Mr McDonald on the need to invest massively in agriculture, but he stressed that the sequencing between investment and liberalization has to be carefully studied.

This is where a different approach to food security intervenes: it stresses the need to protect smallholders from competition which they would be unable to cope with, through the pursuit of food sovereignty at regional levels. There is not a binary opposition between trade liberalization and the closing of borders: there should be a middle-ground, and flexibilities allowed to developing countries.

"I will be preparing a report on the impact of the WTO on the right to food and I will very much put forward the need to anticipate the risk that because of their trade commitments,

States might be obliged to sacrifice their obligations towards the right to food and this may not be allowed to happen; they must have the policy space necessary for them to protect the rights of their populations.", Mr De Schutter concluded.

#### **(d) Ambassador Ujal Singh Bhatia, Permanent Representative of India to the WTO**

Ambassador Bhatia initiated his presentation by saying that agriculture development and trade liberalization are not binary opposites, but that sequencing is a central issue.

Food security is the prism through which India views the global food crisis. To ensure food security, it is India's view that the government must address the distributional aspect of food: "The challenge of food security requires distributional interventions as much as production incentives, Ambassador Bhatia said. In developing countries, governments have to retain the power to maintain price stability in the interest of producers as well as consumers".

He mentioned that in India, around two thirds of the population depend on agriculture and about 450 million people live with less than \$1.25 per day. Therefore, the issue of food security is closely linked to that of poverty.

He claimed that severe distortions due to heavy subsidization and market entry barriers in many developed countries have created serious disincentives in expanding food production in developing countries. Furthermore, financial speculation and concentration of global food market have also played a role in the food crisis but all of these issues are outside the remit of the DDA. Thus "As things stand, the [Doha] Round cannot be expected to deliver a major outcome for expanding food production in developing countries or for addressing the food crisis in any substantial manner. Conversely, those who expect the Doha Round to worsen the global food situation perhaps give it too much credit", he said.

In this context and given distortions on global markets, both Special Products and special safeguard mechanisms (SSM) are needed to preserve and strengthen the livelihoods of poor farmers and to meet the objective of price stability. Talks among G-7 countries (EU, US, India, Brazil, Australia, Japan and China) have broken down on the issue of SSM which will define the soul of this round: is Doha a round for market access at all cost or should the livelihoods of poor farmers be protected? This round cannot conclude without a satisfactory outcome on these issues.

The amendment to the Green box criteria to enable governments to build food stocks based on purchases from poor farmers is also critical for India in the DDA, he said. Public procurement programmes in India have social objectives. They cannot be equated with trade distorting programmes of support in developing countries.

Market concentration is undesirable, but cannot be addressed under the current mandate.

There has been a lot of concern in India about the functioning of futures markets. However, a recent report was submitted by experts to the government, which concludes that there is no clear causal relationship between the increasing activity on futures markets and the increase in prices. The recommendations of the report are being examined.

Ambassador Bhatia concluded that the Doha negotiations have no mandate to address some of the key causes of the food price crisis. As a result, innovative approaches have to be imagined to incentivise food production in developing countries, and governments have to retain the power to maintain price stability in the interest of producers as well as consumers.

#### **(e) Wally Smith, Canada's Dairy, Poultry and Eggs Sectors (SM-5)**

Responding to speakers, Wally Smith agreed with Ms Glipe on the issue of market opening to reduce poverty and increase stability - thus disagreeing with Mr McDonald. He pointed out that unilaterally opening markets tends to discourage local production and in the case of developing countries in particular where development is dependent on concrete policy measures that are implemented and implemented over the appropriate amount of time.

In addition, strengthening developing countries' production capacities through domestic policies such as supply management will allow them to meet their domestic demand which would help avoid price fluctuations and the dumping of food into already fragile markets.

On the issue of Domestic Support, he agreed with Ambassador Bathia that while it is true that an overall effort to reducing trade distorting domestic support is being made, the real problem of box shifting is not being addressed. If countries were really serious about dealing with the huge subsidies in developed countries they would not be putting forward proposals that essentially repackage trade distorting programs to look like non-trade distorting programs Mr Smith said.

On how the WTO can help fix the food crisis, he remarked that initially when commodity prices were low, the objective for concluding the Doha Round was to open markets so that farmers in developing countries could benefit from trade and the high prices in the markets of developed countries. Today, when commodity prices are high (and we are facing the so-called food crisis) the objective for concluding the Doha Round is to increase production in an effort to lower world and commodity prices. He claimed that the answer is not simply concluding the Doha Round for whatever reason but rather ensuring price stability because after all price stability, in domestic markets, developing and developed alike, has a positive impact on world and commodity prices and on food security.

He said regulated systems such as Canada's supply management provide better solutions, and help prevent significant price instability by ensuring a fair price/return to farmers; empowering of farmers will ultimately lead to eliminating



trade distorting domestic support and avoid dumping through the matching of supply and demand.

## 2. Questions and comments by the audience

One speaker from the floor said that liberalization leads to concentration, claiming that it is time for the IMF to back away from its theoretical approach to the world market. Mr McDonald responded that the IMF does not believe that smaller markets will address the issue of volatility.

Milian Chavez from the Argentinean mission in Geneva claimed that trade liberalization for an export-oriented developing country such as Argentina is a way to contribute to food security. She also stressed the fact that the current WTO agreements provide net food importing countries hurt by higher prices with support through the Marrakesh decision. Mr De Schutter responded that the Marrakesh decision has proved not to be operational, and that the crisis has made it obvious that it should be seriously mended.

A Mexican academic stressed the need to differentiate between different farmers in different regions or circumstances. The diversity of situations requires a diversity of policies to address different problems. Ambassador Bhatia responded that agriculture, because it has so many special features, requires special treatment and cannot be submitted to a purely market access oriented approach.

A Canadian academic asked the Indian Ambassador his assessment about the value of working in a coalition such as the G-33 to defend food security interests. Ambassador Bhatia answered that the fact of working as part of a group of developing countries highlighted the fact that these concerns are not only India's, but that they are global. He expressed satisfaction at the success of the coalition in defending their interest in the July negotiations.

Ron Steenblik, from the OECD, questioned the role of biofuels in this debate and how that plays out in the context of the food price explosion. Ms Glipo responded that the expansion of biofuels in Asia had clearly contributed to the crisis, by excluding more small farmers from their land, but that she considers the driving force behind biofuels is really market concentration. Mr De Schutter also stressed that there

are a lot of intellectual property issues associated to biofuels development which could make it harder for developing countries to benefit from their production. He argued that there will be a need to develop certification schemes for biofuels trade.

An attendee from Japan raised the issue of the contribution of export restrictions to the price hike.

## 3. Conclusions and way forward

This panel discussion aimed at furthering a debate on the WTO's role in the food crisis, between some world leaders identifying the completion of the Doha Round to further liberalize global trade as part of the solution, and others, starting with civil society representatives, arguing that the model promoted by the Doha Round is partially responsible for the food crisis.

We put together a panel that represented these different perspectives, trying to base the discussion on facts and figures so as to identify possible bridges between various approaches. Hoping to reconcile such "schizophrenic" (in the words of one of the speakers) approaches in two hours would have been overly ambitious. What came clearly out of the discussion were three main points:

- The Doha mandate is far too limited to address the food price crisis comprehensively. Some call it inadequate, while some call it insufficient, depending on their perspective;
- Despite the very serious crisis we are facing--75 million more food insecure people in the world in 2007, according to the FAO--the dichotomy between free-trade advocates and those who think the market needs to be regulated still exists. The panel put forward the need for the two camps to engage in a dialogue based on facts rather than on ideology, and to use this crisis as an "opportunity" to build a healthy and sustainable food system.
- There was strong agreement on the need to foster investment in the farm sector in developing countries. All speakers agreed that this would require that the Doha Round preserve developing countries policy space.



## World Food Crisis: Are Trade Rules a Problem or a Way Forward?



### **Moderator**

Mr Christian Häberli – World Trade Institute (WTI), Bern

### **Speakers**

Dr Manzoor Ahmad – Director, Food and Agriculture Organization (FAO), Liaison Office in Geneva

Mr Ricardo Meléndez-Ortiz – Executive Director, International Centre for Trade and Sustainable Development (ICTSD)

H.E. Mr Manuel Teehankee – Ambassador, Permanent Mission of the Philippines to the WTO

H.E. Mr Mario Matus – Ambassador, Permanent Mission of Chile to the WTO

H.E. Mr Arsene M. Bahuta – Ambassador, Permanent Representative of the Republic of Uganda to the WTO

### **Organized by**

National Centre of Competence in Research (NCCR) Trade Regulation, World Trade Institute (WTI University of Bern) and ICTSD, Geneva

### **Report written by**

Mr Simone Heri and Mr Christian Häberli, NCCR

Thursday 25 September 2008 – 11.15-13.15





## Abstract

*This session focused on the trade-regulatory aspects of the food crisis and was based on a discussion paper on the relationship between trade policies and the current world food crisis. The objective was to explore the impact of present trade rules on food security in import-dependent and other developing countries as well as to assess whether the Doha Round negotiation proposals effectively address food security concerns.*

*In the panel discussion it emerged that trade rules are not a problem per se, but that there were flexibilities as well as loopholes impacting on food security. It was concluded that at the very least, any Doha Round Agreement should not bring about collateral damage on food security.*

## 1. Presentations by the panellists

Dr Christian Häberli, Senior Consultant at the World Trade Institute, moderated the session and in his opening remarks summarized the main points of the discussion paper that was prepared for the session.<sup>13</sup> In a first round, the panellists then commented on the impact of the multilateral trade rules crafted in the Uruguay Round on food security and in a second round on the Doha Draft Modalities of July 2008.

### Impact of the multilateral trade rules on food security

#### (a) Dr Manzoor Ahmad, Director FAO Liaison Office, Geneva

##### Why the Uruguay Round Agreement on Agriculture did not make any difference over the last 13 years in reducing the number of chronically undernourished people

Dr Ahmad addressed the question by first outlining how agricultural trade rules are different from trade in industrial goods. Whereas the latter are comparatively well-defined with little "policy space" for ceiling bindings, trade distorting subsidies and non-tariff barriers for agriculture were never really disciplined under GATT rules until the Uruguay Round when very weak rules were established. As a result of liberalization and effective enforcement of trade rules for industrial goods, international trade in industrial goods had been expanding at 6.2 per cent per annum. The share of industrial countries, which accounted for 85 per cent of world exports of manufactured goods, declined to about two-thirds in 2006, with a more rapid decline in labour-intensive goods. In the same period, with no effective rules in place for agricultural subsidies, the share of industrial countries in

agricultural exports rose strongly from forty per cent in 1955 to about sixty per cent.

Although a detailed Agreement on Agriculture came into effect as part of the Uruguay Round, it came nowhere near to achieving the objectives of the 1986 Punta del Este Declaration, which had envisaged "more disciplines to world agricultural trade by correcting and preventing restrictions and distortions". The disciplines envisaged through the Agreement were very relaxed and there was too much flexibility. There was abundant scope for using trade distorting subsidies, blocking imports of agricultural goods through safeguard measures or simply raising applied rates, using complex tariff rate systems and restrictions through tariff rates quota management. Some countries used sanitary and phyto-sanitary measures with impunity allowing very little agricultural imports. Therefore, what was intended to be achieved through the Agreement on Agriculture could not be achieved. A specific example was that actual border protection was higher in 1996 compared to 1994 in almost all OECD countries except Australia and New Zealand. As far as agricultural subsidies were concerned, the dollar value of the average Product Support Estimates (PSE) for developed countries had not fallen since the Uruguay Round negotiations began in 1986.

Commenting on the role of FAO in the food crisis, Dr Ahmad stated that FAO anticipated the onset of a global crisis in mid-2007 and started acting immediately. In December 2007, it had launched an Initiative on Soaring Food Prices (ISFP) that provided farmers in the world's poorest countries with start-up funds to boost agricultural production for the next two planting seasons. In addition, FAO's Director General was the Vice-Chair of the High-Level Task Force on the Global Food Crisis working on the two-track approach in the Comprehensive Framework for Action aiming at easing the immediate plight of vulnerable consumers and producers of food, and at building longer-term resilience to similar price shocks in the future.

#### (b) Ricardo Meléndez-Ortiz, Executive Director, International Centre for Trade and Sustainable Development

##### What went wrong and what went right in developing countries

Ricardo Meléndez-Ortiz stated that in the last 15 years there was a continuous lack of investment in agricultural productivity and infrastructure leading to a decline in productive capacity in developing countries. Expenditures for research and development in agriculture in these countries lagged behind, and in the majority of net food-importing developing countries they were almost negligible. Agriculture-based countries had very low public spending in this sector as a share of their GDP. At the same time, expenditures for research and development in developed countries were important and consequently the gap in productivity between developing and developed countries continued to increase. Developed countries subsidised agricultural commodities thus distorting market price signals in developing countries. Higher prices presented a possible

<sup>13</sup> Available online: [http://www.wto.org/english/forums\\_e/public\\_forum08\\_e/session16\\_paper\\_wfi\\_e.pdf](http://www.wto.org/english/forums_e/public_forum08_e/session16_paper_wfi_e.pdf)

increase in monetary flows to food-exporting developing countries, and in fact many countries had been waiting for an increase in prices. If prices were transmitted to the farm gate levels, incomes would rise, but the problem was that they were not transmitted. Those differences between developed and developing countries made it very difficult for developing countries to come out with better agricultural practices within a framework of rules that were disadvantaging the development of those markets.

With regard to the question of food aid, there was a strong correlation between surpluses in developed country markets and the volumes of food aid that were actually disbursed. At time of food crisis, food aid was not available - a fact which obviously called into questions the whole system.

Commenting on the Uruguay Round, Mr Meléndez-Ortiz stated that the results had failed to discipline subsidies in a major way. Even with the 2003 Common Agricultural Policy (CAP) reform there was an effective de-linkage between production and trade in the EU, and in the case of the US exactly the opposite took place with the 2003 and 2008 Farm Bills where subsidies increased beyond what was expected when the reforms were put in place. Furthermore, market access was not sufficient to provide opportunities to developing countries to develop agriculture as a trade-driven activity.

**(c) H.E. Mr Manuel A.J. Teehankee, Ambassador of the Philippines to the WTO**

Ambassador Teehankee stated that the Food crisis was, according to Josette Sheeran of the World Food Programme, a "silent tsunami". A wave of food-price inflation is moving through the world, leaving in its wake riots and shaken governments. For the first time in 30 years, food protests are erupting in many places and at the same time. But the crisis is not a sudden one. Prices have been rising for quite some time now, and perhaps earlier warning signs have been missed or ignored? Food price increases are not necessarily a bad thing, but the problem with the current food crisis is the volatility and the speed at which prices have increased. Gradual price increases could be handled, but sudden price increases as during the present food crisis need a coordinated, worldwide response.

Commenting on whether the Philippines are satisfied with the present Agreement on Agriculture, Ambassador Teehankee was of the opinion that we could and should have done better in the Uruguay Round. The Philippines is a founding member of the WTO and for the past many years it has been actively implementing reforms consistent with the agreements in the Uruguay Round. However, the benefits, as far as food security is concerned, still come in trickles, partly because food is not a one-solution fits all problem, it is influenced by very diverse socio-economic factors particularly at the domestic level.

Addressing the question of the impact of export restrictions, Ambassador Teehankee stated that the imposition of export restriction and other similar measures do not only contribute to the worsening of world food crises in a number of net food importing developing countries, but also undermines the reliability

of the world food supply and thus the world trading system under the WTO. In the recent price crisis in the Philippines, rice prices have gone up to a level that even middle class people can hardly afford, and even if they can, supply is tight and thus not readily accessible. Despite the elimination of import duties and surcharges and facilitation measures by the government, imports do not address the emergency because there is no world rice supply to speak of in the first place. This situation is further aggravated by export restrictions that are put in place by some countries with domestic surpluses. The Philippines understands that each sovereign player has to act in its own best interest; putting in place export restrictions is however a glaring example of the failure of the current world trading system for ensuring world food security, and needs to be further addressed.

**(d) H.E. Mr Mario Matus, Ambassador of Chile to the WTO**

**Is Chile satisfied with the present Agreement on Agriculture?**

Addressing the question Ambassador Matus stated that what we did in the Uruguay Round was just to bring agriculture into the rules-based system. It represented a reflection of the situation at the time, but there was no real and effective trade liberalization. From that perspective Chile was not at all satisfied with the Uruguay Round Agreement on Agriculture.

Commenting on whether the G20 and other exporting countries could feed the world of tomorrow, if importing countries lose market shares after Doha, Ambassador Matus explained that the G20 is a mix of exporters and importers and most often the common positions of the G20 focus on export competition, export subsidies and domestic subsidies. In those areas the G20 has a very strong and ambitious position. But in market access the positions of the G20 combine the interests of exporting and importing countries. For the G20 exporting countries and the Cairns Group, the answer is definitely yes: we can feed the world of tomorrow, because we are not only looking for market access but for clear rules for agriculture that do not allow for distortions. If such rules are put in place, we will not only be able to produce more but the system will be much fairer and ensure that the proper incentives for the developing world to produce and export food in the areas where they are competitive exist.

Concerning the legitimacy of export duties or export restrictions, in Chile's view the question is not so much about whether they are legal or legitimate, because it is a natural reaction to hunger in one's own country to consider some sort of export restrictions. In fact, over 40 countries are already applying them. The real question is what the impacts of this decision would be in the medium and long term. In Chile's view, export restrictions are clearly a bad decision because they distort the domestic production of those products; therefore the natural response is to diminish production in the medium term. In some traditional exporting countries there is already less production of products to which export restrictions apply, therefore in the medium and long term export restrictions do not help food security.



Regarding the question of biofuels vis-à-vis food security, they clearly have an impact on food security. For example in Mexico with the price of corn, more biofuels – at least with the present technology – would create more food insecurity. A Science Magazine article published in 2008 concluded that greenhouse gas emissions from corn and even cellulosic ethanol exceeded those of fossil fuels and therefore produced no greenhouse gas benefit. So more of those biofuels – again at least with the present technology – also created more environmental problems.

### **(e) H.E. Mr Arsene Bahihuta, Ambassador of Uganda to the UN/WTO**

#### **What the Agreement on Agriculture did to food security in Uganda**

Ambassador Bahihuta in addressing the question emphasized that food insecurity is not a new phenomenon to the perennial food deficit situation in some countries in the world, for instance in the Sahel, but it has reached higher media coverage due to the food crisis. Uganda is not satisfied with the Agreement on Agriculture because it has failed to discipline subsidisation. Large subsidies in some developed countries, to some extent, have played a role in retarding the development of the agricultural sector in Least-Developed Countries (LDCs). But LDCs have also failed to develop and adopt modern capitalistic modes of agricultural production and are not working with their peasants to modernise agriculture. The fundamental problem lies in the production structures in Uganda as most peasants produce food for their own consumption and are not in a position to produce a surplus.

Regarding the question whether Uganda can increase its agricultural exports, including to non-European countries where Uganda has already preferential access, Ambassador Bahihuta confirmed that Uganda has indeed increased exports to trading partners, both old and new. Since 1986 Uganda has increased agricultural exports to the EU, China and Japan because of the enabling environment that had been created for the last twenty years with the help of our development partners. While this increase in exports concerned traditional agricultural commodities such as coffee, cotton and tea, Uganda has not managed to increase its exports in more value added products.

#### **Doha Draft Modalities**

In the second round WTO and other trade-based solutions to increase food security worldwide were discussed. The moderator Dr Häberli explained his own position, which was that the July 2008 Draft Modalities for the Agricultural package, seen exclusively from a food security perspective, were a big step forward because of much more market access and tighter subsidy disciplines in developed countries. At the same time, the July 2008 Draft Modalities would mean five steps back from the present rules:

1. No real disciplines have been proposed for export bans, taxes and other restrictions which, as the World Bank has pointed out increase global food insecurity without even effectively reducing domestic prices.
2. Even under the new proposals virtually all international food aid is likely to qualify under what is now going to be the "Safe Box", even though such "aid" in reality constitutes surplus disposal and market displacement, in other words measures very similar to an export subsidy.
3. There is no real commitment to maintain food aid levels when commodity prices are rising – a particularly shocking graph from the World Food Programme's 2007 Food Aid Report shows that when food prices are highest, food aid reaches a historic record low.
4. Rich subsidising countries have for decades depressed world market prices, a fact which explains the supply-side constraints preventing poor country producers to respond to the higher food prices with higher production. But these same rich countries could continue focusing price support at historic levels on specific commodities, including for biofuels production from commodities which in poor countries serve as staple food.
5. Finally, the Doha Round losers are not to be compensated by a binding commitment to an Aid for Trade package.

Dr Ahmad agreed with the five gaps identified by the moderator. The Doha Draft Modalities regarding substantial improvements in market access, substantial reductions in trade distorting support and phasing out of export subsidies, are a big step forward. For example, it has already been agreed at the Hong Kong Ministerial Meeting that all kind of export subsidies would be eliminated by 2013. Thus this area will be brought in line with industrial goods where export subsidies were banned 50 years ago. In case of trade distorting domestic subsidies, there is an understanding that they will be cut by 70 to 80 per cent in major developed countries. This seems a very ambitious cut. However, noting that actual US subsidies have fallen to around \$8 billion a year amid high prices for basic commodities against the \$48 billion currently scheduled, many countries feel that even after a 70 per cent cut, there will still be a substantial cushion for the United States to raise subsidies in the future. In case of tariffs also, an understanding has been reached that there would be an average cut of 54 per cent for developed countries including reductions of up to 70 per cent for the highest tariffs. Again such high cuts are quite ambitious but the ambition could be diluted to a large extent by the issue of the number and treatment yet to be agreed for sensitive products.

All these are positive steps. What is not being envisaged in the Doha Round is a further tightening of existing provisions on export prohibitions, restrictions and taxation. In the wake of the recent food crisis, many countries resorted to such measures



which accentuated the crisis. It is not likely at this late stage that anything substantial could be agreed in this area.

Mr Meléndez-Ortiz emphasized that WTO rules were not designed to address food security issues, but that they were rather aimed at inducing reform in agricultural markets from a commercial perspective. Hence, there are obvious complications if we assess these same rules against food security policy objectives.

Looking at the Uruguay Round and at what it has delivered in the promises for market access and subsidies as well as at the proposals in the Doha Draft Modalities, one has to conclude that the level of ambition is very low. But knowing how difficult the negotiation efforts to get to the July Draft Modalities are, we should better try to conclude the Round soon. But for the future, it will be necessary to address the structural issues that made it difficult to move to a higher level of ambition. We can not escape the fact that we are living in a different world than at the time of the completion of Uruguay Round. The world of today is characterized by persistent and novel factors that are affecting agricultural markets such as demographic changes, the economic resurgence of China and India affecting dietary habits, water scarcity, climate change and the availability of energy.

The food price crisis to a great extent is a wake-up call in that respect. Looking at the tools that have been used in the WTO agricultural negotiations and measuring them against the factors that determine those price hikes would be a rather disappointing exercise. First, the question of oil and energy prices is obviously completely out of the control of the agricultural negotiations. On the failure of key harvests in 2007/2008 in Australia, Canada and Central Asia we may have some instruments at the international level that may be helpful in addressing future situations of that sort, but they are not necessarily directly WTO-related. Furthermore, a figure produced by the World Bank estimates that 65% of the recent price hikes are due to the expansion of biofuels production. This may be mostly applicable with respect to developed country policies that further distorted agricultural markets by promoting production of inefficient temperate zone biofuels. The fact is that biofuels that might be climate-efficient, those stemming from tropical crops such as sugar and palm oil, are punished by highly distorted markets. WTO rules could address the distortion in international biofuels markets by disciplining subsidies and reducing tariffs and other taxes and duties that limit market access. But other issues such as food stocks and price level volatility, the issue of the denomination of commodity prices in US dollar and the depreciation of this currency, hardly find responses directly in trade rules.

Some of the tools directly addressing food security and now included in the negotiations are Special Products (SP) and the Special Safeguard Mechanism (SSM). It is interesting that the trade system, for the first time, has accepted the validity of concerns such as food security, livelihoods' sustainability and rural development, and has given related products a different treatment with respect to market access. In this regard, now there is an attempt to bring food security concerns into the WTO. However, we will see whether these tools work and whether they are the right answer only once we try them out. In any case,

the importance of bringing these issues to the negotiation table must be recognized.

Ambassador Teehankee stated that the tree pillar approach of parallel tariff and subsidy reduction is a necessary but an insufficient answer to the global food crisis. While the WTO has a significant role to play in achieving long-term food security by providing the framework for a more even and fair playing field in the international trading system, it is not a panacea and parts of the food crisis need to be addressed outside of the WTO.

International financial institutions and wealthier nations recognized the weight of the crisis by offering assistance package and loans to developing countries, and this was a positive sign. Yet, their various promises were largely rhetorical, thus detracting from the possibility of urgent actions. The World Bank for example, called for building a safety net and increasing loans for agricultural production and trade liberalization. Based on the Philippines experience, the World Bank's investment agenda was largely defined by partnerships with international corporations to expand trade flows rather than to support farmers and promote food security and domestic food production. Therefore the biggest gains would go to agribusiness groups who control the export markets. Similarly, financial institutions and some Overseas Development Assistance likewise boosted trade rather than determining what kind of trade and finance was needed, and in which type of food production activities.

These issues must be seriously addressed. This also justified the need to boost local production by increasing investments in agriculture, but doing so would also require greater incentives, for example a wider but calibrated import policy space in food deficit countries. This was the very essence of the G33's proposals on SPs and the SSM which was to ensure food security, livelihood security and rural development. So SPs and the SSM are one of the key elements still missing in the draft package, and the sooner they are addressed, the sooner a result in the Doha Round could be achieved that addresses food crisis and food security.

Ambassador Matus stated that the Doha Round is a sort of an experiment in the sense that it is already too complex with regard to the number of issues, the level of details and also the number of countries participating. With 153 WTO member countries there is more democracy in the system but this also makes the entire process more complex. The complexity has also created too many rules. Even if we conclude an agreement, it would result in a very complex world in terms of trade rules. Therefore, it would be difficult for the business community to deal with those new rules as we would have exceptions for almost everybody.

There is also disenchantment with the system as a whole. The basis of the GATT was an understanding that capitalism offers a simple recipe through liberalization to expand trade and enhance the standard of living. That worked properly until the Nineties, and trade was still growing, the cake was a big one in that sense; however this was not transferred to the vast majority of the population. So there is a problem with the perception of the usefulness of trade rules seeking further liberalization.



The Doha Draft Modalities have a lot of flaws, including the five identified by the moderator. However, while repeating his praise for the Discussion Paper, Ambassador Matus argued that in many areas, what we have on the table now, would have been the dream of negotiators ten years ago. So there has been progress although not huge, but it is a lot in terms of the system, because some sorts of limits and disciplines are established. The developing countries are the ones that need those rules most in order for them not to be under the power of the big markets. Disciplines protect the developing countries and in this respect, the Doha Round can deliver much more than the previous ones.

Ambassador Balihuta stated that satisfying Doha Draft Modalities implied that subsidies do not continue to hinder LDCs from developing their agricultural sectors. It also means that subsidies especially in the Amber Box should be seriously disciplined. Developed countries food security could still support food security at home, but they should not export their food security to become our food insecurity. Subsidisation does not hurt our markets, but subsidies should be capped at an optimal equilibrium that would not present an obstacle to agriculture-led development in LDCs.

Good trade rules should also give LDCs policy space to enable them to develop their agricultural sectors. It is basically a situation of crawling babies facing galloping elephants, which is why access to tools like SPs and the SSM is a necessity to catch up with developed countries.

Regarding biofuels, better technologies and more research are needed to develop more effective biofuels that are not based on staple foods; it is also necessary to change subsidisation policies. For Ambassador Balihuta, the present situation of burning subsidised food as biofuels when so many people go hungry during the food crises is simply not acceptable.

There are suggestions in the Doha Draft Modalities about regional stockpiles and commodity agreements. To accept them would be fine, but they can not substitute the modernisation of our agricultural sectors, and this is to take place within our countries – and this is also where Aid for Trade would have to come in. Modernisation of agriculture is what we want, if binding Aid for Trade commitments are possible, this should be done so as to help us build our agriculture beyond subsistence.

Regarding the question of trade liberalization versus policy space, in some countries such as Uganda autonomous liberalization has taken place to such a large extent that we actually now need to de-liberalize; for this reason we need a lot of policy space in the Doha package.

LDCs have also put forward a proposal on food aid disciplines, including the safe box for emergency food aid and disciplines on monetisation that is very clear and we are just waiting for support from our development partners and colleagues to agree with us.

## 2. Questions and Comments by the audience

One comment concerned the issue of biofuels and it was noted that second generation biofuels like switch grass are not staple foods, so maybe we would just need better communication about the ongoing research and the future prospects of biofuels.

Dr Häberli answered that it was not necessarily the case that whenever switch grass was produced, there was no problem for food security. The impact on food security depends where such biofuels are produced and whether the high subsidisation lead to produce more switch grass instead of food. To regulate these distorting incentives is an important issue from a WTO-perspective. But on a general level, one could say that when for example in Mexico previous imports suddenly went into subsidised biofuels production in the US, this certainly did not increase food security.

Mr Meléndez-Ortiz added that there has always been competition over land used for food, feedstock, fuel, fiber, forests or other uses. It is interesting that on the competition between food and fiber nobody seems to say anything. Net food-importing developing countries produce large amounts of cotton that is mostly exported and used for industrial purposes, but cotton production does not provoke the same type of debate on competing uses of land as biofuels do.

Most of the distortions affecting food security has to do with policies directed at the use of food crops as biofuels in temperate zones. Biofuel production processes in these regions are detrimental to the environment and are carbon intensive. Crops planted as biofuels also displace those planted as food. Biofuels per se may not be threatening food security, but their policies have been designed mostly for revenue purposes in the agricultural sector in the EU and the US. There is no justification really to wait for the biotech industry to come up with the switch grass solution as today we have the possibility of using non-food crops for fuels in ways that do not compete with food crops. For example, *Jatropha* in Africa does not compete with food because of the type of land it uses and because it is inedible. Sugarcane and palm oil are again tropical crops not necessarily competing with their food function and could thus be used for biofuels.

A further query addressed the assumption that the era of cheap food might be over and questioned whether the current rules that are designed in an era of cheap food are not out of step with the future food system and what the role of the WTO is in a world of high food prices.

Ambassador Teehankee answered that he believed that WTO is relevant in either situation, because even when we had shifted to higher food prices there would always be the rules-based system to fall back on. A certain level of food prices has been reached, but most economic and business cycles went up and down, then the effects of competition would come into play because there would always be a more



efficient producer in one country or in an area of a country than another – assuming subsidies were disciplined and all other things being equal. Thus, over time food security would be enhanced by the more efficient ones taking over. The first shipment of generic drugs from Canada to Rwanda under TRIPS flexibilities showed that as the world unified there is really a role for communities to help each other through increased efficiency. The future is not that each country should be producing its own food, although food security at the national level is also an important consideration, and that is why export restrictions should be addressed in the WTO.

Ambassador Matus added that obviously the WTO is not a panacea, but the rules would help the process. In his view, WTO rules are not designed for either cheap or high prices, but for an appropriate price whose level is defined by market forces. Looking at what has been happening in the last months the market is already working because this year there will be a record high in the production of wheat, rice and soybeans. But there is no higher production of for instance cotton, precisely where there is a lot of subsidization. Where we had a highly distorted market it was difficult to rely on market forces regulating the price and that is exactly why the WTO rules aim at determining the appropriate price through the market.

A further question addressed the issue whether the concepts of the SPs and the SSM were offering sufficient protection for the LDCs to be able to catch up and modernize.

Ambassador Balihuta replied that SPs and the SSM are just one element of the protection that is needed. In addition, the reduction of trade-distorting subsidies as mentioned earlier is necessary. LDCs have also been struggling to get the so-called preferential markets, meaning some kind of left over high tariffs in developed countries to which LDCs are exempted thus enabling them to gain effective market access. SPs and the SSM are additional to all other sorts of special and differential treatment the LDCs are seeking.

### 3. Conclusions and way forward

To conclude, each panel member was given the possibility for a short closing remark conveying their message on how the WTO was affecting food security worldwide.

For Ambassador Balihuta the WTO is a capitalist organisation that specializes in trade rules. It is not directly concerned with the process of production. However, the food crisis is a problem of production in those countries that are mostly affected by the food crisis. Hence, the WTO not only is not a panacea, but the WTO will not actually help substantially in solving the food crisis. However, the WTO has an important role and that is to help in the designing of trade rules that can work backwards and create an environment that will foster the production efforts especially in the most affected areas. The best way to tackle the food crisis is to modernize agriculture, so that the countries involved can eventually participate in trade, but they have to produce first.

Ambassador Matus' message is that we have to finish the Doha Round now because if we fail to conclude it, the losers will be the developing countries. Price distortions would continue, as would therefore the bad incentives on production of food and none of the fundamental problems would be solved. With the present Modalities there is a clear effort to redress the legal framework towards a more enabling framework for poor farmers, because of the elimination of export subsidies, the reduction of domestic support and the caps we are establishing. At the moment, domestic support is not very intensively used because of the high prices, but in the future those subsidies will be used again. Thus, certainty and much more predictability of prices will be an important part of the outcome of the Doha Round.

Ambassador Teehankee had three messages to conclude. First, to conquer the Doha Round, we have to conquer our fears. We must reach a compromise on the SSM and not be afraid to let economic forces move forward with the Doha Round. Second, there must be trade rules in the multilateral context, but this must be coupled with parallel domestic policies that promote investment in food, government partnership and social responsibility. Third, there must be common action because united action will lead to better solutions.

Mr Meléndez-Ortiz added that solving the food crisis requires more investment in research and production in developing countries and the right social safeguards. We need a multilateral framework that enables those sort of policies.

Dr Ahmaad observed that if we go back to the title of the panel discussion that is whether trade rules are a problem or a way forward, no one from the panellists or the audience called trade rules a problem. Some were seeking exceptions to trade rules, but practically most developing countries have low tariffs, the policy space to be secured would rather apply to exceptional circumstances in the future. Dr Ahmaad strongly felt that trade rules are a way forward, maybe not immediately for this food crisis but in the long run. They worked for industrial goods and they are going to work for agriculture as well.

The moderator Dr Häberli concluded the session by stating that most panel members would agree that food security is an issue of global governance. It is not in the WTO that there can be a solution to a food crisis, but perhaps a contribution to food security. WTO is a trade organization; it is not a food security organization. But at the very least, the Doha Round results must not produce collateral damage to food security.

This Panel made clear that the food security issue can not be solved in a trade organization like WTO. At the same time, good international trade rules can make a positive contribution to global food security. The present rules as well as the July 2008 Draft Modalities are a step forward, but they leave too many loopholes open which can impair global food security. Given the Doha impasse, negotiators now have time to review the new draft rules and to draw the appropriate lessons from the recent food crisis.



## What Future for Global Economic Governance (GEG)? - Potential Role of the WTO



### **Moderator**

Mr Rashid S. Kaukab – Deputy Director & Research Coordinator, Consumer Unity & Trust Society (CUTS), Geneva

### **Speakers**

Dr Winfried Veit – Director, Friedrich Ebert Stiftung (FES), Geneva

H.E. Dr Debapriya Bhattacharya – Ambassador, Permanent Representative of Bangladesh to the WTO

Mr James Howard – Director, Economic & Social Policy, International Trade Union Confederation (ITUC), Brussels

Dr Felix Peña – Professor at Universidad Nacional de Tres de Febrero, Director of the Institute of International Trade - Standard Bank Foundation, and member of The Evian Group Brains Trust at IMD

### **Organized by**

CUTS International, (India), FES, (Geneva) and the Evian Group at IMD, (Lausanne)

### **Report written by**

CUTS International, (India), FES, (Geneva), and the Evian Group At IMD, (Lausanne)

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## Abstract

*The current food, financial, and energy crises have demonstrated that GEG is in disarray and unable to cope with these problems adequately. Thus, just at a time when effective GEG is more necessary than ever, the institutions forming part of it, such as the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank are confronted with a severe crisis while calls for fundamental reforms of the global governance system are getting louder.*

*The main objectives of the session were to sketch out the future of GEG, to discuss the role of the WTO, to emphasize the importance of the social dimension, and to reconsider the relationship between regionalism and multilateralism.*

*The following four questions were addressed by the panellists:*

1. *What are the positive and negative elements of the current Global GEG System as identified by participants of the ongoing FES Scenario Building Project on "Global Economic Governance 2020?"*;
2. *What are key WTO governance issues, how do they affect the GEG System, and what are the lessons learned (from a Least Developed Countries' and Small and Vulnerable Economies' perspective) taking into account the failed July 2008 "Mini-Ministerial?"*;
3. *How could the social dimension of globalization be better addressed in the GEG System?;*
4. *What are the possible future directions of the GEG System, what role should the WTO play as part of it, and what is the relationship between regionalism and multilateralism?*

*The following main conclusions were drawn: There is a need to reform the GEG system and a clear desire for change. Possible scenarios were presented, including one of a "fragmented and protectionist world," the dominance of regional blocks and one of a "re-born multilateralism". Detailed suggestions were given on how to promote the principle of decent work at the WTO. Contradictory views were expressed of whether the WTO should take up new issues, such as climate change, social and environmental standards, and human rights or instead, consolidate its original agenda and leave these issues for other international organizations to address.*

## 1. Presentations by the panellists

### (a) Rashid S. Kaukab, Deputy Director, CUTS Geneva Resource Centre

Rashid Kaukab, the session's moderator, referred to the current financial crisis and highlighted the importance of the GEG system. As part of this setting, the WTO played a crucial role, although the latest attempt to conclude the Doha Round failed at the July 2008 "Mini-Ministerial".

### (b) Dr Winfried Viet, Director, Friedrich-Ebert-Stiftung (FES), Geneva Office

In his presentation, Dr Veit gave an overview of the ongoing Scenario Building Project on "Global Economic Governance 2020," which is run by the FES Geneva Office. The objective of this project is to create different scenarios about the future of the GEG system. It focuses on trade, finance, and monetary issues, but also includes other relevant areas, such as climate change or regionalism. It reconsiders the role of multilateral organizations, such as the WTO, IMF, and World Bank, but also of relevant UN organizations, such as UNCTAD or the ILO. Representatives from these institutions, civil society organizations, and other stakeholders are directly involved in the scenario building process. Although the project is still ongoing, the subsequent intermediate conclusions could be drawn:

The present GEG system is confronted with a lack of people's consideration, lack of transparency, lack of political will and vision, lack of coherence, lack of democratic participation, and accountability. The positive elements include the fact that there exists at least a global governance system, including a court of criminal justice, the human rights regime, etc.; the improvement of human development indicators; the fact that states communicate more easily and openly, and that women are better represented; that there is a greater cooperation between emerging powers; and the fact that the WTO has the potential to put different actors on equal footing. Given the identified weaknesses, there was a clearly stated need to improve the GEG system. A key message was that nations are currently not witnessing global governance, but the governance of global processes; in other words a "post-crisis system" in the sense that it was rather trying to react to crises instead of anticipating, actively tackling, or even preventing them.

Dr Veit clarified that the scenarios offered different pictures of the future, but are not predictions or forecasts. They could offer decision-makers options of what to do by showing what could – and what could not – happen. However, they do not give concrete policy advice. The scenario techniques include the instruments of "driving forces" and "critical uncertainties".

"Driving forces" are factors and developments that push the system in one or the other direction and influence the future of the GEG system. The scenario team identified the following seven main driving forces: regionalism and bilateralism; emerging powers; consequences of climate change; food and energy security; financial instability; technology; and private sector interests. To illustrate the ambiguous role of driving forces, the example of technology was given. On the one hand, technology could solve the food crises; but, on the other hand, it could also cause disasters, such as a nuclear war.

"Critical uncertainties" are disturbing events or discontinuities that could lead to a radically changed environment. They cannot be predicted, but they might happen. The scenario team identified the following seven critical uncertainties: hot war between "centers of gravity;" nuclear war in the Middle East;



world depression; technology; collapse of the European Union; China's implosion; and a new development ideology.

Participants of the scenario team came up with different stories of a possible outline of the GEG system in the year 2020. While these stories are not yet scenarios, they are a first step towards elaborating them. The following four stories were presented:

#### **Story 1: "Fragmented and protectionist world"**

Nation states are the principal players in international relations. The world's biggest economies are the United States (US), China, Japan, Russia, Brazil, and the EU. Trade flows have been severely restricted as protectionist interests in several advanced economies have gained influence. The US has left the WTO and Russia never joined. The big players regularly ignore rulings from the WTO Dispute Settlement Mechanism. The negotiations on the Doha Round, now in their 19th year, remain formally open, but talks were abandoned several years earlier. The IMF's Articles of Agreement are being ignored and most countries pursue occasional competitive currency devaluations. The G8 has been extended to include India, China, and Brazil, but high-level attendance at summits has become patchy. Economic diplomacy is pursued on a bilateral basis with varying coalitions.

#### **Story 2: "Centers of gravity" or "regional blocs"**

Several regional economic blocs have integrated further. Although nation states continue to exist, these blocs generally operate as unitary actors at the global level. GEG is performed through semi-formal dialogue structures, such as that formerly known as the G7, and ad hoc diplomacy between the blocs. The biggest economies are the Free Trade Area of the Americas (FTAA), the EU (39 member states, from Iceland to Turkey), the Japan-Korea Economic Community, China and India. The blocs have either adopted a single currency, as in the case of the EU, or pegged national currencies to an anchor currency, such as the US dollar in the FTAA. Between the blocs, currencies float freely. The lion's share of international trade, investment, and financial flows takes place between countries within the same bloc. The blocs trade with each other, but disputes are frequent. Some blocs operate external capital controls, but even between the blocs that have maintained capital openness, the flow of capital is hindered by differences in regulatory standards.

#### **Story 3: "Business as usual"**

Nation states are the primary decision-makers in international relations, even though companies and civil society groups wield influence as lobbying groups. International organizations, while periodically questioned, continue to act as fora of global cooperation and form the basis of international economic law. While Bilateral Free Trade Agreements have flourished, the WTO has continued to facilitate general trade openness and is widely seen as the most influential economic organization of global remit, not least because the

Doha Round Agreement of 2013 extended the reach of its Dispute Settlement Mechanism to a number of traditionally domestically-controlled policy areas. In 2016, the then-174 WTO members agreed on a new negotiating mandate. This so-called "Obama Round," named after the former US president whose second term in office was outward, rather than domestically, focused, is ongoing with little prospect of imminent conclusion.

#### **Story 4: "Born again multilateralism"**

Faced with a prolonged economic downturn in the final years of the previous decade and the US dollar's demise as the world's foremost reserve currency, the US gradually gave up its scepticism towards multilateral, rules-based international economic governance. Following a major reform of GEG in 2015, national (and regional) currencies are aligned into the IMF's Special Drawing Rights within 15 percent bands. IMF voting rights were also revised as part of the 2015 reform; they now reflect a combination of the relative size of a member country's economy, its population number, and its financial contribution to the IMF. Member states have formally committed to regular reviews of voting rights to reflect changes in these three criteria, but the mechanism was only vaguely defined. Trade remains governed by the WTO, which, in two successive rounds of talks that were concluded between 2015 and 2020, has expanded its mandate to include basic social and environmental standards. Most advanced, and some developing countries, have also agreed upon common standards of taxation to prevent tax competition between them for high earners' choice of residency.

Dr Veit reiterated that the four stories are only selected examples that triggered the discussion on the way to elaborating the final scenarios.

#### **(c) Dr Debapriya Bhattacharya, Ambassador & Permanent Representative, Permanent Mission of Bangladesh to the WTO and UN Offices, Geneva**

In reaction to the four stories presented before, Ambassador Bhattacharya recalled that when it came to the future, there are three sorts of people: those who let it happen, those who make it happen, and those who wonder what would happen. He then focused in his presentation on the following five areas:

First, he reaffirmed that the conclusion of the Doha Round is necessary, but only if it is substantive and fully commensurate with its development mandate. He cautioned not to oversell the outcome of the Doha Round, arguing that its conclusion will not be the solution to the global food, energy, and financial crises. He even considered it exaggerated that a concluded Doha Round could be an anchor for these crises, given the systemic nature of the problems and the lack of specific analyses on the linkages between the crises and the multilateral trading system. Dr Bhattacharya stressed that the Special Safeguard Mechanism is not the only landmine in the Doha Round negotiations and mentioned that there were



many more areas in agriculture, but also in Non-Agricultural Market Access (NAMA), Services, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Rules etc., which needed to be addressed and solved.

Second, Dr Bhattacharya pointed out that the consolidation of the rules-based multilateral system is necessary, especially given the potential rise of protectionism and Free Trade Agreements. He emphasized the regulatory role of the WTO (with or without the Doha Round) as the greatest possible public good of the global system. The transparent, rules-based system with the Dispute Settlement Mechanism (DSM) still remains the best system, especially for small developing countries. Thus, these countries are very keen in the protection, consolidation and promotion of the multilateral trading system. To increase its effectiveness, more compliance (in terms of notifications) and a better, effective and empowered DSM with improved access for weaker developing countries is needed. Moreover, he called for a better surveillance, where the WTO Secretariat needs more capacity concerning access to information among others.

Third, he referred to the reform of the multilateral trading system with the WTO as its anchor, but with the inclusion of Free and Regional Trade Agreements (FTAs and RTAs). The major systemic challenge for the multilateral trading system and the WTO is to cope with this fragmentation. Dr Bhattacharya advocated the idea of including a "sunset clause" in all FTAs in the sense that, after some years they would be open to all other WTO members, i.e. the multilateralization of RTAs and FTAs. However, he also mentioned doubts about the political will and indicated that more analytical work is needed on that.

Fourth, to make the story of a "re-born multilateralism" happen, the WTO has to reform itself. Dr Bhattacharya enumerated three reform areas concerning the WTO's internal governance structure, which are: agenda-setting, participation, and decision-making. These three governance areas have to undergo a significant change in order to meet the challenges of the upcoming debate and the newly raised expectations. He gave the example of the practice called "concentric circles" as a form of consultation and decision-making, starting with the inner circle (G-7), turning to the medium circle ("green room") and then to the broader circle (the whole WTO membership in the Trade Negotiations Committee and the General Council). He saw no problem in this mechanism as long as it works and delivers. However, since the July 2008 "Mini-Ministerial" did not lead to an agreement, he wondered if another process is needed. With regard to participation, he stressed that there is not a lack of participation opportunities, but rather the problem of capacity constraints that prevents, in particular, small developing countries from taking advantage of the existing possibilities.

Fifth, Dr Bhattacharya pointed out that there is an inadequate, incomplete, and vague understanding about the interfaces between the trading system and the other areas of development. He asked for up-to-date, pre-emptive, ex-ante analyses, which are lacking on issues, such as the food crisis, climate change, etc. He warned that if this gap is not closed, the WTO and the multilateral trading system will not be able to play the role that

the membership wants it to play. However, he then cautioned against overloading the WTO agenda and bringing issues into the WTO, which the organization has no competence for, such as human rights, environment, food security, or labour rights. He argued that there is a distinction between understanding the impacts of trade rules on other areas, and bringing such areas into the rule-making of the WTO. However, he reaffirmed that a much better understanding and analysis of trade implications on these issues is needed.

Dr Bhattacharya concluded by reemphasizing the need to strengthen the multilateral system, which needs to get back not only the mind, but also the heart; and reminded the audience of the African proverb "Tomorrow belongs to those who prepare for it today".

#### **(d) James Howard, Director, Economic and Social Policy, International Trade Union Confederation (ITUC)**

James Howard focused his presentation on the ILO principle of decent work and its relationship with the WTO. He offered several concrete proposals in this regard and called for a stronger interaction between the WTO and the multilateral agencies of the United Nations.

He referred to a perceivable change of mindset and greater openness towards inter-institutional collaboration. He stressed that every institution would have to cope with problems such as climate change and argued that the way in which the WTO would make the necessary changes to integrate decent work into its agenda would be indicative of whether the institution would be able to deal with the future challenges of sustainable development in general.

He then highlighted the key findings of the first-ever joint report between the WTO and the ILO on the subject of trade and employment. There was no automatic link between trade and economic development. The benefits of trade were highly concentrated in industrialized countries and a small number of developing countries. For many other developing countries, in particular in sub-Saharan Africa, no such correlation could be found. Moreover, there was a lack of relationship between trade and poverty reduction, given that the poor often work in parts of the economy not affected by trade or were low-skilled or unskilled workers. The study also found an association of trade with worsening inequality in some countries and with increasing elasticity and insecurity of employment, both in industrialized and in developing countries. However, trade could tend to have a positive impact upon employment when governments took active measures to invest in education and skills.

He characterized the study as a "sea change in the perception of trade by the WTO". He pointed out that there are other issues still to explore, such as the impact of trade on core labour standards, enumerating a number of cases where trade indeed is associated with workers' rights violations in different countries. He stressed that this constitutes a serious and systemic problem. He mentioned that ITUC produces regular reports on





core labour standards every time the WTO conducts a trade policy review. These reports show that all too often, workers' rights are sacrificed in order to gain competitive advantage and to increase exports, in particular, in the over 5,000 export processing zones around the world. He argued that these are systemic problems and require comprehensive attention from the multilateral institutions and called for a closer working relationship between the WTO and ILO.

The concept of decent work included the respect for workers' rights, employment creation, social dialogue, and social protection. There is an emerging international consensus on this principle, which was included in different UN resolutions over recent years. He referred to the latest document, the "ILO Declaration on Social Justice for a Fair Globalization," quoting its paragraph "[...] that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage [...]". Moreover, it provided the ILO with a mandate to analyze the impact of the actions at the WTO and other institutions, stating: "As trade and financial market policy both affect employment, it is the ILO's role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies".

James Howard suggested the following ten points of what the WTO could do to promote the principle of decent work:

1. A proper work program between WTO, ILO, and other UN agencies should be developed concerning the labour, social, gender, and development implications of trade liberalization;
2. Intensified follow-up to the WTO-ILO 2007 report on trade and employment should be undertaken to consider a range of issues left unaddressed by that report;
3. ILO should participate in many more WTO committees and negotiating groups to provide expertise;
4. Trade Policy Reviews of the WTO should cover the issue of sustainable development including decent work;
5. Serious Employment (or decent work) Impact Assessments should be commenced at the WTO;
6. WTO accession countries should be reviewed concerning their approach to decent work issues;
7. The WTO Singapore Ministerial Declaration should be reemphasized, which says: "We renew our commitment to the observance of internationally recognized core labour standards;"
8. Meetings of Trade Ministers with Labour Ministers could be organized to enhance coherence at national level;
9. Article 1 ("Definition of a Subsidy") of the WTO "Agreement on Subsidies and Countervailing Measures"

should be amended, in order to indicate that abuses of labour standards are not a permissible way of attaining, in effect, an export subsidy;

10. The jurisprudence of WTO decisions and agreements should be analyzed regarding subjects that have a bearing on decent work.

He concluded by arguing that by implementing these proposals, the WTO would take a significant step towards the objective of forming a coherent part of the global governance system.

**(e) Dr Felix Peña, Professor at Universidad Nacional de Tres de Febrero, Director of the Institute of International Trade – Standard Bank Foundation, and member of The Evian Group Brains Trust at IMD**

Dr Peña argued that fragmentation was already a reality. He highlighted the richness of cultural diversity in the globalized world as a central factor that had to be taken into account in order to understand globalization. He mentioned that the WTO should also take into consideration this issue. Moreover, he stated that the world is in constant revolution in historical terms and that there is not much certainty about the future. Thus, he considered the FES scenario project a useful exercise.

He pointed out that international relations need to be perceived in a multi-disciplinary way; it is not sufficient to think economically. He gave the example that actors of the financial system would not have been able to imagine what happened recently in that sector. The same could happen in the economical area if the logic of the relationships between peoples and nations remain equally misunderstood.

Reacting to the stories, he suggested that given the tendency towards fragmentation with a lot of uncertainties, the best would be to adapt to all scenarios. Thus, it would be crucial for the WTO to prepare for all imaginable scenarios and to take up the philosophy of its member states.

Focusing on regionalism, he commented that the second story concerning regional blocs was both a very unrealistic and undesirable one. A fragmented world, composed of several self-preserving regional blocs, such as the EU, is not feasible. However, he favoured the idea that countries in the same geographical area (although without precise limits, i.e. "variable geography") could elaborate joint regional organizations, rules, social safety nets, and symbols. This would increase the level of regional identification and governability. He argued that effective globalization depended on, and built upon, effective, yet not self-preserving, regional blocs.

Dr Peña continued discussing the following three questions with regards to regionalism:

First, why is regionalism so important? A strong argument in favour of regionalism in political terms was the

fact that problems and opportunities were perceived stronger in the neighbourhood, i.e. nationally or regionally. Peace and political stability at the national level is a precondition for taking full advantage of the opportunities that globalization offered. In economic terms, small and medium enterprises, for example, started with their experiences of internationalization first in their region through small steps. The same process happened with the activities of civil society organizations.

Second, how could a functional relationship be established between regionalism and globalization, especially concerning trade, production, and the integration of productive capacities by global networks? Remarkably, the WTO accepted that geographical regionalism was not the same as the discriminatory Preferential Trade Agreements (PTAs). He stressed that regionalism based on geographical proximity is important for increasing trade and production networks, and urged the WTO to facilitate communication channels between regional blocs.

Third, does regionalism also have serious problems? He gave an affirmative answer, arguing that fragmentation and uncertainty were disturbing factors at the regional level as well. While every country had multiple options in political terms, enterprises had to take strategic decisions in economic terms. Enterprises do not want to be restricted, but need both regionalism and the WTO. Thus, he concluded by stressing that regionalism and the WTO should not be perceived as contradictory.

## 2. Questions and comments by the audience

Most of the questions and comments from the floor touched upon future scenarios of GEG, the WTO agenda and reform, the interactions between international organizations, regionalism, and the relationship between trade and economic growth.

With regard to regionalism, one participant emphasized that it was much easier and faster to conclude a bilateral or regional agreement than a multilateral one between 153 countries with different cultures and perspectives. He pointed out that even the smaller group of 36 Latin American countries had failed to find consensus on the FTAA project. Regionalism was the answer to the lack of progress and inefficiency at the multilateral level and the future challenge is to harmonize the RTAs with WTO rules. Moreover, he warned against considering China as the best example given the violation of core labour standards there.

Another comment was with regard to the fourth story and the question whether social and environmental standards should be addressed in the WTO or in other international institutions. The speaker referred to the subsidiary and solidarity principles as guiding principles, and mentioned that it should be assured that social and environmental issues are addressed effectively. Referring to the first story of a "fragmented and protectionist world," she suggested another one, in which all multilateral institutions would deal with trade from their perspective.

A former member of the European Parliament reiterated the title of the session and stressed that three issues were central but often left out, i.e. how policy was made, in whose interest policy was made, and to whom policy-makers were accountable. He stressed that any consideration about GEG should take into account the interplay between national democracy, democratic institutions, and policy-making actors. He mentioned that the risks of the EU or the WTO falling apart depended on the ability of decision-makers to carry the people with them, on whose behalf they claim to act. Many people, including even political elites, feel very puzzled about the world, because decisions, which had impacts on them, had been taken without their consensus or even knowledge. He identified this as a serious gap, which the WTO needs to address if it wishes to maintain credibility. He warned that international organizations only have the power which its member states grant them.

The speaker mentioned two areas of research concerning global governance: First, to conduct a simple comparison of how major players make policy at the WTO and to whom they report back. He argued that it seemed that the country with the best trade performance, i.e. China, is in fact the least transparent, and a small elite is acting on the country's behalf without national consultations. He also cautioned that in some countries, there is no accountability at all. Second, to find out whether there was any correlation between transparency and trade performance and whether this could be proven by empirical research.

A senior researcher emphasized the importance of rules and the rules-based system. She argued that countries and the international system went in cycles between rules and freedom. She warned that a very high point of freedoms for financial and economical markets had been reached. Together with the growth of RTAs, all those phenomena were examples of "let things happen" and the world would see a reversal of that trend. She warned that there is no perfect solution and one might need to sacrifice certain things in order to get the regulation right. Referring to regionalism, she argued that it should be seen as a complement rather than a substitute to multilateralism and called for better rules on this relationship. Commenting on the reasons for the failure of the July 2008 "Mini-Ministerial," she cautioned that it would be too simple to just blame the system and the process for the setback.

Referring to Ambassador Bhattacharya's point on not to overload the WTO with issues, one participant agreed that this could actually be counterproductive. He gave the example of the Millennium Development Goal (MDG) 8 to illustrate the gaps between the trading system and development. There was a clear commitment made by UN members with regard to a fairer and effective participation of Least Developed Countries (LDCs) and other small and vulnerable economies in the multilateral trading system. However, very little progress had been made in regard to that particular commitment during the Doha Round negotiations, despite the fact that most UN members were also WTO members. Moreover, the WTO is one of the few multilateral organizations, which did not undertake a study of the impact of its work on the MDGs, and in particular on MDG 8, although there was a clear relationship. In contrast, the WTO is involved in other



areas, such as Aid for Trade, where its role is very limited. Thus, there is a real risk that the WTO will be overloaded with issues, to which it could not add any substance. Moreover, whenever a new issue is brought up, LDCs with a weaker capacity will have the most difficulty in dealing with them effectively and risk becoming even more marginalized in the process.

A final comment was on Pascal Lamy's speech the day before, in which he stated that the WTO was bound by its Constitution of 1994, i.e. the Marrakesh Agreement. While it was committed to trade opening, the WTO will also be obliged to assure that everything was subservient to sustainable development. The speaker argued that the term "sustainable development" was an oxymoron and that for any practical purpose "development" meant more. He suggested conducting an analysis on how far the WTO's overall goals are consistent with what the reality of this world would be able to supply in the next 20-30 years.

The panellists reacted to these comments and questions by the following statements:

Dr Peña pointed out that economic growth is necessary and the question would rather be how to avoid or mitigate the negative impacts in the form of environmental and social costs. He mentioned that in Argentina, economic growth has led to increased employment opportunities. The process of trade policy formulation differs from country to country and depended on cultural circumstances among others. He argued that since economic activities and problems have globalized, every country needs to find strategies on how to act and react to these global circumstances, having in mind their respective national interest. In this regard, the WTO has fulfilled an important role. He praised the WTO's increased transparency and improved diffusion of information, which should be continued, intensified, and defended. One indication of this is the Public Forum and he suggested holding similar events regionally, as well as in other international institutions, such as the IMF.

He highlighted that rules are the only way of living together in a civilized and peaceful manner ("rules-oriented society"). However, he cautioned that rules make themselves obsolete and need to be updated regularly, taking into account cultural and country-specific interests. Thus, for the WTO as a rules-based organization, there is also the need to update its rules and working procedures continuously. He reaffirmed that it is more important to discuss how to work together than why to work together. The most obvious example of what happened if countries do not work together was the catastrophe before and during the 1930s. With regards to RTAs, he urged consideration on how to evade their negative effects and the "spaghetti bowl" problem. More generally, international organizations should find ways and rules on how to minimize the risks of a global chaos. As one of the best results that the international system delivered, he referred to the active participation of China in the multilateral trading system.

Mr Howard recalled that some of the earlier regional agreements between developing countries included provisions to respect workers' rights, such as the SADC or MERCOSUR agreements. He reiterated that there was a certain global consensus for the importance to respect workers' rights. With regard to China, there was the need to address the relationship between the absence of workers' rights and the increase of exports. In many countries, forced labour or slavery was a reality and led in the worst cases to fatal casualties. In China itself, there was a massive outcry of workers and while there could be growing pressure inside the country, increased international attention was necessary as well. These cases posed the question of the legitimacy of the global system. Polls in the US and worldwide showed rather great scepticism about the value and benefit of trade. This was probably linked to the fact that people saw evidence of the links between trade and the violation of worker's rights. He pointed out that this issue could be addressed at the international level and that it would be good to tackle the problem itself and thereby increase the legitimacy of the international system. He added that the WTO needs to contribute to the fulfilment of the MDGs, as part of the coherence agenda among the international institutions. Moreover, he agreed on the suggestion to take up new areas, such as labour, in a future WTO round.

Ambassador Bhattacharya pointed out that much of the discussion centered on the role of trade and its implications on growth, economic development, poverty alleviation, and sustainable development. He cautioned that it depends on the perspective and explained that liberalization, deregulation, and the role of the private sector are all very good until their own competitive advantage starts getting lost. An American worker who lost his job would certainly have a negative view on globalization, although probably not understanding completely the whole causality. Dr Bhattacharya stated that instead of blaming other countries that have become more competitive, the electoral debate in the US should rather focus on how to undergo a structural adjustment program. He stressed that the benefits of trade need to be more equally distributed between, and inside, countries and a more reasonable view will be necessary in the future.

With regards to regionalism, he mentioned that the main challenge will be to absorb all the PTAs into one integrated, coherent trade system. However, since most PTAs were "WTO Plus" agreements, certain flexibilities would be lost in that process and could cause frictions, in particular in the areas of TRIPS, environmental and social standards, or a labour clause.

Concerning global governance, Dr Bhattacharya cautioned that if it was not possible to improve the effectiveness of certain international organizations, this would not mean that their working areas should be brought into the WTO. He argued that if the Kyoto Protocol or the "Bali roadmap" could not be implemented in the respective fora, it was unrealistic to assume that they could be solved at WTO instead. He suggested that it was time to put some attention to other areas and wondered how many international organizations have

such activities as the WTO Public Forum, or initiate discussions on how to improve their performance. He reemphasized that effective multilateralism could only be delivered by a coalition of well-functioning international organizations.

With regard to the failure of the July 2008 "Mini-Ministerial," he reemphasized that getting the process right would be no guarantee for getting the outcome right. Thus, the process is a necessary, but not sufficient, condition for success. The WTO is still looking for an adequate mechanism that guarantees representativeness, which is becoming more and more difficult in view of the variable geometry of the world, the shifting alliances, and new interest groups.

He pointed out that the option of a new round would depend on how the current round ended, in the sense of a high or moderate level of ambition or the lowest common denominator, the inclusion of an unfinished agenda, and the length of an implementation period. He recalled that while after the conclusion of the Uruguay Round, there was a lot of discussion on the implementation issues, those issues were no longer on the agenda. He emphasized that once a round was finished, it was crucial to give countries time to implement the agreed-upon new rules. He identified Services, Rules (transparency, anti-dumping, subsidies etc.), and Non-Tariff Barriers as issues that could be taken up in a new round, since tariff discussions will be almost a matter of the past. He also underlined that a higher level of accountability should be guaranteed in particular in the capitals, rather than in Geneva.

Dr Bhattacharya concluded by arguing that science and technology could leapfrog for many countries towards the achievement of sustainable development. As an example he referred to Bangladesh, which obtained food self-sufficiency despite a population explosion, reaching 140 million currently. There was enough in the world for the need, but not enough for the greed.

Dr Veit reacted to the questions concerning the fourth story and the discussion on overloading WTO's agenda by referring to an article by Robert Howse, who argued that the WTO might risk irrelevance if it did not address new issues, such as food and energy security, climate change, human rights, terrorism, and corruption. Dr Veit mentioned that there could be a scenario in which the WTO would be the main actor in the future GEG system. There could also be a new UN Council of Economic Security, which would coordinate all multilateral organizations in that area.

As the main problem of global governance, he identified the incoherence of the system and the lack of coordination. These problems are even reflected at the national level in the capitals, where different ministries are responsible for different areas and do not always follow or represent a common and coherent policy. The main challenge would be on how to overcome the missing coordination at the various levels.

With regards to the point that conventional wisdom suggested that trade and democracy are good, he argued that both factors are not an automatic response to the current problems. He mentioned that not all people consider multilateralism the best option; otherwise there would not be so many bilateral and regional integration projects. He reiterated that American or German workers who lost their jobs certainly did not consider multilateralism the best option for them. In African countries, there is also widespread scepticism about the real winners of the Doha Round.

He reemphasized that scenarios offer different pictures of the future, but that they are not forecasts, since it was not possible to predict the future. Quoting John Maynard Keynes, he stated that the only thing you could say about the future was that "in the long run, we are all dead". However, scenarios can at least offer policy-makers orientation, if not policy advice, on what to do by illustrating different possibilities.

### 3. Conclusions and way forward

The session provided a controversial discussion on the four proposed questions. There was a broad consensus on the need to reform the GEG system and a clear desire for change. The stories illustrated that there is a wide range of possibilities, including a "fragmented and protectionist world," the dominance of regional blocks or a world of "re-born multilateralism". There was consensus on the need to avoid another economic catastrophe as occurred in the years before and during the 1930s. Thus, support for the rules-based global system was expressed various times.

Detailed suggestions were given on how to intensify the working relationship between the ILO and WTO and on how to promote the principle of decent work at the WTO. There is the need to bring PTAs into conformity with the WTO framework in order to guarantee a coherent multilateral trading system. Contradictory views were expressed about whether the WTO should take up new issues, such as climate change, energy, social, and environmental standards and human rights or rather consolidate its original agenda and leave these issues for other international organizations to address. Better analyses and research on the interlinkages between trade and those cross-cutting issues was recommended.

The WTO's increased transparency was mentioned as a positive trend, which should be continued, intensified, and defended. However, the need for reforms at the WTO was reemphasized, in particular in governance areas, such as agenda-setting, participation, and decision-making. Without taking these internal reforms seriously, the WTO might risk becoming irrelevant in the future. Moreover, it was recommended that the WTO should undertake a study of the impact of its work on the fulfilment of MDG 8, i.e. to develop a global partnership for development.





## Trade Facilitation – Impossible Without Facilitating Logistics



### **Moderator**

Ms Eva Molnar – Director, Transport Division, United Nations Economic Commission for Europe (UNECE)

### **Speakers**

Mr Peter Krausz – Head, Goods Transport and Facilitation, International Road Transport Union (IRU)

Mr Simon Bennett – Secretary, International Chamber of Shipping (ICS)

Mr Colin Beaumont – Honorary Member, International Federation of Freight Forwarders Associations (FIATA)

Mr John Simpson – Director General, Global Express Association (GEA)

### **Organized by**

IRU, FIATA, ICS, GEA and UNECE

### **Report written by**

IRU, FIATA, ICS, GEA and UNECE

Thursday 25 September 2008 – 9.00-11.00



## Abstract

*Key message: "Conclude the Doha trade facilitation chapter as a separate file!"*

*It is not sufficient to conclude favourable trade purchase/sales contracts if the "hinterland," i.e. the favourable logistics conditions are not assured. Any gains of "perfect trade deals" may end up being lost due to time and other inefficiencies which have nothing to do with failures or neglect by logistics providers but with the inherent malfunctions of the regulatory and operational, or even social environment, of international transport and logistics.*

*In general, the session presented how the conditions of the physical movement of traded goods should be improved in the context of the WTO trade facilitation efforts, duly considering other regulatory schemes governing international transport and logistics. It was recalled that the Logistics Performance Index of the World Bank of November 2007 clearly illuminates the fact that transport barriers limit the benefits of the WTO's efforts to open markets and they retard economic development.*

*In particular, the session highlighted that trade facilitation does not work alone if unaccompanied by the facilitation of logistic activities, in particular international cargo transport. The importance of GATT Articles V, VIII, and X, as well as the ongoing negotiations aiming at the conclusion of a new WTO trade facilitation agreement interpreting these three GATT Articles, was underlined. Uni-modal and inter-modal concerns of the international logistics industry were presented, such as the reasons for long trade transaction times stemming from transport and logistics inefficiencies, waiting times at international borders, red tape, regulatory restrictions, rent seeking, etc. Possible remedies within the scope of trade (and transport) facilitation were tackled.*

*All speakers called for an efficient conclusion of the trade facilitation chapter of the Doha Development Round as an independent file well separated from the rest of the still debated issues of the Round. This would have a beneficial impact on facilitating international logistic activities.*

## 1. Presentations by the panellists

### (a) Eva Molnar, Director, Transport Division, United Nations Economic Commission for Europe (UNECE)

Eva Molnar, as moderator, emphasised in her introductory statement that at this session presentations would be delivered by eminent representatives of the most relevant international organizations concerning international transport and logistics: Peter Krausz, Head of Facilitation, International Road Transport Union (IRU), who kindly organized this session; Simon Bennett, Secretary, International Chambers of Shipping; Colin Beaumont, Honorary Member, International Freight Forwarders Association (FIATA); John Simpson, Director General, Global Express Association and the United Nations Economic Commission for

Europe, that is in fact a centre of facilitation agreements and solutions.

Fundamental changes have been taking place over the past decades. Series of production steps have been increasing, and thus transport services have become ever more important. Manufacturers have often been competing with each other through the supply chain services and not so much through the quality or the price of their products. Thus transport and logistics services have become even more important for competitiveness both at micro and at macro levels.

It is obvious that in these circumstances, time and cost wield a strong influence. Thus it is imperative to reduce lead time and time volatility, to get rid of excessive charges, as well as informal payments on top of the true logistics costs and overall to benefit from competitive logistics services. The transport and logistics industries are however destined to incremental improvements unless they are supported by the governments' liberalization and facilitation policy.

According to the "Enabling Trade Index" recently published by the World Economic Forum, the most enabling trade environment is in Hong Kong SAR, Singapore, Sweden, and Norway (ranking from 1 to 4) and the least enabling is in Chad, Burundi, Nepal, Venezuela (ranking from 118 to 115). Although the influencing factors in this index offer a more complex picture, observers can safely conclude that the availability of Trade and Transport Facilitation measures largely influence this outcome.

During the session, attention will be drawn to both the already available instruments that are in place (e.g. Harmonization Convention, TIR Convention, CMR Convention etc.) that are not yet implemented globally and also to the gaps in the current TTF architecture and the need to keep pace with the fast changing world.

### (b) Peter Krausz, Head - Goods Transport and Facilitation, International Road Union (IRU)

Peter Krausz's presentation underlined that road transport should be appreciated as an indispensable mode of transport in the 21st century; it is an important contributor to, and facilitator of, GDP production. Without road transport, trade is impossible since road transport is and will remain the dominating land transport mode with its basically short distance operations due to its unique "door-to-door" service capability.

Losses due to barriers to international road transport can be measured only in billions of USD/Euros; these are preventable losses to economy and society alike. The IRU makes efforts to help the industry and the economy as a whole to reduce these losses in particular by advocating the improvement of border crossing conditions.

However, while it is an acknowledged fact that freedom of sea routes has enormously contributed to economic and social progress all around the world, road transport facilitation has been neglected in the 20th century. Thus, a good example is



there, but instead of moving in the right direction, protectionist measures are being introduced by many countries to limit road transport and other logistic services.

It is high time to provide the same freedom to inland transport such as road transport.

On the international governmental scene, there are two principal multilateral ways of facilitation, i.e. loss prevention:

- UN Conventions (e.g. TIR Convention and the Border Control Harmonisation Convention)
- WTO instruments (GATT Articles, V, VIII, and X)

GATT Article V concerning the freedom of transit is to be reconfirmed in a new WTO facilitation instrument since its proper implementation, including the use of the dispute settlement facility of the WTO, is an excellent tool to support the progress of trade and international cooperation via facilitated road transport.

Ongoing trade facilitation negotiations must not reinvent the wheel. They should only precise but not overwrite provisions of the present Article V. A few additions may be useful, e.g. extending freedoms to domestic legs of transit operations (export and import before and after transit) and transit operations to and from sea ports. A clear distinction is also necessary between "transit" as such and "customs transit regimes".

Transit routes, which should dynamically always remain the most convenient, may be prescribed but escort used only in exceptional cases. No quantitative limitations (transit quotas) can be tolerated.

Apply National treatment and Most Favoured Nation treatment in harmony and whichever is more favourable for transit in a given situation.

The exemption of transit from duties and charges over and above those payable for true services rendered to transit operators must be reinforced to reduce rent-seeking practices.

The new WTO agreement should be concluded *without further delay* as an independent WTO tool separated from the Doha package.

### **(c) Simon Bennett, Secretary, the International Chamber of Shipping (ICS)**

During his session, Simon Bennett highlighted that international shipping transported about 90% of world trade by volume. Without shipping, intercontinental trade, the bulk transport of raw materials, and the import/export of affordable food and manufactured goods would simply not be possible. It is the availability, low cost, and efficiency of maritime transport that has permitted the large shift towards industrial

production in Asia – and is in large part responsible for recent improvements in global living standards.

The efficiency of world trade also depends on liberalised shipping markets, and the preservation of OECD maritime principles regarding market access following the disbandment of the OECD Maritime Transport Committee. It is hoped that that these will be codified by incorporation into the WTO agreement on maritime services. In the meantime, the industry works closely with the Consultative Shipping Group of maritime administrations to defend free trade principles and ensure that major maritime nations set an example to emerging economies. It is also hoped that the successful conclusion of the WTO facilitation negotiations will help promote international standards and the simplification of customs procedures.

### **Important Obstacles to the Efficiency of Shipping:**

#### **i) Regional Regulation**

International shipping is a global industry requiring global regulation. A comprehensive framework of technical and legal rules governing international shipping is provided by the UN International Maritime Organization (IMO), but there is always the danger of this being threatened by regional regulation which can create market distortions and reduce the efficiency of maritime transport.

New pressures regarding environmental rules, and suggestions that shipping be included in the 'post Kyoto' UNFCCC regime on climate change (with its principle of 'common but differentiated responsibility') presents a particular challenge in maintaining a level playing field in shipping.

#### **ii) Security versus Facilitation**

There is a need for balance between legitimate concerns about protecting the security of the supply chain and the practicalities of keeping trade moving. The focus of current debate is at the World Customs Organization (WCO).

The US law demanding 100% container scanning, and implementation of new EU cargo security rules are particular challenges. Trade facilitation (including IMO FAL (facilitation) standards) is being eroded by new priorities – particularly after 9/11. Increased red tape and restrictions on the movement of goods threaten inefficiency. The need for the facilitation of crew transfers and access to shore leave by seafarers is also important.

World trade continues to grow and shipping has responded to the increased demand for its services. But as world seaborne trade continues to expand, infrastructure struggles to keep pace. Port infrastructure is under enormous strain with congestion and delays – an issue receiving increased attention due to rising fuel costs and the new demand for carbon efficiency throughout the supply chain.

There is a need for greater investment in infrastructure, and a greater balance between environmental sensitivities and the needs of international, multi-modal business. The industry needs integrated transport policies. In Europe (and to some extent in the US) more co-ordinated strategies in the maritime sector are being developed, but all too often strategies for different transport modes are developed in isolation.

In sum, the shipping industry supports the successful conclusion of the WTO facilitation negotiations to help 'lock-in' customs 'best practices' and to reinforce facilitation activities in other bodies such as the WCO and the IMO.

The simplification of customs procedures ties in with the work of the IMO FAL Committee, to standardise and streamline administrative procedures. This is particularly important, given the growing paper burden on industry personnel. There are also welcome initiatives such as the current EU consultation on a Common Maritime Transport Space for customs procedures.

There is a need for proper trade consultation, as seen from ICS's own involvement in regulatory discussions at IMO and consultation processes with, for example, the EU and US. Proper trade consultation helps create better legislation.

WTO facilitation efforts can help promote international standards, such as the work at the WCO to develop the SAFE Framework of customs security standards, the use of e-commerce and concepts like the Single Window - the submission of electronic data to a single portal.

**(d) Colin Beaumont, Honorary Member, International Federation of Freight Forwarders Associations (FIATA)**

Colin Beaumont declared that efficient logistics were vital to world trade and FIATA regretted the recent failure of the latest Doha Round, urging that talks be resumed again as quickly as possible.

FIATA members are freight forwarders who work at the coal face of international logistics. They see and experience what actually happens when goods are transported, in particular when goods cross international borders. They incur costs to maintain cargo flows and they solve problems for their customers.

Logistics suppliers are driven by customer demands that require goods to be delivered on time and in good condition. Generally customers are not concerned for the reasons of delay, only the fact that unnecessary time in the transport chain costs money. World trade is driven by consumer demand and certainly in the developed world consumers have become used to a wide variety of products available year round at very low prices. Much of the necessary logistics are taken for granted, though they are vital in connecting world markets and in providing access to developing countries in even the most remote regions of the world to the consumers who need their products.

In spite of these difficult logistics, predictability in the supply chain is a paramount requirement. Unpredictability adds cost and discourages those who might otherwise participate in international trade. However, several key barriers to trade remain:

- Lack of international electronic trading standards
- Protection of markets
- Bureaucratic border controls
- Poor infrastructure
- Criminal activity
- Lack of training

Many of these issues will take a long time to resolve others only require the political will to achieve. In particular, many small but effective efficiency gains could be made by creating a requirement for better training in all levels of society. The need for better trade facilitation is recognised by the WTO as an essential element of their programme. FIATA argues that training also needs to be added to WTO programmes as a vehicle to improve understanding and to save costs.

**(e) John Simpson, Director General, Global Express Association (GEA)**

In the final presentation, John Simpson reconfirmed that the importance of efficient logistics to international trade was not fully recognized, even though innovations to circumvent logistical roadblocks had had enormous impacts throughout history. For example, express delivery, a relatively recent addition to the logistics industry, has established itself as a distinct option that enables trade that might otherwise not occur and has helped to open the global marketplace to small businesses.

Providers of logistics services today operate under obsolete rules, and governments around the world seem unable to undertake reforms, chiefly because of domestic political forces. A particular burden on express delivery is posed by national postal operators that arrogate to themselves extraordinary powers to regulate trade, often in contravention of national development objectives.

Obsolete rules also govern air and ground transport in many parts of the world, reducing logistics efficiency and undermining efforts to stimulate trade.

These problems are compounded by persistently inefficient border management, which with the demise of the Doha negotiations, may continue to go unaddressed.

In order to obtain their development goals and the full benefits of trade liberalization, governments must place logistics efficiency at the forefront of reform programs. In the end, no matter what



other trade liberalization is successfully accomplished, goods must be delivered to customers on their timetables.

## 2. Questions and comments by the audience

Helmut Lubbers, of Ecoglobe, said that oil reserves were running out and logistics operations should think of alternative energy sources now if they wanted to “trade into the future”. He invited logistics representatives to seek appropriate solutions.

Pierre Latrille, of the WTO, asked representatives of the various transport modes to set up an inventory of conditions in individual countries conducting transport services. Without knowing exactly the problems in each country, it is difficult to give advice for solutions.

## 3. Conclusions and way forward

To conclude the session, Ms Molnar stated that transport and trade facilitation could be accelerated by two means:

### Continue the current path

- Instruments in place
- Investment plans in place
- Progressive improvement

### Big Bang change

- Seamless border crossings, efficient transit

- Real-time procedures thanks to e-docs
- High quality services in logistics centres along the whole route

In order to achieve meaningful progress, the transportation sector must build on a solid base involving:

- Customs transit regimes
  - TIR Convention
  - e-TIR (electronic TIR customs transit documents)
- Regulatory framework for transport service contracts
  - CMR Convention
  - e-CMR (electronic e-Consignment Note)
- Border Control Harmonization Convention – simplified frontier controls
- Measuring the border crossing performance
- and other tools

She warned that the transit value of land-locked countries would diminish if trade and transport facilitation were delayed, in particular considering the fact that, due to global warming, new sea routes were opening up via the North Pole, thus devaluing land routes across continents.

Public-private partnership in achieving facilitation goals is the right path to follow. Ms Molnar made an appeal for the earliest possible conclusion of the WTO trade facilitation talks even if it should be in a form separated from the general Doha package.

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## Trade and Development Policy for the 21<sup>st</sup> Century: Towards a Southern Consensus



### **Moderator**

Dr Nagesh Kumar – Director-General, Research and Information System for Developing Countries (RIS), New Delhi, India

### **Speakers**

Mr Faizel Ismail – Head of the South African Delegation to the WTO, Geneva

Dr Kevin Gallagher – Global Development and Environment Institute (GDAE) at the Tufts University, Medford, MA, USA

Dr Mehdi Shafaeddin – Institut de recherches économiques (IRENE), Université de Neuchâtel, Switzerland.

### **Organized by**

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RIS, GDAE and CENIT

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## Abstract

*Global trade has expanded enormously during the last few decades, but different countries have recorded different levels of success in exploiting the opportunities provided by this expansion. A major factor in the varying levels of success in different countries has been their respective choices in regards to active policy interventions. Drawing upon the lessons from history and the experiences of different regions, the session's presentations emphasized the importance of policy space for developing countries and supportive policies for development. However, the trade negotiations in multilateral and regional contexts are squeezing the ability of developing countries' governments to pursue many aspects of development policy interventions that were extensively employed by developed countries along their paths to development. This session discussed the policy challenges for building productive capacities in developing countries and how to make trade rules consistent with the development policies. One of the key challenges for the WTO is to make the trade governance more relevant for the process of development in the developing countries that constitute a majority of its membership. The trade rules should facilitate their ability to build competitive productive capacities and move up the value chain to enable them to exploit the opportunities created by trade liberalization and globalization.*

## 1. Presentations by the panellists

### (a) Dr Nagesh Kumar, Director-General, RIS

#### Introductory Remarks

In the last few decades, there has been an incredible expansion of world trade. However, developing countries have differed in their ability to exploit the opportunities created by trade and globalisation. For instance, the share of global exports of developing Asian nations increased from 17% to 26% between 1980 to 2004. During the same period, Latin American global export shares declined slightly from 5.5% to 5.1% while Africa's respective shares decreased by more than 50%, falling from 6% to 2.5%, with the result that some countries have been progressively marginalized.

There are many factors to explain why some developing countries have performed better than others. Indeed, the policies of trade and development adopted by countries have played an important role. For instance, African and Latin American countries opened their economies quickly in order to receive assistance from the Bretton Woods Institutions in order to cope with the financial crisis of the early '80s and '90s; however, these policies did not have the expected results in term of growth and development. On the contrary, Asian countries adopted more active policy interventions such as: building their industrial capacities through infant industry protection, gradually opening the economy to international competition, imposing performance requirements on foreign direct investment (FDI), and adopting soft patent regimes to absorb knowledge generated abroad, among other policies. Modern, developed nations also extensively exploited these

policy interventions in their own development processes in the past, as is now well-documented.

The current trade negotiations, both at the multilateral and regional levels, have sought to rapidly liberalize the policy regimes of developing economies further, thus limiting the governments' space for pursuing development policy. Therefore, leaders and negotiators should revise current trade and development policies for the 21st century.

### (b) Faizel Ismail – Head of the South African Delegation to the WTO, Geneva

Faizel Ismail addressed the question on how trade rules can build productive capacity in developing countries and advance development. He addressed this question in three parts:

The first part looked at the relation between the state and the market. The Ricardian theory of comparative advantage, arguing free trade based on comparative advantage, may not work if markets are imperfect and should not be interpreted in a static way. In fact, basing the market's growth and development strategy on its own natural comparative advantage is intuitively wrong. Countries should develop their capabilities to improve the standard of living and quality of life. Therefore, trade and productive strategy should be driven by the concept of dynamic comparative advantage. Empirical studies document that developed countries use a range of state-led policies and market interventions to build their technological capacity, including trade policies and tariffs, which have been replicated by East Asian countries from Japan to South Korea. However, too much state intervention does not work— thus, a balance is required depending on the level of development. Liberalization, implemented too quickly and without enough caution has shown, in multiple studies, to fail as well. In addition, aid is also very instrumental, as seen with the role of the Marshall Plan in getting EU economics into the right type of production. Currently however, aid is being heavily employed, as witnessed internationally in some of the biggest state interventions in the markets since the 1930s.

The second part of the presentation focused on trade and industrial and development policies. Trade and trade policy are imperative in fostering development. Through international trade, countries can access new markets, export their productive potential, ensure competitive pressure in the domestic market, improve technological capabilities, and stimulate innovation. However, trade is only one, important part of a composite set of policies which are required to promote development. The fact remains that there are other elements which play an equally important role: an established macroeconomic policy, a stable and well-defined regulatory environment, strengthening education and skills that favour industrialisation, a policy towards innovation and technology, and strong infrastructures.

Finally, the presentation focused on the relationship between the World Trade Organisation (WTO), the Doha Round, non-agricultural market access (NAMA) negotiations,

and development. The Doha Round started with the general implicit recognition that there were some imbalances in the global trade system caused by the previous rounds of negotiations and which need to be addressed. A major imbalance was the limited market access and high tariff peaks for the products of interest to developing countries.

Initially, the Doha Round had a strong commitment to development (paragraph 2). Despite the recognition of the so-called "less than full reciprocity" formula, under which developing countries shall do less and developed countries shall do more as well as the recognition that developing countries should be allowed more flexibility, as the Round proceeded, it was not possible to address some of the imbalances. Using an agricultural example, an incremental formula is being used while, at the same time, a Swiss-type formula has been devised for NAMA negotiations, which will cut down the policy space and will reduce tariffs of developing countries dramatically. In addition, in agricultural negotiations, a long list of flexibilities for developed countries was agreed upon while in NAMA, it is highly circumscribed and there is an attempt to reduce the existing paragraph 8 flexibilities further through the anti-concentration clause. As per the mandate, bound rates should be the legal basis for tariff cuts but, in reality, there is an insistence on applied rates while ignoring the need to recognize and give credit to the unilateral market access provided by developing countries. On Sectorals, the mandate was clear that this should be voluntary and applied to sectors of export-interest to developing countries. In reality, the debate shifted to the need to ensure that the larger emerging markets participated in at least two sectors of export-interest to the developed countries. Therefore, the development mandate of the Round was undermined by the commercial interests of developed countries.

Mr Ismail concluded by reiterating the importance of an appropriate balance between the state and markets and of supporting policies for development. He added that the Doha Round must correct the imbalances of the Uruguay Round and not exacerbate them by aggressive mercantilist market access demands of developed countries and the erosion of policy space for industrial development in developing countries.

**(c) Kevin Gallagher – Global Development and Environment Institute (GDAE) at the Tufts University, Medford, MA, USA**

This presentation addressed the question concerning to what extent regional agreements further constrain the policy space for developing countries. It was based on an analysis of the WTO and 13 other regional agreements (US-developing countries, Europe-developing countries, and South-South agreements).

The set of trade and development policies that are generally used, such as export subsidies and infant industry protection, can be justified by economic theory as responses to market failures. However, the use of these instruments does not necessarily generate development as proven by the many countries which did not benefit from their implementation. Evidence shows that some conditions facilitate the success of those policies. First, the adopted policy should be the most appropriate response to the

market failure to which it responds, otherwise too much counter-distortions are created. Moreover, countries need embedded autonomy in defining their policies: the industrial strategy should be defined by market forces and eventually through a public-private partnership. Finally, the support to a certain industry should be temporary and attributed through performance requirements. For example, South Korean firms in the past, as well as current Chinese firms, received subsidies upon exporting a certain percentage of their production.

Generally, trade agreements limit the ability of countries to maintain control over various policy tools that were traditionally used as parts of a development strategy. However, within the WTO framework there is considerable space for flexibility, though developed countries have been trying to reduce it. The agreements between Europe and developing countries are more similar those in the WTO in terms of constraining the policy space while South-South agreements allow even greater flexibility. In greater detail, US goods trade agreements do not allow both safeguards measures for balance of payment problems and the use of quantitative restrictions when there is a safeguard situation. However, both WTO and EU agreements allow the use of these measures. The same can be said for FDI, intellectual property (IP), and service agreements: WTO and European agreements allow a greater space for flexibilities than the respective US agreements. In addition, while WTO and European agreements allow capital control measures in the case of an emerging crisis, US agreements do not. Under WTO and European service agreements, protection is the rule and exceptions are negotiated. In contrast, under US service agreements, liberalization is the rule and the exceptions are negotiated. Finally, in general, South-South trade agreements allow a greater space for flexibility. For example, in the goods trade agreements there is usually a long list for industrial and agricultural sensitive products.

The proliferation of regional trade agreements has a high cost in terms of trade diversion and tariff loss. However, the evidence indicates that countries are expected to have welfare benefits. Thus, it is interesting to note that Latin American countries have signed deep trade agreements with the US in term of constraining their policy space, while simultaneously holding a different position in regards to the WTO.

In conclusion, due to these agreements, currently developing countries have a more limited toolkit with which to engage in long-run development strategies. This is in marked contrast to the environment in which many currently developed countries organized their own development strategies.

**(d) Dr Mehdi Shafaeddin – Institut de recherches économiques (IRENE), Université de Neuchâtel, Switzerland**

Through the Doha Round, developing countries should be allowed greater flexibility and policy space in order to facilitate their process of development. However, there is an evident contradiction between the development mandate of the Round and the reality that has emerged during the negotiations; quite clearly, developed and developing nations have different concerns



and expectations. The main concerns for developed countries are market access and the protection of their agriculture and some sensitive industrial sectors. On the other side, developing countries are interested in the expansion of their supply and industrialization through a strategy of dynamic comparative advantage. However, this is not possible if trade negotiations will further reduce their respective policy space.

According to Samuelson, if developing countries specialize their production where they have comparative advantage, the world welfare will improve. However, if they specialize their production where developed countries have comparative advantages (the concept of fair dynamic comparative advantage), wealthy nations will lose. This theory has evident implications for the world trade system, which is based on static comparative advantage: developing countries specialize in exporting raw materials and primary goods, while wealthy nations protect their agriculture and some sensitive industries.

Furthermore, developed countries sometimes do not implement what has been agreed upon or decided. For instance, the US continues to subsidize its domestic cotton industry (about US\$ 1.5 billion) even though the Dispute Settlement Body has condemned this practice. There is an imbalance of power between developed and developing countries as well as between the interest of countries and multinational companies.

Within the Doha Round, developed countries have tried to push towards a rapid and concentrated liberalization of developing countries' markets. However, historical and empirical evidence indicates that premature, uniform, and quick liberalization does not benefit developing countries. As a result of these liberalization recommendations, some countries de-industrialized, were unable to diversify their economies, and based their production on primary commodities. In comparison, wealthy nations and successful developing economies, mainly in Asia, experienced long periods of selective infant industry protection, intervention in areas other than trade, and the selective and gradual opening of their economies, etc.

It is important to change the rules of the international trade system. Developing countries should be allowed more flexibility according to their level of development. Moreover, special treatments should be the rule, not the exception. In this manner, developing nations will be able to develop following their dynamic comparative advantage.

WTO rules should be changed through a bottom-up approach. This means that developing countries should identify their priorities before negotiating whereas, during the Uruguay Round, they commenced negotiations without knowing what exactly they wanted.

However, it must be noted that the current circumstances do not allow a genuine reform of the international trade system.

#### **(e) Dr Nagesh Kumar, Director-General, RIS**

Most countries welcome Foreign Direct Investment (FDI)

because it tends to bring new technologies, entrepreneurship, organisational skills, and market access. However, FDI can also have negative effects: for instance, it can crowd out national investment and impoverish a country in the long run.

There is a strong variation in the quality of FDI: some stimulate growth in the long run, some do not. A recent study investigated the mutual relationship between FDI and growth, using a sample of 84 countries. It emerged that in 12 countries, FDI stimulated growth; in 11 countries, growth attracted FDI; while in other countries, the relationship was not overly pronounced. The same study explored the relationship between FDI and domestic investment. In 29 countries, FDI was crowding out national investment; while in 23, FDI was crowding national investment in. Most of the countries where FDI stimulated national investments were in Asia, while in Africa and Latin America, FDI often crowded out local investment. This phenomena is attributed to the Asian market trend of being more selective in attracting FDI while also employing performance requirements on FDI such as local content requirements, export performance requirements, joint venture requirements, etc. in order to make FDI more to their national advantage. For instance, in the 1970s, Thailand imposed local content requirements on FDI and built the base of its auto industry. Then, the government imposed additional measures, such as export requirements, to make it more export-oriented. The results were extremely positive: currently, Thailand is the third largest exporter of vehicles in Asia.

A strong patent law regime, as the one in the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement, has negative consequences for developing countries. All the major developed countries benefited from a soft intellectual property law when they were technology importers and now that they are negotiating IP law with currently developing countries, they are in favour of a rigid patent law regime to protect their technological leadership.

In this topic, India makes a very interesting case study: leading up to the 1970s, India had a very strong patent law, inherited from its colonial past. During the 1970s, the government softened the patent law in the pharmaceutical industry and in other sectors. Since then, India has emerged as one of the world leaders in the production of cost effective generic drugs. In 2005, when the Indian Parliament was discussing ways to conform the Indian patent law to TRIPS requirements, international media appealed to the Parliamentarians to exercise flexibilities to ensure the continued supply of cheaper generic medicines for the world's poor.

## **2. Questions and comments by the audience**

In the discussion, which followed the presentation, a number of questions were raised by audience members:

There is a difference between the original mandate of the Doha Round and the reality which has emerged during the

negotiations, due partially to the significant changes seen in the situation of the past few years. Therefore, it is not surprising that countries have changed their negotiating positions from 2001. The Round should take into consideration this changing situation and the mandate should be modified accordingly; an audience member asked how the WTO is dealing with this new reality:

Answer: Even if the situation has remarkably changed since 2001, when the Round was launched, many conditions have remained unchanged and are still a priority for developing countries. In particular, the existing imbalances in the trade system which emerged from the Uruguay Round are still a major concern for developing countries, and the Doha Round has not addressed them. The WTO should be reformed and work under a clear mission that is still currently undefined. Moreover, countries should rethink the way negotiations are conducted. In fact, with the existing system, it is extremely complicated to find an agreement. The most immediate priority is to finish the Round and move forward in the Doha development agenda.

Why do Latin American countries have different positions in bilateral/regional trade agreements with developed countries and within the WTO?

Answer: Several Latin American countries have signed liberalizing agreements with the US because they want to enter the US market before other countries with similar export profiles. This way, they will enjoy temporary benefits until the other markets manage to sign similar agreements. They also sign agreements because they fear exclusion from the US market. Moreover, those countries are often right-wing oriented and ideologically sympathetic with the Washington Consensus ideology.

There is a difference between trade theory and trade policy. The mainstream trade theory suggests that free trade is generally the optimal conditions for both developed and developing countries. However, trade theory admits some exceptions in the case of market failure and has elaborated concepts like the optimal tariff, subsidies, etc. However, the exceptions to free trade are often downplayed in the reality.

As suggested by the Growth report published by the Growth Commission in May 2008, there is not a clear and uniform path for development. Governments should be pragmatic and constantly checking the effects of the policies they undertake. They should have an experimental approach and change direction when the adopted policy is not producing the expected results. For instance, trade liberalization is followed because policy makers or international organizations believe it is beneficial. However, in some cases, trade liberalization can have negative effects, especially for developing countries.

Which characteristics should FDI have in order to benefit emerging economies?

Answer: Countries should attract FDI which builds production capacities, generates output and employment, and stimulates domestic investment.

### 3. Conclusions and way forward

There are several imbalances in the existing international trade system, which are often detrimental for developing countries. A major problem is the limited market access for their products of interest, mainly for agricultural goods as wealthy nations protect their agricultural sector and other sensitive industries. Moreover, the system drives countries to specialize according to their comparative advantage: therefore, most developing countries base their export strategy mainly on raw materials and primary goods, which are low added-value products.

Another major constraint is that trade agreements strongly limit the policy space of governments. Therefore, policy makers have tied hands in regards to defining their trade and development strategy. In particular, North-South trade agreements, and among them US-South trade agreements, reduce the freedom of governments' actions, as they are more rigid in conceding special treatments, safeguard measures, and other flexibilities. At the same time, the evidence suggests that those measures are extremely important when some circumstances occur, especially for developing countries. Developed nations, and some successful Asian economies, extensively used these policies in their own development strategies. However, in the last few years developed countries have tried to limit the recourse of these measures.

When the Doha Round was launched in 2001, one of the main objectives was to address the existing imbalances and to give priority to the development of developing countries. However, as the negotiations proceeded, the development mandate of the Round was undermined due to the commercial interests of developed countries. Wealthy nations tried to speed up the process of liberalization in developing countries and to limit their policy space while evidence suggests that a quick and generalized liberalization often produces negative consequences for developing countries' economies in terms of growth, de-industrialisation, etc. Countries should first industrialize, diversify their economies, consolidate some sectors, and then gradually open their markets. Trade negotiations should move in this direction in order to assist the process of growth and development in developing countries. In addition, countries should be allowed more flexibility according to their level of development; for example, they should be allowed to protect some immature sectors through infant industry protection and other special treatments.

International trade rules should allow developing countries to specialize according to their dynamic comparative advantages and to diversify their economies in sectors where developed countries have comparative advantages. Therefore, trade agreements should not tie governments' hands: while governments should not excessively intervene in the market, they should be able to build up the country's productive capacities through infant industry protection, the gradual opening of the economy to international competition, the definition of performance requirements on FDI, and be able to fine-tune intellectual property protection to ensure access to technology.



K.

## Five years from the Decision to the Action: Is the 2003 August 30 Decision the “Expeditious Solution” for Access to Medicines We Need?



### **Moderator**

Mr Sisule F. Musungu – President, Iqsensato

### **Speakers**

Ms Rachel Kiddel-Monroe – Chair of the Board, Universities Allied for Essential Medicines, Former MSF Access to Essential Medicines Campaign Canada Coordinator

Ms Inthira Yamabhai – Researcher, Health Intervention and Technology Assessment Program, Bureau of Policy and Strategy-MOPH, Thailand

Mr Sunjay Sudhir – Counsellor, Permanent Mission of India to the WTO, Geneva

Dr Jorge Bermudez – Executive-Secretary, UNITAID

### **Respondents**

Mr Roger Kampf – Counsellor, Intellectual Property Division, WTO Secretariat

Mr Gianluca Susta – Member of the European Parliament

Mr Greg Perry – Director General, European Generic Medicines Association

### **Organized by**

MSF Campaign for Access to Essential Medicines

### **Report written by**

MSF Campaign for Access to Essential Medicines

Thursday 25 September 2008 – 11.15-13.15



## Abstract

*Five years ago, the World Trade Organization came to an agreement, the so-called August 30th Decision, which was intended to increase access to affordable treatment for people in developing countries through the compulsory licensing of much needed medicines. The agreement was to act as an incentive for the production and exportation of much needed generic medicines from countries able to produce medicines to countries where no such production capacity existed. Billed as an 'expeditious solution' within existing international trade rules that would open up access to medicines to millions of patients in need, it has proved to be unworkable and totally ineffective. Rather than increasing the production of generic medicines, it has proved more of a "straitjacket for access".*

*Five years later, the access crisis is far from resolved – in fact it is getting worse as the cost of newer medicines, for example second-line antiretroviral (ART) drugs, steadily increases. It was not until September 2008 that the first drugs were exported under the August 2003 agreement. Finally, in September 2009, five years after the agreement was concluded, the first shipment of a triple combination AIDS drug (AZT/3TC/NVP) was due to arrive in Rwanda where thousands are in need of these medicines; the second shipment is due shortly thereafter. While MSF welcomes the fact that the drugs will finally arrive, it is quite clear that a process that takes so long, for just one drug, for just one country, is deeply flawed. Given the global situation where 70% of patients in need of ART still do not have access to the treatment, this procedure is simply not up to the task. On the occasion of the WTO Public Forum 2008, MSF brought together key actors with experience in processing Compulsory Licenses to share their perceptions and generate discussion.*

## 1. Presentations by the panellists

### (a) Rachel Kiddell-Monroe, Chair of the Board, Universities Allied for Essential Medicines, Former MSF Access to Essential Medicines Campaign, Canada

The WTO's August 30th Decision of 2003 has failed to deliver on the promise of an expeditious and expedient solution to the so-called "paragraph 6 problem". The government of Canada domestically implemented an August 30th legislation to allow countries with no manufacturing capacity to import medicines from Canada through compulsory licences. While the domestic legislation was introduced in 2004, only one drug from one generic company left Canada for Rwanda in 2008. The drug company stated that the legislation is too complex and they will not make use of it again unless it is revised. Developing countries have also found the legislation too complex to use and no other country has sent notice to the WTO stating its intention to use the Canadian Access to Medicines Regime. The presentation called into question the WTO's decision to ratify a faulty August 30th mechanism as a permanent amendment to TRIPS and asked them to consider alternative ways to address the Paragraph 6 problem, such as using TRIPS article 30.

### (b) Inthira Yamabhai, Thai Ministry of Public Health

Inthira Yamabhai presented the Thai experience in issuing compulsory licences to import affordable generic medicines of patented medicines. She explained that, while patients' have benefited from the issuing of compulsory licenses, the process for these licenses has been a difficult and painful experience for Thailand. For example, generic drug producers were threatened by patent holders for the "illegal" use of compulsory licenses even though, under Thai patent law (and TRIPS), the use was not illegal. Thailand was also put on the United States Trade Representative's priority watch list and encountered potential trade retaliation, threats of foreign investment withdrawals, and propaganda to undermine the country's image.

### (c) Sunjay Sudhir, Counsellor, Permanent Mission of India to the WTO, Geneva

In 2005, India amended its patent law to comply with the TRIPS ruling, including safeguards to effectively balance IP protection and public health. However, since the law's adoption, India has not used compulsory licences as there is little need; 97 percent of drugs in the Indian market are off-patent, though this could change in the future. To protect against future conflicts, a notable provision (Section 3d) was added to prevent "ever-greening," a method of extending a patent by making small changes in the existing patented product.

### (d) Dr Jorge Bermudez, the executive secretary of UNITAID

During his presentation, Dr Bermudez described patent pooling as a solution to provide affordable medicines to developing countries. He argued that a licensing agency should be established to discuss a patent pool that covers low- and middle-income countries as well as to focus on paediatric Human Immunodeficiency virus, under the UNITAID mandate.

### (e) Roger Kampf, Intellectual Property Division, WTO Secretariat, Geneva

Roger Kampf highlighted that the Paragraph 6 System is by far not the only mechanism available under TRIPS to improve access to medicines, but an additional flexibility next to other flexibilities in the agreement, of which the Doha Declaration is perhaps the most pertinent expression. The system could clearly not be expected to solve problems of access to medicines on its own. A proper assessment of the impact of the Paragraph 6 System could only be made by WTO members once TRIPS flexibilities were fully understood and, if so decided by governments, implemented into domestic law. At the international level, the system was designed to keep the burden on importing, developing countries to a minimum. The implementation by Canada represented only one example of how national legislation could be designed; other countries have adopted different models. Therefore, lessons drawn from the use of the system in one country could not easily be transferred to use in other circumstances. The annual review mechanism was



part of the Paragraph 6 System and offered an opportunity for WTO members to share experiences. To conclude, Mr Kampf recalled that remarkable achievements have been made since 2001, including major price reductions, enhanced international funding, and a greater recognition of need to find balance within IP system, etc.

#### **(f) Gianluca Susta, Italian member of the European Parliament**

Gianluca Susta recalled the work done by the European Parliament (EP) relating to access to medicines and TRIPS. The main question raised by the EP in 2006 was: why amend TRIPS with a mechanism (August 30 Decision) that has so far not been efficient and certainly not expeditious, as it was intended to be? Above all, what is the EU doing about the alternative solutions available to improve access to medicines?

One of the main concerns expressed by the EP was how the EU focused intensely on the August 30 2003 Decision, insisting on its ratification at all costs, while at the same time, there was no pro-active support from the EU towards countries who use, or would like to use, the flexibilities contained in the TRIPS Agreement as highlighted in the Doha Declaration on TRIPS and Public Health. (ref: Peter Mandelson letters to the Thai government). Parliament called on the EU to take concrete steps through the Parliamentary Resolution of July 12, 2007, insisting that if the EU responds positively to the demands made by Parliament and acts thereupon, Parliament would then agree to the ratification of the TRIPS amendment. Parliament agreed to ratify the permanent amendment to the TRIPS Agreement after the EU Council publicly committed to the requests of the EP. Nevertheless, Parliament is still waiting for their demands to be put into action and for the commitment of the Council. The question of access to medicines and TRIPS should be considered as a whole and not limited to a single mechanism, to one solution.

Mr Susta called the EU to actively participate to the implementation of the WHO Global Strategy and Plan of Action on Public Health, Innovation, and Intellectual Property; congratulated UNICEF for deciding to look at the patent pool mechanism; recalled the right of member states with manufacturing capacity to use the Art 30 of TRIPS; and stressed the importance to effectively support countries that are using and/or want to use the TRIPS flexibilities in order to manufacture and/or to import generic version of medicines still under patent (Art 31 of TRIPS) as recalled by the Doha Declaration on TRIPS and Public Health (Art 5).

#### **(g) Greg Perry, Director General of the European Generic Medicines Association**

During the final presentation of this session, Greg Perry stated that the WTO's 2003 August 30 Decision concerning compulsory licenses is complicated, unworkable, and unable to deliver any significant improvement in access to medicines. Policy makers should significantly reform the provision as well as concentrate their efforts on reducing threats to access to generic medicines that feature in bilateral trade agreements. He explained that he did not intend to undermine the August 30 Decision, but rather "to put it into the context of economic and commercial reality". The provisions he said "act more as a straitjacket than an incentive" since the legal and administrative requirements are extremely complicated and burdensome. Moreover, it is unlikely that any company would make major investments to develop, manufacture, and market a medicine if it is limited for use in only one country, is restricted by volume and low sales, lacks payment security, and has no clear long-term market prospect. Originators can at least subsidize their sales to least-developed-countries by selling the same product in other regions—an option not available to the compulsory license holder. To date, no company has used the provision in the EU, while one company in Canada has used the WTO system, only to find the process extremely frustrating and restrictive. In this context, and in order to create a real incentive to improve access to medicines, Mr Perry proposed linking the compulsory licenses to procurement pooling and to funding schemes/assistance for the companies wishing to use the system. A regional—as opposed to a national—basis with long-term commitments should also be part of the reform. He added that policy makers should be more concerned by the growing trend to add "TRIPS Plus" provisions such as patent linkage, data exclusivity, and patent extensions into trade agreements, as was highlighted by the European Parliament's Resolution of 12 July 2007 on the TRIPS Agreement and access to medicines.

## **2. Conclusions and way forward**

Ellen 't Hoen, Director of Policy & Advocacy at the MSF Access to Essential Medicines Campaign, concluded the session, saying that the evidence presented by the participants in this session clearly indicates the need for a complete revision of the August 30 system.



## Forging New Comparative Advantage: Industrial Policies' Revival and the Potential Clash with WTO Disciplines?



### **Speakers**

Mr Richard Newfarmer – Special Representative of the World Bank at the UN and WTO

Ms Mona Haddad – World Bank Sector Manager

H.E. Mr Debapriya Bhattacharya – Ambassador, Permanent Representative of Bangladesh to the WTO

Professor Robert L. Howse – New York University School of Law

### **Organized by**

The World Bank Group

### **Report written by**

Ms Elisa Gamberoni, World Bank

Thursday 25 September 2008 – 16.30-18.30



## Abstract

*A dynamic export sector is increasingly recognized as fundamental to sustain high rates of growth over a long period. Moving rapidly into new products and markets is an essential part of making exports dynamic. The role of policies in influencing the structure of exports, however, has been a source of controversy among economists and policymakers. Some trade experts have highlighted numerous market imperfections that impede trade expansion and diversification, and called for new industrial policies to change the structure of trade. These authors argue that WTO rules prevent governments from adopting these policies. On the other hand, others have argued that industrial policies often distort market forces and are captured by special interests, producing new inefficiencies. Governments have limited information about markets and have a high probability of protecting losers rather than stimulating winners, so sector-neutral policies are likely to be more effective.*

*Starting from this debate, the panel focused on the challenges and opportunities for developing and emerging economies regarding future multilateral industrial policy. The panel discussion focused on three main questions: Are market failures that systematically slow trade growth susceptible to government intervention? Do WTO disciplines prevent governments from adopting pro-active policies to remedy the most important market failures, and to stimulate export growth and structural change? What types of institutional arrangements can be adopted to lower the probability of capture and ensure the highest probability of success?*

*The panel concluded that the effectiveness of industrial policy depends from its design. All countries adopt in a certain degree industrial policy and thus, what is important is the type of institutional arrangements that has been implemented. Certain characteristics are shown to be vital for government interventions to be effective. Moreover, countries should analyze the type of industrial policy already in place. Indeed, governments often are not aware of the combined effect of the implemented arrangements, precluding the attainment of pre-determined national objectives. Notably, it emerged from the discussion that WTO disciplines do not constrain the ability of governments in adopting of industrial policy. This is because either the discipline is not being used or because other agreements, including Bilateral Investment Treaties and other Regional Trade Agreements have deeply tied the hands of governments. However, the WTO poses a challenge in terms of legal uncertainty since the absence of a WTO competition law and the presence of provisions without a precise definition open the room to different interpretations.*

## 1. Presentations by the panellists

### (a) Richard Newfarmer, World Bank Special Representative to the WTO and the UN

#### Is there a need for industrial policy? Setting the scene

In value terms, average exports of developing countries have grown at a pace similar to high performing countries and trade performance during 1996-2006 was strong for most countries. Despite the high export growth, about half of low income countries lost market share and many low income countries are still heavily reliant on just a few products. The dependence on a few exports exposes countries to terms of trade shocks with deleterious effect on economic growth.

Thus, it is natural to ask whether government should intervene to actively promote particular sectors. Economists remain divided on the subject. One view suggests that the best way to promote competitiveness is to unleash the power of the market and avoid government interventions. According to this view, problems due to poor trade performance are the result of "government failures" such as protection of inefficient industries, creation of barriers to competition and rent seeking activities. At the opposite end of the spectrum, some experts suggest that market failures inhibit trade. Governments should intervene with pro-active policies to provide coordination, to address missing markets and to create dynamic spillover. Between the two proposals, the intermediate view suggests a two track policy. Governments should reduce policy barriers to competition and improve government trade-related services but also recognize that in small markets the range of government services has to be larger.

Industrial policies are made up of many elements (sector specific public goods, special economic zones, business environment enclaves) and each type of industrial policy is more or less controversial depending on the decade and the context. In turn, there are a lot of different justifications for implementing an industrial policy. Firstly, the presence of market failures leads governments to consider some types of firms and sectors as special, because, for example, they exhibit externalities and thus, they should be promoted (e.g. exporters, large firms, SMEs, IT firms, "strategic sectors", FDI). Secondly, there can be a self-discovery type of argument, according to which industrial policies are tools for remedying coordination failures or credit market failures. Thirdly, industrial policies are often based on enclave justifications, under which governments, as a starting point, set-up the perfect business environment for some industries (e.g. SEZ, regional enclaves, administrative enclaves for certain types of firms). Finally, political reasons, such as the political importance of a declining sector or of SMEs for which short term visible interventions are highly valuable politically, could lead to the implementation of industrial policies.

### (b) Mona Haddad, World Bank Sector Manager

#### What are industrial policies and do they work? Pros and Cons and the taxonomy of industrial policies

A typical question is whether industrial policies do work. There have been many successful case studies, particularly in East-Asia, but many failures, both visible and not visible. Very few rigorous cost-benefit analyses have been carried out and



thus, with or without much evidence, anyone can argue in both directions. Indeed, it is hard to establish solid counterfactuals and it remains a challenge to understand what would have happened without the adoption of a certain policy. Finally, there are very few political incentives for policy makers or the private sector beneficiaries to really evaluate their programs.

As a result of these constraints, the debate is essentially ideological. Typical arguments in favour of industrial policies underscore the presence of market failures, which are large in developing countries, to justify interventions. Secondly, those in favour point out that trade policies, for example investment climate reforms and the provision of public goods, do not lead to sustained growth and do not automatically generate strong increase in employment. Along the same lines, they provide the evidence that most success stories have been based on smart interventions at the industry-level with selective and sector-specific public interventions, which enabled the private sector to succeed in tackling several investment climate reforms. Finally, advocates of industrial policies suggest that the integration into global supply chains usually does not contribute to the upgrade of the local industry.

Typical arguments against industrial policy underscore, instead, the distortions generated by government interventions, including corruption and state capture. The main argument is that governments do not have the capacity to pick winners. Additionally, these experts suggest that industrial policy distracts from key investment climate and trade policy reforms. Moreover, they observe that if public support is carried out, government support should be limited to non-selective policies (horizontal policies) such as providing public goods (infrastructure, education, R&D). Finally, they point out that the governments should help firms to integrate global supply chains.

Industrial policy is comprised of different types of government interventions, which can be classified in two dimensions: the degree of selectivity (whether a policy is specific to an industry or sector or it applies horizontally to the overall economy) and the extent of price subsidies (the level of support offered). Each category of industrial policy is justified by different arguments and calls for a different type of intervention. For example, a policy with a low degree of selectivity and price subsidy gives rise to a set of policies close to the Washington consensus. In turn, policies that have a high level of selectivity and a low level of support are generally interventions targeted towards sector infrastructure and sector regulation and are justified by the presence of sector specific public goods and/ or coordination failure. On the other hand, policies with high support and low selectivity, as for example subsidies to R&D, are defensible by the presence of externalities in the goods and factor markets. Finally, policies with high degree in both dimensions are generally justified by the presence of externalities associated with certain types of firms and sectors.

Importantly, as we move to more selective and largest support interventions, industrial policies could be constrained by some WTO disciplines, preventing governments to use these types of policies. Typical examples include the WTO discipline on

export subsidies, domestic content requirements and intellectual property right disciplines.

### **What types of institutional arrangements can be adopted to lower the probability of capture and ensure the highest probability of success?**

*Based on Rodrik (2007) "How to move forward on the industrial policy debate", a design on what is needed to make it right.*

Industrial policy could help tackle the presence of market failures and externalities but there are cost and risk associated with them. These are generally fiscal costs, the generation of distortions that lead to inefficiencies, the misuse of political capital and the distraction from deep reforms, the difficulty to know when the policy is becoming harmful and the difficulty to step back. Therefore, the institutional design of industrial policy requires careful analysis.

Institutional design of industrial policy must recognize that on one hand, the requisite knowledge about the existence and the location of spillover, market failures and constraints that block structural change, is diffused widely within the society while on the other hand, the businesses have strong incentives to "game" the government. Finally, governments must always keep in mind that the intended beneficiaries of an industrial policy is neither the bureaucrats nor the business, but society at large.

Right industrial policies are based on three principles: embeddedness, that is the degree of closeness between policymakers and the private sector; a carrot and stick procedure, that is the kind of incentives provided; and finally, the type of the accountability mechanism.

Embeddedness can be thought of, for example, as a top-down principal agent model, which takes informational incompleteness and asymmetries as given while keeping the private sector at arms' length. The advantage of this model is that bureaucrats are autonomous and are protected from the private sector rent seeking activities. However, the disadvantage is the restriction on the flow of information from the private sector: businesses cannot communicate information about the constraints they face other than through their actions.

Another way to think about embeddedness is in terms of a "capture" model, which has the strong disadvantage of leaving the bureaucrats in the hands of the business sector.

The right model probably lies between the two models. This poses questions on how should the public sector and private sector work together. The answer is a combination of autonomy and embeddedness. This includes a strategic collaboration and coordination between the private sector and the government with the aim of uncovering the area with the most significant bottlenecks (through, for example, deliberation councils, supplier development forums, "search networks", investment advisory councils, sectoral roundtables, private-public venture funds) and with the vision of industrial policies as a process of discovery





rather than a list of policy instruments (focusing on learning where the binding constraints lie rather than on whether you should use tax breaks, R&D subsidies, credit incentives, eliciting information on private sector's willingness to invest subject to the removal of obstacles or provision of incentives, etc.).

Industrial policy should also be thought as a carrot and stick process. Without rent for entrepreneurs, the business sector will under-invest in cost discovery and other activities that promote structural change but, at the same time, open-ended rents bottle up resources in unproductive activities. Therefore, the carrot is to encourage investments in non-traditional areas while the stick is to weed out projects and investments that fail. Typical instruments for this process include conditional subsidies, sunset clauses and a monitoring and evaluation mechanism. For example, the industrial policies implemented in East Asia during the 1960-90 included both incentives and discipline (lots of new activities closely monitored for performance), the Latin America experience of the 1950-1980 was characterized by many incentives with too little discipline. The experience of Latin America in the 1990s was characterised by a great deal of discipline but too few incentives.

Indeed, the success in industrial policy is determined not by "picking winners" but by "letting losers go". Given uncertainty, optimal policy outcomes will necessarily lead to mistakes so the trick is not to avoid mistakes altogether, but, to ensure that mistakes are recognized as such and that mistakes entail phasing out of support. Governments may not be able to pick winners, but they can recognize losers.

Accountability and transparency is the last feature for a "right industrial policy". Indeed, bureaucrats monitor businesses, but who monitors the bureaucrats? There is the need for transparency and for an accountability mechanism, including politically responsible institutions, publication of activities and accounting of expenditures. For example, the Chilean salmon industry evolved from quasi-artisan, family-based industry to world class export-oriented industry in two decades and today Chile is one of three major salmon farming countries in the world, along with Norway and Scotland. The Chilean government was a catalyst in seeding the industry and helped disseminate salmon farming technology but the government's role lately changed from facilitator to regulator.

To summarize, it is not *whether* but *how* the government is involved. On one hand, the government needs feedback from the private sector and thus, public-private partnership is important. On the other hand, the government should walk away when the policy does not work and thus, it needs a strong accountability structure to avoid rent seeking activities.

Programs implemented by the World Bank to foster trade growth and competitiveness have many facets: they aim to reduce policy barriers to competition through trade policy and competition policy, invest in technological upgrade and innovation through agricultural technology projects, and help governments in the provision of more efficient services

through customs reforms and telecom projects. Additionally, the World Bank has a pragmatic approach towards subsidies and taxes by promoting rural investment funds and energy subsidies, and promotes public private partnerships in areas such as infrastructure provision with the International Finance Corporation (IFC).

### **(c) Debapriya Bhattacharya, Ambassador and Permanent Representative of Bangladesh to the WTO**

#### **An example of industrial policy: Bangladesh and the textile industry**

The textile industry of Bangladesh is often cited as an example of government intervention. The government has tried to protect the industry, with beneficial effects. Did Industrial policy play a role? The answer is: partly. The 1990 Industrial plan in Bangladesh was designed around four pillars: more investment, more employment, structural change (especially in export) and balanced development of industries across the country. The policy favoured small exporting firms, rural industries and FDI.

Different instruments have been and sometimes are still used to tackle market failures and the major part of these policies is market-oriented. The failure of financial markets has been tackled by subsidized credits, refinancing facilities through the World Bank, implementing equity finance schemes and issuing letters of credit. The input market has been promoted through duty drawback, which became, as time passed, too cumbersome and corrupt and as a result new activities replaced the system, including the introduction of bounded warehouse system.

To help firms exporting, Bangladesh cut its tariff on imports and implemented investment promotion schemes, including tax holidays for the first years of establishment and tax breaks for reinvested profits. Enclave clusters, as for example export processing zones and more recently special economic zones have been adopted as well.

### **(d) Robert L. Howse, Professor at the New York University School of Law**

#### **Do WTO disciplines prevent governments from adopting pro-active policies to remedy the most important market failures, and stimulate export growth and structural change?**

The WTO disciplines are more restrictive than the previous GATT. An interesting example, related to industrial policy, is the WTO discipline on subsidies. Firstly, Art. XVIII of the GATT allows developing countries to use measures, which are generally contrary to the WTO discipline, for assisting their development process. The provisions impose a set of conditions and limitations but still provide a policy space for governments. Additionally, during the Uruguay Round, a list of subsidies not to be actionable was included. The attached

sunset clause provided for the possibility of reviewing this list, which expired in 2000. Currently, therefore, there is a reduction of this policy space for developing countries.

A subsidy must be specific to fall into the category of prohibitive (as for example export finance, a typical industrial policy) and actionable (and this can include government purchases of good and services at less than adequate remuneration) subsidies. The main problem is the fact that the WTO has never developed a competition discipline. The absence of a competition discipline constrains the ability of the Appellate Body to rightly interpret the relevant WTO provision. This is typically the case for certain legal definitions like “less than adequate remuneration” or the pre-requisite of specificity for a subsidy. The absence of a precise definition translates thus, into the necessity of having a list of subsidies.

## 2. Questions and comments by the audience

Problems arise mainly when industrial policies are disconnected from long-term development objectives. For example, in Bangladesh, industrial policy aims at promote the overall textile sector while the export oriented industry, like the garments industry, would prefer to have access to cheap inputs, including imported inputs. A blueprint for industrial policy should be based on an adequate time frame and should be based on the concept that industrial policies must provide advantage to the society rather than to particular groups.

Concerning the WTO discipline, several points emerged. First, other regimes, including Regional Trade Agreements, can constrain countries more than WTO disciplines can. The typical example is the provision on compulsory licenses as spelled out in the TRIPS Agreement. The discipline can be considered a constraint for developing countries' policy space. However, even if the discipline were to be relaxed, many developing countries are part of Regional Trade Agreements and Bilateral Investment Treaties and this ties deeply the hands of governments. Secondly, other disciplines, including the subsidy discipline, have been rarely challenged by the members, which have also refrained from providing a list of subsidies to be excluded. Finally, the Special and Differential Treatment for developing countries offer policy space.

Adjustment lending by the World Bank and the IMF may require stringent industrial policy, such as the removal of subsidies that help certain industries. But in a time of fiscal crunch, these policies may not be high on government agendas and may be the first to go compared to expenditures on health and education for example. Moreover, it is important to realize that macro-stability is the first priority for investors—beyond industrial policy and incentives—and generally requires a fiscal adjustment.

## 3. Conclusions and way forward

The type of industrial policy depends on both the degree of selectivity and the degree of price support. As the policy becomes more selective and provides for a larger price support, the policy will be most likely WTO inconsistent. However, it emerged from the Panel discussion that other arrangements, including Regional Trade Agreements and Bilateral Investment Treaties, preclude deeper governments' policy space. Additionally, other disciplines that could constrain countries have been rarely challenged by WTO members. Uncertainty remains, however, in terms of legal interpretation of certain provisions, which could represent obstacles in the future.

Certainly, all countries around the world implement, to a certain extent, industrial policies. What is important is thus the type of institutional framework. A blueprint for industrial policy requires first an analysis of the industrial policy already in place, which might diverge from the long run strategy. Rodrik (2007) has suggested a framework for “right industrial policy”. In summary, a good institutional arrangement of industrial policy requires a strategic collaboration and coordination between the private sector and the government with the aim of uncovering where the most significant bottlenecks and the idea that industrial policy is considered a process of discovery rather than a list of policy instruments. Additionally, industrial policy should encourage investments in non-traditional areas but the governments should weed out projects/investments that fail. Indeed, the success in industrial policy is determined not by “picking winners” but by “letting losers go”. Given uncertainty, optimal policy outcomes will necessarily lead to mistakes so the trick is not to avoid mistakes altogether, but to ensure that mistakes are recognized as such and that mistakes entail phasing out of support. Accountability and transparency is the last feature for a “right industrial policy”. A mechanism of transparency and accountability should include politically responsible institutions, publication of activities and accounting of expenditures.

In a single sentence, a successful industrial policy is a policy that provides benefits to all the society rather than to particular groups.

### Further readings

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M.

## The Warwick Commission Report on the Future of the Multilateral Trade System: Strategies for Implementation



### **Chair**

H.E. Mr Pierre Pettigrew – former Canadian Minister for Trade

### **Speakers**

Dr Heribert Dieter – Associate Fellow of the Centre for the Study of Globalisation and Regionalisation of the World Economy, University of Warwick

Ms Diana Tussie – Facultad Latinoamericana de Ciencias Sociales (FLACSO)

Professor Simon Evenett – St Gallen University

Professor Ann Capling – University of Melbourne

### **Organized by**

University of Warwick

### **Report written by**

University of Warwick

Thursday 25 September 2008 – 16.30-18.30

## Abstract

*In December 2007, the Report of the Warwick Commission entitled, 'The Multilateral Trade Regime: Which Way Forward?' was launched at the World Trade Organization. The Report was a stocktaking exercise into the systemic problems facing the governance of the global trade system in the early 21<sup>st</sup> century in general with some recommendations for both systemic reform and specific WTO reform. The full Report can be downloaded as a PDF at <http://www2.warwick.ac.uk/research/warwickcommission/report/>*

*Since its launch, the Report has been subjected to sustained analysis and scrutiny in a series of workshops, at venues including London, Washington D.C., Ottawa, Brussels, Singapore, Melbourne, Canberra, Paris, Berlin, and Cape Town. Commissioners have also given evidence, based on their recommendations, to a UK House of Lords inquiry into EU trade policy. In October 2008, the Commission and the British Confederation of British Industry co-hosted a major conference involving government and business leaders to discuss the business community's attitudes towards the reform of the global trade regime.*

*The aim of the session at the WTO Public Forum was to allow for further scrutiny of the Report's recommendations by a Geneva audience and to explore in a systematic fashion if and how those recommendations might be taken forward. Bringing the Report back to Geneva ten months after its launch will offer the opportunity for reflection on its strengths and limitations.*

*The Report seeks to address problems of a systemic nature in global trade governance. Recommendations are of reformist nature; panellists gave presentations in the following key areas of the Warwick Commission Report:*

- *Agenda setting and decision-making at the WTO.*
- *Trade and development, especially on the issue of Aid for Trade*
- *The challenges for multilateralism posed by the growth of regional preferentialism.*

*Commissioners also addressed possible developments in,Mr and pressures on, the multilateral trade system following the mini-Ministerial meeting held at the WTO in July 2008 and the deepening crisis in the global financial system.*

*The main conclusions reached were that the successful resolution of the Doha Round is not just a necessary objective in itself but that it would also be a way of injecting confidence into the global economy; and that the Warwick Commission report offers potential solutions to the systemic problems which have affect the work of the WTO and which limit the chances of further extensions in the multilateral trade system.*

## 1. Presentations by the panellists

### (a) The Honorable Pierre Pettigrew PC, "The Warwick Commission Report in Context," Chair of the Warwick Commission

Pierre Pettigrew PC opened the session by saying that the primary objective of the Warwick Commission is to examine the governance of the world trading system and to make recommendations about how it can be improved.

He said that, throughout its discussions, the Warwick Commission has assumed that the current architecture, based around the World Trade Organization (WTO), should reflect the aspirations and needs of all Member nations and that the Report contains recommendations which, taken together, propose a constructive and pragmatic way to move global trade governance beyond some of the problems which have beleaguered the Doha Development Agenda (DDA) negotiations. The organization's intention is that the Report is taken as a considered contribution to the inevitable debate about the future of the multilateral trading system, whatever the outcome of the DDA may be.

The Warwick Commission identifies several key issues which it considers important to the future health of the global trading system. The organization believes that the involvement of the least-developed countries is not the only issue of participation requiring consideration. The Warwick Commission's deliberations, therefore, tracked specifically that group of nations which are emerging as significant players on the world economic scene, notably Brazil, Russia, India, and China. As the economic and political clout of these countries increases, both individually and collectively, it is a generally accepted fact that the trading system will have to reach an accommodation with them, politically as well as economically. The emergence of a multi-polar global economy, one in which the United States, the European Union, and Japan are no longer the only major players, must therefore be addressed if the continued viability of the trading system is to be assured. The Warwick Commission was also struck by the paradox that, at a time when much of the developing world appears to be more supportive of increasingly open markets than in the past, political and popular support for globalisation is under challenge in parts of the developed world.

Mr Pettigrew said that the Warwick Commission had identified five challenges which must be met if the multilateral trade regime is to succeed in the early 21<sup>st</sup> century. These challenges are distinct, yet often related, and The Warwick Commission does not seek to prioritise them. The five core challenges are:

- The first challenge is to counter growing opposition to further multilateral trade liberalisation in industrialised countries. This tendency threatens to render further reciprocal opening of markets unduly limited and to weaken a valuable instrument of international economic cooperation.
- The idea that a bipolar global trade regime dominated primarily by the United States and Western Europe has given way to a multi-polar alternative is now an established fact. The second challenge is to ensure that this evolving





configuration does not lapse into longer term stalemate or worse, disengagement.

- In this changing environment, the third challenge is to forge a broad-based agreement among the membership about the WTO's objectives and functions, which in turn will effectively define the "boundaries" of the WTO.
- The fourth challenge is to ensure that the WTO's many agreements and procedures result in benefits for its weakest members. This requires that the membership addresses the relationships between current trade rules and fairness, justice, and development.
- The fifth challenge relates to the proliferation of preferential trading agreements and what steps can be taken to ensure that the considerable momentum behind these initiatives can be eventually channelled to advance the long-standing principles of non-discrimination and transparency in international commerce.

Mr Pettigrew concluded by saying that the failure to conclude the DDA negotiations at the recent mini-Ministerial both highlighted the need for reform in the governance arrangements for world trade and gave an opportunity for consideration of the way forward, which, he hoped, would include the Warwick Commission's report.

#### **(b) Dr Heribert Dieter, "Multilateral Trade: the Impact of the Financial Crisis," the Warwick Commission**

Dr Heribert Dieter discussed the issue of the potential consequences of the financial crisis on the global trade regime. He said that the Warwick Commission report was written before the scale of the current crisis became apparent and that in his presentation he would attempt to identify some of the possible threats to multilateralism that might emerge as challenges to the global trade system.

Dr Dieter began by noting that in public debate, no distinction is made between the trade dimension of globalisation and financial globalisation. He stressed that the very real risk exists that globalisation will be discredited because of the turmoil in financial markets. He was especially concerned that policymakers might decide to use globalisation as a scapegoat and implement a more protectionist trade policy. Dr Dieter noted that this risk is probably greatest in the United States, where protectionist sentiment have characterised parts of the presidential campaign. However, he argued that the problem was by no means limited to the US and that other countries, like France, are not immune to such positions.

Finally, Dr Dieter highlighted the potential for the greater use of subsidies to save failing institutions and corporations. He said that subsidies had the potential to distort competition by protecting inefficient industries and, in this respect, he particularly mentioned the US motor industry.

#### **(c) Dr Diana Tussie, "Trade and Development," the Warwick Commission**

Dr Diana Tussie opened her remarks by noting that The Warwick Commission had identified as a major challenge the need to ensure that the World Trade Organization's many agreements and procedures result in benefits for its weakest members and that this requires that the WTO membership address the relationships between current trade rules and fairness, justice, and development. A key test for contemporary GEG is, therefore, to reconcile trade and development under conditions of globalisation. Trade and development are closely connected as trade growth and trade liberalisation are clearly necessary, albeit not sufficient, conditions for development.

Dr Tussie said that The Warwick Commission had observed that, in the early 21st century, there is a recognition that the success of the first, and indeed subsequent, waves of newly industrialising countries has been built on export-oriented strategies rather than import substitution. She added that the Warwick Commission believes there is now broad acceptance of the notion that effective integration into the global trading system is a major, but far from being the only, key to accelerating growth and eradicating poverty in developing countries.

In taking this position, the Warwick Commission does not claim an authoritative interpretation of the precise nature and causal direction of interactions between trade, growth, and development as the intricacies of these relationships are the subject of longstanding academic debate. Rather, Dr Tussie argued that the modest aim of the Warwick Commission is to offer some practical suggestions about how to tackle trade and development as policy questions, notably as they relate to the role of international trade rules and commitments in furthering development and the role of Aid for Trade (AFT) in trade-related capacity building.

As the Warwick Commission noted, developing countries that later, if not sooner, opted for export-oriented strategies, especially in East and South Asia, have fared better than those that have not. However, trade liberalisation has not resulted in significant economic development for all, especially for many countries in Africa. Between 1965 and 2004, per capita GDP in Sub-Saharan Africa fell from 17.1 percent of the world average to 9.7 percent. Although a certain degree of trade liberalisation has taken place in some of these countries while standards of living have declined, international trade is generally not considered to be the prime factor in the weak development of the poorest countries. The strength and quality of institutions, political stability, functioning domestic markets, adequate physical and economic infrastructure, and appropriate domestic policies are equally regarded as essential ingredients of sustained growth and development.

Continuing its analysis, the Warwick Commission noted that WTO rules and procedures affect the interests of developing countries in at least three ways. First, the very choice of the negotiating agenda for trade rounds can influence the



development prospects of the WTO's weaker members. The prominence given to reform of national agricultural policies in the Doha Development Agenda (DDA) talks, for example, reflects the strong conviction of many developing country governments, and others, that the subsidies paid to farmers in certain industrialised countries retard rural economic development in poorer countries. Second, the set of principles that guide WTO negotiations will have implications for development. The insistence, in the DDA, on less than full reciprocity in favour of developing countries is an example of such a principle.

Third, the manner in which WTO obligations are implemented also affects developing countries, and many concerns were raised after the completion of the Uruguay Round about the potential cost of complying with the numerous commitments made in that negotiation. There are, however, important examples where WTO rules and initiatives have advanced the cause of development. The decision taken on access to medicines at the WTO Ministerial Conference in 2001 was widely regarded as pro-development, and it should not be forgotten that one of the core obligations of WTO membership – that of MFN treatment – substantially weakens the ability of powerful states to take advantage of their weaker counterparts in the application of commercial policies.

The Warwick Commission takes the view, as described by Dr Tussie, that the challenge in the 21st century is not to protect the poorest developing countries from trade, but to enable them to participate in the international division of labour on more equal and successful terms but that action had to be taken to determine what rules and procedures would enable these countries to secure the maximum benefit from a liberalising trading order. Without denying the virtues of open, freer trade, many developing countries currently believe that some WTO norms and applications are inimical to their development. Some would argue that the system today is based more on assumptions of reciprocity stemming more from the theory of club goods than a theory of public goods predicated on non-rivalry and non-excludability and availability to all. One observer captured perfectly the dilemma of seeing the international trade regime as a global public good and the DDA as a 'development round.'

To move beyond this dichotomy, The Warwick Commission recommends that pursuing a more variegated approach comprising the following three elements may hold greater promise:

- i) critical mass-based initiatives (to facilitate the provision of club goods);
- ii) a richer set of Special & Differential Trade (S&DT) provisions for developing countries than employed at present; and
- iii) a strong commitment to Aid for Trade (AFT) measures that ease the implementation burdens that weaker WTO members may face.

Dr Tussie observed that the first element of this approach would be discussed by Professor Capling but that she would concentrate on the second and third elements.

Dr Tussie said that The Warwick Commission accepts that the relationship between trade and development is highly contentious and, as its Report argues, involves a number of significant economic and political considerations. The importance of trade to development is universally recognised but the opportunities provided by trade liberalisation do not always translate into benefits for all countries. Countries inhibited by inadequate infrastructure, inefficient bureaucracy, immature legal regimes, and macroeconomic instability will not increase their exports as their overseas market access increases.

The multilateral trading system needs to offer meaningful support to developing countries that not only assists them in key elements of their development strategies, especially trade liberalisation, but also convinces them of the utility and legitimacy of the WTO. This understanding is the basis for the AFT discussions. It may be a cliché, but the WTO still needs to find a greater role for developing countries as stakeholders in the institution, while maintaining the engagement of the rest of the membership. In this Chapter, we have suggested more nuanced and relevant approaches to S&DT as well as one principled – as opposed to strictly practical – argument as to how this process may be advanced, namely by insisting on a key role for the WTO in the development and delivery of AFT. AFT has a purpose that remains valid outside the context of the Doha talks and thus should, in line with the recommendations of the WTO Task Force on the matter, continue to unfold despite the stalled negotiations.

Dr Tussie concluded by arguing that the debate over S&DT provisions in the WTO has been contentious and over-politicised and the need for substantive analysis has often been neglected. Critics of S&DT provisions have characterised them as insensitive to diverse conditions in developing countries, often irrelevant to real development needs, and over-reliant on best-endeavour undertakings that are often disregarded. In regard to S&DT, she said that the Warwick Commission recommends that efforts be redoubled to design clear, concrete S&DT provisions based on solid analysis of development needs and cognisant of the reality that differing needs among developing countries call for differentiated measures. The Commission commends the approach taken in the Doha negotiating mandate on trade facilitation, where the need for technical assistance and resource support to undertake new trade disciplines is linked to the ability to do so. The Commission also believes that the systemic aspects of this issue should be taken up in the proposed reflection exercise.

She also reported that the Warwick Commission notes the importance of increasing opportunities for developing countries to benefit from trade through improving physical infrastructure and human capital, modernising and streamlining administrative procedures, and strengthening trade-related regimes such as those dealing with product standards. The Commission applauds the Aid for Trade (AFT) initiative and recommends that the respective responsibilities of the WTO, donor nations, potential recipient nations, and the other international organisations involved with this initiative be clearly delineated. Failure to identify the locus of respective responsibilities will weaken the



effectiveness of Aft and heighten the risk that the WTO will be wrongly blamed for the lapses of others. Thus each party should be held accountable for its contribution to this initiative, which should stand apart from trade negotiations.

#### **(d) Professor Simon Evenett, “The Challenge of Preferentialism,” the Warwick Commission**

Professor Simon Evenett began by highlighting the challenge posed by the proliferation of preferential trading agreements and posed the question about what steps could be taken to ensure that the considerable momentum behind these initiatives can be eventually channelled to advance the long-standing principles of non-discrimination and transparency in international commerce.

He noted that the Warwick Commission acknowledges its focus on the multilateral trading regime and the role of the World Trade Organization (WTO) as its central institution. Nevertheless the Warwick Commission also understands that trade governance and trade liberalisation are more than simply a multilateral enterprise. In the last two decades, significant trade liberalisation has been achieved outside the multilateral arena, with most tariff reductions coming from unilateral liberalisation. For some scholars of global trade, growing recourse to bilateral and regional preferential agreements is simply an inferior policy choice that undermines multilateralism and should be avoided. Yet trade governance and liberalisation are not as simple as that. Preferential Trade Agreements (PTAs) need not, in all circumstances, be counterproductive in terms of a wider multilateral trade agenda. Moreover, such agreements, along with regional activity in other economic policy domains such as monetary relations, are increasingly a fact of life in contemporary international economic relations and they will not simply disappear.

Professor Evenett noted that commentators favourably disposed towards PTAs as a vehicle of international cooperation recognise their downside from a more inclusive, multilateral perspective. He said that the Warwick Commission seeks to minimise the friction between regionalism and non-discriminatory trade relations presided over by the WTO and pointed out that the WTO rules on Free Trade Areas (FTAs) and Customs Unions (CUs) have been notably unsuccessful in disciplining and regulating PTAs, which raised the question of what can be done about the rules. The Warwick Commission argues, he continued, that the WTO needs to take a fresh look at the way it addresses regionalism and that a promising start has been made in this direction with the recent adoption of the new Transparency Mechanism.

Professor Evenett argued that the existence of different kinds of PTAs requires a more systematic consideration of what motivates governments to enter into PTAs. In the past, unilateral liberalisation and preferential agreements co-existed with the development of multilateralism, for example, during the first phase of regionalism in the 1960s. He added that the 1980s had seen the launch of the Uruguay Round in 1986, and major steps forward in European, as well as North

American, integration and unilateral liberalisation. He argued that the completion of the Uruguay Round, in 1994, provided evidence both of a remarkable achievement for multilateralism and some important preferential initiatives. Thus, it could be assumed that there is little need to see a threat to the multilateral regime emerging from preferential agreements. There is, however, evidence to suggest that today's preferential agreements create a different environment which pose threats to the multilateral trading regime.

First, the United States is actively pushing for PTAs. The country that helped shape and underwrite the post-World War II non-discriminatory trading regime has been at the forefront of those emphasising the development of PTAs in recent years. Whilst the number of PTAs between the United States and other countries has been somewhat limited, in part due to the linking of trade and security policy, the continuing push for preferential agreements represents a break with US policies of the past. Similarly, the European Union (EU) has long been actively pursuing PTAs, though many of them have been with countries either on the European continent or with which the EU has enjoyed strong historical relations. Today, the EU is entering negotiations with some of the few remaining countries with which it still trades on a MFN-basis.

Third, Asian countries have joined the trend. Whilst important East Asian countries like Japan, South Korea, and China, long refrained from negotiating preferential agreements, these countries have been extremely active in the push for PTAs since the turn of the century. Fourth, many PTAs are about much more than regulating trade. The United States, for example, uses a template in its PTAs that also has the effect of shaping domestic regulation in the partner countries. The consequence is the creation of parallel regulatory spheres that, at least in some cases, make international trade more difficult than under the umbrella of the WTO. A plethora of competing and overlapping norms and regulations does not facilitate international trade.

Professor Evenett said that the Warwick Commission is convinced that the WTO alone has the capacity to address PTAs as a collective action problem confronting the multilateral trading regime. It does not, he added, believe that regionalism will disappear, nor that the WTO is necessarily well placed to achieve everything that governments seek to attain in terms of their international trade relations with other nations. However, the Warwick Commission does believe that the explosion of regionalism in recent years has been sub-optimal in systemic and political terms. Recent developments carry the risk of undermining the fabric of inclusive, fair, and stable institutional arrangements that underpin international trade. Governments should not forget the post-war lessons learned from the debacle of largely institution-free trading arrangements in the first half of the twentieth century. The Warwick Commission also believes that poorly conceived regionalism carries many avoidable costs and tends to penalise the weaker and smaller members of the trade community. These are the considerations informing the Commission's recommendations in this area.

Moving on to the effects of regionalism, Professor Evenett noted that much has been written about the impact of PTAs on the multilateral trading system. Most commentators agree that a multilateral approach to trade relations is generally preferable to the fragmentation that is today's PTA panorama. This tends to be true of those who are relatively sanguine about the adverse effects of regionalism as much as it is of those who worry about its corrosive impact on international trade relations. The Warwick Commission is firmly of the view that concerted action is needed to bring greater order and coherence to the present confusing web of criss-crossing PTAs around the world.

Professor Evenett drew attention to the views of those commentators who have argued that an additional burden is imposed by regionalism because it diverts attention from multilateral negotiations. This can be true in two senses. First, governments may believe, or be lulled politically into the conviction, that they can acquire all they need by way of trade policy through regional arrangements. This will lead to neglect of the relative costs and benefits, especially over time, of regional versus multilateral approaches to trade relations. The second way in which Regional Trade Agreement (RTAs) may crowd out serious consideration of the frequently harder business of making multilateral agreements is through the resource costs of actually carrying out negotiations. Even the biggest and best organised countries can be challenged when it comes to negotiating trade agreements at these two different levels.

Taking these considerations into account, Professor Evenett said, the Warwick Commission believes that the very rapid growth of PTAs in recent years has unnecessarily increased trade costs and carries worrying implications for the world trade regime in terms of stability, fairness, opportunity, and coherence. The Commission therefore recommends that as part of a concerted response by governments to this situation, current efforts to clarify and improve disciplines and procedures in relation to WTO provisions on RTAs be intensified.

He also said the Warwick Commission recommends that, as an expression of their commitment to the multilateral trading system and of a willingness to provide leadership in maintaining and strengthening international trade arrangements for the benefit of all, the major industrialised countries should refrain from establishing PTAs among themselves. The Warwick Commission also believes that large developing countries with significant shares in world trade should similarly refrain from establishing PTAs with each other.

Finally, Professor Evenett stated that The Warwick Commission recommends that WTO members strengthen and make permanent the recently established Transparency Mechanism for reviewing RTAs. The Warwick Commission believes that this initiative would provide crucial support for an urgently needed process of reflection, independent of negotiations, to consider how to manage the relationship between multilateral and RTAs. In this connection, the Warwick Commission recommends that consideration be given to developing a mechanism that facilitates collective surveillance of regional trade agreements and to the establishment of a code of best practices.

### **(e) Professor Capling, "Agenda Setting and Decision-Making at the WTO," the Warwick Commission**

Professor Capling began by referring to Chapter Two of the Warwick Commission Report, which examined the challenges of boundary determination, agenda-setting, and decision-making in the World Trade Organization (WTO). It began by noting the value of the General Agreement on Tariffs and Trade (GATT)/WTO system, especially for its unique provision of multilateral trade rules. However, since the end of the Uruguay Round, it has been manifestly difficult to get proposals for new rules negotiations onto the agenda, as was evident at WTO Ministerial Meetings in 1996, 1998, 1999, and 2003. Even the 'something for everyone' Doha Round agenda of 2001 was subsequently condensed to a few issues in 2004.

There is no shortage of explanations of the recent difficulties in decision-making in the WTO: lack of leadership by the major powers; the clash of interests and values that comes from having a more diverse membership; the challenge posed by larger numbers which makes it more difficult to identify common interests and increases the cost of organisation; and more generally, the climate of mistrust that is said to exist within the WTO. The problem with such diagnoses is that they are rarely accompanied with forward-looking proposals for resolving these problems

Professor Capling argued that the Warwick Commission was especially interested in considering how approaches to decision-making in the WTO might be reconsidered. At the back of the mind of each Commission member was the thorny issue of how to engender the ongoing commitment of all members to the multilateral trade system while at the same time ensuring that the interests and rights of all members were respected and protected.

The Warwick Commission began by acknowledging that the WTO has done much to address criticisms about exclusivity and lack of transparency in its decision-making processes – problems that were a legacy of the GATT where only a minority of the membership participated in a meaningful way in deliberations and negotiations. Thus, the last ten years have seen measures to enhance participatory decision-making as well as the increasingly important role of coalitions in decision-making process.

But the Warwick Commission's Report went on to argue that the WTO's decision-making processes were cumbersome and were an impediment to progress: in particular, the Commission suggested that the principles of consensus and the Single Undertaking have become an obstacle to agenda formation. Before elaborating this, it's important to clarify the Single Undertaking which has two different meanings.

First, in multilateral trade rounds, the Single Undertaking means that nothing is agreed until everything is agreed and that the results go forward in a single package -- a principle which was operative in the Uruguay Round and now in the Doha Round. Its second meaning relates to obligations rather than process and it is the requirement that all members subscribe to all parts



of a negotiated package, with no choices for opting in or out. This second understanding of the Single Undertaking came into effect at the end of the Uruguay Round, and it entailed a significant and ultimately contentious set of new obligations for many developing countries.

The Warwick Commission noted that the requirement for consensus was important for ensuring that issues could not go ahead when a group of countries genuinely believed an outcome was undesirable or not in their interests. However, consensus is problematic if it allows a member or small group of members to block progress on an issue, simply to prevent it from going forward.

The Report also noted that the Single Undertaking, which emerged late in the Uruguay Round and which imposed obligations on all members as a condition of their entry into the WTO, has made many countries more resistant to the inclusion of new issues in the WTO agenda, regardless of their intrinsic merit.

In thinking about how to address these problems, the Warwick Commission canvassed the introduction of voting system, similar to those that exist in some other international organisations. However, the Commission dismissed this on a number of grounds, not least of which is the fact that the WTO membership has shown little enthusiasm for this idea in the past.

In the end, the Warwick Commission settled on a proposal which was informed by earlier practices in the GATT rather than being lifted from the practice of other international organisations. This less radical approach calls for the re-introduction of the flexibility which characterised decision-making prior to the Uruguay Round, in the form of critical mass decision-making, which would allow *groups* of members to put new ideas into the mix; propose, advance, and develop initiatives; and negotiate new rules.

Professor Capling then addressed the key questions of what would a critical mass agreement look like and how it might be used. Proposals for the re-introduction of variable geometry into the multilateral trade system have been around for a few years now. Various authors have suggested criteria for when and why a particular issue area should be considered for critical mass negotiation in the WTO and for how the interests and rights of all WTO members, and not just those in the critical mass agreement, could be protected.

Based on this work, the Warwick Commission Report proposed a comprehensive set of criteria for critical mass decision-making, and recommended that decisions made by critical mass had to demonstrate:

1. that they were necessary to protect the *acquis*, or in cases where rules extended into new regulatory areas, that they were Pareto-improving; this was consistent with the WTO's World Trade Report which argued that notions of the 'trade-relatedness' of a particular issue area are too

ambiguous a basis on which to make arguments for the inclusion of a particular issue in the WTO, and that more specific criteria were necessary to inform that decision; and,

2. that no other international forum provide a better venue for pursuing cooperation in the particular area.

In relation to the objective of protecting the interests of the entire membership, the Warwick Commission, again taking up suggestions made by others, including the World Trade Report, recommended:

- that the rights acquired in a critical mass agreement be extended to all WTO members on an Most Favoured Nation basis;
- that members consider any distributional consequences arising from cooperation in new regulatory areas, and consider means of addressing potential adverse consequences;
- that the WTO membership would provide any necessary support to developing countries that wish to participate in a critical mass agreement; and,
- that all members would have the future right to join on terms no more demanding than those applied to the signatories.

These recommendations were aimed at striking a better balance between the goals of inclusiveness and efficiency in decision-making at the WTO. They are necessarily demanding, in large part in an attempt to address some of the criticisms that have been made of the critical mass idea, both in principle and in practice.

Professor Capling concluded by saying that the critical mass idea does not necessarily preclude consensus decision-making; rather it relaxes the Single Undertaking that requires all members to accept the obligations of new agreements. Consensus might be preserved through a requirement that a decision to negotiate or adopt results on a critical mass basis be agreed to by all members. This might not be necessary if there were demanding requirements about the form and substance of critical mass negotiations that were aimed at protecting the interests of non-participants.

Institutions are notoriously path-dependent; achieving change in the purpose or design of institutions is very hard to achieve. Indeed, the critical mass proposal has received mixed reception while discussing the Warwick Commission Report with policy makers in North America, Europe, East Asia, and Australia. However, there are precedents for critical mass decision-making in the GATT/WTO system; in this case, looking to the past helps to think about the way forward. And it may be an idea whose time has come; earlier this week a major government-initiated review of trade policy in Australia



recommended that Australia include work on the critical mass idea as part of its post-Doha agenda.

## 2. Questions and comments by the audience

Discussion centred on issues of clarification in the following areas:

- a. Special and Differential Treatment: a delegate expressed agreement with the Warwick Commission's concern at the one-size-fits-all nature of S&DT measures and said that there was a problem along these lines in the present negotiations. The questioners noted that one of the major obstacles to movement on this front is the larger developing countries themselves, for example India and China.
- b. One contributor noted that the main concerns about the implementation of WTO rules were held by the Western nations and that this was a particular problem to be overcome.

c. The panel was asked to give an assessment of the Report's reception at the various dissemination events that the Warwick Commission had held. The reply was that the Report has received constructive feedback and that it has been praised for its pragmatism. The Panel reported that significant elements of the Report had been featured in the recent Australian review of trade policy, which had also adopted some of the Warwick Commission's recommendations.

## 3. Conclusions and way forward

The objectives of the session were met but the nature of the session meant that there were no further actions required.



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## Leveraging Trade Policy Toward Sound Environmental Governance: Legal and Economic Considerations Related to the Implementation of Market-Based Environmental Policies



### **Moderator**

Mr Mark Halle – Director, Trade and Environment Program, International Institute for Sustainable Development (IISD)

### **Speakers**

Mr Jason Potts – Manager, Sustainable Markets and Responsible Trade (SMART), IISD

Ms Carolyn Fischer – Research Fellow, Resources for the Future

Mr Mark Sanctuary – Program Director, Entwined Consortium, IVL

### **Organized by**

ENTWINED Research Consortium

### **Report written by**

ENTWINED Research Consortium

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## Abstract

*Today, some of the most important environmental problems are global in scope, in which the countries bearing the consequences are not the same as those generating the damaging pollution, or the economic pressures for unsustainable resource exploitation. Global climate change is the most obvious and pressing example of such problems.*

*Growth in trade—and in international economic linkages through trade—provides both great opportunities and great challenges for addressing global environmental problems. Trade helps drive economic growth, improving standards of living on the one hand and exacerbating emissions on the other, as in the rapidly expanding middle-income countries such as China, India and Brazil, not to mention most developed countries. Global markets also create challenges for countries that wish and are able to tackle these environmental problems, as few care to lighten their environmental footprint while the invisible hand directs others to tread more heavily.*

*Among the range of tools available to policy makers, market-based instruments like emissions taxes, cap-and-trade programs, and differential fiscal policies are generally the most economically and politically efficient mechanisms for accomplishing environmental goals. By signaling that pollution is costly, they harness market forces to find the most cost-effective means of reducing emissions—at least within the regulatory jurisdiction. But since they not only induce abatement but also make polluters pay for their emissions on the margin, these instruments can lead to greater consequences for international competitiveness than traditionally less efficient regulations. When the shifting of production outside the jurisdiction also undermines the policy goal of reducing a global pollutant, then economic efficiency argues for counterbalancing measures. Still, there are legitimate questions as to when and whether trade-related measures are the most effective response, economically or politically, or the most likely to survive legal challenges under the WTO.*

*This session will explore the interaction between market-based environmental policies, international trade, and international trade law. Since nowhere are these dynamics more evident than in the development of climate change policy, it will draw from examples related to the management of greenhouse gas emissions in the US and China, including the proposed use of border adjustments. The expert panellists bring to the table the different perspectives of economic instrument design, legal interpretation, developing country contexts, and global governance. A broad-based discussion of the issues and other applications is encouraged.*

### 1. Presentations by the panellists

#### (a) Jason Potts, Sustainable Markets and Responsible Trade (SMART) Program, IISD

#### Market-Based Environmental Policy: Building WTO Compatibility

This presentation examines market-based policies and their compatibility within WTO regulations under the GATT 1994. Market-based policies are defined as policies that leverage market forces to change the behaviour of citizens and economic actors towards improved environmental performance. The rationale for these policies is that they are economically, dynamically, and politically efficient. There are three categories of market-based policies: price-based (directly affecting price), rights-based (new markets are created by defining new property rights), and market friction (enabling the market to be more responsive to environmental concerns). These market-based policies can be applied to firms or products, which is an important fact in the context of WTO compatibility because products are traded but firms are not. Firm-based policies (incentives for firms to reduce emissions) can negatively impact competitiveness at the domestic level, while product-based market-based policies can affect the ability of importers to bring goods into a domestic market or exporters into a foreign market. Product-based policies are important to WTO policy because of their influence on processing and production methods.

In examining the GATT 1994 cornerstone obligations, the convergence of such market-based policies and WTO regulation becomes evident. Article 11, for example, prohibits quantitative restrictions on market entry; while some environmental policies, such as intensity targets, may come into conflict with this stipulation, market-based policies are generally in line with the agreement because there are no restrictions and players can continue in the market. Articles 1 and 3 focus on the equal treatment of like products but both allow for differentiation of products based on non-product related characteristics; The Asbestos Appellate Body (AB) decision highlighted the importance of “competitive relationships” in determining product likeness suggesting that it is possible that physically identical products which serve different markets (e.g. eco-labels) could nevertheless be considered “un-like” based on their specific competitive characteristics. Article 20, on the other hand, stipulates that intervention can be acceptable if necessary to protect animal, human or plant life or health or the conservation of natural resources; Art. 20 applications, however, are subject to compatibility with the Chapeau which obliges that such intervention be applied in a manner which is neither unjustified nor discriminatory. In the Shrimp-Turtle decisions, considerable emphasis was placed on the ability of countries implementing environmental measures to provide objective means for monitoring that producers under similar conditions are treated similarly. Market-based policies can play an important role in meeting these requirements where they are linked to supply chain monitoring systems and use science-based evaluation methods.

In conclusion, market-based policies can be compatible with WTO regulation. The potential for this outcome is maximized by avoiding quantitative restrictions, limiting extra-territorial effect to cases where there is a direct “nexus” of impact on the implementing country, building on existing market-based distinctions (eco-labels), being based on international standards and other participatory processes, being based on scientific evidence, and ensuring that mechanisms have effective, accurate and fair monitoring systems. Finally, however, it is important



to note that market-based policies' compatibility with WTO regulation does not guarantee sustainability. To the extent that they are unilateral in character, they can reinforce existing inequities in international markets by providing developed country stakeholders with a competitive advantage. In order to avoid this outcome, great attention and care needs to be given to ensuring that market-based mechanisms are designed with the active participation of developing country stakeholders.

### **(b) Carolyn Fischer, Resources for the Future**

#### **Market-Based Environmental Policies in a Global Context**

This presentation examines the role of market-based environmental policies in overcoming global environmental problems. Ms Fischer defines market-based environmental policies as financial instruments or prices which signal the value of environmentally-friendly behaviour. While these policies may take on different forms (e.g. taxes on emission, cap and trade, tradable performance standards, tradable portfolio standards), what is important is that all are of the same value to all economic actors. The benefits of market-based environmental policies are similar to those of trade: cost effectiveness, efficient allocation of scarce resources, consistent price signals, and profit incentives (which also provide incentive for innovation). The problems with market-based environmental policies are also similar to those of trade: they do not always improve welfare, there is hidden information, property rights are ill-defined, missing markets do not benefit, and incomplete coverage.

Market-based policies have more of an impact on product prices than regulation but are generally more efficient. The marginal emissions cost imposed by the policy increases the product price, which can lead to a lack of competitiveness, displacement of production to countries where there is no policy coverage, or emissions leakage. In this case, another policy must be implemented to limit leakage, such as border adjustments for imports, border relief for exports, a combination of the two (full coverage), or a production rebate (which could reduce cost and provide a production incentive). Each option faces challenges within WTO trade law because import adjustments discriminate and export relief and rebates may be viewed as subsidies. There is also the issue of political cooperation and who needs to be involved in implementing these policies. It is important to note that none of these policies necessarily reduce global emissions because they are merely shifted from one country to another. Also, the policy that might be best for one trade sensitive sector may not be for another.

Overall, we can conclude that border adjustment policies are most effective at reducing leakage but, if limited to home practices, home rebates are more effective (although they are bad for the energy sectors). Most of the traditional market-based policies are useful in allowing countries to take unilateral action but they also generally are limited in the net reductions they achieve at the global level. It is important to note that

the less effective policies are at reducing emissions, the more pressure they will put on the cost of the market-based policy at home. With this said, international cooperation is essential in the reduction of global emissions, even within the context of a market-based regime (eg. Countries can't rely on market-based instruments as tools for moving "beyond" global consensus to any great degree).

### **(c) Mark Sanctuary, ENTWINED**

#### **Market Based Mechanisms for Climate and Energy Policy in China**

This presentation focuses on the market-based mechanisms that China is implementing on climate and energy, as well as the linkages between environmental market-based mechanisms and trade. China has implemented a national climate change program which aims to accelerate climate-friendly energy mixture, to enhance science and technology capacity, and to facilitate market-based mechanisms (MBMs) for more efficient energy production and utilization. China has introduced many new regulations over the last two years, some market-based and others more centralized. In the Chinese renewable energy law, there are a number of market-based mechanisms and trade mechanisms (e.g. lower import taxes); the Clean Development Mechanism (CDM) is one important component because China generates 35% of the world's emissions reductions and CDM projects generate \$13 billion. The Chinese government taxes CERs depending on the project type – high taxes on non-preferred project types and low taxes on preferred project types. China has an implicit price floor on CER credits, as well as foreign ownership restrictions. In order to promote renewable energy, there are reduced tariffs on renewable energy components. On the supply side of the CDM projects, there is a shift away from smaller actors to more state-owned projects. On the demand side (mainly the EU), there are many large market players coming into the game who will affect the types of projects, the technology transfer, competition, and pricing. The Chinese government is putting lots of money into enabling CDM and allowing the private sector to come into the market.

There are several challenges that confront CDM actors; the public sector needs to balance domestic and foreign interests, government intervention and market mechanisms, and national priorities with international climate cooperation. On the other side of the coin, the private sector faces regulatory barriers and relatively little incentive to invest given the risks involved. The objectives of CDM are to reduce emissions, promote sustainable development, and to support technology transfer; the Chinese government is much more interested in the latter than it is in financial flows. The issue is that technology transfer is only limited to certain types of projects and is less of a priority for the private sector. Furthermore, in China, the market mechanism cannot work where the market does not work and thus, this policy cannot replace other development initiatives.

Nonetheless, trade is a key component of China's climate and energy objectives and China's use of MBMs has mobilized significant private sector resources. Selling CERs to Europe has provided an important boost to energy efficient projects and increased the internal rate of returns. While MBMs are efficient, they do not always address distributional concerns therefore necessitating a balance between carrot and stick approaches. In conclusion, China is taking the climate change issue seriously and market-based instruments are an important part of the equation. However, the challenges in making market-based mechanisms work in China are twice as complicated by the nascent character of the Chinese market and the need for a strong and coherent approach at the global level. Without targeted attention to these two barriers first, Chinese mechanisms are unlikely to be effective.

## 2. Questions and comments by the audience

The following questions were raised by the audience:

- Why do you say that China is open to trade liberalization of environmental goods? This is not the position that has been reflected in the Doha Round.
- I recently read that China was selling off a lot of its state-owned enterprises, including those in the telecoms sector – how will this play out on CDM in years to come?
- How can we address the link between trade rules and environmental negotiations? If there is no agreement that

environment and trade have equal value (i.e. no hierarchy between them), how will we agree on the guidelines?

- Economic rationale for individual country emissions legislation: is it cheaper for the country who implemented the measure to oversee its own emissions, as well as those of its trading partners?
- On Article 30.11, the best outcome is no outcome at all because it is hard to imagine an outcome that doesn't provide a disincentive for countries to join Multilateral Environmental Agreements (MEAs), which are legitimate environmental regimes.
- I would like to hear more about the best practices approach and carrot and stick.
- In terms of the best practices approach, to what extent are we formulating new rules?
- Would it be wise for the WTO to set a rule implementing an emissions cap on exporting products?

## 3. Conclusions and ways forward

We need to figure out what kind of system we want to construct (there is a sequencing issue here). Solutions are not as simple as previously thought. The best outcome for the WTO is a clean framework with a multilateral approach.





## Trade Liberalization and Poverty: Policy Challenges from Latin America



### **Moderator**

Mr Enrique Mendizabal – Research Officer, Overseas Development Institute (ODI), United Kingdom

### **Speakers**

Mr Waldo Mendoza – Chief, Department of Economics, Pontificia Universidad Católica del Perú

Mrs Juliana Peixoto – Investigadora, Facultad Latinoamericana de Ciencias Sociales (FLACSO)

Mr Alan Fairlie – Coordinator, Latin American Trade Network (LATN), Peru

Ms Sheila Page – Senior Researcher, ODI

### **Organized by**

Consortio de Investigación Económica y Social (CIES), Peru, Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC), Argentina and ODI

### **Report written by**

CIES, CIPPEC and ODI

Thursday 25 September 2008 – 16.30-18.30



## Abstract

*Latin America has significant, persistent poverty and high inequality. Trade flows offer the opportunity to reduce poverty, through job opportunities, reduced cost of consumption, and by accelerating growth. However, empirical studies do not show a clear relationship between trade and poverty reduction – and the reduction of inequality, in particular. We also know that the effects of trade policies (positive or negative) are not felt equally by all –and that the most vulnerable tend to be the ones who pay for the costs of adjustments. Making trade pro-poor is a key policy challenge for Latin America and for the international trade system. Experts increasingly recognise that for the poor to benefit from trade liberalisation, social and economic policies linked to trade are needed to help the poor take advantage of new opportunities, and to protect and help the most vulnerable and socially excluded sectors.*

*This session discussed major policy challenges relevant to creating positive effects of trade liberalization on development. The panellists shared views on the roles that trade agreements and complementary policies play in enabling Latin American countries to benefit from trade liberalization. The session found that it is not just liberalization but export expansion that contributes to growth. The poor in Latin America live primarily in rural and lagging areas, and they are particularly vulnerable to the adjustments inherit to any trade agreement. To benefit from trade, the poor need significant public and private complementary policies to combat exclusion.*

*Given that a large number of trade agreements have now been signed, it is important to shift the terms of the debate from supporting or opposing trade reforms, to thinking about the types of policy instruments that will maximise the pro-poor potential of trade liberalisation.*

*This programme goes beyond research. Central to our approach is improving understanding of the relationship between research-informed evidence, policy making processes and practice, and sharing this new knowledge. Accordingly, the Trade and Poverty in Latin America programme (COPLA) aims to promote policy dialogue among multiple stakeholders -- national ministries (economic and social), legislators, civil society, the private sector, the media and regional and international agencies.*

## 1. Presentations by the panellists

**(a) Waldo Mendoza, Chief, Department of Economics, Pontifical University of Peru and Former Vice-Minister of Treasury, CIES, Peru**

### International Trade, Poverty and Income Distribution: Perspectives from Latin America

In general terms, it is possible to argue that trade benefits economic growth. Equally, growth can contribute to the reduction of poverty. However, this only happens when liberalization is accompanied by an increase in exports. The relationship between

trade and income distribution, and the consequent reduction of inequality, has not been studied enough.

In Peru, most poor people are directly or indirectly dependent on agricultural activities for survival. Therefore, in order to evaluate the effects of trade policy on poverty, it is necessary to know the effects on the agricultural sector of any given trade policy, whether it is unilateral liberalization or a free trade agreement. So far, evidence demonstrates that lower tariffs are more likely to affect rural producers of non-tradable agricultural goods.

One of the biggest issues concerning trade liberalization is unequal distribution, as producers of tradable goods may very well benefit from it -depending on a series of variables concerning competitiveness- while the producers of non-tradable goods might still be left behind even if they are not participating in trade, leaving a scenario for stark comparisons that have proven to be potentially conflictive in Latin American countries.

In this context, economic policy options available for policymakers include:

- Trade liberalization (e.g. free trade agreements) that can reduce poverty. These may, though, aggravate income distribution;
- Policies directed towards fighting poverty;
- Policies directed towards reducing the inequality gap.

**(b) Juliana Peixoto, Research Fellow, Latin American Social Sciences Faculty (FLACSO, Argentina) and Coordinator of the Latin American Trade Network (LATN)**

### Trade and Poverty in Latin America: The Perspective of a Policy-Oriented Research Network”

The deepening of trade liberalization has been accompanied by very different tendencies in the rates of poverty and inequality, but these depend on several factors such as labour and capital markets, human capital, infrastructure, financing and access to information. One thing is true: changes in trade policy always generate losers among the existing poor or among those who fall into poverty as a consequence of trade losses. The current trade agenda shows a shift towards more critical positions regarding globalization and trade liberalization, generating more inclusive styles of trade policy making. The trade policy agenda, traditionally regarded as an area of expertise, is now an arena of heated debate. It includes new actors among civil society organizations have shown that they can frame debates, influence negotiating agendas and engage in all stages of policy making process.

Public investment in social welfare aid has been increased, implying at least the implicit recognition that more open economies might require special policies to deal with distributional



consequences. The research agenda for trade policy making should include focus on the following:

- the implications of both protectionism and trade liberalization on poverty and inequality;
- the impacts of compensatory policies, designed to mitigate costs of trade policy;
- the effects of complementary policies, needed to extrapolate the benefits of trade; and
- impact of openness on specific sectors, such as small industries, women's groups, indigenous communities and small agriculture producers.

With regard to the process behind policy making, it is fundamental to promote civil society participation in trade policy debates. Increased interaction between civil society and governmental agencies, and focus given to best-practices drawn from experience in this area, can stimulate the participation of local authorities in central debates and promote policy influence in all levels of the public policy process.

The current context shows an opportunity for trade policy oriented research networks to broaden the policy making process and influence policy change, as well as to catalyze a process of reflection on trade and distributional effects in order to favour a positive relation amongst them in terms of greater equity and inclusion. For trade policy oriented research networks such as LATN, it is important to achieve a balance between knowledge production and policy influence.

**(c) Alan Fairlie, Principal Professor, Department of Economics, Pontifical Catholic University of Peru and Coordinator of the Andean Node, Latin American Trade Network (LATN)**

#### **Asymmetries and Poverty: Challenges for North-South Agreements**

The relationship between liberalisation and pro-poor growth is not clear. Investment, which is often said to be a key factor to promote employment and growth does not essentially depend on Trade Agreements. New North-South agreements in the framework of the "New regionalism" often imply net gains but the effects on developing countries tends to be differentiated across sectors, sub-regions and groups. These differences reflect asymmetries in development. To effectively address poverty through these agreements it is important to deal with these asymmetries (such as subsidies in the north and higher levels of competitiveness).

This can be done with:

- reductions of the existent asymmetries so developing countries can obtain benefits from trade liberalization;

- use and development of special and differential treatment as an instrument;

- use of South –South Agreements as a way of balancing or compensating the costs of North –South ones.

The opportunity of signing trade agreements with the EU is also important. The EU offers advantages over the trade agreement with the US that could help, such as: cooperation and political dialogue in addition to commercial partnership; willingness to address asymmetries and special and differential treatment; and an explicit link with regional integration providing a driver for convergence and reducing conflict. The implementation agenda is still weekly addressed and faces internal restrictions and the reduction of policy space as a direct consequence of North-South trade agreements.

**(d) Sheila Page, Senior Research Associate, Overseas Development Institute**

#### **What should happen after a trade agreement?**

Complementary measures to help with adjustment to a trade agreement are not only good for development and for poverty reduction: they are necessary. Additionally, they address the unintended and perverse effects of the interactions among different trade agreements, in particular as the system becomes increasingly complex. Complementary policy measures respond to capacity shortfalls among public institutions and private entrepreneurs who may not have the capacity to respond to new market opportunities arising from liberalisation.

There are relatively costless policy options, such as provision of information to traders and potential traders so that they know about an agreement, facilitation of information sharing between markets and suppliers, and continuous policy review. Responding to new patterns of trade that arise from the agreement is essential: a good agreement must be flexible.

Relatively more expensive policies include removing non-tariff barriers and complex trading rules which might prevent smaller businesses from participating. Other changes require more resources, such as the provision of adequate financing for the production and marketing of more dynamic products or of larger quantities, developing infrastructure required to access value chains and markets, and serious long term investment in human capital development to increase the productivity of labour and create opportunities for global engagement.

The degree to which developing countries gain or lose from trade agreements, as well as how these gains are distributed, depends directly on a range of policies with regard to regulatory structures, infrastructure provision, and financial markets. Less directly, these variables depend on complementary policies to do with aspects other than trade, such as education and social safety nets. As the complex nature of existing trade arrangements means that the potential



benefits of an agreement may be small or may be in very specific areas, the adequacy or inadequacy of these complementary policy measures may determine not only the size but even the direction of the effect trade liberalisation has on development.

## 2. Questions and comments by the audience

The brief discussion session after the panel focused on questions related to the limited attention placed on South-South agreements and the role of civil society in trade policy process. A question was raised regarding the value added by civil society involvement in consultations or other participatory processes –given the highly technical nature of the policy space.

On the complementary policies issues it was highlighted that the provision of information about the new markets and the

processes of the trade agreements to producers or sellers were necessary and relatively inexpensive strategies to follow. Also important is clarity and stability that may allow actors to invest in market access as well as in the necessary institutional and physical infrastructure for trade.

## 3. Conclusions and way forward

The objectives of the session were met and the panel discussions and preparation process has helped to develop new partnerships between its members.

In terms of key conclusions reached, it is clear that there is a need to combine further work on the complementary agenda with ongoing monitoring and support of current and future free trade negotiation agreement processes. Lessons-learned from the implementation phase should inform future agreements.



## Research and Construction of Capacity in Trade Negotiations



### Speakers

Ms Diana Tussie – The G-20, Latin American Trade Network (LATN)

Mr Paul Mably – The G33, International Centre for Trade and Sustainable Development (ICTSD)

Ms Susan Joeke – International Development Research Centre (IDRC)

### Discussant

Mr Christophe Bellman – ICTSD

### Organized by

LATN and IDRC

### Report written by

Mr Adriano José Timossi, Consultant and Ms Juliana Peixoto – LATN-FLACSO

Thursday 25 September 2008 – 16.30-18.30

## Abstract

*The session examined how capacity building and research has had an impact on negotiations. It looked at how these two activities influence the formation of trade coalitions, in particular the G-20 and the G-33. How do the G-20 and the G-33 use research to deal with both extra- and intra-coalition negotiations? How do coalitions make use of research to influence agenda-setting? How can research be used internally (explicitly or not) to facilitate consensus-building within a coalition? A second part of the panel analyzed the other side of the equation by asking how policy-making influences the production of research.*

## 1. Presentations by the panellists

### (a) Diana Tussie, Latin American Trade Network (LATN)

#### The G-20

Academics are trained to think on *a priori* lines, speaking truth to power. The approach of policymakers is more fundamentally empirical, handling each problem according to merit. Despite these stark contrasts, negotiations show very intense chains of transmission from policy to research in preparation for trade battles. There are two particular developments that mark the participation of developing countries in the WTO in recent years. First, the quality of proposals has improved significantly. Secondly, much of the bargaining and construction of proposals is done through coalitions. Coalitions have become a feature of the new landscape. Both G-20 and G-33 have strengthened and increased their influence since their establishment in 2003. There are many reasons why the impact of both groupings has grown. One of these reasons is that more realistic bargaining positions and negotiating effectiveness are backed up by more convincing, detailed research.

The coalition did not begin with collective research capacity to back the proposals. Instead, particular members, namely India, Brazil, and Argentina, took the lead on specific issues, which were then incorporated as part of the G-20 agenda.

Research has been used to inform the submission of proposals, such as a tiered formula on market access, limits to a SSM, and product-specific caps. Internally, such research has facilitated consensus, provided cohesion to the coalition, discouraged defection and allowed the domestic legitimization of negotiations where export interests were at stake. Paradoxically, research projects have also been discarded when findings were considered inconvenient to the deployment of a particular political strategy (such as research on the costs of the SSM for some member countries).

It has been found that research did not contribute to first mover initiatives or grand agenda setting visions. Research served to provide an elaborate critique of Northern proposals in order to suggest alternative approaches. Because the proposals introduced by the G-20 arose as a response to the proposals of the EU and the U.S., research that contributed to the substance

of the negotiations was anchored in policy from the outset and subject to political constraints: once governments committed to the alliance, research was commissioned on a step by step basis following the needs and opportunities of the agenda. Governments remained at the helm and research was produced on demand. It was rarely arm's length.

However, even within this framework, research plays an important role in the shape of the proposals that were put forward, first by individual governments and subsequently by the coalition. Research might not matter much in the initial agenda-setting phase, but the nitty-gritty of negotiations would be impossible without it. The G-20 has managed to produce a series of small operational papers that may appear to routinely follow precedent, but they tap into a variety of in-country sources and are used politically at strategic points of the negotiations.

### (b) Paul Mably, International Centre for Trade and Sustainable Development (ICTSD)

#### The G-33

Paul Mably's presentation looked at 2 distinct policy change moments or episodes:

1. The building of a consensus among G-33 member countries on the meaning of, and their positions on Special Products (SPs) and the Special Safeguard Mechanism (SSM) in the negotiations on market access under the Agreement on Agriculture.
2. The generation of consensus at the WTO to put SPs and the SSM on the WTO negotiation agenda.

The G-33 has not built the infrastructure to do its own research as a coalition. It relies on research produced both by key member countries and by outside entities. The main sources of research are India, Philippines, Indonesia, China, Jamaica and Turkey. Outside sources of research include the FAO, the South Centre and a handful of NGOs. Principal among these NGOs has been the ICTSD.

In reference to the knowledge building process used by ICTSD and G-33 representatives, it is important to note that several G-33 countries started working with ICTSD in the summer of 2004 during of the time the July Framework. In September 2004 consultations between ICTSD and G-33 negotiators resulted in the decision to realize multi-stakeholders consultations at country level which should include a broader national strategy for agricultural development and poverty alleviation. Indicators would be developed in order to identify the intended beneficiaries of SPs and SSM flexibilities and the potential impacts of further liberalization of selected products.

G-33 negotiators designed six countries where the conceptual framework could be field tested. Local researchers were selected following suggestions by G-33 officials. National government and local researchers worked with ICTSD in order to apply the research methodology developed. There has been a





dialogue with all stakeholders involved. The outcome was that potential special products that members of the G-33 might put forward were identified.

The methodology put officials and national researchers in closer contact, and also helped capacity building for research. The gathering of officials, researchers and civil society also contributed to improving the quality of research skills and their conceptual and data analysis abilities in the area of trade policy. The new capacities resulted, for example, to one of the local researchers joining his national delegation as a negotiator.

Research has helped the coalition make broad development concepts accessible and practical for trade negotiators to use. The country studies showed that ICTSD played a key role in filling the gap in research capacity that existed among the G-33 countries and at the level of coalition. This wealth of documentation contributed to higher credibility of policy makers.

### **(c) Susan Joeques, International Development Research Centre (IDRC)**

#### **Policy Influence in Trade Research**

IDRC supports research on the assumption is that research activity is a public good. Most of the projects supported by IDRC result from direct exchanges between the Centre and developing-country institutions. IDRC's support for regional networks is an example.

There are many modalities of research used in the process of making trade policy. In the case of trade negotiations, research can be used to promote interaction with domestic demands. Ms Joeques sees trade researchers as "service providers", and as such, argues that research as public good should be transparent and independent. On the issue of demand-driven trade research, Ms Joeques mentioned that "data" research needs, specifically in negotiations, are met by "cloistered" experts: in-house units, policy researchers, and consultants contractually bound to confidentiality.

Traditionally, the value of research for public policy increases as academic citations decrease, even when the foundations of the research lie in consultation and socially validated knowledge. Ms Joeques raised the point that the use of "blue sky" critical thinking can also be instrumental when a strategic policy shift has to be acceptable to international market sentiments. Given the lack of certification standards for economic research outputs, outputs from those researchers working from blue sky thinking are given credit for their attachment to a certain "cause".

There is a need to break down secrecy and confidentiality in trade research. This would be a positive change, allowing collaborative approaches and a reduction of replication. The speaker concluded by reaffirming that there is a need to ensure that research outputs are placed in the public domain.

Independent research can make important contributions to broadening horizons and eliminating blind spots.

### **(d) Christophe Bellmann, Discussant, International Centre for Trade and Sustainable Development (ICTSD)**

The starting point of ICTSD research was not to promote a single interest but rather to bring an issue into the discussion. There was a concern on how to integrate concerns and how to reach consensus in negotiations. Research was not commissioned by convergence of interest and was not an academic exercise. Rather, intensive discussions were held on how to make the research undertaken attractive for trade negotiators and to help them do their homework to support research as argument, and as "independent assessment".

The coalition was a useful instrument for members not only to gain bargaining power but also to preclude sanctions. The ICTSD methodology aimed to bring negotiators in touch with reality. ICTSD played a role of facilitator or "Devil's Advocate". The methodology developed by ICTSD has been replicated by ECOWAS- Economic Community of West African States for the EPA negotiations.

## **2. Questions and comments by the audience**

Adriana Verdier, ICTSD- Business research through in-house think tanks has played a key role in the development of G-20 positions supporting Brazilian leadership of the group. Did knowledge production support leadership even if the research in this case was not collective and rather represented the interests of one specific sector? Ms Tussie pointed out that power is important and it cannot be neglected. Research has made a difference in the formation of G-20. The Brazilian think-tank Icone has played a key role, along with other institutions in Argentina and India. Consultants from the Ministry of Agriculture and Ministry of Foreign Affairs also made important contributions to the in-country process.

Adriano J. Timossi, Independent Consultant, Development Cooperation - There is currently a changing situation in policy making processes in which NGOs have more power and influence than traditional academic research does. In this context, Mr Timossi asked how research can be made more influential. According to Ms Tussie, think tanks produce specialized papers while NGOs have media power. Academics suffer from the so-called "publish or perish" syndrome. Academics need to take up the role of public intellectuals, showing blind spots and broadening the horizons of public policies. Ms Joeques complemented by saying that with very few exceptions NGOs do not produce effective knowledge as such, but instead play a useful role as intermediary. Papers are produced for dissemination and have a particular influence. The media has played an important role in making NGO research resonate.



### 3. Conclusions and way forward

The G-20 and the G-33 show that lobby power together with persuasive research drives results, in both the national and international arena. Research still remains an important asset for these two blocks. National capacity in research also benefits from the demands generated by each group by becoming more specialized, more connected and by breaking barriers as exemplified by the regional and inter-regional approximation of research centers and think tanks.

Trade research is becoming less independent, increasingly moved by business interests. The appearance of this new “brand research” is changing traditional patterns of research use in policy making processes. There is a risk that as research becomes more dependent, it may benefit only some groupings of powerful lobbies. Thus, government negotiators have a key role to play in limiting their influence while benefiting from research on specific issues. There is a need for balance in research sources in the process of trade negotiation that aims at extended social benefit.

It is important to rescue the academic as a “public intellectual”, with a role in opening debate. This should be preserved but also strengthened, particularly in regional and inter-regional research networks in developing countries, in order to broaden the policy processes.

Regarding the role of research, there is a need for more transparent formats. Academic research risks losing influence in face of the appearance of new types of more accessible knowledge with direct bearing on the policy making process. Traditional research, while maintaining a “wealth of knowledge”, has to improve develop a better understanding of the policy process.





## Abbreviations

<b>AB</b>	Appellate Body
<b>ACP</b>	African, Caribbean and Pacific Group
<b>AD</b>	Anti-Dumping
<b>AEB</b>	Anti-Export Bias
<b>AfT</b>	Aid for Trade
<b>AG</b>	Attorney General
<b>AGOA</b>	African Growth and Opportunity Act
<b>AITIC</b>	Agency for International Trade Information and Cooperation
<b>ALBA</b>	Bolivarian Alternative for the People of Our Americas
<b>ARIMA</b>	Autoregressive Integrated Moving Average
<b>ART</b>	Antiretroviral
<b>ASCM</b>	Agreement on Subsidies and Countervailing Measures
<b>ATC</b>	Agreement on Textiles & Clothing
<b>BIS</b>	Bank for International Settlements
<b>BoP</b>	Balance of Payments
<b>CAFTA</b>	Canadian Agri-Food Trade Alliance
<b>CAN</b>	Comunidad Andina
<b>CAP</b>	Common Agricultural Policy
<b>CBD</b>	Convention on Biological Diversity
<b>CBI</b>	Caribbean Basin Initiative
<b>CCMTS</b>	Climate-Change Mitigation Technologies
<b>CDM</b>	Clean Development Mechanism
<b>CEEV</b>	Comité Européen des Entreprises de Vin
<b>CENIT</b>	Research Centre for Economic Change
<b>CGIAR</b>	Consultative Group on International Agricultural Research
<b>CIEL</b>	Center for International Environmental Law
<b>CIES</b>	Consortio de Investigación Económica y Social
<b>CIPPEC</b>	Centro de implementación de políticas públicas para la equidad y el crecimiento
<b>CIS</b>	Central Asia and Caucasus
<b>COCERAL</b>	Comité du Commerce des céréales, aliments du bétail, oléagineux, huile d'olive, huiles et graisses et agrofournitures
<b>COP15</b>	Climate Change Convention in Copenhagen in 2009
<b>CTE SS</b>	Committee on Trade and Environment, Special Session
<b>CTEI</b>	Centre for Trade and Economic Integration
<b>CU</b>	Customs Union
<b>CUTS</b>	Consumer Unity & Trust Society
<b>CVDs</b>	Countervailing Duties
<b>DDA</b>	Doha Development Agenda
<b>DFQF</b>	Duty-Free Quota-Free
<b>DSB</b>	Dispute Settlement Body
<b>DSM</b>	Dispute Settlement Mechanism
<b>DSS</b>	Dispute Settlement System
<b>DSU</b>	Dispute Settlement Understanding
<b>EBA</b>	Everything But Arms
<b>ECIPE</b>	European Centre for International Political Economy
<b>ECOWAS</b>	Economic Community of West African States
<b>EGS</b>	Environmental Goods and Services
<b>EIF</b>	Enhanced Integrated Framework



<b>EP</b>	European Parliament
<b>ERD</b>	External Relations Division
<b>ESF</b>	European Services Forum
<b>ETS</b>	Emission trading scheme
<b>EU</b>	European Union
<b>FAO</b>	United Nations Food and Agriculture Organization
<b>FDI</b>	Foreign Direct Investment
<b>FES</b>	Friedrich Ebert Stiftung
<b>FIATA</b>	Federation Internationale des Associations de Transitaires et Assimilés
<b>FLASCO</b>	Fellow Latin America Social Sciences Faculty
<b>FoEE</b>	Friends of the Earth Europe
<b>FSC</b>	Forest Stewardship Council
<b>FTA</b>	Free Trade Area
<b>FTAA</b>	Free Trade Area of the Americas
<b>G-20</b>	Since 21 November 2006, 23 members: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe
<b>G-33</b>	Since 27 November 2006 understood to comprise 46 countries: Antigua and Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, China, Congo, Côte d'Ivoire, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Rep. Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe
<b>G-4</b>	EU, US, India and Brazil
<b>G-7</b>	EU, US, India, Brazil, Japan, China, Australia
<b>G-8</b>	Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States of America. The European Union is always represented by the President of the European Commission
<b>GATS</b>	General Agreement on Trade in Services
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GBD</b>	Global Business Dialogue
<b>GDAE</b>	Global Development and Environment Institute
<b>GDP</b>	Gross Domestic Product
<b>GEA</b>	Global Express Association
<b>GEG</b>	Global Economic Governance
<b>GFMD</b>	Global Forum on Migration and Development
<b>GFMS</b>	Gold Fields Mineral Services
<b>GHG</b>	Greenhouse Gases
<b>GIs</b>	Geographical Indications
<b>GMG</b>	Global Migration Group
<b>GSI</b>	Global Subsidies Initiative
<b>GSP</b>	Generalised System of Preferences
<b>HACCP</b>	Hazard Analysis and Critical Control Points
<b>HEID</b>	Graduate Institute of International and Development Studies
<b>HLD</b>	High Level Dialogue
<b>HSI</b>	Humane Society International
<b>IATP</b>	Institute for Agriculture and Trade Policy
<b>IBRD</b>	International Bank for Reconstruction and Development
<b>ICC</b>	International Chamber of Commerce
<b>ICS</b>	International Chamber of Shipping





ICT	Information and Communication Technologies
ICTSD	International Centre for Trade and Sustainable Development
IDRC	International Development Research Centre
IFAP	International Federation of Agricultural Producers
IFC	International Finance Corporation
IGTN	International Gender and Trade Network
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
IOM	International Organization for Migration
IP	Intellectual Property
IPCC	Intergovernmental Panel on Climate Change
IPRs	Intellectual Property Rights
IRENE	Institut de recherches économiques
IRIS	International Research Institute of Stavanger
IRU	International Road Transport Union
ISFP	Initiative on Soaring Food Prices
ITC	International Trade Centre
ITCB	International Textiles & Clothing Bureau
ITUC	International Trade Union Confederation
JITAP	Joint Integrated Technical Assistance Programme
LATN	Latin American Trade Network
LDCs	Least-developed Countries
LLP	Limited Liability Partnership
MAPA	Ministry of Agriculture, Livestock and Food Supply
MBMs	Market-Based Mechanisms
MDG	Millenium Development Goals
MEAs	Multilateral Environmental Agreements
MERCOSUR	Southern Common Market
MFN	Most Favoured Nation
MNE	Multinational Enterprise
MPEDA	Marine Products Export Development Authority
MSF	Médecins Sans Frontières
MTS	Multilateral Trading System
NAFTA	North American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NAPA	National Adaptation Programmes of Action
NCCR	National Centre of Competence in Research
NCTO	National Council of Textile Organization
NGO	Non-Governmental Organization
NTBs	Non-Tariff Barriers
NTMs	Non-Tariff Measures
ODA	Official Development Assistance
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights



<b>OIE</b>	World Organization for Animal Health
<b>PPMs</b>	Process and Production Methods
<b>PS</b>	Private Standards
<b>PSE</b>	Product Support Estimates
<b>PTAs</b>	Preferential Trade Agreements
<b>PV</b>	Photovoltaic
<b>QMS</b>	Quality Management System
<b>QR</b>	Quantitative Restriction
<b>R&amp;D</b>	Research and Development
<b>RIISPOA</b>	Regulamento de Inspeção Industrial e Sanitária de Produtos de Origem Animal
<b>RIS</b>	Research and Information System for Developing Countries
<b>RMG</b>	Readymade Garment
<b>RSPCA</b>	Royal Society for the Prevention of Cruelty to Animals
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>RTA</b>	Regional Trade Agreement
<b>RTRS</b>	Round Table on Responsible Soy
<b>S&amp;DT</b>	Special and Differential Treatment
<b>SADC</b>	South African Development Community
<b>SMART</b>	Sustainable Markets and Responsible Trade Program
<b>SME</b>	Small and Medium Size Enterprise
<b>SP</b>	Special Products
<b>SPS</b>	Sanitary and Phytosanitary Measures
<b>SSM</b>	Special Safeguard Mechanism
<b>TBT</b>	Technical Barriers to Trade
<b>TCP</b>	Tratado de Comercio de los Pueblos/ Treaty of Commerce for the People
<b>TDP</b>	Trade Development and Poverty
<b>TPRM</b>	Trade Policy Review Mechanism
<b>TRIPS</b>	Trade-Related Aspects of Intellectual Property Rights
<b>TRTA</b>	Trade Related Technical Assistance
<b>TUCP</b>	Trade Union Congress of the Philippines
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference for Trade and Development
<b>UNDP</b>	United Nations Development Programme
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UNIDO</b>	United Nations Industrial Development Organization
<b>USA</b>	United States of America
<b>USTR</b>	US Trade Representative
<b>WB</b>	World Bank
<b>WCO</b>	World Customs Organisation
<b>WIPO</b>	World Intellectual Property Organization
<b>WSPA</b>	World Society for the Protection of Animals



## WTO Public Forum 2008

This year's edition of the WTO Public Forum offers an overview of the debates at the 2008 Forum, whose title was "Trading into the Future". The Forum provided a unique opportunity for governments, representatives of non-governmental organizations, parliamentarians, academics, members of the business community, journalists, lawyers and students to discuss how the trading system may best reflect the future needs and aspirations of the international community. The sessions held during the Forum triggered a frank and open debate on the multilateral trading system's six decades as well as on the challenges and opportunities facing the WTO and all those involved in international trade. The Forum also sought to identify practical and effective ways forward for the multilateral trading system. A chapter is devoted to each of the sessions held during the two-day programme.



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