



WORLD TRADE  
ORGANIZATION

# WTO Public Forum 2012

Is multilateralism in crisis?



## About the Public Forum

The WTO Public Forum is an annual event that provides non-governmental organizations, academics, businesses, students and others with the opportunity to discuss the latest issues regarding the multilateral trading system. Around 1,400 people registered for the 2012 Forum, whose theme was “Is Multilateralism in Crisis?”.

## About this publication

This publication brings together summaries of the sessions and workshops held during the event. The summaries were prepared by the organizers of each session.

## Find out more

[www.wto.org/publicforum](http://www.wto.org/publicforum)

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## Foreword by the Director-General

The lead-up to this year's Public Forum, like last year, was marked by sluggish economic growth, high unemployment and a slowdown in world trade. This has been accompanied by political turbulence, rising food prices, the ongoing threat of climate change and calls to resist protectionism.

In recognition of the need to enhance cooperation across all areas of global governance, this year's Forum posed the question: "Is multilateralism in crisis?".

The three-day event provided an opportunity for civil society and the public at large to debate the challenges faced by the multilateral community and to contribute ideas on how to move forward. Debates were structured around three sub-themes: formulating new approaches to multilateral trade opening; addressing 21st-century issues and identifying areas in need of new regulations, or which offer scope for future rule-making; and looking at the role of non-state actors in strengthening the multilateral trading system.

We were honoured to act as host to such a rich variety of debates and to welcome participants from all walks of life. It was particularly gratifying this year to share the stage with the former President of Switzerland, Ms Micheline Calmy-Rey, for the official opening of the Public Forum and to see so many young people attending the event and offering their perspectives on the future.

One of the innovations this year was the introduction of a Youth Ambassador Panel, bringing together the winners of the recent video and essay contests for the Youth Ambassador Programme and asking them to debate with other students how to address the global challenges of tomorrow.

Other innovations this year included the "Ideas Workshops", which aimed to bring participants together in a relaxed environment to propose solutions to specific challenges. We also launched a Social Media Corner to give participants the opportunity to express their views in short 1-2 minute videos, which were subsequently posted on social network sites. And we had pleasure in unveiling the Cartoons Exhibition, which offered a humorous insight into how the WTO has been perceived over the years.

In addition, the WTO Panel on Defining the Future of Trade, which I convened in April 2012 to undertake an assessment of the challenges to the multilateral trading system in the twenty-first century, took part in a public debate and listened to the views of WTO delegations in a specially organized session on the side-lines of the Public Forum. On both occasions, constructive discussion took place and lots of ideas were put on the table. The panel will feed this input into their future deliberations.

Over 1,300 participants from various backgrounds and organizations registered for this year's Forum, providing diverse contributions to a total of 44 sessions. This publication provides a summary of the views expressed over the three-day event. We hope that it will play its part in injecting new perspectives into how to tackle the changing face of multilateralism and the challenges that lie ahead.



Pascal Lamy

## Acknowledgements

The *WTO Public Forum 2012* was prepared by the Information and External Relations Division (IERD). María Pérez-Esteve, Counsellor in the IERD, led the project. This publication would not have been possible without the support and contributions of all those who organized sessions during the 2012 Public Forum. The IERD is very grateful for their assistance and thanks all the organizers for their reports, which form the basis of this publication.

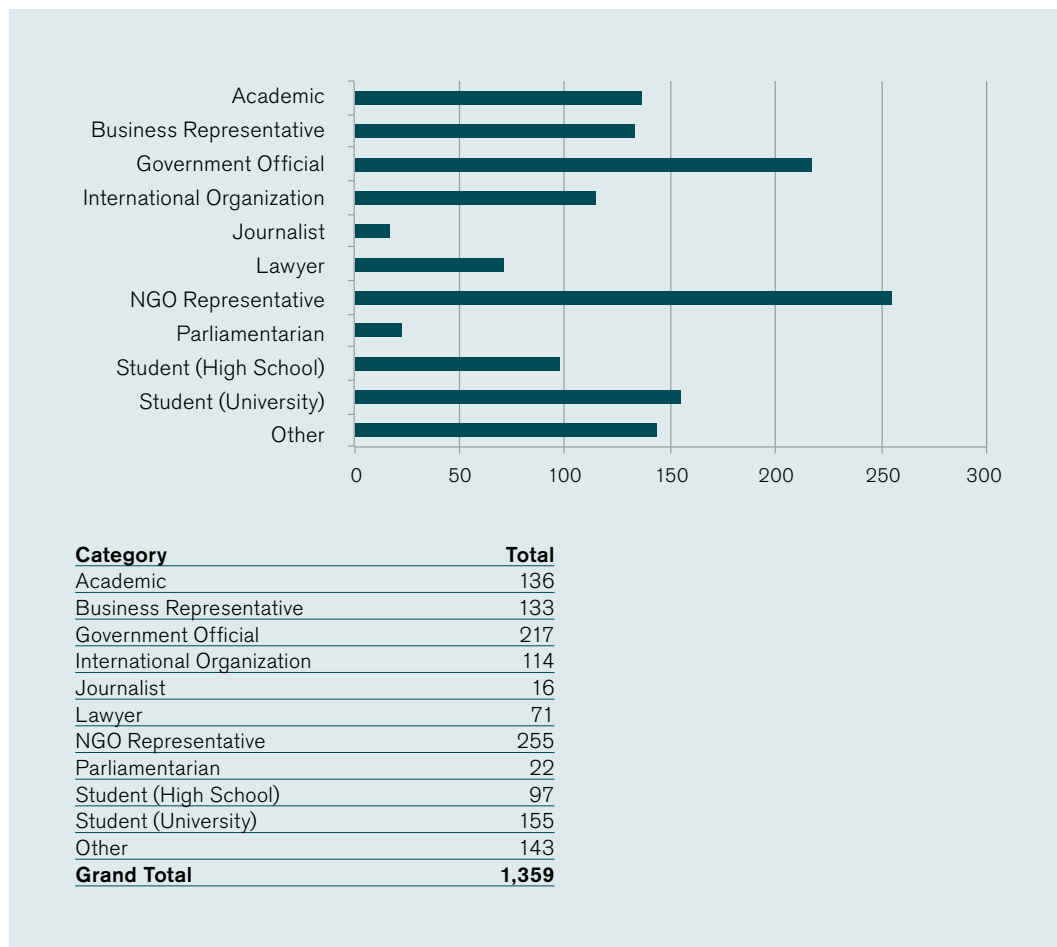
The IERD also acknowledges the cooperation of staff in the Accessions Division, the Agriculture and Commodities Division, the Appellate Body Secretariat, the Office of the Director-General, the Economic Research and Statistics Division, the Intellectual Property Division, the Legal Affairs Division, the Rules Division, the Trade and Environment Division, the Trade Policies Review Division and the Trade in Services Division for submitting reports on the various Public Forum sessions and contributing to the success of this year's forum. The IERD is also indebted to the volunteers in the WTO Secretariat, who worked tirelessly throughout the event.

Anthony Martin and Ross McRae of the IERD coordinated the production of the publication. Ross McRae undertook the editing. Special gratitude is due to Matthew Hamilton and Daria Shatskova for their contributions in drafting submissions for the publication, as well as to the translators in the Languages, Documentation and Information Management Division for their hard work.



## Overview of registered participants

### Public Forum 2012 Statistics of registered participants by category



## Introduction

### WTO Public Forum 2012: Is multilateralism in crisis?

On 24-26 September, the WTO hosted the 2012 Public Forum on “Is Multilateralism in Crisis?”, at its headquarters, in Geneva. It provided an opportunity for relevant stakeholders of the multilateral trading system to analyse whether multilateralism is indeed in a state of crisis, taking into account both the Doha Round deadlock and WTO activities that continue to work well, such as trade monitoring, administering existing WTO rules and trade capacity-building for developing countries. The new world order in which the WTO operates was also among the topics for discussion.

At a time when the multilateral trading system is being put to the test due to the economic slow-down, the impasse in the Doha Round and the increasing use of protectionist measures, the 2012 Public Forum looked at novel ways to update the WTO rulebook and to address the current obstacles facing the international trading system. It also took a closer look at the factors shaping 21st-century, with a view to identifying solutions to the challenges that lie ahead.

This publication provides a summary of the various sessions held during the 2012 Public Forum. Each summary was prepared by the organizers of the session. The structure of the publication reflects the three sub-themes of this year’s event:

- formulating new approaches to multilateral trade opening in areas where headway can be made, such as trade facilitation
- addressing 21st-century issues and identifying areas in need of new regulations or which offer scope for future rule-making
- examining the role of non-state actors in strengthening the multilateral trading system.

**Sessions under sub-theme 1** included services and trade facilitation (i.e. easing the transfer of goods across borders). Other issues discussed included government procurement practices, the expansion of the WTO Information Technology Agreement (ITA), and WTO accession, and special and differential treatment for least-developed countries. In addition, participants discussed the issue of compatibility between the WTO and preferential trade agreements (PTAs). Participants also examined how institutional decision-making at the WTO may need to be addressed to encourage a more progressive and responsive WTO agenda, which could contribute to greater efficiency in multilateral negotiations on trade rules.

**Sessions under sub-theme 2** examined how the WTO should adapt to deal with 21st-century challenges, including food security, trade in natural resources and their impact on the environment, the link between trade and jobs, as well as the phenomenon of global supply chains. Participants discussed how the political, economic and social aspects of the world we live in today are very different to those that existed a decade ago. Participants also looked into the widening gap between existing trade rules and current realities, examining how the WTO should adapt to deal with these new challenges.

Other topics discussed included the proliferation of PTAs, the new world order in which the WTO operates, in particular as a result of the WTO accession of powerful new players such as China and the Russian Federation, new technological developments, the increasing role of non-state actors, evolving public attitudes towards the WTO, current reflections on social and environmental considerations, and the future of both multilateral and sectoral trade negotiations.





**Sessions under sub-theme 3** looked at the role of non-state actors in strengthening the multilateral trading system. Discussions focused on the role of non-state actors, such as civil society organizations, in strengthening the multilateral trading system as the WTO reflects on the way forward. In particular, discussions focused on how civil society should monitor the implementation of trade agreements. Participants discussed how in the last few years, the level of participation of non-state actors in the international trading system has increased substantially. The role of non-state actors in increasing public awareness of trade issues and WTO activities was also examined.

A Youth Ambassador Panel was held for the first time, featuring the winners of the 2012 video and essay contests for the Youth Ambassador Programme. Ms Ankita Mishra, from India, and Ms Karina Hehs, from Brazil, were part of a panel that addressed “How can trade help promote development?” – the topic tackled by their winning competition entries. Further questions addressed by the panel of students included:

- How can the WTO help tackle world problems and global governance?
- How can developing and least-developed countries benefit from the multilateral trading system?
- How does joining the WTO affect a country?

This 2012 Public Forum also saw the launch of the Social Media Corner. This new feature allowed participants to record video messages in response to the question “Is multilateralism in crisis?”. The videos are streamed on the WTO Facebook, Twitter and YouTube pages.

Three Ideas Workshops – another brand-new feature of this year’s event – provided participants with the opportunity to share their ideas on a number of key trade topics in a relaxed and interactive environment. The workshops brought together experts from diverse backgrounds to address a topical trade challenge. Complementing the panel sessions, the workshops dealt with a particular problem and focused on coming up with concrete solutions. The following topics were dealt with:

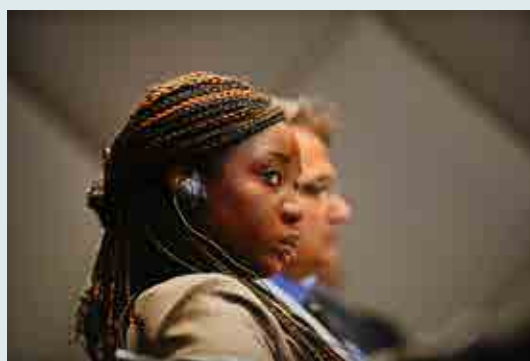
- How can we ensure that green economy policies work together rather than at cross-purposes? A closer look at policies to support renewable energy.
- The future of the WTO dispute settlement system.
- Rethinking “trade-related aspects of intellectual property” in today’s global economy.

The 2012 Public Forum allowed participants to provide valuable guidance on how the WTO can face today’s challenges and contribute to greater cooperation across all areas of global governance.



## 2012 Public Forum

Over 1,300 participants attended the 2012 Public Forum. During the three-day event, over 40 sessions were held covering a variety of topics. Useful information about the Forum and relevant WTO publications could be collected by simply touching a tag with a specially adapted USB stick.







The Social Media Corner allowed participants to record video messages of up to two minutes in response to the question "Is Multilateralism in Crisis?". The videos are available via the WTO Facebook, Twitter and YouTube pages.





# Inaugural speech by the Director-General and Opening address by Micheline Calmy-Rey, Former President of the Swiss Confederation



## Inaugural speech by the Director-General

### Is multilateralism in crisis?: The house of trade

Ladies and gentlemen,

Welcome to the WTO Public Forum of 2012.

This year, like last year, has been marked by extraordinary turbulence. Sluggish economic growth rates, high unemployment, and newly released figures on world trade that are just as worrying. In this slowdown, no one has been spared.

But the turbulence we witness this year goes beyond the economic sphere. Like last year, political turbulence is rampant across the globe, food prices are starting to rise once again, although not in the same alarming fashion, and the climate crisis is continuing to go unabated.

As this kaleidoscope of problems plays out, we are also witness to a redistribution of the geopolitical deck of cards on a global scale. With the rise of the emerging countries, new and stronger voices from the developing world are making themselves heard. The poorest countries, once silent, are today much clearer and vocal about their priorities. What they are saying loud and clear is that the rules of the multilateral system must change.

The rules of the game – whether in the trade sphere, in the economic sphere, in the environmental or food security spheres – and indeed across all areas of international policy making, are in need of adjustment. Governments are not only struggling to cope with the vast panoply of domestic problems that they are confronted with, but they must do so against a landscape in which their relative powers have also changed. They must also do so in a world in which interconnections are greater and therefore global commons require stronger multilateral cooperation. And they must compete for spaces, for which previously no one had competed, like the Arctic or cyberspace.

In this challenging era that we live in, citizens are asking for the right to a decent living. They want jobs, they want human rights and they want dignity. The question becomes, can multilateral cooperation live up to their expectation? Will the international community be able to rise to the multiple challenges with which it is confronted today?

While multilateralism is struggling in almost all spheres of global cooperation, I stand here before you with some optimism. We are after all gathered in the “house of trade”. An international house that rose out of the ashes of two World Wars and which took some 60 years to create. Across from this house, is the seat of the United Nations, the International Labour Organization, the International Environment House that groups many environmental treaties, and many other symbols of successful international cooperation. This is “la Genève Internationale” after all.

It is these organizations that teach us a very important lesson: progress in international cooperation is incremental, with some of our best episodes having been born of our worst excesses. Yes, the challenges we face today are multiple, and yes, multilateralism is struggling, but we have proven ourselves to be up to the task before, and we can be up to it again.

The WTO, in many ways, is one of the most successful examples of rules-based multilateralism at work. Its capacity to administer and enforce the global trade rules, including in the present crisis, is widely recognised as a major success in international cooperation. But our members difficulties to agree to update our rule book, also demonstrates that the WTO is not immune to the geoeconomic and geopolitical transformations of our time. The WTO is both an organization and an institution. And I dare say that, it is in a better shape as a member-driving institution, than as a member-driven organization.





This year's forum will deal with a vast array of challenges that you, yourselves, have brought to the house of trade. Over a three-day period, we will be hearing from you on issues as diverse as trade and the environment and the regional free trade agreements. You will also meet with the "WTO Panel on Defining the Future of Trade", which I have established to advise me on the profound transformations in the global economy, and the drivers of today and tomorrow's trade.

There are many innovations in this year's Forum that I urge to explore. Various "Ideas Labs" will be launched for the first time to help us generate solutions and benefit from our brainstorming with you. A Social Media Centre will interact with you and the broader world through Facebook and other social networks to allow for a reachout of a much grander scale. And a fabulous Cartoons Exhibition, is taking place in our Atrium and the Delegates Lounge throughout the Forum. In that Exhibition, no fewer than a 100 cartoons, from about 20 artists from across the globe, will tell the story of GATT and the WTO – so don't miss it. You should never miss a good laugh!

We also have with us the winners of the contest for the WTO Youth Ambassador Programme. Please join me in congratulating Ankita Mishra from India and Karina Hehs from Brazil. We count on you to be strong advocates of multilateralism!

And, now, without further ado, let me welcome one of the main architects and visionaries of the "Genève Internationale", of which I have just spoken. Micheline Calmy Rey, you have the floor.

## Opening address by Micheline Calmy-Rey, Former President of the Swiss Confederation

### Is multilateralism in crisis?

Dear Director-General Pascal Lamy,

Excellencies, ladies and gentlemen,

It is a great honour and a real pleasure to be here today at the opening of the 2012 WTO Public Forum. An important fixture on the world calendar and on the International Geneva calendar in particular.

La Geneve Internationale, as many of you know, is very dear to my heart. So you will understand how happy I am today to respond to Pascal Lamy's and the WTO's invitation to meet the very diverse stakeholders taking part in the Public Forum and who have a say on how the WTO functions and interacts with its environment.

A few years back, I had the privilege to work with the WTO on their projects for better staff working conditions. And I am glad to see that a lot has already been achieved and that the new building is entering the final stages of its construction. Creating the optimum conditions for International Geneva remains very important for Geneva and for Switzerland.

Ladies and gentlemen,

My country Switzerland, Europe and the world are at a crossroads today. So I cannot think of a better topic to our meeting today than to address whether multilateralism is in crisis. This is an interesting debate and I think many of us have their own ideas about it and on how we all can live together in a peaceful and prosperous world.

Technology, trade, globalization and social networking have made citizens of our world closer to each other more than ever before. Yet, we still need to find the best way to work and more importantly to address global problems together. What is certain today is that multilateralism is failing on many fronts and is clearly unable to deliver in these very difficult times we are witnessing across the globe.

Millions of people around the world have to put up with extreme conditions of poverty, food shortage, conflicts and wars. New diseases are spreading with unprecedented effects and many of us are contributing on a daily basis to the destruction of the subtle balance that permits our earth to be sustainable.

The financial and economic crisis is another big challenge to multilateralism. This crisis is keeping extreme pressure on international organizations, on governments, on legislators, on business, on non-governmental organizations and on populations around the world. Since 2008, this crisis has been a real eye-opener to the world about the much-needed global financial regulation, which is starting to be shaped, through the Basel Accords for example. But other areas of global cooperation are also suffering from less multilateralism rather than more multilateralism. The climate negotiations are in crisis; greater food insecurity and rising food prices around the world are a few other examples where the international community cannot ignore that the only path to address these issues is true cooperation and multilateralism.

In my view, the crisis of multilateralism also has ramifications on the work of the World Trade Organization, where we are today.

The inability of the WTO members to agree on the conclusion of the Doha Round is certainly a setback that is very difficult to understand, particularly within the context of the current crisis. The essence of the



WTO negotiations is to deliver mutual trade opportunities for all its members and by doing so creating a very strong impetus for economic growth and job creation across world economies.

I know many of you would agree with what I just said, but as it is often repeated, the devil is in the details. Well, I think it is about time for multilateralism and for the WTO to deliver on this low-hanging fruit that is the Doha Round. It is not only common sense but is a necessity, given the difficult times many economies are facing.

Even if it is a tough sell for politicians today to elaborate on the virtues of opening up trade, I sincerely believe that creating mutual trade opportunities through the conclusion of the Doha Round would certainly be a boon for the extreme majority of WTO members. Let alone the fact that by concluding the Round, WTO members would simply translate into the multilateral trade rules many of the new realities of how international trade operates today.

Let me explain, even if I am taking the risk of repeating something many of you probably know too well. I am referring to the fact that most of international trade is about creating value to goods produced and traded amongst diverse countries. I believe it is extremely hard to spot a product that is entirely made in one single country today.

In fact, 60 per cent of the products that are traded globally are intermediate products. This means that today's trade is dominated by inputs to the final products. Again I am sure this is a piece of statistics that you probably know too well. But here I am more interested in the broad story behind this statistic. The story here is all about how far WTO members are collectively participating to the creation of "value chains" around the globe, thus creating an extremely dense network of interests among themselves and within various international economic sectors. Given these immense transformations, we can confidently say that a country's imports and exports are both sides of the same coin of competitiveness in international trade.

And if I may give an illustration, I would say that Switzerland's foreign trade is a living example of this. One of the successes of Swiss trading has been to invest in extremely value-added products but also to be connected to the global value chains. Besides the fact that Swiss clocks and watches represent 47 per cent of those traded globally, medicinal and pharmaceutical products are the top Swiss exports but also top Swiss imports. Similar examples can be drawn from the imports and exports of manufactured or semi-manufactured goods, such as electrical appliances or instruments for precise measurement or analysis. Switzerland is also the fourth world exporter of coffee without being a country renowned for its grown coffee. Similarly it is the eighth chocolate exporter.

In addition, Swiss trade with Asia, where most of the value chain dynamics are taking place, has been in steady growth through the last decade with 13 per cent growth for exports and 11 per cent for imports with an Asian origin. In 2011, almost 15 per cent of our exports were directed towards what we can call emerging Asia (excluding Japan), compared to only 9 per cent in 2000. This is by far the most dynamic segment in our foreign trade.

Ladies and gentlemen,

I am sure that similar examples abound in different members of the WTO. So in this context, it is hard to understand the lack of progress in the negotiations and even more the tendency towards protectionism. Limiting or restricting your imports is often a case of shooting yourself in the foot.

Having said that, I totally agree that during an economic crisis, it is very normal that politicians are confronted with tremendous social and economic pressures and they need to take action. Unfortunately, very often political action would tend to lean towards the more vocal and visible discontent and act towards protectionist paths. We have seen in the past that this kind of political action can lead not only to isolation and retaliation but can have more serious effects. The crisis of 1930s and subsequent World War II are powerful reminders.

Ladies and gentlemen,

At this juncture, I would like to really commend the excellent work done by WTO to monitor protectionist pressures for a couple of years now. The monitoring reports produced by this institution have certainly helped us all to contain protectionism to reasonable levels so far. If I understand correctly, international trade has been minimally impacted by the different measures taken by WTO members in the wake of the current crisis. But I think the WTO should not weaken its guard, even stronger challenges lie ahead to monitor any new protectionist measures but also to dismantle the existing ones as soon as possible.

I believe that through the current crisis, and beyond the monitoring function, the WTO was able to demonstrate how a body of agreed international rules, in this occurrence the multilateral trading system, carries a lot of value for its members and can help them contain extreme protectionist pressures. I would say that the international community will need more of the same "rule-based systems" to address the many urgent global issues such as international finance governance, nuclear proliferation, conflict prevention, food security, climate change and sustainable development in general.

These issues are just a few of the explosive mix of problems that the international community and multilateralism need to solve. None of these problems is simple, but I think the situation is aggravated by the fact that international geopolitics are themselves in complete transformation.

Nobody can deny the extremely important role played by the international organizations created in the aftermath of World War II. Nobody would also deny that these organizations are no longer representative of the reality of the global balance of power. There is certainly a steady shift of power from West to East on the global stage. For example, the traditional West coalition has not been able to have its prominent role in shaping the agenda in Copenhagen or in Rio+20 or to protect civilians in Syria.

A reflection of this new geopolitical reality is impacting the WTO Doha Round as well. The traditional Quad countries that were the deciding factor in the last Uruguay Round for instance have been joined by new forces from the emerging powers. In addition, a more complex network of geographic and interest alliances have come into the picture and play their role in shaping the agenda and the progress in the negotiations.

I shall hasten to add that these changes and transformations have been taking place in the WTO for already a decade now so in a way, this organization and the Doha Round have been precursor in setting the scene for the new reality of the global balance of power. This explains to a large extent the difficulties in agreeing to conclude the Round.

These difficulties have crystalized the differences between developed and emerging economies over the degree of responsibility and solidarity in making commitments. Or if I use WTO jargon: the conception of "special and differential treatment", by which flexibility is given to some members to take lesser commitments with regard to their level of development. This is a highly political discussion that is very symptomatic of multilateralism in crisis. It is very interesting to note the parallel between special and differential treatment and the "common but differentiated responsibility" in the climate change discussions. These are two illustrations of how multilateralism needs to be closer to the reality of the balance of power. Failing to read and react to these realities in a consensual and timely fashion, the multilateral system will remain in dire straits.

Ladies and gentlemen,

I believe that the redefinition of the role of the state and its obligation to accommodate the necessary collaboration with other actors on the global stage, have modified the decision making processes very profoundly. These transformations are very often coupled with the necessity to act rapidly. Therefore, many "super powers" are trying to go beyond the framework of the United Nations which has been so far, the international organ par excellence for conflict resolution and collective action.



This is why the G-20 was created to address challenges nascent from the economic and financial crises since 2008. While I can understand the logic behind the creation of these parallel forums, I regret however, their lack of legitimacy and I think these Forums should not take major decisions *in lieu et place* of more universal organizations. These universal organizations do not derive their legitimacy from the size or economic clout of states but from the collective will of all their constituting members.

If, for one thing, these changes have demonstrated the need for multilateralism and collective action. A very slow process has started by which multilateralism is taking precedence over predominant super powers. But it is too early to be triumphant about it. One of the key issues in today's tormented world is to know what future holds for an organization such as the United Nations. Would all of these changes lead to its strengthening or on the contrary, it would lead to the disappearance of the already feeble level of world cooperation achieved through the UN framework.

In this regard, global governance means different things for different people. For instance many emerging powers consider multilateral governance as the gathering of strong heads of state or government, negotiating among themselves.

This conception of global governance is hardly in line with the interests of many countries, holding fewer instruments of power, such as Switzerland. This kind of power relations does not really correspond to our national interests. On the contrary, it is of utmost importance that multilateralism remains alive and kicking. It is true that the ways of multilateralism are often tortuous, complex and time consuming but there should be no other alternative. Multilateralism guarantees legitimacy and can actually deliver if the collective will exists.

Multilateral institutions such the United Nations and the WTO are unique in being a framework that offers all the nations of the world the possibility of joining together to address the whole range of international challenges to peace and security, as well as the protection of human rights and such goals as sustainable development for all. However, they are often criticised and accused of not delivering on the pressing global issues. Besides the unfairness of some criticism, it is usually forgotten that the United Nations or the WTO actions are the result of the collective action of their members.

I would adhere completely to the ideas of inclusiveness, shared responsibility and solidarity as the best way ahead for global governance. Only by shaping consensual but ambitious agendas and accepting that all actors have a role and responsibility in world affairs, multilateralism can deliver.

I thank you.





# Inaugural session: Is multilateralism in crisis?



## Inaugural session: Is multilateralism in crisis?

This inaugural session addressed the most pressing challenges facing the multilateral trading system and identified possible ways forward for the WTO and multilateralism in general.

With the recent impasse in the Doha Development Round and the increase in protectionist tendencies, the multilateral trading system is being put to the test. In the words of Director-General Pascal Lamy, "Multilateralism is at a crossroads. Either it advances in the spirit of shared values and enhanced cooperation, or we will face a retreat from multilateralism ...".

The difficulties encountered by the WTO and other multilateral institutions in recent years provide indisputable proof that yesterday's solutions simply cannot be applied to today's problems. The speakers gave their assessment of the current state of the multilateral trading system and of how to proceed from here.

### **Moderator**

Mr Andrew Harvey, Former Presenter,  
British Broadcasting Corporation

### **Speakers**

Ms Micheline Calmy-Rey, Former President  
of the Swiss Confederation

Hon. Mr Ricardo Lagos, Senator, Senate of  
Chile

Mr Pascal Lamy, Director-General, WTO

H.E. Sheikha Lubna Al Qasimi, Minister for  
Foreign Trade, United Arab Emirates

Mr Nicholas Staheyeff, Vice-Chairman and  
CFO, eBay International

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Division (IERD), WTO Secretariat

### **Report written by**

IERD, WTO Secretariat



## Presentations by the panellists

Mr Harvey opened the floor by asking a question about the state of multilateralism.

### *Hon. Mr Ricardo Lagos, Senator, Senate of Chile*

Hon. Mr Lagos believed that the rule-making aspect had been compromised. However, we should assure that it functioned properly by emphasizing the necessity to separate the lack of results in the Doha negotiations from the state of multilateralism and trade.

### *Ms Micheline Calmy-Rey, Former President of the Swiss Confederation*

Ms Calmy-Rey was blunt in assessing the situation of multilateralism, stating that international institutions did not reflect today's realities, and there was great need for reform.

### *Mr Nicholas Staheyeff, Vice-Chairman and CFO, eBay International*

Mr Staheyeff described the current status of multilateralism from a business perspective, indicating that the work of the WTO had led to an increase of trade over time. He saw smaller traders as a nucleus of economic power and success, who want to trade internationally despite the barriers that exist. The WTO should continue to reduce obstacles to trade to help people make a living and have successful global business using online platforms.

### *H.E. Sheikha Lubna Al Qasimi, Minister for Foreign Trade, United Arab Emirates*

H.E. Sheikha Al Qasimi considered that present-day rules are not up-to-date and need upgrading. She stressed that the involvement of members is critical in driving negotiations back on track.

### *Mr Pascal Lamy, Director-General, WTO*

In the same vein, Mr Lamy proceeded to state that multilateralism is outdated, having failed to catch up with the realities of today's global balance of power. With all the changes in the world, the current system needs an adjustment, but the persistent economic crisis has not made change easy. He also pointed out that international negotiations were about the capacity of WTO members to convince their constituencies to agree on following the path towards greater liberalization.

The second question was addressed to Hon. Mr Lagos regarding multilateralism in Latin America. Mentioning that most of Latin American countries are represented in the United Nations and the WTO, he raised the concern about under-representation of Latin America in the UN Security Council. On trade-related matters, Latin American countries have taken different approaches without having a single voice. There has not been the political will to agree on a common set of rules and standards within the region, due to different agenda of the members and their reluctance to give up some of their sovereignty. Sharing some responsibility would allow Latin America to speak – if not in one voice – in the same tune.

## Questions and comments

### *How much protectionist pressure has there been in Switzerland?*

Ms Calmy-Rey provided an illustrative example of how Switzerland prevented protectionist measures by curbing the rise of the Swiss franc after its sharp appreciation in 2007 to the euro, in order to help Swiss exporting industries compete. She underlined that protectionist measures were not an adequate response to the crisis.

### *What are the advantages of multilateralism for a company like eBay?*

Mr Staheyeff based his answer on a study conducted by Genève Internationale, which concluded that 81 per cent of US sellers who do business of more than US\$ 10,000 a year export to at least five different countries. Therefore, there is a platform which is already conducting trade in a very robust manner. Having listened to customers, Mr Staheyeff focused on their complaints with regard to trade barriers. He emphasized the need for further promotion of trade facilitation through governments or international

organizations. For example, eBay has already set a global shipping platform to improve the livelihood of its sellers. With WTO collaboration, Mr Staheyeff believed the programme would function more smoothly.

#### *What does the Arab spring mean?*

H.E. Sheikha Al Qasimi urged countries to abide by free market policies, focusing more on investment and creating a hospitable environment for business. Countries emerging from the Arab spring need support from WTO members to accelerate the accession process for those who are not in the WTO. Those who are already WTO members have to make sure that they are following their commitments, as it is a political challenge towards political and economic stability. Free trade provides more progress and development as well as an opportunity for more investment.

Reflecting on the aforementioned issues, Mr Lamy emphasized the simplification and classifications of customs procedures, as well as finding a new balance between reciprocity and flexibility in order to create a level playing field. He also raised his concern on trade finance as a main instrument to keep small and medium enterprises alive.

#### *What about the proliferation of preferential trade agreements?*

In answering Ms Calmy-Rey's question about the proliferation of preferential trade agreements (PTAs), Mr Lamy made clear that they should be studied on a case-by-case basis. According to Mr Lamy, PTAs can be an effective first step in lowering tariffs, which can then be extended to the multilateral level. However, the problems may arise when non-tariff barriers proliferate, such as rules of origin. He underlined that overall there should be better coordination between multilateralism and bilateral efforts to liberalize trade.

In his intervention, Hon. Mr Lagos stressed the importance of PTAs for small economies, which can help provide greater market access. As an example, he spoke of the Chile–Canada Free Trade Agreement, in which issues such as anti-dumping, subsidies and domestic support are covered.

H.E. Sheikha Al Qasimi pointed out that the WTO provides rules on PTAs. Despite perceptions that such agreements are easier to agree upon, she stated that their ratification can be challenging. She noted that many countries find it easier to negotiate as a group, such as the Association of Southeast Asian Nations. However, when it comes to protectionism, focus turns to the WTO Dispute Settlement Body.

Ms Calmy-Rey concluded by showing her support for the WTO, reminding the audience of her country's role as a key facilitator of the Russian Federation's accession and expressed her happiness about the new construction underway.

#### *Why has there been a slowdown in growth numbers?*

In his speech, Mr Lamy underlined that since trade represented a transition between supply and demand, world trade had been decreasing due to an overall slump in growth. However, the WTO has not detected any rise in protectionist measures.

## Conclusions

A rich debate covered a broad spectrum of issues such as agricultural subsidies, development, export restrictions, government internet restrictions and exchange rates.

Mr Lamy stressed that bilateral agreements do not cover agricultural export subsidies as developing countries hold a comparative advantage in the sector. He emphasized the need to reduce tariff peaks and tariff escalation in order to ensure market access for developing countries, as well as to abstain from export restrictions that were witnessed during 2008, particularly on rice.

Ms Calmy-Rey underlined that Switzerland had been protecting its agricultural sector for many centuries – despite that fact that it only represents 1 per cent to 2 per cent of gross domestic product. However, liberalization remains contentious given the cultural importance of agriculture in Switzerland.



With regard to internet restrictions, Mr Lamy responded that governments can invoke security exceptions which are covered by WTO agreements. Therefore, he concluded that internet restrictions do not provide an exception to the logic brought forward from the original days of the General Agreement on Tariffs and Trade.

Mr Harvey, the session's moderator, finished by asking whether the panellists were optimistic or pessimistic for the future of multilateralism in the next five years. Hon. Mr Lagos, Ms Calmy-Rey and Mr Staheyeff all responded that they were optimistic, while H.E. Sheikha Al Qasimi stated she was only "carefully optimistic". Mr Lamy proved to be the only panellist to see the glass half empty, acknowledging that his own outlook remained "carefully pessimistic".

On his assessment for the future, Mr Staheyeff said that the future multilateral system will need to learn to cope with increased volatility in trade and economic conditions and to be "ready for a bumpy ride".





# High-level sessions



## Panel of multi-stakeholders

The aim of this session was to perform a “health check” on multilateralism, starting with the state of the multilateral trading system, but also looking at the wider picture of macroeconomic cooperation, development, job protection and promotion of the environment. The difficulties that the global trading system and many other multilateral institution have encountered in recent years is indisputable proof that yesterday’s solutions simply cannot be applied to the problems we face today. The discussion benefited from the participation of members from Mr Lamy’s Panel on Defining the Future of World Trade. They encompass expertise from all corners of the world and nearly every field of endeavour, and their analysis will spark debate and open new channels of thinking.

### Moderator

Mr Pascal Lamy, Director-General, WTO

### Speakers

Mr Talal Abu-Ghazaleh, Chairman and Founder, Talal Abu-Ghazaleh Overseas Corporation

Ms Sharan Burrow, General Secretary, International Trade Union Confederation (ITUC)

Mr Frederico Fleury Curado, President and CEO, Embraer SA

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

H.E. Mr Festus Gontebanye Mogae, Former President of Botswana

Mr Fujimori Yoshiaki, President and CEO, JS Group Corporation

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Information and External Relations Division (IERD), WTO Secretariat

### Report written by

IERD, WTO Secretariat



## Presentations by the panellists

### *Ms Sharan Burrow, General Secretary, ITUC*

Ms Burrow said that there was no doubt that multilateralism was in crisis, as shown by current economic indicators, including record unemployment and the falling income share of workers. She also noted that the inequity was growing between countries, and it was not only about income but also about the fabric of humanity.

She pointed to the growing despair among workers and surveys reporting that two-thirds of people believed their children would be worse off in the future. Ms Burrow raised her concerns that the informal sector of the economy was growing. The world was in despair and from her perspective there was a crisis of global leadership. She reported that only 13 per cent of voters believed that they had any influence on government economic decisions in democratic countries. She stated that capitalism is not working and that trade and economic institutions must be reformed and be based on fundamental human rights. Commitments should be to the community and not just to the profits.

### *H.E. Mr Festus Gontebanye Mogae, Former President of Botswana*

H.E. Mr Mogae underlined that while African countries had been experiencing crises for a long time, they did not relish the fact that the world's larger economies are finally experiencing the same difficulties such as unemployment and lack of income distribution – which, in the case of Africa, are almost twice as high as in developed countries. He believed youth unemployment was a major reflection of the crisis, with African rates as high as 40 per cent to 60 per cent.

He raised his concerns about the inability of African states to obtain equal access to international trade and to influence the progress in the Doha Round. In terms of international trade, he believed larger countries were withdrawing from multilateralism to engage in bilateral trade deals, where they can gain more concessions from smaller countries. He emphasized the lack of bargaining power of small developing countries and the predictability of the outcome of bilateral deals that are most likely to be biased. For this reason, he contended, African states would prefer the multilateral approach, where the rules applied equally to everybody.

### *Mr Frederico Fleury Curado, President and CEO, Embraer SA*

Mr Curado reported that multilateralism had been an important factor in Latin America's recent economic growth. He said that the system had been in crisis, but its deep roots were in the financial system. However, he cautioned that a proliferation of regional trade agreements (RTAs) could pose a threat to private industry, while urging a conclusion to the Doha Round – even if states could not agree on a complete package. He emphasized how businesses rely on multilateral institutions to ensure a level playing field.

Mr Curado noted that there were some structural issues not covered under the classic trade in goods and services, such as the environment, food security, information technology and water. Other important trade-related issues, noted Mr Curado, were exchange-rate and monetary policies that can create imbalances among economies – directly influencing the capacity to compete. In his view, all of these topics should come under the multilateral agenda.

On behalf of Latin America, Mr Curado stressed the importance of agriculture. Using development in Brazil as an example, he described the difficulties of reaching the global stage and being able to stay there. Multilateral mechanisms may ensure a level playing field. However, he noted that the governance mechanisms should be faster, stricter and more efficient, and be given effective power to compensate for eventual losses.

*Mr George Yeo, Former Foreign Minister, Singapore; Vice-Chairman, Kerry Group Limited*

Mr Yeo argued that people did not really want a global government, which they perceived would create even greater problems. He also believed that people wanted big powers to lead, but not to dominate, and he stressed the importance of a single forum. For Mr Yeo, the multilateral system had been created with rules where there are certain disciplines with leniency, where countries compete and cooperate, but at the same time, there was a sense of autonomy.

He underlined that instead of criticizing the system, the most important topics, such as the financial system, trade and climate change, should be defined. However, those topics could not be addressed with only one solution.

Mr Yeo thanked the WTO for helping move economic policies in the right direction. However, he stressed the need to conclude the Doha Round to help move the international trading system forward, even if the agreement was not as broad as some may have envisioned.

*Mr Talal Abu-Ghazaleh, Chairman and Founder, Talal Abu-Ghazaleh Overseas Corporation*

Mr Abu-Ghazaleh reflected on how the world order had changed since the negotiation of what would later become WTO rules some 50 years ago. He called for revisiting the function of the WTO as a negotiating forum, including finding an alternative to decision-making by consensus. According to Mr Abu-Ghazaleh, more attention should be given to making the WTO a “knowledge organization”, like the World Bank, and to enable direct participation of the private sector. He also called for reconsidering the Single Undertaking principle and for focusing on more modest agendas. Finally, he urged improvements to ease the WTO accession process, noting that half of the Arab world was still outside the organization.

The question of the Doha Round should also be addressed, and he raised his concerns with regard to the emergence of plurilateral and preferential trade agreements, especially in the area of services where an agreement is being negotiated outside the WTO. Mr Abu-Ghazaleh expressed his preferences for ending the plurilateral negotiating process, since the future of global trade is in the services area. He stated that the poorer countries would like to have equal chances to participate in it.

*Mr Fujimori Yoshiaki, President and CEO, JS Group Corporation*

Mr Yoshiaki said that private industry had been working in an environment of protectionism for a long time. Businesses have to adapt to the exchange-rate issue, the rise of RTAs, new non-tariff measures, and various national laws and regulations.

Mr Yoshiaki emphasized that regional agreements could be one of the solutions proposed to governments. He referred to the concept of “high-level trade agreements”, such as the Trans-Pacific Partnership Agreement, that are not addressed to tariffs but non-tariff barriers (NTBs), including government procurement and energy security. Finally, he stated that the WTO must have a mechanism that would allow for greater participation of the private industry.

*Mr Pradeep S. Mehta, Secretary General, CUTS International*

Mr Mehta said that multilateralism had to deal with issues other than trade that crosses borders, such as climate change, energy issues and security concerns. He also noted that developed countries were not able to influence the decisions of developing countries, such as India.

He stated that the Doha Round was at an impasse because of differing levels of ambition, which gave off negative signals. He also emphasized that the Doha Round was not the WTO, and its role must be differentiated from what was happening in terms of negotiations. He added that there was a need for reform when there was crisis. He believed that the G20 – being a mix of developing and developed countries – was another approach to how the global governance was shaping up, to the extent that they were able to deal with the crisis and to start thinking about what kinds of reforms were necessary. In spite of these issues, Mr Mehta reiterated that a multilateral approach would still achieve the best outcome.



## Questions and comments

The questions from the floor included topics on development and regionalism, such as whether poor countries should wait for multilateral solutions that would be a long time coming or whether they should move towards bilateral agreements instead. A member of civil society urged changing WTO rules to promote employment. H.E. Mr Mogae said that bilateral agreements were not the answer, and that multilateral agreements were better, especially for small countries with little bargaining power.

Ms Burrow urged changing trade rules to allow policy space for governments to help people and sectors in need of assistance. She emphasized that labour must have a voice in the WTO. Mr Mehta said that the WTO had to take on board the concerns of farmers and workers. Mr Abu-Ghazaleh believed that the WTO should develop a mechanism that would directly involve traders, businesses, workers and consumers in its work. Mr Yoshiaki said that from his experience, companies thrived if they contributed directly to the welfare of communities. Thus, multilateral institutions should always be cognisant of providing benefits on the ground.

## Conclusions

Mr Lamy thanked the panellists and welcomed the discussions as interesting and useful. He urged participants to send comments and suggestions to panellists through a special facility on the WTO website.

He also stated that this enriching debate must continue, noting that there can be no easy solutions to the complex issues raised during the session. Finally, Mr Lamy underlined that the results of the debate will be submitted to WTO members, who will draw conclusions – since ultimately, the final outcome is in their hands.

## Global value chains – implications for trade policy

The central theme of this session was the role global value chains (GVCs) play in the world economy and the implications they have for trade policy at a local, national and multilateral level. According to comments by the moderator, Ms González, more than half of international trade is in intermediate goods, while the contents of final exports consist of imported materials at an average rate of 40 per cent. Reflecting on these changes in production and consumption, this panel of policy-makers, academics and members of the private sector provided a lively discussion on both the challenges and benefits GVCs pose for the world economy.

### **Moderator**

Ms Arancha González, Chief of Staff,  
Office of the Director-General, *WTO*

### **Speakers**

Mr Ken Ash, Director, Trade and Agriculture  
Directorate, Organisation for Economic  
Co-operation and Development (OECD)

Mr Karan Bhatia, Vice-President and Senior  
Counsel, International Law and Policy,  
General Electric Company (GE)

Mr Peter Draper, Senior Research Fellow,  
South African Institute of International  
Affairs (SAIIA)

H.E. Ms Anabel González, Minister of  
Trade, Costa Rica

Dr Bernard Hoekman, Director, Trade  
Department, World Bank Group

### **Commentator**

Mr Patrick Low, Director, Economic  
Research and Statistics Division (ERSD),  
*WTO*

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## Presentations by the panellists

### *H.E. Ms Anabel González, Minister of Trade, Costa Rica*

H.E. Ms González spoke of the experiences in her own country, Costa Rica, in participating in GVCs and how this was reflected in the changing structures of the economy. She reflected on the notion that raw materials and a robust manufacturing base are no longer necessary for countries to become part of GVCs. According to H.E. Ms González, Costa Rica now exports more services, particularly in the information technology sector, than in traditional agricultural goods such as coffee and bananas. For her, the real challenge posed by GVCs is how to capture more value once a country is able to participate.

She identified five key determinants to her country's success:

- designing a long-term strategic vision how to attract foreign direct investment (FDI)
- creating a sound business environment
- building a strong export platform including WTO agreements and other bilateral and regional free trade agreements (FTAs)
- establishing an educated work force
- focusing on logistical and supply management, including investments in infrastructure.

### *Mr Ken Ash, Director, Trade and Agriculture Directorate, OECD*

On the current metrics used to analyse trade flows, Mr Ash noted that they were inadequate as they did not take the full value chain into account. He stated the importance of measuring how much value was added in the chain, especially as goods and services are now traded across borders at an increasing rate. As the nature of trade has changed, he suggested that more must be done to understand not just the value of opening up trade on the export side, but also the importance of creating a more liberal environment for imports. Mr Ash underlined the significance of easier access for businesses that need high-quality inputs in order to compete efficiently. He concluded by announcing that an OECD database on value-added trade would be launched by the end of the year.

### *Mr Karan Bhatia, Vice-President and Senior Counsel, International Law and Policy, GE*

Speaking from the perspective of a large multinational firm, Mr Bhatia explained the vital importance of GVCs in maintaining his company's competitive edge. He discussed the essential factors GE takes into account when making a decision to outsource, which include:

- the size and attractiveness of the market itself
- human resources
- physical infrastructure
- legal and policy environment.

However, he criticised certain countries for imposing local content requirements, a measure which he believed hurt the abilities of GVCs to function smoothly and competitively.

Mr Bhatia also stressed that low-cost labour was not seen as the determining factor in locating operations overseas. For many activities, a highly skilled workforce is needed. He also countered the misconception that the old tradition of innovation in the west and production in the south still holds. According to Mr Bhatia, GE currently operates research centres across the globe, located in both developed and developing countries.

*Mr Peter Draper, Senior Research Fellow, SAIIA*

Mr Draper challenged the idea that plugging into GVCs is simple, especially for sub-Saharan Africa. He noted that the absence of industrial tradition, coupled with poor infrastructure and geographical isolation from major markets, created a handicap for attracting FDI. According to Mr Draper, many countries in the region suffered from a “resource curse” and were therefore unable to move up the ladder and to capture greater value through GVCs.

However, he noted that labour costs had been increasing in China – an opportunity Mr Draper sees for African states to seize through the right trade and economic policy. Trade facilitation in a broad sense should be used as tool to lower transaction costs through improved infrastructure and customs. Mr Draper cautioned the move towards more protectionist measures – a trend he claims had been supported by domestic industry lobbies in his home country of South Africa. He related how domestic industry seemed to favour closing borders in order to maintain domination of the local market, concluding by stating the importance of convincing this lobby of the value GVCs could hold for the region.

*Dr Bernard Hoekman, Director, Trade Department, World Bank Group*

Dr Hoekman stated that it was not a surprise for the audience to hear about a huge explosion in terms of international trade. However, composition of the trade is different. The ratio of value added over growth trade has been steadily dropping over time – and that is a reflection on rise of GVCs. What we are seeing are firms and countries specializing in particular types of activities that fit into a value chain.

The ratio of the value added to the total value of goods has dropped from 10 percentage points to 15 percentage points over the last 15 to 20 years. And this phenomenon has been dropping particularly in the last few years. Dr Hoekman believed that this was GVCs at work, and most of it was happening in regions. We are witnessing the deepening of regional value chains because of trade costs and policy. The challenge is to figure out what are the policies that have the greatest impacts on the ability of countries to participate in this phenomenon. He noted that this depends on what type of activity we are talking about, and especially what type of products. Value chains differ significantly from food products to electronics. In food, sanitary and phytosanitary measures matter the most as NTBs that are equivalent to tariffs. He concluded that, with regards to the policy implications on this, the focus must be on a group of issues such as customs, single windows and improvement in transportation. Improvement in overall services supply will bring many benefits – especially for small and medium-sized enterprises (SMEs).

**Questions and comments**

The first question from the audience was directed towards Mr Bhatia and was on tax benefits and their role in attracting overseas investment. Mr Bhatia replied that tax policy was not the main driver of GE’s fundamental investment decisions, although it may play a role in how deals are structured. He pointed towards other indicators, such as education and infrastructure, as having a greater bearing on where GE chooses to expand business abroad.

An audience member pointed out that under WTO rules, local content requirements are curbed. In particular, he referred to the Agreement on Trade-Related Investment Measures and its prohibition of domestic content requirements. However, as Mr Bhatia indicated, local content requirements seemed to be a growing trend in some countries. The audience member asked whether the rules were ineffective or if it was just that the private sector was not enforcing them. Mr Bhatia replied that it was his experience that current trade rules were not strong enough to stop domestic content requirements from increasing. He stressed the need for WTO members to come to an agreement on enforcement and regulation of this issue.

An audience member indicated that many Export Processing Zones (EPZs) are prohibited under WTO rules as an export subsidy. He asked H.E. Ms González whether or not she believed special exceptions should be made for developing countries to relax these rules, to which she replied no. According to H.E. Ms González, Costa Rica’s EPZ regime was originally in conflict with the WTO agreement on subsidies,



but had since been amended to comply. Since the changes were made, she noted, the efficacy of the programme had not been affected.

Responding to a question regarding how the World Bank helps countries in sub-Saharan Africa to participate in GVCs, Dr Hoekman emphasized the organization's increased efforts to bolster trade facilitation in the region. In particular, the World Bank has directed resources towards efforts to reduce trade costs for farmers in Central Africa, according to Dr Hoekman. He cited programmes to improve trade logistics, infrastructure and customs, which fit under the larger umbrella of Aid for Trade.

## Conclusions

In concluding of the session, H.E. Ms González reiterated that each country must decide whether it wanted to participate in GVCs and to see the potential they have for growth. One of the main benefits comes from opening new job opportunities, which, in the experience of Costa Rica, has led to positive effects for women especially. She finished by stating that countries needed to discuss how to be part of GVCs and then to see how trade policy fits into that strategy.

Mr Low, Director of the ERSD, WTO, stressed the need to pose more questions and analysis. He pointed to the alignment between governments and firms who he believed would always have disagreements. Mr Low emphasized that firms did not dictate policy and that governments still had significant bargaining power, though both should engage in an intelligent debate to produce strong policy measures.

Mr Low summed up the discussion on GVCs as complex and in need of further analysis. He noted that the nature of supply and demand had been changing for some time, along with investors' perception of risk. Similarly, Mr Low expressed a common theme throughout the 2012 Public Forum, which was the conflict that may arise from an increasing number of RTAs as opposed to a more multilateral approach. Finally, he concluded by stating that more must be done to understand the issues surrounding GVCs from a holistic policy perspective, including those that exist outside the WTO's purview.

## Trade and jobs

### Moderator

Mr Rufus Yerxa, Deputy Director-General,  
WTO

### Speakers

Mr John Evans, General Secretary, Trade  
Union Advisory Committee (TUAC) to the  
OECD

Hon. Mr Ricardo Lagos, Senator,  
Senate of Chile

Mr Yogendra K. Modi, Member of the  
Board, International Organisation of  
Employers (IOE); Chairman and CEO,  
Great Eastern Energy Corporation

Mr Stephen Pursey, Director, Policy  
Integration Department and Senior Advisor  
to the Director-General, International  
Labour Organization (ILO)

Professor Alberto Trejos, Professor of  
Economics, INCAE Business School;  
former Trade Minister, Costa Rica

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This High-level Session addressed the linkages between trade and the labour market. As the world is facing difficult times and while some countries' labour markets have fared relatively well, in many others the pace of growth in recent years has not been sufficient to significantly reduce the high levels of unemployment and under-employment accumulated during the downturn. Growth seems to be faltering in a number of advanced economies and decelerating in some emerging economies.

For many governments, employment is now the top priority, and the question of the role of trade is of crucial importance. Some see trade as a major cause of unemployment, while others see it as the main engine of growth and job creation. The more objective reality is that, under the right conditions, trade can play a vital role in boosting growth and jobs. At the same time, however, increased trade and the adjustments it causes often involve some job losses in the short run. In other words, even when the long-term effects of trade on jobs are positive, there may be job losses in the short term.

In these times of economic uncertainty, the risk is that short-term concerns regarding jobs may fuel protectionist actions, and that these actions may jeopardize the prospects for longer-term growth. The challenge for governments is how to avoid such a protectionist backlash and to ensure that trade plays its part in reigniting growth and job creation. Of course, the WTO has a vital role to play in this regard because a rules-based organization with broad membership can help governments maintain the right trade policies by ensuring mutual respect for WTO rules and commitments among all members.



## Presentations by the panellists

### *Mr Rufus Yerxa, Deputy Director-General, WTO*

Mr Yerxa stated that the world had been facing difficult economic conditions. In many cases, a slow or even negative pace of economic growth had seriously affected employment levels. In some countries, unemployment has reached crisis levels and budgetary restrictions have significantly limited governments' ability to respond to this predicament through such measures as job stimulus programmes. For many governments, employment is now the top priority. Some see trade as a great job creation instrument, while others see it as contributing to job dislocation. Many WTO members are concerned that political actions to preserve jobs may lead to protectionist actions which have the potential to jeopardize prospects for longer-term growth. Governments which usually apply such measures often justify their actions by saying that others resort to similar types of measures, creating a vicious circle of tit for tat finger-pointing. The WTO has a vital role to play in this regard and can help governments maintain stability by ensuring mutual respect for WTO rules and commitments. In order to examine further the relationship between trade and labour, three broad categories were discussed by the panel:

#### **I. Differing perspectives on trade and jobs**

- What is the effect of trade on jobs in developing and developed countries?
- What is the perception regarding the effect of trade on jobs in various regions?

#### **II. Trade and policy responses to the crisis**

- What is the role of trade in governments' responses to the current crisis?
- How should trade and employment policies be coordinated?
- What complementary policies are needed to ensure that trade reform actually translates into economic growth, high productivity and more jobs?

#### **III. Trade, jobs and the multilateral system**

- How do concerns regarding the effect of trade on jobs affect the multilateral system?
- How should they be dealt with in the future by the WTO and other bodies?

### *Professor Alberto Trejos, Professor of Economics, INCAE Business School; former Trade Minister, Costa Rica*

Professor Trejos opened the debate, arguing that trade policy was a very important issue because it related to employment. He strongly believed that trade is a key instrument that can make a difference – if not in the number of those employed, then in the quality of jobs, in the productivity rates, wage levels and the type of jobs that a state expects to create. According to Professor Trejos, if we consider economic history, we see that openness to trade makes some sectors grow and others shrink within the economy. In the times of crisis, the more destructive of those forces prevails in the short term; while in times of prosperity, the more productive of those scenarios dominates.

What we see today is that the world is changing, and the dynamics of certain industries are shifting as well. What used to be a long production process in a single company is now divided into different pieces, where a multitude of companies can compete in different segments of the industry. A well-crafted trade policy with good supplementary policies can accelerate job creation.

### *Mr John Evans, General Secretary, TUAC to the OECD*

Mr Evans emphasized that in the current climate, 200 million workers are unemployed and the recession had heavily hit some industrialized countries, including France, Germany and the United Kingdom. On

the trade agenda, there have been many concerns about the rise of protectionist measures, but so far it has proven to be “a dog that hasn't barked”. Mr Evans emphasized the need for better quality jobs and distribution.

What can be seen on both fronts is that conflicting policies are being pursued. Rather than attempting to support and sustain demand, we are seeing collective austerity and “beggar-thy-neighbour policies” that suppress domestic demand.

The discussion has moved beyond “just trade” to now also include investment – specifically, in how to attract it and how to avoid a race to the bottom in labour policy creation. Focus is also now on how to strengthen those institutions on distribution and how to achieve a more growth-oriented policy demand which is consistent at a global level.

*Mr Yogendra K. Modi, Member of the Board, IOE; Chairman and CEO, Great Eastern Energy Corporation*

Mr Modi stated that India had seen the benefits of trade when its economy was opened in 1991 – resulting in rapidly expanding growth. According to Mr Modi, an increase in trade creates more jobs in the private sector, with most growth taking place in SMEs. States should look towards creating fiscal and monetary policies that benefit SMEs, allowing them to hire more people. He stressed that countries must remain competitive, while acknowledging that imports were as important as exports.

Mr Modi cautioned states that move towards closing their markets, a situation he believes would result in decreasing demand as prices increased. He noted that all economic activities were based on consumers and therefore efforts should be made to help lower the cost of products, thereby increasing demand.

He emphasized that the question on trade and jobs had been settled: trade creates better economic activity, and better economic activity creates better jobs. The focus is where the jobs will be created – and that is in open and competitive economies, which attract more investment. In the context of the WTO, if the Doha Round is not completed quickly, countries will go plurilateral or bilateral. With the latter response, many smaller states will be left outside – therefore for them, multilateral agreements are a must. The policy of agreeing either to everything or to nothing makes no sense to a businessman. The bottom line should be free and better trade. Blaming the WTO or trade for a country's internal problems is wrong – one can only help oneself.

*Hon. Mr Ricardo Lagos, Senator, Senate of Chile*

Hon. Mr Lagos stated that the global recession had to do with financial deregulation, not trade. According to Hon. Mr Lagos, trade could help regulate the effects of the crisis by protecting jobs. He noted that trade in Chile had been beneficial, but adjustments were necessary. Labour policies need to be judiciously integrated as well, and some of these, such as safety nets, require investment. He questioned why so many countries would negotiate FTAs if they truly saw that trade was hurting jobs. Hon. Mr Lagos went on to state that labour and the environment are always difficult topics to discuss, since very often they are seen as a pretext for protectionism. However, he sees that the world is moving towards certain basic understandings that will include environment and labour in the future. Representing a small economy, he proposed to start drafting bilaterally what they consider to be important rather than swallowing a framework of issues as a package.

*Mr Stephen Pursey, Director, Policy Integration Department and Senior Advisor to the Director-General, ILO*

Mr Pursey stated that, due to rising unemployment and falling labour force participation, there was now an estimated 60 million fewer jobs globally than in 2007. According to Mr Pursey, the gains from globalization are not distributed equally, and some workers and firms may lose out in the short and medium term. He believes that the Nordic economies, which he reported as having been open for the longest, had also created the most extensive systems of social protection – developed before these economies became rich.





## Questions and comments

A lively discussion took place with significant interactions by the audience as well as by the panellists. Many topics related to trade and jobs were covered. Among them were:

- technological development
- the economic crisis and its influence on jobs
- demographical influence on the labour market
- growth factors
- the WTO's role in poverty reduction
- intra-industry trade mitigation on employment issues.

## Conclusions

The panel concluded by reflecting on the relationship between trade policy and labour regulations, especially as it relates to the economic crisis. While the general consensus was that job creation needs to have a focus, some panellists cautioned that rising income inequalities may create further difficulties in creating robust trade. Mr Evans was particularly critical of the short-term responses to the crisis, such as the decentralization or prohibition of collective bargaining, reductions in the minimum wage and weakened employment protection. While some actions may help budgets in the short term, he questioned their ability to return confidence in the market.

Professor Trejos seemed to echo some of these concerns, citing the changing dynamics of the global economy. Based on his own country's experience, Professor Trejos found that government intervention can often help address issues related to income inequalities, through measures such as improving education and creating a more competitive work force. As a result, he noted that Costa Rica had achieved stronger results in trade. He concluded by stating that policy-makers faced a choice not between more or less regulation, but rather one of implementing measures that are either effective or ineffective.



# Overall theme: Is multilateralism in crisis?



## Plurilaterals and bilaterals: guardians or gravediggers of the WTO?

Confronted with the Doha Round being stalled, a discussion has started on whether or not plurilateral negotiations should be initiated, or whether WTO members should pursue trade liberalization through free trade agreements (FTAs). This panel, jointly organized by BUSINESSEUROPE and the US Chamber of Commerce, will assess whether plurilaterals and FTAs are effective approaches to tackle the challenges currently faced in multilateral trade negotiations. High-level representatives from the business community as well as WTO members will provide different perspectives on this controversial issue, discussing the merits and limitations of these approaches.

### Moderator

Ms Jennifer Freedman, Reporter,  
*Bloomberg News*

### Speakers

H.E. Ms Anabel González, Minister of  
Trade, Costa Rica

Ms Arancha González, Chief of Staff, Office  
of the Director-General, WTO

H.E. Mr Wayne McCook, Ambassador and  
Permanent Representative of Jamaica to the  
WTO

H.E. Mr Fernando de Mateo, Ambassador  
and Permanent Representative of Mexico to  
the WTO

Ms Naoko Munakata, Director-General,  
Multilateral Trade System Department,  
Ministry of Economy Trade and Industry,  
Japan

Mr Winand Quaedvlieg, Vice-Chairman,  
International Relations Committee,  
BUSINESSEUROPE

Mr Christopher Wenk, Senior Director,  
International Policy, US Chamber of  
Commerce

### Organized by

BUSINESSEUROPE

US Chamber of Commerce

### Report written by

Information and External Relations  
Division (IERD), WTO Secretariat



## Presentations by the panellists

A panel of ambassadors to the WTO, representatives of the EU and US Chambers of Commerce together with the WTO Chief of Staff, Ms Arancha González, discussed the relevance of plurilateral agreements to the construction of multilateralism.

Speakers agreed that “bilateral, plurilateral and multilateral agreements are like children – you have to like them all”. However, there was a discrepancy in the views over the necessity to advance the Doha Round.

A panellist recalled that there are different types of plurilateral agreements. First, regional trade agreements (RTAs), and second, coalitions of the willing, such as the Information Technology Agreement (ITA) and the Government Procurement Agreement. As pointed out by the WTO Chief of Staff, the Tokyo Round was the golden age of plurilateral agreements. However, the international community has felt the desire to go back to the Single Undertaking in the Uruguay Round for reasons of fairness and inclusiveness.

### *Plurilateral and bilateral agreements are building blocks for multilateralism*

The main argument here is that the three types of agreements reinforce each other. First, they constitute an alternative to the multilateral negotiations in the WTO that are undermined by the sluggishness of the negotiations in the Doha Round.

Second, regional agreements are particularly relevant to small developing countries which prefer step-by-step trade liberalization. An example was Costa Rica, which progressively opened its telecommunications sector.

Third, coalitions of the willing have proven to be great successes – examples include the ITA. The Japanese representative proposed extending such agreements to the environmental goods sectors.

Fourth, preferential trade agreements (PTAs) are not a threat to the WTO, as only 16 per cent of world trade is made under PTA regulation. The rest is exchanged through most-favoured-nation rules.

### *PTAs impede regulatory convergence of trade standards*

PTAs undermine the development of an international playing field for negotiations, which would strengthen multilateralism. A recent report from the Asian Development Bank shows that many firms are unable to adapt their standards to PTA regulations. Moreover, plurilateral agreements threaten the multilateral trading system if they are designed for strategic purposes.

In the current situation, business sector representatives expressed their frustration and their willingness to go further on trade liberalization outside of the Doha Development Agenda (DDA) framework. In their view, agreement on services and trade facilitation would be more than welcome. They also expressed willingness to have an agreement on import tariffs on machinery and chemical goods. Finally, they insisted on the need for transparency in future agreements and cited as a counter-example the Anti-Counterfeiting Trade Agreement.

## Questions and comments

The WTO Chief of Staff stressed the need for countries to advance on multilateralism, pointing out that 40 per cent of exports contain imported goods. The business sector representative called for BRICS (Brazil, the Russian Federation, India, China and South Africa) to negotiate as they will in five years' time rather than how they were five years ago.

A member of a French non-governmental organization (NGO) denounced trade agreements between states of different economic sizes, referring specifically to the agreement on dairy products between the European Union and India. Mexico added it had benefited a lot from the North American Free Trade Agreement (NAFTA).

## Gridlock: why global cooperation is failing when it is most needed

### Moderator

Ms Roberta Piermartini, Counsellor,  
Economic Research and  
Statistics Division (ERSD), WTO

### Speakers

Mr Thorsten Benner, Associate Director,  
Global Public Policy Institute (GPPi)

Ms Carolyn Deere Birkbeck, Senior  
Researcher, Global Economic Governance  
Programme, Oxford University

Mr Thomas Hale, Postdoctoral Research  
Fellow, Blavatnik School of Government,  
Oxford University

Mr Mark Halle, Vice-President, International  
Institute for Sustainable Development (IISD)

### Organized by

Oxford University

Durham University

University of Amherst

### Report written by

Mr Thomas Hale, Postdoctoral Research  
Fellow, Blavatnik School of Government,  
Oxford University

In a forthcoming book from Polity Press entitled *Gridlock: Why Multilateralism is Failing When We Need It Most*, Thomas Hale (Oxford University), David Held (Durham University) and Kevin Young (University of Amherst) argue that the “failure of multilateralism” cannot be understood within a single issue area, but rather reflects a general condition of the present international system. To manage the global economy, prevent runaway environmental destruction, reign in nuclear proliferation and confront other global challenges, we must cooperate. But at the same time, our tools for global policy-making – chiefly state-to-state negotiations over treaties and international institutions – are increasingly unable to provide common solutions.

The result is gridlock, which manifests across issues areas via a number of common mechanisms. The rise of new powers representing a more diverse array of interests makes agreement more difficult. The problems themselves have also grown harder as global policy issues penetrate ever more deeply into core domestic concerns. Existing institutions, created for a different world, also lock-in pathological decision-making procedures and render the field ever more complex. All of these processes – in part a function of previous successful efforts at cooperation – have led global cooperation to fail us even as we need it most.

The session examined the growing problem of gridlock across the multilateral system. Intergovernmental organizations are decreasingly able to provide global public goods, even as the need for such goods has grown due to deepening interdependence, it was argued. Moreover, the previous successes of international cooperation, by facilitating globalization, may have paradoxically sowed the seeds of the current impasse. Experts explored these questions across several domains of global policy: trade, intellectual property, security and the environment.





## Presentations by the panellists

### *Ms Roberta Piermartini, Counsellor, ERSD, WTO*

The objective of this session was to answer three questions:

- Why is global cooperation failing?
- Why is this failing now?
- What are the possible solutions?

The discussion was framed around the forthcoming book entitled *Gridlock: Why Multilateralism is Failing When We Need It Most*. One of its authors, Thomas Hale, started the session with a presentation of the theoretical framework of the book.

### *Mr Thomas Hale, Postdoctoral Research Fellow, Blavatnik School of Government, Oxford University*

Mr Hale began by presenting the core arguments of the book. He argued that the “failure of multilateralism” could not be understood within a single issue area, but rather it reflected a general condition of the present international system. He believed that this gridlock manifested across issues areas via a number of common mechanisms. The rise of new powers representing a more diverse array of interests made agreement more difficult, he explained. The problems themselves have also grown more difficult as global policy issues penetrate ever more deeply into core domestic concerns. Existing institutions, created for a different world, also lock-in pathological decision-making procedures and render the field ever more complex.

Moreover, all of these processes are, paradoxically, in part a function of previous, successful efforts at cooperation. The post-war period set the world on a course of self-reinforcing interdependence in which the United Nations and the Bretton Woods institutions, as well as the multilateral trading system, created a peaceful, stable and liberal order in which economic globalization could flourish. The result was deepening interdependence and, over time, greater institutionalization, which followed a self-reinforcing logic. This dynamic brought the world to a far greater level of interdependence than had been imagined in the post-war order. Some 60 years later, concluded Mr Hale, it has now reached a point at which the very institutional “technology” that facilitated globalization is now less able to solve the policy cooperation and coordination challenges that such interdependence requires.

The other panellists then evaluated the presence – or absence – of gridlock in various policy areas, and reflected on the dilemmas of cooperation and pathways around them in those spheres.

### *Mr Thorsten Benner, Associate Director, GPPi*

Mr Benner began by noting the success of the post-war order in preventing a great power conflict, although of course numerous other factors, such as nuclear deterrence, contributed to this outcome as well. He also noted the rise of new kinds of security problems, ranging from terrorist networks, to pandemics, to cybersecurity, which have changed the nature of security problems over the last decades. These problems are quite different from the “traditional” issues such as non-proliferation, he argued, and it remains unclear whether existing institutions will be able to deal with them effectively.

### *Mr Mark Halle, Vice-President, IISD*

Mr Halle then turned to environmental issues, noting the grave state of international cooperation in that sphere. Discussing the recent Rio+20 Conference, he strongly criticized the failure of governments to take meaningful action and contrasted intergovernmental gridlock with the dynamism of sub- and non-state actors. These groups, including corporations, NGOs and cities, have announced a string of new initiatives for sustainability. Here, Mr Halle suggested, lay some hope to move beyond the failures at the multilateral level, although of course it remained to be seen whether such initiatives could meaningfully complement or even supplant intergovernmental structures.

*Ms Carolyn Deere Birkbeck, Senior Researcher, Global Economic Governance Programme, Oxford University*

The final panellist, Ms Deere Birkbeck, evaluated the state of intergovernmental cooperation in the realms of trade and intellectual property. Countries' interests have always diverged on these topics, she noted, so cooperation has never been easy. That said, a large body of trade and intellectual property rules have been built up and many parts of them function well. Furthermore, Ms Deere Birkbeck noted that it was not necessarily clear that more cooperation in the trade and intellectual property realms served everyone's needs equally well. She explained the area perhaps represented less of a general "governance gap" and more of a field in which different institutional choices implied different sets of distributional outcomes.

### Questions and comments

A vivid discussion continued after the presentations of the panellists. Several topics caught the public's attention, such as collaboration and coalitions in negotiations processes, future leader's credentials, as well as the mechanism ensuring cooperation between national governments and international organizations.

Respondents argued that the main driving force is not only a political will, but also the ability of governments to be able to translate national level problems to international organizations and to coordinate within different existent international organizations by executing adequate policy that would be effectively implemented on the ground.

### Conclusions

The session was concluded with the example of the United Nations Framework Convention on Climate Change process as one of the most open ones in terms of access of civil society, notably NGOs. The Intergovernmental Panel on Climate Change (IPCC) is one of the most evidence-based processes. Looking at it through an evolutionary perspective, the IPCC must represent one of the greatest scientific enterprises in the history of humanity and it has moved very steadily towards growing consensus.

A lack of progress on cutting down carbon emissions is due to the fundamental misperception in the whole construction of the process. Behind the need to cut down carbon emissions is the need of technological changes and transfers, which require investment. Moreover, the people who can actually lower investment risks and get the investment flowing are not present at the negotiating table.

Another area that is moving forward is the area of subnational jurisdictions, which is happening in coalitions and networks of megacities. The solution is not to favour the intergovernmental approach over the national one but to use both of them in parallel.



At the roots of the crisis of multilateralism there is a strong shift in the political and policy landscape in which trade policies and negotiations evolve. One of the main factors at the origin of such shifts has been the emergence of the South.

Emerging economies are becoming more and more important in world trade and economy. Their influence – individually or in coalitions like BRICs or BASIC (Brazil, South Africa, India and China) – is growing, and international economic policy-making must take into account their interests and visions on the global agenda. In any post-Doha Round scenario, their stances and interests will be one of the main factors shaping the future of multilateralism. Understanding what they think about the multilateral trade system and its future is vital to set up a broad and solid basis for the development of multilateralism.

The panel brought together experts of five emerging countries from different regions of the world – BASIC and Turkey – to address these issues, focusing on the following questions:

- Which domestic and international factors shape the visions of the emerging countries on the future of trade multilateralism?
- Is multilateralism considered relevant and applicable to their domestic development agenda, taking into account the challenges these countries will face in the coming years?
- Which kind of trade multilateralism captures the preferences of these countries for the post-Doha period?
- How can the emerging countries constructively contribute to the improvement of multilateralism, according to their interests and preferences?
- Is there room for coalitions among emerging countries as a mechanism to foster the emergence of a “new multilateralism”?

## Emerging powers, national interests and the future of multilateralism

### Moderator

Mr Michel Gressot, Senior Advisor, Swiss Agency for Development and Co-operation, Federal Department of Foreign Affairs

### Speakers

Mr Bipul Chatterjee, Deputy Executive Director, Consumer Unity and Trust Society (CUTS International)

Ms Catherine Grant, Programme Head, Economic Diplomacy, South African Institute of International Affairs (SAIIA)

Dr Lin Guijun, Vice-President, University of International Business and Economics (UIBE), Beijing

Dr Ümit Özlale, Director, Training and Research Institute for Public Policy (TRIPP), Economic Policy Research Foundation of Turkey (TEPAV)

Ms Sandra Polónia Rios, Director, Centro de Estudos de Integração e Desenvolvimento (CINDES)

Mr Pedro da Motta Veiga, Director, CINDES

### Organized by

CINDES

Confederação Nacional da Indústria

UIBE

### Report written by

CINDES

## Presentations by the panellists

### *Mr Pedro da Motta Veiga, Director, CINDES*

In a presentation entitled "Brazil, trade multilateralism and the WTO: a medium-term perspective", Mr da Motta Veiga summarized the results of a task force which gathered views of Brazilian trade specialists on how to build a Brazilian proposal for the multilateral trade system. The presentation was organized around three main questions:

- What are the conditioning factors affecting Brazil's positions in the multilateral trade negotiations?
- What characteristics must trade multilateralism have to correspond to Brazil's interests and policy preferences?
- Which should be the main drivers and components of a Brazilian multilateral trade agenda?

Multilateralism is the negotiating forum historically prioritized by Brazil in the trade area. The country does not feel comfortable in the "world" of preferential agreements. The country is undergoing a productive transformation whose vectors are the industrial and agribusiness segments natural resource-intensive.

The task-force concluded that the four most likely trends in Brazil were: (i) the increase in the weight of sectors intensive in natural resources in the industrial structure; (ii) the transformation of the industry towards a less diversified, but more competitive structure; (iii) the consolidation of internationalized competitive segments in the service sector; and (iv) the continuity of the recent trend for Brazilian companies to invest abroad.

According to Mr da Motta Veiga, other domestic factor to be taken into account included Brazil's aspiration for international recognition. Brazil will have to assume growing responsibilities in relation to the multilateral trade system – which may require the country to distance itself gradually from its traditional position as the developing countries' representative.

He believed that at least three external factors should be added to these considerations:

- The accession of two large emerging economies to the WTO (China and the Russian Federation), which has produced a substantial shift in the balance of power within the multilateral trade system.
- The growth in the number of PTAs, which may generate the relative erosion of market access conditions to Brazilian exports vis-à-vis those of the signatories of these accords.
- The emergence of global challenges not directly associated to trade issues, but having intersections with the area of trade.

Mr da Motta Veiga elaborated that in any scenario and whatever the policy preference that dominates the setting of the Brazilian trade agenda, multilateralism would continue to be the priority negotiating forum for Brazil. He expressed that the main characteristics of multilateralism which fit Brazil's interests were the consolidation and improvement of the existing rules and the gradual incorporation of new issues into the agenda.

He concluded that the capacity of the multilateral negotiations to generate results regarding the reduction of tariff barriers had been drastically reduced. At the same time, trade flows are growingly being distorted by non-tariff mechanisms. New efforts of tariff liberalization should keep the backseat in the multilateral agenda, but they can be pursued in the regional and bilateral forums.



Three elements must be taken into account:

- The economic and political importance of multilateralism for Brazil's international strategy.
- The global transformations following the emergence of Asia.
- The prospect of productive transformation opening up for the Brazilian economy.

*Dr Lin Guijun, Vice-President, UIBE*

In his presentation "China's stakes in the WTO and the role it could play", Dr Lin stated that China resents being discriminated in the WTO, citing: (i) the creation, for the first time, of special safeguard mechanism for manufactured goods; (ii) the invention of non-market economy status for China; (iii) the large number of anti-dumping and countervailing duties against China; and (iv) the review mechanism after eight years of accession.

Although most of China's export expansion has occurred after accession to the WTO, Dr Lin did not believe this could be explained by multilateral reductions in trade barriers. A key factor for this impressive performance is China's participation in global vertical specialization.

He expressed that China's main interests in the WTO were:

- a relative stable exchange rate system
- guaranteed market access to Organisation for Economic Co-operation and Development (OECD) countries
- improved access to markets in developing countries
- developing a new approach to disciplines related to anti-dumping and safeguard measures
- uninterrupted and dynamic global supply chains
- the further opening of its domestic market to foreign investors.

Regionalism cannot protect China's fundamental trade interests. Its exports are greatly diversified across regions, which means that increased access to global markets is in China's interest. Dr Lin commented that the main priorities in China's domestic agenda were the expansion of the domestic demand and the upgrading of its industries. The objectives were to move up along the global value chain (GVC) – improving its production patterns from labour intensive to capital intensive and skills and knowledge-intensive patterns – and to develop a new generation of export products.

Dr Lin concluded by comparing Chinese and Russian accession commitments, commenting that, in many cases, China's liberalization measures went far beyond those offered by the Russian Federation.

*Dr Ümit Özlale, Director, TRIPP, TEPAV*

Dr Özlale acknowledged that the entrance of Turkey in a customs union with the European Union had not only fostered the increase of manufactured goods in Turkish global exports, but also in exports to the European Union. In spite of this, however, the country does not have any star export industries, and the loss of competitiveness is a major challenge. When compared to the 12 most recent EU member states, he continued, Turkish competitiveness lags behind in many factors, such as education, technological readiness, macroeconomic stability – although it ranks a little better than BRIC.

Dr Özlale noted that – post-crisis – the slow recovery process in the European markets had had a very negative effect on Turkey. Diversifying exports to the Middle East and North Africa (MENA) markets was the country's first response to the crisis. He explained that although this helped the performance of

Turkish exports during the first year of the crisis, Europe was still Turkey's major market and the EU share in Turkey's global exports was still around 46 per cent.

Dr Özlale then described the increase in the number of RTAs Turkey has with its neighbours – including Albania, Bosnia and Herzegovina, Croatia, Egypt, the European Communities, the European Free Trade Area, Georgia, Montenegro, Morocco, the Occupied Palestinian Territory, the Syria Arab Republic and Tunisia. RTAs are flourishing worldwide, he explained and listed several reasons for the rise of regionalism and the fall of multilateralism in the Turkish agenda:

- problems in negotiation
- more bargaining power with RTAs
- greater market share and easier market access
- barriers to trade and non-tariff barriers in RTAs are reduced more quickly and to a significant extent
- as long as multilateralism fails to liberalize international trade, regionalism tends to continue.

But he warned of the danger of being excluded from the RTA block for non-members and the complicated conflicts arising from the multiple RTA memberships – the "spaghetti bowl". Increasing relations with MENA could foster the diversification of exports. However, Dr Özlale did not believe it provided a long-term solution, due to the quality of exports and the value added to the size of the MENA market as a whole.

Although Turkey is one of the leading exporters in the region, structural problems such as competitiveness still exist. He concluded that there was a high probability that increased regionalism and the associated EU policies would emerge as a challenge. MENA is far from providing a sustainable solution – there should be greater focus on a new industrial policy design.

#### *Ms Catherine Grant, Programme Head, Economic Diplomacy, SAIIA*

In the multilateral trade negotiations, began Ms Grant, South Africa aims to represent the interests of the whole continent. The WTO is at center stage of South African trade policy, but inequalities and imbalances in the world trade system hinder the development objectives of all of Africa.

From a South African perspective, she continued, it is important that the WTO system improves transparency, social dialogue and the participation of the stakeholders. Ms Grant believed the country's agenda for the multilateral trade negotiations included:

- policy space to implement domestic policies geared to foster domestic development
- improving market access and rules in agriculture
- more defensive stances with regards to services and investments.

She argued that there were other relevant issues affecting South African views of trade multilateralism. For example, how climate change impacts on trade. She believed this was a very relevant issue not only due to the impacts of domestic policies responding to mitigation policies on the market access conditions for African products, but also due the climate effects on the production conditions in many countries.

Ms Grant acknowledged the inclusion of South Africa as a member of BRICS, and she considered this to be very relevant for the country. In conclusion, she expressed South Africa's particular interest in the creation of the BRICS Development Bank.





*Mr Bipul Chatterjee, Deputy Executive Director, CUTS International*

Mr Chatterjee started by listing India's main challenges:

- promotion of economic growth
- reduction and elimination of poverty
- promotion of environmental protection.

He acknowledged that these challenges demanded a significant increase in productivity, which called for policy space to implement incentives for the industrial sector.

He believed the opening of India's trade was increasing but there are many doubts about its impacts on jobs generation and on the participation of small and medium companies, which are the main end goals. Mr Chatterjee remarked that the relations between trade and climate change were very sensitive to India. There is much uncertainty about what should be the appropriate approach to incorporate this issue in the multilateral trade agenda.

He concluded with another very important topic of food security. He reported a concern that, in the long term, India might become a net food-importing country – which was perceived as a serious threat to food security.

## Conclusions

In concluding, the panel addressed the points raised during the discussion. There is a disconnection between the emerging countries self-perceptions and the perceptions dominant in the West regarding the situation of these economies. The five presentations highlighted domestic fragilities and competitiveness gaps and the need to implement domestic policies geared to increasing productivity and the upgrading of their participation in the GVCs. In most countries, except for China, there is a concern with the risks of reducing diversification of the production structure.

The panel acknowledged that there was more competition than complementarity among the BRICS production structures, and most of them face fierce competition from China in domestic and external markets. This allowed little room for devising common ground in the coalition to shape a new agenda for trade multilateralism.

In closing, the panel members remarked that, with the exception of Turkey, multilateralism is the main priority for their countries' trade agenda. Their recent good economic performance has been possible under the current rules of the WTO. In general, the domestic agenda for the WTO imply incremental reforms. None of the panel considered profound reforms in trade multilateralism.

## Doha and the multilateral trade system: from impasse to development?

This session explored whether the present impasse in the Doha negotiations can be broken by focusing on the original development objectives of the Doha Round and to suggest ways of moving ahead. Many developing countries are working to preserve the multilateral mandate to ensure that any future WTO outcome promotes a 21st-century vision of development. At the same time, other countries have maintained a push for further liberalization: through mechanisms of the proposed plurilateral agreement on services; the proposed expansion of the ITA; and negotiations on environmental goods and trade facilitation. However, this could result in a two-tiered system that would not only threaten the universality of the multilateral framework, but would also seriously jeopardize the ability of developing countries to utilize trade for their future development.

### Moderator

Mr Martin Khor, Executive Director,  
South Centre

### Speakers

Mr Andrew Cornford, Special Adviser,  
Observatoire de la Finance

H.E. Mr Jayant Dasgupta, Ambassador  
and Permanent Representative of India to  
the WTO

H.E. Mr Faizel Ismail, Ambassador and  
Permanent Representative of South Africa  
to the WTO

Ms Deborah James, Director of International  
Programs, Centre for Economic Policy  
Research (CEPR); Our World Is Not For  
Sale (OWINFS) network

H.E. Ms Angelica Navarro, Ambassador  
and Permanent Representative of the  
Plurinational State of Bolivia to the WTO

### Organized by

OWINFS

International Trade Union Confederation

Third World Network

South Centre

### Report written by

Ms Deborah James, Director of International  
Programs, CEPR; OWINFS



## Presentations by the panellists

### *Mr Martin Khor, Executive Director, South Centre*

Mr Khor moderated the session by providing a summary of the negotiations from the Uruguay Round to the current Doha Round. He noted that the tension between members wanting more liberalization and coverage of the scope of the WTO and other members wanting more development-oriented rules had existed since the WTO was established. He noted that when the DDA was launched in 2001, implementation and special and differential (S&D) issues were given the most prominence in terms of the sequencing, which were to be finished first, before going into the in-built issue of agriculture and then trade-related aspect of intellectual property rights. Developing countries, which had to pay a heavy price in the Uruguay Round to bring agriculture – which had been left out of the trading system for many decades – back into the system, had again to pay a price at Doha for making the disciplines on agriculture more effective. Today, there is still no solution to agriculture, where the subsidies remain and have even increased.

He noted that we were now faced with a trading system in which there was strong debate over the potential changes in the rules – including whether there should be reform to make it development-oriented, or whether they should be changed in order to have more market access and new trade flows. Mr Khor asked whether they were the unfinished development issues of the past or were they the new issues that some members had tried to push but failed, but still continued to do so.

### *H.E. Mr Jayant Dasgupta, Ambassador and Permanent Representative of India to the WTO*

Ambassador Dasgupta noted that trade facilitation is being pushed very aggressively and relentlessly by the developed countries. The arguments which are put forward are that they are good for the developing countries, but perhaps, the implicit message is that “you do not know what is good for you”. He said the attempt is to balance trade facilitation off against the LDC accession, the 28 agreement-specific proposals of Cancun, and the S&D monitoring mechanism.

He pointed out that a World Bank study on trade facilitation, which is often quoted out of context and in a very partial manner, states that there will be US\$ 377 billion of additional trade gained. However, the majority of these projected gains comes from export facilitation. Since developed countries will easily be able to adhere to new standards, it is the developing countries that need to improve their infrastructure for export growth – but the finance for this will not be forthcoming. Trade facilitation will basically result in import facilitation, which the World Bank study concludes will account for just US\$ 33 billion of the overall purported gains. This is next to nothing given global trade volume of US\$ 14.5 trillion today.

Regarding the proposed International Services Agreement (ISA), Ambassador Dasgupta believed that if that kind of agreement was signed, it would mean a very high level of liberalization. Then there would be an effort to transpose that high level of ambition to the WTO, and the developing countries and the rest of the membership would be strongly pressured to accept it.

Pointing to agriculture and non-agricultural market access (NAMA), he explained that under NAMA, there were two agreements in the offing: the ITA-2, in which a very ambitious list of 357 tariff lines has been drawn up and it will include any conceivable device which has an electronic chip; and a very recent agreement among the Asia-Pacific Economic Cooperation (APEC) members on environmental goods. He pointed out that these two lists combined – which would reduce the tariffs on a long list of industrial goods to nearly zero – represent the developed countries' demands for sectoral goods participation in NAMA.

On GVCs, he remarked that they had existed since the dawn of civilization. The whole issue is how do we move up the GVC, and how do we provide more employment, more growth and better benefits to our own people. That is a question which the United Nations Conference on Trade and Development has addressed at great length over the past ten years. However, nobody is paying heed to that because the new mantra is “GVCs are the latest thing”, as if they had appeared out of nowhere.

He predicted that the strategy of some states would be to reach agreement on trade facilitation, some kind of environmental goods list, an ITA-2 and the ISA at the next WTO Ministerial Conference, in Bali, in December 2013 – leaving much of the developing country agenda, and particularly agriculture, out of the round.

*H.E. Ms Angelica Navarro, Ambassador and Permanent Representative of the Plurinational State of Bolivia to the WTO*

Ambassador Navarro believed that we had started this century with a mirage, the idea of development and re-balancing the trade system, at the centre of the WTO. Finally, there was to be a new negotiating round for which developing countries were not necessarily prepared but were promised a series of illusions. More than ten years later, she said we had realized that those chimerical promises were nothing more than a means to ensure greater opening of our markets. In other words, markets were the idea, and we were to accept multinational corporations and companies from the world's most powerful countries.

As to why this is so, she replied that it was because some had an attitude which meant that they wanted development to be development in name only – and that meant “lip service” was paid to development now and again, but no more was done. As to the main issues for the twenty-first century, she said that it was clear from the point of view of her country – first of all, development, secondly, development, and thirdly, development.

In the twenty-first century, she said, we cannot have a development round based on free trade exclusively. It must promote trade that contributes to balance among countries and regions and Mother Nature. Trade agreements must not impose conditions that have adverse effects on human rights and the environment, and they must not bring an end to the values of our societies.

*H.E. Mr Faizel Ismail, Ambassador and Permanent Representative of South Africa to the WTO*

Ambassador Ismael focused on the issue of GVCs. He noted that many proponents of GVCs argue that the most efficient way to improve a country's chances of gaining from globalization was to reduce barriers and to participate in these GVCs. They hope this argument will have the effect of gaining support for liberalization and improving the possibilities for the round itself, and for the impasse to be broken. However, he thought the argument flawed, and that it did not offer a way out of the current crisis.

On the way forward, he believed there was need to begin a different dialogue. One of the key principles to base the system on is fair trade, equal opportunities and levelling the playing field. The second principle should be about capacity-building. Many countries do not have the capacity to produce and export, and they need to be assisted. The rules should be fair and allow everyone to act in ways that promote their development. It should not close off opportunities for development and policy space. It should be inclusive and allow for the participation of countries.

He noted that some of the major players in this system were today taking the plurilateral route – the so-called variable geometry route. These are going to marginalize more many of the developing countries, and particularly the smaller countries, from the system because the whole idea is based on starting with a few countries and then imposing the will of the few on the rest. Ambassador Ismael stressed that this was not a correct principle for multilateralism.

He concluded by stating we need a discourse, a new dialogue among developing countries, between developing and developed countries, between NGOs and governments, academics and intellectuals, about how we would want to rebuild this multilateral system which was constructed. On a final note, he posed the question: How do we construct this in a way which serves the interests of all?

*Mr Andrew Cornford, Special Adviser, Observatoire de la Finance*

Mr Cornford addressed General Agreement on Trade in Services rules on financial services, noting that since negotiation in the 1990s, the international banking landscape had undergone far-reaching changes. He explained that the bail-outs of large banks in the United States and some European countries – arguably the largest programme of sectoral support by governments in modern history – had implications for policy towards the granting by countries of market access to foreign banks that have benefited



directly or indirectly from such support. However, within negotiations in the WTO, there seems to be little understanding of the need for fundamental rethinking of the financial services rules.

He remarked that in June 2012, Ecuador submitted a proposal that the WTO should monitor and review developments related to the global financial crisis towards ensuring that WTO members had policy tools available to prevent intensification of the crisis. He pointed to discussions about the appropriate policy response to the large capital inflows experienced by some emerging-market countries since the outbreak of the financial crisis. He pointed out that it was much more widely accepted that prudential measures and capital controls are closely related substitutes for the purpose of avoiding macroeconomic instability.

Mr Cornford also highlighted some possible ways forward, noting that the NGO Public Citizen had proposed a revision to the Prudential Defence Measure of the Annex on Financial Services that would place the burden of proof in cases involving this measure explicitly on the challenger. Another possible way forward, he suggested, would be simply to hope that negotiations on banking services would fade. Although such hope is unwarranted, given that certain countries seem quite determined to push financial liberalization in the plurilateral services negotiations. One possibility might be to suspend negotiations on financial services indefinitely. However, such a suspension might leave in place what are now inappropriate commitments undertaken during the Uruguay Round negotiations, and thus they would still need to be addressed.

*Ms Deborah James, Director of International Programs, CEPR; OWINFS*

Referring to the WTO Panel on Defining the Future of Trade, convened by Director-General Pascal Lamy, Ms James said that back in the 1980s, when negotiations to launch the Uruguay Round were at an impasse, then Director-General Arthur Dunkel employed a very similar tactic by convening a panel to write a report which ultimately led to the launch and conclusion of the Uruguay Round. She argued that the developed-country language at the Group of 20, APEC and other summits was part of an effort to move this “new trade narrative” about the GVCs forward. She called the need for trade facilitation and the plurilateral services agreement as the “lubricant” for those GVCs. Ms James expected a panel report from the WTO Secretariat in April 2013, which would be used to narrow the debate about what is possible, and thus civil society organizations had opposed the panel since its inception.

She pointed out that global civil society organizations also opposed the new guidelines for LDC accession, because they were very abstract with regards to the policy space flexibility for LDCs, while being too stringent in their demands on LDCs for liberalization.

In conclusion, she said that the OWINFS asserts that the global trade framework must provide countries sufficient policy space to pursue a positive agenda for development and job-creation, and that trade rules must facilitate, rather than hinder, global efforts to ensure true food security, sustainable development, access to affordable health care and medicines, and global financial stability.

## Re-energizing multilateralism: an Asia-Pacific perspective

### Moderator

Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official

### Speakers

Mr Alejandro Jara, Deputy Director-General, WTO; former Ambassador and Permanent Representative of Chile to the WTO

Professor Wang Xinkui, Chairman and President, Shanghai WTO Affairs Consultation Center (SCCWTO); Vice-Chairman, All-China Federation of Industry and Commerce (ACFIC)

Mr Luzius Wasescha, Former Ambassador and Permanent Representative of Switzerland to the WTO and the European Free Trade Association (EFTA)

H.E. Mr Yi Xiaozhun, Ambassador Extraordinary and Plenipotentiary and Permanent Representative of China to the WTO

### Organized by

SCCWTO

### Report written by

Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official

The challenges facing multilateralism today have reignited intense debate among academics. Some are worried that regionalism threatens to erode the multilateral trading system, while others believe that regionalism serves as a complement.

The session examined the dynamics, mechanisms, practices and effects of Asia-Pacific regional economic integration in recent years and attempted to identify the experiences gained and the lessons learned. The objectives of the session were to:

- stress the continuing importance and relevance of a vibrant multilateral trading system to international trade
- draw attention to the experience of the Asia-Pacific region in fostering and encouraging international economic cooperation
- explore whether that experience might be helpful in re-energizing the multilateral trading system.





## Presentations by the panellists

### *Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official*

In introducing the session and the panellists, the moderator, Mr Harbinson, contrasted the difficulties currently faced by the WTO with the vitality of the APEC across the broad spectrum of its activities. It had, for instance, recently agreed to reduce tariffs to at least 5 per cent on a range of environmental goods by 2015. He noted that the WTO was based on legally binding rules and commitments, while APEC (covering a diverse range of economies) proceeded through voluntarism and “open regionalism”. The session aimed at exploring the links between APEC and the WTO and any lessons that might be learned in this connection.

### *H.E. Mr Yi Xiaozhun, Ambassador Extraordinary and Plenipotentiary and Permanent Representative of China to the WTO*

Ambassador Yi noted that, mainly due to the impasse in the Doha Round, the multilateral trading system was at a crossroads and could be said to be in crisis. At the same time, protectionism was rising. China was nevertheless a very strong supporter of the WTO and would remain so. APEC consistently supports free trade and investment, and its model of open regionalism also supports the multilateral trading system. Its operations are characterized by strong political will. WTO members should similarly strengthen their commitment to it through strong political guidance. A healthy multilateral trading system is vital. Efforts should be redoubled to conclude Doha. At the same time, the WTO might learn from APEC's meaningful work in the areas of GVCs, trade facilitation and innovative growth.

### *Mr Alejandro Jara, Deputy Director-General, WTO; former Ambassador and Permanent Representative of Chile to the WTO*

Mr Jara drew attention to the evolution of the WTO from the General Agreement on Tariffs and Trade, which had been based on a more pragmatic system that had developed, through a period of experimentation, into the WTO. Governments are now very careful about undertaking new commitments which would be legally binding under the WTO framework. However, the APEC approach, involving guidelines and best practices, enhanced transparency, and preparation and analysis, could be a very useful tool for WTO members to prepare the ground for possible future action in a range of areas – for example, trade facilitation, investment and competition policy. APEC could perhaps do more outreach in terms of highlighting for other WTO members the positive aspects of its experiences.

### *Mr Luzius Wasescha, Former Ambassador and Permanent Representative of Switzerland to the WTO and EFTA*

Mr Wasescha agreed that there were elements of APEC's work and experience which could be of use to the WTO. This was not to say, however, that the APEC list of environmental goods could simply be transferred to the WTO. There should be enhanced dialogue between APEC and the WTO and the results of APEC's work could be considered in the WTO. The WTO could also learn from some of the APEC processes, for example, the annual Leaders' Meetings and the involvement of the business community. He noted that EFTA and Switzerland were very active in conducting trade negotiations with Asian states.

### *Professor Wang Xinkui, Chairman and President, SCCWTO; Vice-Chairman, ACFIC*

Professor Wang felt that the impasse in the Doha Round, coupled with rising protectionism, had stoked fears that multilateralism was in danger. The multilateral trading system needs a more broad-based involvement, its operations need a more inclusive decision-making process, and it should be grounded on a clearer vision and forward-looking agenda. APEC had been able to respond more flexibly to changes in the global trading system, addressing such issues as climate change and high food demand resulting from rapid urbanization in developing countries. Nevertheless, the constellation of PTAs between Asia-Pacific states resulted in a confusing “spaghetti bowl”. In the final analysis, trade liberalization in the Asia-Pacific region was best achieved multilaterally. For this reason, it was vitally important that the multilateral trading system should be re-energized.

## Questions and comments

A question was asked on the contrast between the business community's avid participation in APEC and its relative indifference to the WTO. In response, one panellist noted that business was well organized in APEC. It also had a direct channel to meet leaders and ministers, and APEC-related business meetings were regular and well attended.

Some participants contrasted the legalistic environment in the WTO with the more open and flexible system of consultations in APEC. Perhaps the legal environment inhibited WTO negotiators, who thus became more "risk averse". Despite the "voluntary" nature of AEC, it seemed to be able to produce results.

Another question concerned agricultural trade and the possibility that APEC might be able to address "protectionist" tendencies among some countries in the region. The panellists did not feel that this was a realistic possibility, although APEC might be a forum for some dialogue in this connection.

A further question concerned dispute resolution. Should APEC have a regional dispute settlement mechanism or would the WTO provide a suitable forum? The panellists felt that APEC was not a suitable forum for dispute resolution. Nor should the WTO concern itself with the settlement of regional disputes.

## Conclusions

The following main conclusions were drawn from the discussion:

- APEC had benefited enormously from the multilateral trading system. It was a strong supporter of it and should strengthen this commitment even further in order to ensure that the multilateral trading system was viable and healthy.
- The legalistic approach in the WTO had resulted in a certain amount of rigidity in negotiations. The use of more flexible APEC techniques such as guidelines and best practices and open discussion might in certain contexts be usefully applied in the WTO in order to prepare the ground for agreement.
- APEC has responded more flexibly to changes in the world trading system and the WTO could learn some lessons from APEC in this regard.



# Youth Ambassador Panel



- WTO
- Regulate Multilateral Agreements
- Settle disputes
- Provide a legal and institutional framework



## How can trade promote development?



### Moderator

Ms María Pérez-Esteve, Public Forum Coordinator, IERD, WTO Secretariat

### Speakers

Mr Andrew Bauer, student, Land Economics, Cambridge University

Ms Karina Hehs, student, Agricultural Engineering, University of São Paulo; winner of the WTO Youth Ambassador Video Contest

Ms Eloise Johnston, student, Masters of International Relations, Macquarie University

Ms Ankita Mishra, student, Institute of Business Management Pune; winner of the WTO Youth Ambassador Essay Contest

Ms Marina Murina, former student of the Graduate Institute of International and Development Studies (IHEID); Consultant, United Nations Economic Commission for Europe (UNECE)

### Organized by

IERD, WTO Secretariat

### Report written by

IERD, WTO Secretariat

The WTO launched the Youth Ambassador Programme during the closing session of the 2011 Public Forum to increase youth involvement in discussions on international economic governance issues, to encourage their engagement in public policy discussions and to bring new perspectives to the debate.

The Youth Ambassador Panel was a new element of the Public Forum 2012. It featured the winners of the Youth Ambassador Video and Essay Contest, who presented their views on "How can trade promote development?" – the topic tackled by their competition entries – along with other students with a proven interest in international trade issues.

Questions considered by the panel included:

- How can trade contribute to promote growth and stability in these challenging times?
- How can the WTO participate in better addressing world problems and improving global governance?
- How can developing countries, and in particular least-developed countries (LDCs), benefit from the multilateral trading system?
- How does accession to the WTO affect a country?



## Presentations by the panellists

### *Ms María Pérez-Esteve, Public Forum Coordinator, IERD, WTO*

Ms Pérez-Esteve introduced the speakers and gave some background information on the Youth Ambassador Programme and the Video and Essay Contest. To participate, contestants had to provide their response to a trade-related question. Submissions were either made in the form of a video or an essay.

For the first time, the winners were invited to the WTO to attend the Public Forum and to present their views on the topic dealt with by their competition entries. Other students with a proven interest in international trade issues were also part of the panel.

### *Ms Karina Hehs, student, Agricultural Engineering, University of São Paulo; winner of the Video Contest*

The discussion began with the winning video submission. It was then followed by its author, Ms Hehs, reminding the audience of the importance to include the idealistic voices of youth as part of the discussion on trade. Ms Hehs believed that by ensuring the process of developing new ideas includes all voices, the best ways would arise in which to move trade forward.

She also underlined the importance of the strategy accepted by all players, and that the outcome will be completely different depending on how the players are willing to proceed, whether they will have only one winner or whether there will be a mutually beneficial solution in the end.

### *Ms Ankita Mishra, student, Institute of Business Management Pune; winner of the Essay Contest*

Having underlined the importance of the Youth Ambassador Programme in increasing the involvement of young people from all over the world on trade matters, Ms Mishra explained her key concept of “soft-trade”. She stated that trade had gone through an evolutionary process – from a pure exchange of goods to a more complicated stage with the evolution of competition and recognition in the global arena. With the process of liberalization, the purpose of trade, according to Ms Mishra, had also changed. The motives of trade have shifted from merely satisfying the needs of people to achieving global growth, whereby developed countries help LDCs with what she calls “soft-trade”. This type of trade looks beyond materialistic gains and channels the resources of global society within its own capability.

It is her belief that the driving forces of trade should be changed from pure materialistic elements to ones which serve as a tool to lift up developing countries. The sharing of knowledge and capacity-building could be paths to accomplishing this. Ultimately, bridging the gap between change-loving youths and decision-makers can be a good way to achieve progress, she noted.

### *Mr Andrew Bauer, student, Land Economics, Cambridge University*

Mr Bauer took a look at economic history to understand the different stages of development and the trade interest inherent in these stages. The initial stage concentrates on primary exports, where the efforts are focused on production and exploiting natural resources. These products are then traded internationally in order to raise foreign cash reserves, which then can be used to import foreign-manufactured goods. Unfortunately, he underlined, this process does very little to stimulate growth within countries, as it almost allows them to consume outside of their productive capacity, and it does not provide any increases in this productive capacity.

Many LDCs are trapped in this stage of development: their economies cannot industrialize, and they cannot expand beyond the primary production phase. A potential solution with regards to trade would be the adoption of a policy of temporary import-substitution industrialization, which involves the implementation of tariffs on foreign-manufactured goods in order to protect and nurture the domestic industry. This enables the countries themselves to industrialize to the point where they can saturate domestic market. Historically, the Republic of Korea and Chinese Taipei have used these policies in order to fuel industrial growth.



The second stage is achieved once a country has industrialized past the point where it can satisfy domestic demand for manufactured goods. This stage represents developing or newly industrialized countries such as the Asian tigers or Brazil and China, and they require a much larger market in order to continue expanding. They must begin selling their products internationally. For this to occur, governments must adopt a more outward-looking trade strategies, and this is where the WTO can help to induce further growth to the industries through liberalized international markets.

Finally, there are developed countries that have high levels of industrialization and several home industries which already have strong positions in the international market. At this stage, it seems to be little progress left to be made for the countries, which is why they are seeking to sign PTAs with other countries in similar positions. The advantage of this is that it creates FTAs and customs unions, which are able – to varying degrees – to use the free flow of human and physical capital between members to help to eliminate all border-related constraints. The benefits of economies of scale across states can happen. Examples of trade blocs currently in operation include the European Union and the NAFTA. Although there has been some success in the formation of the trade blocs which have successfully promoted growth and development for the countries involved, one has to bear in mind there are risks involved and potential repercussions, such as the creation of depressed regions and inefficiency due to administrative costs. In his view, the WTO must do what it has been doing – which is the promotion of fair competition whilst allowing certain trade concessions for developing countries. However, this process requires the full support of WTO members and in Mr Bauer's view, the Doha Round was the perfect example. His suggestion for the WTO was to increase and encourage collaboration between members.

*Ms Marina Murina, former student of IHEID; Consultant, UNECE*

Ms Murina offered an interesting perspective on the recent accession of the Russian Federation. According to her, regardless of the turbulence, the WTO was still the forum which countries strived to join. The organization itself is an incentive to make positive developments in a member's domestic policies.

She stressed that WTO membership provides the right to participate in international rule-making and shaping the future of multilateral trading system, since the new rounds will be coming up on the agenda as well as new issues being covered. Ms Murina also mentioned that some benefits were hard to quantify since they were embedded in the system such as the bidding mechanism of the dispute settlement, which establishes the level playing field with all the WTO members, and the inflow of foreign direct investment, which stimulates diversification of the economy by bringing new technology and managerial skills. She noted that even though not all of the economic sectors would benefit in the short run, after accession some self-enforced mechanisms would switch off and the economy would be restructured.

Ms Murina quoted one of the Russian negotiators underlying that the WTO is neither good nor evil – it is a mechanism that ensures stability, transparency and global prosperity. She concluded by stressing that the WTO is a member-driven organization and its functioning depends on its members.

*Ms Eloise Johnston, student, Masters of International Relations, Macquarie University*

Ms Johnston offered a less optimistic view in her preliminary research on trade and development between Australia and the Pacific islands. Since 2009, Australia has been calling for a complete liberalization of those markets to promote growth and development. Through the Aid for Trade programme, they will focus on capacity-building, improvement of infrastructure and ministerial training. However, she found that despite the activeness of the agreement, aid and trade may be incompatible.

According to Ms Johnston, trade tariffs represented an important source of revenue for governments, and liberalization sometimes caused the provision of public goods such as water and electricity to become unattainable. According to Ms Johnston, the Pacific islands' main concern was the disappearance of the Aid for Trade at any time, since this programme is granted on a voluntary basis. Another issue that she raised in her research was youth unemployment on the Pacific islands. She underlined that Australia had negotiated another agreement on labour mobility outside of the FTAs in question.



Concluding, she raised a systemic issue of the North–South divide, where negotiations between the two parties showed unfairness in relation to the weakest party.

### Questions and comments

Questions from the audience offered interesting perspectives on a number of other issues, including:

- the use of information and transparency to encourage companies and the public to think globally instead of just their own interests
- the inability of growth to be the sole indicator of development, but the difficulty in identifying other metrics
- the use of trading blocs and South–South cooperation to help LDCs
- the importance of including the environment and greening economies in the trade discussion, as well as the bilateral or multilateral ways to continue liberalization.

### Conclusions

The panel closed with the two Youth Ambassadors explaining how they will use their positions to foster the programme's goals. Both planned to spread information and awareness of the WTO and trade issues among their peers: Ms Mishra through forums and lectures at universities in India; and Ms Hehs with a blog and discussion forum in Brazil.

Ms Pérez-Esteve announced the theme for next year's Youth Ambassador Video and Essay Contest: "The role of the multilateral trading system in global governance". She urged students from around the world to participate. The WTO looks forward to engaging further with young people and hopes to see the programme develop into a firm platform that will promote and increase youth involvement in discussions on international economic governance issues at the WTO.



## Winning essay by Ms Ankita Mishra

### How can trade promote development?

*How can trade promote development?* The moment I read this statement, I thought to myself, “well here we have another one of those typical topics of discussion that is echoed in practically every diplomatic and political meeting around the world”. “Bilateral trade”, “sustainable development” and “inclusive growth” are the buzz words forming the epicentre of the modern economic world; be it high-profile talks between the United States and China or the annual Doha Development Round of the World Trade Organization (WTO). Nevertheless, the simplest answer to the question above would be:

*Trade aids development by bringing different countries together; thereby providing avenues to suffice their need of scarce commodities and thus nurturing a mutually beneficial relationship.*

However, this would be stating the obvious. While it is true that the evolution of the modern corporate world owes its existence to the concept of trade and that what had started as a simple exchange of goods between people to fulfil their survival needs has now become the lifeline of many economies, one cannot overlook the drastic transformation that the theory of trade has undergone in the past few years. Moreover, we as youth and as “the future” definitely cannot avert the changes that we need to bring to the global economy.

The basic concept of modern trade is beautifully captured by the world-renowned economist Paul Krugman in his theory of new trade, which states that all countries trade for two primary reasons: firstly, to take advantage of their differences by a phenomenon known as comparative advantage; and secondly, to benefit from increasing returns through the inherent advantage of specialization. It is to be noted that so far trade has always been associated with materialistic objectives, i.e. it involves the exchange of goods between two entities hoping for some financial gain in the process. However, it is worth mentioning at this point that rapid globalization and liberalization have revolutionized the purpose of trade itself. The motive of trade has shifted from merely fulfilling the needs of people to achieving global growth, whereby the developed nations help to uplift the underdeveloped and the developing economies. As stated by the WTO Director-General Pascal Lamy, trade as a world of “them” and “us” has changed to the world of “we”.

I have to admit that the concept of “holistic global development” is still in its nascent stage and is faced with numerous challenges. Nevertheless, in my opinion many of these hurdles can be overcome by adopting the approach of “soft-trade”. This is a technique that encourages nations to *think beyond their self-centred motives and channel resources to aid the development of the global society within their capability*. I would like to clarify at this point that soft-trade does not mean charity! *It is a concept which steers nations to stretch their capacity in their field of competitiveness while creating a multiplier effect so as to help the development of weaker economies. It also aims to equip the weaker sections of the society with adequate knowledge and skills to help them compete in the global arena*. It is often noticed that many nations have adequate resources, but they fail to compete due to poor organization, a lack of technology or inadequate skills. The key to the implementation of soft-trade is that it involves a *shift in focus of trade from the exchange of goods to the exchange of ideas, expertise and soft-skills* amongst nations; hence promoting a sense of responsibility towards inclusive development of the society. Schemes such as the Standards and Trade Development Facility, “Made in the World” and “Aid for Trade”, initiated by the WTO, illustrate this concept very effectively. This simple change in the outlook would not only aid the progress of developing and underdeveloped nations, but it would also help to overcome many global challenges faced by nations across the world today.

I would like to illustrate the concept of soft-trade with a hypothetical example. One of the most critical issues impacting our world today is food crises. There are several nations around the globe, including many Asian countries, the African subcontinent and parts of Latin America, that are severely affected by the adversities of insufficient food and nutrition. However, the irony of the story is that while people in these countries struggle to get their daily bread, there are other nations where millions of tonnes of



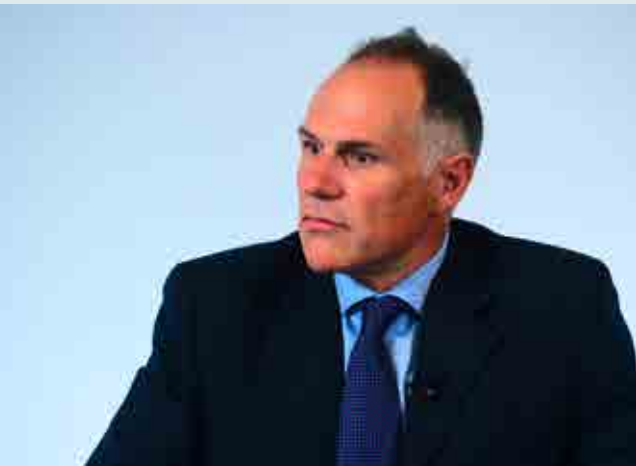
surplus food are thrown away every year. Furthermore, we also have nations where tons of food are wasted every year due to poor infrastructure. A study entitled *Global Food Losses and Food Waste*, by the Swedish Institute for Food and Biotechnology, on request from the Food and Agriculture Organization of the United Nations, suggests that “roughly one-third of food produced for human consumption is lost or wasted globally, which amounts to about 1.3 billion tons per year”. Moreover, it was also found that “much more food is wasted in the industrialized world than in developing countries”. Generally in high income countries, food is wasted at the consumption stage whereby low-quality food is declared as unsuitable for human consumption. In addition, while anticipating unpredictable bad weather or pest attacks, farmers sometimes make production plans on the safe side and end up producing excess crop. On the other hand in low-income countries, food is wasted due to financial, managerial and technical limitations. A recent case in India showed that millions of tons of wheat had rotted due to a lack of warehouse space to hold the bumper crop. This could be avoided to a great extent if the two sides could cooperate by trading skills, knowledge, resources and capacity instead of merely trading crops, as it is done now. Cooperation among farmers could reduce the risk of overproduction by allowing surplus crops from one farm to solve a shortage of crops on another. Similarly other major challenges can also be overcome by proper cooperation and collaboration.

The impact of soft-trade on the development of emerging economies such as India, China and Russia has been especially evident in the past two decades. Belonging to one such nation (India) myself, I have personally experienced a drastic transformation in my country since liberalization, when India opened its doors to foreign trade. The pace of growth and development has been phenomenal since then. The country has seen major boost in practically every sector; right from manufacturing to services, aviation to telecommunications, agriculture to textiles and mining to the financial sector. In addition to fuelling technological advancement, international trade has provided a major platform for sharing expertise and knowledge, thus abetting global inclusive growth.

In conclusion, it can be said that there is direct correlation between trade and development. International trade and cooperation have found a new hierarchy in the modern economic world due to globalization. Soft-trade which looks beyond materialistic gains helps to achieve sustainability and aims to make nations self-sufficient to compete and survive in the long run. Not to forget about the human touch that it inculcates which helps to build stronger relations among the nations!



# Sub-theme I: Formulating new approaches to multilateral trade opening



## Least-developed countries at the crossroads: status quo or sustainable development?

### Moderators

Dr Debapriya Bhattacharya, Chairman,  
*LDC IV Monitor*

Mr Josip Pervan, Senior Policy Advisor,  
*IDEAS Centre*

### Speakers

Dr Vinaye Dey Ancharaz, Senior  
Development Economist, International  
Centre for Trade and Sustainable  
Development (ICTSD)

Mr Nicolas Imboden, Executive Director,  
*IDEAS Centre*

Dr Jaime de Melo, Senior Fellow,  
Foundation for International Development  
Study and Research (FERDI)

Professor Mustafizur Rahman, Executive  
Director, Centre for Policy Dialogue (CPD)

### Organized by

LDC IV Monitor

IDEAS Centre

### Report written by

Ms Anne-Katrin Pfister, Junior Programme  
Officer, ICTSD

The economies of least-developed countries (LDCs) had been steadily improving until the global economic meltdown in 2008 and are currently on the path of a faltering recovery. Growth is still being generated mainly by exports of raw materials and semi-processed products to the markets of developed countries and major emerging economies. The new investments are predominantly targeting LDCs' natural resources and are creating jobs and value-added only in the short-term. Opportunities for the export of services continue to remain very limited. Growth in these countries has done little to create sustainable employment opportunities and add value to the products exported, or to help find new markets. In an increasingly volatile economic environment, coupled with stalled delivery of the Doha Development Agenda (DDA), diversification and flexibility of LDC economies have become a critical necessity. This need has been accentuated by the emerging shifts in trade and investment flows and their changing institutional arrangements. LDCs are facing a serious dilemma about the prospect of structural transformation of their economies. One of the key questions is how to take a decisive step forward to increase the opportunities for exports of goods and services while at the same time creating an economic framework conducive to investments and trade expansion.

The session concentrated on the following two key areas:

- diversification of export base and the opening up of new export markets
- creating a predictable and transparent economic framework.



## Presentations by the panellists

### *Mr Josip Pervan, Senior Policy Advisor, IDEAS Centre*

Mr Pervan introduced the two institutions which organized the session, presented the panellists and gave a short introduction to the topic.

Until the global meltdown, LDCs had experienced increasing growth rates. However, this development was mainly due to trade in natural resources and raw commodities, which only added value to the economies in the short term. As such, the sustained growth has done little to create employment opportunities or create markets. Today, LDCs are facing a serious dilemma of structural transformation. In order to increase the development in LDCs, exports need to be increased via the diversification of a country's export base and by creating a predictable and transparent economic framework.

### *Dr Vinaye Dey Ancharaz, Senior Development Economist, ICTSD*

Focusing on Africa, with 33 out of 48 LDCs, Dr Ancharaz emphasized that diversifying the export base entails diversifying the products produced as well as markets. As indicators of industrial diversification have shown, Africa has failed to industrialize and diversify. With a reference to the Istanbul Programme of Action (IPoA), he mentioned that one of the main goals of the IPoA is also export diversification, as this is essential to increase trade for LDCs. Two important aspects of diversification is the resistance towards external shocks as seen in other countries during the crisis and the relation between diversification and jobs as seen in the recent developments in Tunisia, where the revolution was driven by the need of jobs for young people. The export-oriented growth in Africa has so far failed to address high unemployment rates. This means that a country needs to grow by 28 per cent to cause a country's employment to increase by just one per cent.

In terms of exports, African countries have shown a sharp increase in exports from 2000 onwards but then suffered a decrease caused by the global crisis in 2008. However, most of this growth was driven by commodities – fuels and minerals only. This leads to the measure of export concentration by country which shows that many countries are exporting mainly one good (e.g. oil in Angola). Countries such as Gambia are nevertheless showing a gradually diversified export base. Export diversification is, however, not a matter of quantity but rather a question of which products have been exported. In order to gain from its exports, a country should aim to engage in processing, in order to add value to its exports of raw products.

Creating the right environment for these developments requires the institutional set up, the regulatory framework, the governmental set up in a country and the ease of doing business. As rankings show, such as those by the World Bank, much needs to be done in LDCs in order to create a healthy business environment allowing countries to move out of the natural resource trap.

However, there are opportunities for LDCs to diversify, such as via increased regional trade with other African countries, especially as intra-African trade is more diversified than in the rest of the world. Another opportunity can be seen in the rise of global value chains (GVCs) and the emerging research in trade in tasks. GVCs, by their nature, need different steps of production and different tasks. They are important to LDCs who are in a position to produce a component of a product or to provide services along the GVCs.

Diversification is possible for LDCs when the countries move up the production ladder and engage in processing, as this in itself provides significant scope for diversification. If a country wants to achieve long-term growth, a bigger set of more sophisticated products is needed.

Aspects such as trade facilitation and aid for trade (North–South corridor) have shown results in Africa, but also accession to WTO and the regulation it implies can support and unleash the dynamic needed for export diversification. The focus should lie on structural transformation rather than on a narrow focus of export diversification.



*Dr Jaime de Melo, Senior Fellow, FERDI*

Mr de Melo emphasized the marginalization of LDC exports not only in goods but also in services. He mentioned that LDCs were not that different from other landlocked, low-income countries or small islands when it comes to the problems of diversification. With regards to trade in services, the share of LDCs has not increased in recent years, but given the countries' geographical situation, this area might hold potential for further development.

In general, more diversification brings higher growth of exports and less volatility. Countries become rich by producing what rich countries consume, he explained. Given the age pyramid of LDCs and low-income countries, the importance of creating jobs becomes imperative. It should be in the interest of these countries to expand exports in labour-intensive industries.

Firm-level data show that larger transactions have a longer duration. However, this is very specific to the industry, and LDCs which have limited export markets are encouraged to export to their neighbours in small quantities, with low costs. There is potential to increase these transactions step by step.

The latest trade data show that it becomes more and more profitable to specialize in a specific task in order to plug into factory chains around the world. Services can be one aspect of integration into GVCs.

*Mr Nicolas Imboden, Executive Director, IDEAS Centre*

Mr Imboden began that the real problem of diversification lies in providing employment to the many young people in LDCs. The question is how this can be achieved.

A country cannot add value without economic transformation, but no country has developed only on commodities or only on agricultural production. It must also be considered that no country has ever developed under free market conditions (e.g. China or the United States). However, after a certain stage of development, a country is unable to develop further if protectionist measures are in place.

What needs to be diversified in general is the production base. The comparative advantage of a country must be developed, preferably by clustering. However, knowing that LDCs are the latecomers in the system, it is particularly difficult for them to do so as they are competing with more developed countries with cheap labour.

With regards to GVCs, these are providing new opportunities for LDCs, as they give the big advantage of becoming competitive in one product in order to enter the value chain. This means that any producer has the whole world as its market. The problem lies in supply constraints and not in market access.

In order for LDCs to increase their exports, a regional approach and depending on the type of industrialization, a labour-intensive path is needed in order to take care of the high unemployment rates.

Valid framework conditions are needed for these kinds of development and that is why the WTO accession process is so relevant: accession gives both security and predictability for the country itself and others.

*Professor Mustafizur Rahman, Executive Director, CPD*

In Professor Rahman's view, the creation of a predictable economic framework is vital. However, although it is a necessary condition for sustainable development, it is not in itself a sufficient condition. By talking about predictable and transparent frameworks, it is not only the WTO which is important in this regard but also regional trade agreements (RTAs) and structural adjustment policies.

He further emphasized the importance for a country to appreciate how to transfer from comparative advantage to competitive advantage. One aspect is rules, but also industrial policies have to be in place, even if they are undermined by many conditionalities. It is not only the WTO the discussions should be limited to but other forums as well.





Given the low percentage of LDC trade in world trade, Professor Rahman encouraged the audience to rethink how LDCs are supported in order that valuable and focused help is provided to them which offers true competitive strength. Only predictable and transparent policies are good for LDCs, but these will not be enough. One has to go beyond those and to think about the challenges.

### Questions and comments

A representative from Global Voice, Australia, raised a question on the negotiations for a closer cooperation between Australia, New Zealand and the Pacific islands, as the talks have experienced some difficulties in finding agreement, and asked how this could progress.

A representative from Our World Is Not For Sale network commented on the recently agreed accession guidelines for the LDCs, which were approved by the General Council in July 2012. She said that these would make many demands on LDCs regarding their tariffs when acceding to WTO. In addition, the issue of the process knowing that every country could “veto” the accession of another country was mentioned. The question was raised as to how the WTO could be more responsive to the needs of LDCs and developing countries and in particular with regards to the accession process and the two issues raised.

### Conclusions

Mr Bhattacharya concluded the session. First, when talking about diversification in LDCs, one has to keep in mind their heterogeneity – landlocked, small island states and others have different needs. The concept of diversification has a different meaning for different countries. However, the structural impediments are common for all countries.

Second, what does diversification mean? Is it structural transformation? As a general definition, Mr Bhattacharya said that in his view, it meant creating sustainable changes by relocating your resources from a low-productivity sector to a high-productivity sector. For example, agriculture to non-agriculture, but today it also includes services.

Third, the change in gross domestic product is not the only factor which is important, as it does not show change in employment, which is key for LDCs, in livelihood or in poverty levels.

## How can the WTO dispute settlement system influence dispute settlement within regional trade agreements and bilateral investment treaties?

The session focused on a discussion on whether modelling dispute settlement provisions after the WTO dispute settlement mechanism in regional and investment agreements will help harmonize multilateral and bilateral/regional regulation or might it generate more fragmentation and greater risk of conflicting outcomes, creating problems for governments and traders. Against different backgrounds, the panellists touched on the possible influence of the WTO dispute settlement system and its jurisprudence on disputes in RTAs and investment disputes, and made general comments on the present state of trade agreements vis-à-vis the WTO dispute settlement mechanism.

### Moderator

Professor Giorgio Sacerdoti, Professor of International Law, Bocconi University, Milan

### Speakers

Professor Anne van Aaken, Professor of Law and Economics, Public Law, Public International Law and European Law, University of St Gallen

Mr James Baxter, Deputy Permanent Representative and Minister, Permanent Mission of Australia to the WTO

Professor Gabrielle Marceau, Senior Counsellor, Legal Affairs Division (LAD), WTO; Visiting Professor, International Law, Graduate Institute of International and Development Studies (IHEID)

Mr Fernando Piérola, Senior Counsel, Advisory Centre on WTO Law (ACWL), World Trade Institute (WTI)

### Organized by

Bocconi University, Milan

DISSETTLE Network, Geneva

### Report written by

Mr Gerard Penalosa, Paralegal, LAD, WTO



## Presentations by the panellists

### *Professor Giorgio Sacerdoti, Professor of International Law, Bocconi University, Milan*

Professor Sacerdoti moderated the discussion and set the tone of the session by stressing that there are several ways in which the WTO dispute settlement mechanism could influence RTAs and bilateral investment treaties (BITs). He noted that, initially, regional and bilateral trade agreements generally have very little in terms of dispute settlement structure and are generally more focused on negotiation when it comes to the settlement of disputes. Professor Sacerdoti also highlighted that there was a scarcity of cases being brought under the ambit of RTA jurisdiction, and that more and more cases were being brought to the WTO by parties to RTAs which have their own dispute settlement system. He then posed the question: “Does this mean that there is no good system of dispute settlement under existing free-trade agreements?”

### *Mr Fernando Piérola, Senior Counsel, ACWL, WTI*

Mr Piérola stressed that states are more inclined to bring disputes under the auspices of the WTO due to the following reasons: the WTO has a well-established jurisprudence; it has an excellent track record in dispute management; and considering the aspect of effective compliance, the WTO dispute settlement mechanism – being multilateral in nature – is a more practical choice. Mr Piérola added that the WTO dispute settlement system plays a very significant role in terms of influencing the formulation of new rules concerning dispute settlement in the negotiation of free trade agreements (FTAs). He also pointed out that while forum-exclusion clauses which can be found in existing RTAs may bar other forums from looking into matters that were already decided under the WTO dispute settlement system, it is not clear whether the same principle would work the other way around – that is, the WTO being barred from looking into matters that have already been adjudicated at the regional level. In terms of investor–state disputes, he pointed out that among the relevant issues to consider when looking at them from the WTO perspective were coherence in the findings of different tribunals, jurisdiction and legal standing of private parties in the WTO dispute settlement system, and the granting of remedies.

Mr Piérola concluded by stressing that, in light of recent developments in investor–state disputes, the relevant question should be: “How would these developments influence the manner in which we perceive and foresee dispute settlement in the context of the WTO and the multilateral trading system?”

### *Mr James Baxter, Deputy Permanent Representative and Minister, Permanent Mission of Australia to the WTO*

Mr Baxter focused on East Asia in his presentation. He noted that dispute settlement mechanisms in East Asia RTAs have generally not been used, and added that this is consistent with the relatively non-litigious approach to dispute settlement in the region. Mr Baxter also pointed out that while, on the one hand, the WTO may have strongly influenced the dispute settlement mechanisms in RTAs in the region, there was no evidence that the experience of East Asian states in RTA dispute settlement is influencing the WTO dispute settlement system. He explained that among the reasons for these observations were that firstly, this could be an indication of a conscious preference for adhering to the primacy of the WTO system, and secondly, there was little practical incentive for exploring the full potential of dispute settlement under RTAs – especially among countries that rarely resort to formal dispute settlement.

Mr Baxter stated that the current approach of East Asian states to dispute settlement could change over the long term, as commitments spread to areas not covered by WTO rules. He also emphasized that for the time being, dispute settlement rules in RTAs in East Asia do not appear to threaten fragmentation of the system established by the WTO, and on the contrary, it appears that WTO members in East Asia have intentionally followed the WTO dispute settlement model in designing rules and have avoided referring to the RTA dispute settlement mechanisms disputes which can also be considered by the WTO.

### *Professor Gabrielle Marceau, Senior Counsellor, LAD, WTO; Visiting Professor, International Law, IHEID*

Professor Marceau provided examples of certain aspects of the WTO dispute settlement system which could be considered by negotiators in negotiating RTAs. She pointed out that the WTO selection

process for panellists and the principle of automaticity are just two examples of elements found in the WTO dispute settlement system which could clearly improve RTAs. Other exemplary aspects of the WTO dispute settlement system, for which the WTO was praised by the International Court of Justice, are its use of experts and dealing with evidence in WTO dispute settlement proceedings. Professor Marceau suggested that the concept of burden-of-proof is an important development in the WTO dispute settlement system, which should also be looked into in light of the present discussions. She cited examples of instances in which the WTO “borrowed” elements from existing RTAs, such as the use of interim report and cross-retaliation, which were incorporated into the WTO dispute settlement system. Professor Marceau stressed the importance for WTO members and negotiators to examine the need to address the relation between RTAs and the WTO dispute settlement system, and also touched on why the WTO case law cannot just simply be exported into investment situations.

Professor Marceau stated that when it comes to investment matters, it should be reiterated that the WTO is a system composed of several elements that form a single undertaking. Considering that this fundamental element is generally not reflected in BITs, one should be prudent in relying candidly on WTO case law and be realistic in the desire to change existing BITs. One should also be especially wise in the selection of arbitrators. She summed up her arguments by stating that what matters often when it comes to the choice of forum for disputes are the quality of adjudicators and the quality of the dispute settlement system.

*Professor Anne van Aaken, Professor of Law and Economics, Public Law, Public International Law and European Law, University of St Gallen*

Professor van Aaken started her presentation by stating that although trade and investment were closely related and sometimes substitutable from a business and economic perspective, their legal framework had since been decoupled. She enumerated several similarities between trade and investment and noted that partially identical substantive provisions such as those on non-discrimination, subsidies, procurement and policy exceptions may be found in both trade and investment. Professor van Aaken stressed, however, that although trade and investment both have provisions for dispute settlement, one significant difference is that while in investment disputes, there can be investor–state dispute settlement, in trade law, there can only be state-to-state dispute settlement. Professor van Aaken also noted that trade and investment are treated closely together in RTAs and that at present, more and more measures may be challenged either under trade law or investment law. She also touched on recent developments in the European Union in light of the Treaty of Lisbon, which extended the external competence of the European Union for investment protection and treaties.

Professor van Aaken observed that when it comes to dispute settlement, it is difficult to take away from investors what they have been using extensively – such as investor–state dispute settlement. But there are signs of the desire to align procedures, evidenced by the constant criticism of the lack of state-to-state dispute settlement, a lack of using local remedies and the partial incoherence in interpretation in investment law. She concluded her presentation by highlighting the need to work on finding the right balance between the two different systems and procedures of dispute settlement, and quoted Aristotle that “virtue lies in the middle”.

### Questions and comments

On a question relating to the choice of forum in disputes and the lack of cases brought under RTAs, Professor Marceau emphasized that one of the factors in making the choice is the “trumpet effect”: although WTO rulings are only binding between parties, the rulings have an effect on the membership in general because the WTO system is multilateral. She also pointed out that, notwithstanding the resolution or settlement of disputes in other forums, WTO members may not want to restart again at the WTO with regards to another member not party to earlier disputes – a scenario that is likely to happen because of the most-favoured-nation (MFN) principle.



Mr Piérola added that the matter of choosing a forum was usually a question of substantive and procedural legal certainty, which is generally evident in the WTO system, owing to its well-established rules of procedure and jurisprudence that cover a vast area of WTO law. He also observed that there was no method of ensuring coherence between the two systems and pointed out that there was a missing link between RTA and WTO dispute settlement mechanisms.

Mr Baxter stressed that it is not enough that negotiators should ensure good drafting of agreements, but they should also look into policy decisions that may need to be taken as a result of such agreements when drafting the texts. He pointed out that at present, major RTAs largely allow complainants the choice of forum, and this is probably generated by cautiousness on the part of the negotiators and their unwillingness to foreclose options. Mr Baxter suggested that one element that could be explored was the inclusion of a dispute settlement hierarchy provision in trade agreements so that negotiators could decide that certain types of disputes would be handled by certain forums.

On a question relating to the inclusion of development provisions in dispute settlement chapters in RTAs, Mr Piérola stated that in practice, their inclusion usually depended on whether the negotiations were done as a one-to-one process or as a more collective process. He elaborated that when the Free Trade Area of the Americas was being negotiated in the 1990s, several members considered that there was a need to include special-and-differential treatment provisions. However, subsequent trade agreements negotiated on a one-to-one basis between some Latin American countries and the United States markedly do not contain any such provisions.

On a question relating to the issue of overlapping jurisdiction and the value of a forum-shop clause in disputes brought to the WTO, Professor Marceau reiterated that “automaticity” was one of the fundamental characteristics of the WTO dispute settlement system, and there was nothing so far that had caused a panel to refuse to act on a WTO dispute. She added that if members wanted to, they could certainly decide by consensus and uphold the primacy of RTA jurisdiction over that of the WTO. She was, however, quick to add that it all boiled down to the principle of MFN.

## Conclusions

The panellists were generally in agreement that the WTO multilateral dispute settlement system remains a model and the preferred option for bringing and deciding disputes even between members of regional and bilateral trade agreements and that the dispute settlement mechanisms of these agreements, should they become more effective and used, as some developments show, will borrow more and more in their drafting and in their application from the example of the WTO system. Moreover, the BIT dispute settlement system may look increasingly to WTO case law, although there are differences between the legal regulation of trade (multilateral with no direct access for private parties) and the one of investments (mostly bilateral and in the hand of private investors) that caution against the prospective of a swift approximation of the two systems.

## Plurilateralism against multilateralism? A multi-stakeholder perspective

The topic discussed by the panellists was to assess the potential impact of plurilateral agreements within the WTO multilateral trading system. Plurilateral agreements can be concluded by three or more WTO members and cover trade issues labelled WTO-plus, -extra and -minus. They can be adopted both within and outside the WTO framework. They can be “preferential” agreements or agreements based on the MFN principles. Future plurilateral trade agreements negotiated within the WTO could generate more transparency, and third parties’ rights could be better protected under the WTO dispute settlement procedure.

### Moderator

Professor Raymond Saner, Director,  
Trade Policy and Governance Programme  
(TPGP), Centre for Socio-Eco-Nomic  
Development (CSEND)

### Speakers

H.E. Mr Yonov Frederick Agah, Ambassador  
and Permanent Representative of Nigeria to  
the WTO, Mission of Nigeria to the United  
Nations Office in Geneva

Mr Peter Draper, Senior Research Fellow,  
South African Institute of International  
Affairs (SAIIA)

Mr Stuart Harbinson, Former Permanent  
Representative of the Hong Kong Special  
Administrative Region of China to the WTO;  
former Senior WTO Official

Mr Lu Xiankun, Counsellor, Head of  
Division, Permanent Mission of China to  
the WTO

Mr Nicholas Niggli, Former Chairman, WTO  
Committee on Government Procurement;  
Counsellor, Deputy Head of the WTO  
Division at the Permanent Mission of  
Switzerland to the WTO and the European  
Free Trade Association (EFTA)

Mr Luzius Wasescha, Former Ambassador  
and Permanent Representative of  
Switzerland to the WTO and EFTA

Professor Robert Wolfe, School of Policy  
Studies, Queen’s University, Canada

### Organized by

TPGP, CSEND

### Report written by

Mr Mario Filadoro, Programme Officer,  
TPGP, CSEND



## Presentations by the panellists

### *Professor Raymond Saner, Director, TPGP, CSEND*

Professor Saner, who moderated the session, made introductory statements and introduced the speakers. The overview of this session was to discuss the concepts of multilateralism and plurilateralism in trade and to assess potential impact of new plurilateral agreements within WTO system.

In order to do so, panellists and the audience were invited to ponder the following questions:

- To what extent would it be possible to “multilateralize” new plurilateral agreements?
- How could new plurilateral agreements be negotiated?
- What are the implications of new plurilateral agreements for the multilateral trading system?
- Besides services (International Services Agreement, ISA), could other trade areas be negotiated through plurilateral approaches? If so, which areas?
- What are the strategies and tactics available to developing countries and LDCs should new plurilateral agreements be negotiated?

### *H.E. Mr Yonov Frederick Agah, Ambassador and Permanent Representative of Nigeria to the WTO, Mission of Nigeria to the United Nations Office in Geneva*

Plurilateralism was not a new concept, explained Ambassador Agah. Countries always come together in small groups to formulate, influence or negotiate multilateral frameworks. Plurilateralism represents a reaction to the failure of multilateralism – some countries are not willing to move forward with the liberalization process. Ambassador Agah then laid out the different approaches to plurilateral agreements:

- outside the WTO – RTAs, FTAs and preferential trade agreements (PTAs)
- inside the WTO – Tokyo Round “codes”, the Government Procurement Agreement (GPA) and the Information Technology Agreement (ITA)
- benefits extended to all members (MFN), whether or not they participate (“free riders”), while obligations bind only the initial members and others as they join
- benefits accrue only to participants who also undertake binding commitments.

Plurilateralism fragments and disrupts the larger multilateral process, including multilateral cooperation, on different issues. Furthermore, he continued, plurilateral agreements can violate the multilateral principles of universality, inclusiveness and transparency. These types of agreements imply a threat to the conclusion of the DDA, the “single undertaking” principle, and they favour the consolidation of RTA commitments and policy harmonization, sometimes going beyond the needs of some members.

Ambassador Agah concluded that any strategy for developing countries and LDCs vis-à-vis plurilateral agreements should support the following ideas:

- plurilaterals must preserve the multilateral character of the WTO
- plurilaterals cannot modify existing multilateral rules and disciplines, or introduce new obligations in any sector or agreement
- MFN application of all benefits
- an “opt in” and “opt out” approach
- plurilateral agreement to include favourable accession conditions.



*Mr Peter Draper, Senior Research Fellow, SAIIA*

Mr Draper asked whether plurilateral agreements were necessary to save the Doha Round, and answered that they were necessary to save the WTO. He explained that the political economy had shifted and new approaches were needed. Plurilaterals could be part of the solution.

There are two broad types of plurilaterals:

- non-exclusive – MFN-type with benefits to all members, such as the ITA
- exclusive – PTAs, such as the Trans-Pacific Partnership (TPP) Agreement, and Annex 4, such as the GPA.

With MFN-type agreements, there are no issues. Almost all the WTO members are negotiating PTAs, and no problem is envisaged either. Mr Draper explained that an Annex 4-type agreement raised a problem because of the need to reach a consensus. In addition, there is the problem of free riders. He believed the next question should be on how to facilitate this consent.

The World Economic Forum (WEF) named a code of conduct including a range of things. Multilateralizing the benefits should be optional in the view of the WEF. A further consideration is to make the benefits available for LDCs. One important question to bear in mind is what would happen with the issues negotiated if a plurilateral way were adopted.

*Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official*

There are two options to having a plurilateral agreement sanctioned by the WTO, began Mr Harbinson. One is by getting a waiver under Article IX of the WTO Agreement (but this is only for exceptional circumstances and for a limited time). The other is a plurilateral agreement under Annex 4 of the WTO Agreement which requires consensus by all WTO members. There are two existing plurilateral agreements under Annex 4, namely: Trade in Civil Aircraft and the GPA.

Mr Harbinson also spoke of the plurilateral negotiating techniques used in the WTO context. These are used every time, he explained, giving an example in Services negotiations of the collective request-offer approach at the Hong Kong Ministerial Conference.

He added that there was a critical-mass approach to consider when conducting an agreement like the ITA: the agreement is expressed through the schedules and extended to all members through MFN. Some areas in which plurilateral approaches are being suggested is the agricultural sector. In the case of the plurilateral ISA, he posed the question: Why not ask LDCs to join and allow them to free-ride?

*Mr Lu Xiankun, Counsellor, Head of Division, Permanent Mission of China to the WTO*

Mr Lu believed the main reasons for pursuing plurilateral agreements included a long stalemate of multilateral trade talks and like-minded groups liberalizing trade for the sake of their mutual interests to create incentives for multilateral agreement. An analysis should be carried out on a case-by-case basis, and he listed the considerations such as:

- whether to launch within the framework of the WTO
- whether adequate transparency is provided
- whether it would be subject to the WTO rules, including Dispute Settlement Body
- the possibility for latecomers to join
- the possibility to be “multilateralized”.



Some members took Services to negotiate a “plurilateral” agreement. There are views against this initiative: it diverts members’ attention, there is ignorance of development dimensions, it discriminates against developing countries, it breaks the DDA mandate and it ignores the negotiations results. However, there is also support: it creates momentum for revitalizing the DDA and it is beneficial to developing countries – the Warwick Commission Report on the future of the WTO was one such example given by Mr Lu.

In concluding, Mr Lu did not see FTAs or plurilateral agreements as an alternative for DDA. The implications for developing countries of negotiating those types of agreements are that they have fewer bargaining chips and it is hard to form broad interests groups. There is also less chance to balance among different topics and an inability to push topics of their own interest.

*Mr Nicholas Niggli, Former Chairman, WTO Committee on Government Procurement; Counsellor, Deputy Head of the WTO Division at the Permanent Mission of Switzerland to the WTO and EFTA*

Maybe we are looking for the wrong scapegoat, asked Mr Niggli. There is nothing new about plurilaterals – most of them have been successful and have expanded.

Doing nothing was not an option, he continued, and making some progress was always better. The important thing is not the approach the agreement takes but its content. Plurilateral agreements by themselves are not important.

There is a need to move beyond sterile opposition. However, he warned that it was not easy to go the plurilateral way, and they could help rather than harm the system. Gradual multilateralization – critical mass permitting it – might be an option. The stepping-stone approach – instead of a stumbling block – should be done by doing the splits: be ambitious enough and welcoming but demanding.

*Mr Luzius Wasescha, Former Ambassador and Permanent Representative of Switzerland to the WTO and EFTA*

Instead of looking into the substance, the focus is put on the form, reminded Mr Wasescha. This happened in the Uruguay Round. By looking at the content, we should make a distinction between market access and rule making.

There is a lack of trust among WTO members. This is the real problem and cannot be solved at the WTO only. It can help to do the technical work, creating possibilities to strengthen the system. If the core of the WTO is development, then it should not be surprising that market access happens somewhere else, for example, through PTAs.

Mr Wasescha believed the challenge was to bring in those members who were a little bit stronger to make agreements on some things. It is clear that the free-riding problem exists when there is a heterogeneous group of countries. However, this is not always the case. The ITA is an example: Brazil never participated in this agreement and it was their choice to not participate in this value chain.

*Professor Robert Wolfe, School of Policy Studies, Queen’s University, Canada*

According to Professor Wolfe, the institutional design of a plurilateral agreement involves less than full WTO membership, a limited range of issues, and critical-mass decision-making and not consensus. There is also a problem of asymmetry of interests on issues and partners. He then posed a series of questions.

Are rounds unnecessary for liberalizations? Who matters in a plurilateral agreement? Is a package a “single undertaking”?

He explained that there are three meanings of the single undertaking:

- The Doha Round package as re-defined through Hong Kong and July 2008.

- Negotiation has to be a package – the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.
- The WTO acquis – “the WTO Agreement shall be open for acceptance as a whole”. The accumulated rules and practices must be accepted by new members, and all members must apply all agreements to all other members.

Professor Wolfe believed that other states were unlikely to conclude any negotiation with the United States without some version of “fast track”. The United States needs a package deal that does not unravel once submitted to Congress. Given heterogeneity of Congress, any deal has to have something for many different constituencies. The logic will tend to favour deals with a critical mass of issues and participants.

In concluding, he questioned to what extent it was possible to “multilateralize” plurilaterals? Most WTO negotiations are a linked set of self-selected critical-mass building blocks. The necessary bundling is in effect a single undertaking. At some stage, members have to agree on what is a necessary part of the bundle – to close the deal or to maintain integrity of the WTO acquis.

### Questions and comments

Would a plurilateral agreement on subsidies be a WTO-minus or a WTO-plus type of agreement?

It seems legally possible to make a plurilateral agreement in subsidies, but the benefits are not clear. This leads to the single undertaking issue, and experience shows that giving up subsidies is more efficiently done multilaterally.

#### *How can the lack of trust among WTO members be resolved?*

Governments are not looking at what is happening in the world but at what is it happening in their own “village”. The systems that we have do not reflect these realities. Trust is a key issue linked to the declining levels of competitiveness of some players. Nowadays, some states are talking about “re-industrialization” when other countries are at an early stage of industrialization. This is the problem for the WTO: different players in different situations with a lack of trust. A “coalition of the willing” seems to be a coalition for pressure: if the state does not join the negotiations, then it will be left behind. All in all, this is not a specific trade problem. A lack of trust happens everywhere during an absence of political leadership. The WTO has been successful in many things, like dispute settlement.

### Conclusions

Future plurilateral trade agreements negotiated within the WTO could bring more transparency, and third parties' rights would be better protected under the WTO dispute settlement procedure.

If a plurilateral agreement were adopted outside the WTO framework, other WTO members would not need to be included and negotiations would not include other WTO members not party to the agreement. It would then lead to the creation of a “soft law”, since a plurilateral agreement outside the WTO would not have the same legal and political weight and could not aspire to an “international standard”.

On the other hand, a plurilateral trade agreement within the WTO that extends MFN benefits to non-treaty WTO members would avoid trade distortions. Conversely, if a WTO-based plurilateral trade agreement is kept as a PTA (non-MFN), it would avoid free-riding by non-members and provide an incentive for others to join.



The session' objective was to discuss the challenges for international cooperation raised by recent changes in the non-tariff measure (NTM) universe based on the findings of the *World Trade Report 2012*, which takes a fresh look at NTMs and services regulation. Public-policy measures such as technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures are now predominant among NTMs, reflecting the emergence of a clear trend in which NTMs are less about shielding producers from import competition and more about the attainment of a broad range of public-policy objectives. The *World Trade Report 2012* examines how these changes affect the current market-access-based framework of the multilateral trading system and the challenges they pose for governance. The discussion was organized around the following four core themes:

**I. Transparency**

- Why is it important to enhance the transparency of NTMs?
- What needs to be done to enhance the transparency of NTMs?

**II. Private standards**

- Why are developing countries concerned about the proliferation of private standards?
- What is the level of responsibility that governments have with respect to what private standard-setting bodies do within their territories?

**III. Legal challenges**

- Are WTO adjudicators required to assess the legitimacy of the objectives of public policies and should they be?
- Could non-violation complaints play a role in achieving a better balance between policy commitments and flexibility?

**IV. Regulatory convergence**

- How and where should regulatory convergence be promoted?
- Does the existing WTO legal framework strike the right balance between the pursuit of gains from trade and the pursuit of public-policy objectives?

## Trade and public policies: non-tariff measures in the twenty-first century

### Moderator

Mr Marc Bacchetta, Counsellor, Economic Research and Statistics Division (ERSD), WTO

### Speakers

Professor Robert Wolfe, School of Policy Studies, Queen's University, Canada

Professor Gabrielle Marceau, Senior Counsellor, LAD, WTO; Visiting Professor, International Law, IHEID

Mr Mombert Hoppe, Economist, Poverty Reduction and Economic Management Department, World Bank Group

Ms Gretchen Stanton, Senior Counsellor, Agriculture and Commodities Division (ACD), WTO

Mr Cosimo Beverelli, Economic Affairs Officer, ERSD, WTO

### Organized by

ERSD

### Report written by

Mr Marc Bacchetta, Counsellor, ERSD, WTO

Mr Cosimo Beverelli, Economic Affairs Officer, ERSD, WTO

## Presentations by the panellists

### *Mr Cosimo Beverelli, Economic Affairs Officer, ERSD, WTO*

Mr Beverelli's presentation was on the *World Trade Report 2012*. He began by stating that the motivation behind NTMs was changing, with public policies becoming more prevalent. Governments employ NTMs to achieve public-policy objectives such as protecting public health or the environment and addressing information asymmetries. Archetypical examples of public-policy NTMs are TBT and SPS measures and domestic regulation in services. However, NTMs can also serve a dual purpose: they may be designed or administered in ways that intentionally restrict trade even if their primary purpose is to serve a public policy. The potential for dual purpose underlies the difficulty of distinguishing between "legitimate" and "protectionist" motivations for NTMs and of identifying instances where NTMs create "unnecessary" trade costs.

Transparency, continued Mr Beverelli, was a major issue with regard to both NTMs and services measures. Information on public policies is not as easily accessible as information on border measures. Public-policy measures are diverse and difficult to compare across countries and sectors. Their effects also depend on how they are applied.

He explained that the *World Trade Report 2012* examined diverse sources of data: notifications, data collected from official sources, concerns raised at the WTO, disputes and business surveys. None of the available data sources provides comprehensive coverage. Some stylized facts, however, emerge:

- There is inconclusive evidence of a rising trend in NTM incidence over the last 20 years.
- There is some evidence of an upward trend in TBT and SPS measures.
- TBT and SPS measures are major impediment to exporters.
- Procedural obstacles matter.

Transparency provisions in the WTO agreements help address the problems raised by the opacity of NTMs but they are not sufficient. Notifications in particular do not provide adequate information on a number of NTMs. Compliance is low because of lack of incentives for governments to be transparent. The new Integrated Trade Intelligence Portal (I-TIP) will improve accessibility (and possibly quality).

Mr Beverelli revealed that public policies had ambiguous trade effects, which depended on the measure and were highly variable. Calculation of *ad valorem* equivalents raises both methodological and practical issues. For instance, value chains amplify the effect of trade costs and this is difficult to document. Moreover, the effect of specific measures is difficult to single out. In the case of standards, for instance, trade effects hinge on the degree of policy heterogeneity. Therefore, harmonization of TBT and SPS measures increases trade.

He believed public policies required deeper cooperation. Historically, regulation of NTMs in trade agreements addressed the problem of tariffs being replaced by NTMs. In particular, GATT rules on national treatment and non-violation complaints were designed to address the policy substitution problem between tariffs and NTMs.

Mr Beverelli described that global supply chains created a need for deeper forms of institutional integration to prevent distortions of trade and investment decisions along the supply chains. The increased prominence of public policies driven by consumer concerns has also created a need to develop rules to identify efficient and legitimate uses of NTMs. The SPS and TBT Agreements are "post-discriminatory" agreements that go in the direction of deeper integration by promoting harmonization through the use of international standards and by including the need to ensure that requirements are not unnecessarily trade-restrictive. The deeper integration approach in the SPS and TBT Agreements goes a long way towards addressing changes in the global economic environment, but it is not without problems. First,



strong encouragement to follow international standards creates tensions, for example because of different national preferences. This raises the question where and how regulatory convergence should take place. Second, WTO adjudicators may have to “second-guess” a member’s domestic regulatory choices in deciding whether a measure is discriminatory. Limiting the protectionist application of NTMs requires better integration of economic and legal analysis.

Looking ahead, he argued that the core trade liberalization mechanism was likely to change in the direction of regulatory convergence. The WTO promotes such convergence through transparency provisions, aid for trade, encouragement to embrace best practices and to adopt international standards. Existing disciplines, however, leave considerable room for the unilateral quest for public-policy objectives. The question is therefore whether the current framework strikes the right balance between the pursuit of public-policy objectives and the pursuit of gains from trade.

*Professor Robert Wolfe, School of Policy Studies, Queen’s University, Canada*

Professor Wolfe focused on transparency and began by stating it reduced information asymmetries among governments, and between the state, economic actors and citizens. For governments, transparency and surveillance improve the implementation of existing obligations. For analysis, they provide a comprehensive picture of effects of policy. For firms, they reduce crippling uncertainties about requirements.

In the WTO, he explained, transparency can be defined as the “degree to which trade policies and practices, and the process by which they are established, are open and predictable”. This definition includes how a rule or a policy is developed domestically, published and enforced, as well as how other WTO members are notified, how the notification is discussed and how the results of such discussion are published.

Professor Wolfe revealed that there had been three generations of transparency since the establishment of GATT in 1947. The first generation was the “right to know”, which involved publication, enquiry points and notifications. Such a “sunlight-as-disinfectant” approach proved to be insufficient, giving rise to the second generation of transparency – monitoring and surveillance, which included the Trade Policy Review Mechanism (TPRM) and specific trade concerns. The third generation includes reporting and engagement – since 2002, through the TBT and SPS Information Management Systems, the I-TIP and the annual *World Trade Report*.

However, he warned that transparency exercises were plagued by data problems. For instance, formal notifications may not be accurate or complete, and real-time monitoring may be hampered by absent or late notifications. There are also some surveillance problems. Specific trade concerns in SPS and TBT have few active participants and results are not always reported. While the Agriculture Q&A process is improving, analogous process is under-developed in other committees (e.g. Agreement on Subsidies and Countervailing Measures, import licensing provisions). In this regard, an “umbrella” database may be needed.

Professor Wolfe concluded that we may be facing a “transparency trilemma”. The surveillance system is designed to monitor official obligations (even the TPRM serves governments first). Analysts, in turn, are interested in building a picture of economic impact, not implementation of commitments. Firms’ interests are only served if governments publish information at home and if all WTO data is accessible in user-friendly form.

*Professor Gabrielle Marceau, Senior Counsellor, LAD, WTO; Visiting Professor, International Law, IHEID*

Professor Marceau explained that NTMs naturally raised a number of legal issues. In particular, their inherently dual purpose – they meet a public-policy objective and they restrict trade – calls for a tight legal analysis, with the main goal of avoiding protectionism. The purpose of legal analysis is to distinguish between measures, striking a balance between trade restriction and legitimate policy requirements. At the heart of this approach is the careful legitimacy assessment of the particular policy objective linked to NTMs.

Under GATT, she continued, the panel of adjudicators had to refer to a closed list of legitimate objectives, including environment, security and health. This regulation scheme provided clear guidance, but at the same time limited flexibility. The WTO introduced a significantly different legal framework, where the trade-off between tight guidance and flexibility is solved much more in direction of the latter. Legitimacy is now extended to the broader category of sustainable development objectives and not constrained to a closed list.

In conclusion, Professor Marceau stated that non-violation complaints can play a role in achieving a better balance between policy commitments and free trade.

*Ms Gretchen Stanton, Senior Counsellor, ACD, WTO*

Ms Stanton focused on private standards, which she grouped into three categories: individual firm schemes; collective national schemes and collective international schemes. She explained that developing countries were concerned with private standards for many reasons, including: a lack of understanding between official and private requirements among producers and exporters; and the costs of certification. An important question for Ms Stanton was how to challenge private standards.

She outlined SPS principles used in food safety requirements, including, among others:

- separate food safety from quality requirements
- aim at consistent levels of health protection
- be least trade-restrictive
- entail no unjustified costs in testing, certification, approval
- be subject to WTO formal dispute settlement procedures

In conclusion, she outlined a number of specific provisions in the TBT and SPS Agreements relevant for private standards:

- Article 1(f) of Annex C of the SPS Agreement
- Article 3 of the TBT Agreement
- Article 4.1 of the TBT Agreement
- Article 13 of the SPS Agreement

*Mr Mombert Hoppe, Economist, Poverty Reduction and Economic Management Department, World Bank Group*

In an integrating world, began Mr Hoppe, convergence of regulations allows linkages with global networks. But global standards and regulations might not always be the most appropriate for developing countries. Depending on the state's needs and level of development, regulatory convergence can be done at the global, regional or domestic level.

However, he cautioned that regulatory reform was complex. First, regulations aim to achieve legitimate policy objectives, but can have adverse economic impacts (particularly on small and medium-sized enterprises). Within each country, it is necessary to identify, and agree on, what the national interest is, how to achieve it with regulations and how to minimize negative effects. There is a need to shape balanced regulation, not remove it. For this, transparency, dialogue and capacity are crucial.





Second, regulatory reform requires analytical capacity at all levels (government, private sector and public sector) to identify costs and benefits and to:

- understand current regulations and measures
- understand effects on the domestic economy
- identify and agree on broadly supported public-policy objectives
- compare and balance different regulatory options, including global or regional standards
- design effective regulations
- enforce regulations in the domestic economy.

Third, regulatory reforms require increased coordination. It is critical to increase transparency and access to information, to improve governance through inter-ministerial consultation and to consult the private sector and other stakeholders that might be affected.

Referring to a recent World Bank publication, *Streamlining Non-Tariff Measures: A Toolkit for Policy Makers*, Mr Hoppe said it offered a pragmatic and comprehensive approach to address the NTM agenda and to introduce the culture of Regulatory Impact Assessment in policy-making. It is designed to allow governments make informed and sound decision based on dialogue and the use of analytical tools for cost-benefit analysis.

### Questions and comments

Most questions and comments related to private standards or to the findings of three recent Appellate Body Reports, which established case law on a number of key TBT issues (*US – Clove Cigarettes*, *US – Tuna II*, *US – COOL*). One comment addressed the importance of private standards to enable consumers to distinguish substitute products. The positive aspects of private standards were also highlighted, and comments and questions on the Tuna–Dolphin case highlighted the concrete implications of the WTO legal framework.

## Services regulation in a globalizing context

### Moderator

Dr Anirudh Shingal, Senior Research Fellow, WTI

### Speakers

Dr Bernard Hoekman, Director, Trade Department, World Bank Group

Dr Marion Jansen, Head, Trade and Employment Programme, International Labour Office, International Labour Organization (ILO) Secretariat; Faculty Member, WTI

Professor Markus Krajewski, Chair of Public Law and International Law, Friedrich-Alexander-Universität Erlangen-Nürnberg; Faculty Member, WTI

Mr Peter Morrison, Counsellor, Trade in Services Division (TSD), WTO

### Organized by

WTI

Trade Department, World Bank Group

### Report written by

Dr Anirudh Shingal, Senior Research Fellow, WTI

With preferentialism in services gaining rapid strides – especially in the last decade – and interests in a plurilateral initiative on services becoming organized since earlier this year, the subject of services regulation assumes much significance. Trade barriers in services typically take the form of regulatory measures. While it may be necessary to regulate entry into a market to ensure a level playing field, to mitigate sub-optimal, first-mover advantages or to ensure that universal services obligations are met, it is also essential that such regulation does not take the form of disguised protectionism. Ensuring this is not just an exercise in rule-making but also one in implementation. There is also the additional challenge of dealing with the consequences of non-discriminatory regulation. The moderator, Dr Shingal, initiated the discussion on these and related issues amongst the panel members and the audience, who addressed them in turn in formal presentations and in the ensuing discussion session. Topics of interest included:

- the role of, and relationship between, services regulators and trade negotiators at both national and international levels
- the role of trade-related technical assistance in strengthening or adjusting domestic regulation
- the design of legal provisions and different forms of international dialogue and cooperation from the point of view of their potential to facilitate the adoption of non-discriminatory regulation in the services sector.



## Presentations by the panellists

### *Mr Peter Morrison, Counsellor, TSD, WTO*

Mr Morrison began with an overview of the efforts to negotiate disciplines on this subject since the Uruguay Round. He spoke of the need to regulate services and GATS provisions related to services regulation, in particular the requirements of Article VI:4. He also cited examples of services regulation, including the Reference Paper on telecommunication services and the sectoral disciplines in accounting. He also mentioned that the issues under discussion now related to the use of language (best-endeavour versus obligation) and the form of disciplines (horizontal versus sectoral, GATS amendment versus Reference Paper approach), thus providing an excellent introduction to the discussion that was to follow.

### *Professor Markus Krajewski, Chair of Public Law and International Law, Friedrich-Alexander-Universität Erlangen-Nürnberg; Faculty Member, WTI*

Professor Krajewski followed with a stimulating presentation, in which he argued the case for a paradigm shift in international trade negotiations to facilitate movement from disciplining to promoting services regulation. He outlined the initiatives on regulation in GATT and concluded that regulatory lessons from goods do not apply to services in all cases. He then provided a critique of the current GATS model in terms of architecture, (a lack of) regulatory incentives and sequencing issues, before discussing the treatment of services regulation in recent PTAs, in particular EU–CARIFROUM, EU–Korea and the TPP Agreement, where he felt that the focus was still on disciplining domestic regulation. He thus argued for a paradigm shift in negotiations that would:

- combine liberalization and promotion of regulation through, among others, incorporation of international standards if regulatory convergence existed and encouraging adoption of international best-practice regulation
- connect trade negotiations with regulatory standardization efforts in other international organizations and settings
- include capacity-building in regulation
- keep regulatory space and autonomy where there was no evidence of better regulation through international convergence and cooperation.

This, he said, required a critical change in the mindset of services negotiators – especially from the perspective of regulators – and could be applied both in the context of the Doha Round services negotiations and those of the ISA.

### *Dr Marion Jansen, Head, Trade and Employment Programme, ILO; Faculty Member, WTI*

Dr Jansen, who is soon to re-join the WTO Secretariat, drew lessons for services regulation from regulatory experiences in areas such as SPS, TBT and trade-related aspect of intellectual property rights. She began by outlining differences in objectives of regulation, which suggested a preference for a sectoral as opposed to a horizontal approach to services regulation. In contrast to the previous speaker, she suggested that there was enough flexibility within GATS to deal with domestic regulation. She also provided evidence of correlation between the level of economic development and the extent of regulation, which further provided a case for capacity-building on this subject in low-income countries. Dr Jansen summarized that the approaches to regulation in the Legal Texts are threefold: promoting transparency, references to international standards and promoting mutual recognition. However, she felt that the use of international standards in the services field included possible challenges such as:

- defining legal and institutional relationships between the WTO and standardization bodies
- efforts to ensure the participation of developing countries
- the role of regulatory agencies in dispute resolution
- the assessment of the quality of regulations.

*Dr Bernard Hoekman, Director, Trade Department, World Bank Group*

Dr Hoekman spoke about the World Bank's initiatives in plugging the gaps in knowledge and information on this subject, referring in particular to the Services Trade Restrictiveness Index (STRI) and Services Knowledge Platforms (SKP). He emphasized the problem of the lack of information and the severity of constraints in achieving more efficient regulation in services. While this also pointed to the need for capacity-building, he emphasized that such requests did not emanate from the WTO, but rather from members of PTAs. He then outlined three initiatives at the World Bank to overcome the knowledge and information challenges in services regulation. The first is the STRI, which is an extensive database on services sector policy that covers 103 countries, 5 sectors, 19 sub-sectors and GATS Modes of Supply: Mode 1 (cross-border supply), Mode 2 (consumption abroad) and Mode 4 (presence of natural persons). The second are regulatory assessments, which are country- and sector-specific audits that the World Bank conducts in different regions at the request of its clients. Finally, the SKP, which are again demand-driven pilot initiatives to get services providers and users together on a sectoral basis to arrive at less trade-distorting ways of regulating services.

### Questions and comments

There were three rounds of questions and comments, and most included those on the relationship between trade negotiators and services regulators, on the role of the WTO and whether standard-setting should be within or outside the WTO ambit. Others related to the economic modelling technique that was used in the World Bank regulatory assessments and whether lessons could be drawn from the Aid for Trade experience aid for regulation.

### Conclusions

The moderator and panel members concluded by emphasizing the importance of the services sector in all economies and the important link between integrating services markets and streamlining services regulation. While everyone recognized the need for capacity-building on this subject in low-income countries, in light of experiences from Aid for Trade initiatives, the panel was not sure if binding commitments in the form of aid for regulation would be successful. It was also suggested that promoting regulatory convergence or adopting international best practices were optimal only in cases where domestic regulation was not "good enough".



# Sub-theme II: Addressing 21st-century issues



## The end of the North Atlantic hegemony: rise of the new global economic powers?

In the twentieth century, the world economy was dominated by the United States and to lesser extent by Japan and a few states in Western Europe. The beginning of the twenty-first century is witnessing the (re-)emergence of new, global economic powers, which are members of the multilateral trading system and are legitimately seeking greater influence in the game. The objective of the session was to discuss how to reduce the gap between the reality of today's multilateral trade and the international institutions of the trading system in charge of its governance. The session tackled the following topics:

How to strengthen the institutions and adjust the mindsets to the new realities of today's global economic landscape.

- The importance of the rule of law in the context of emerging regionalism.
- The implications of the global impact of China for multilateral rules-based trade governance.
- The impact of technologies on the global distribution of economic production.
- The role of the mega-metropolises in global governance in a multipolar environment.

### Moderator

Dr Carlos Braga, Director, The Evian Group @ IMD; Professor of International Political Economy, IMD

### Speakers

Dr Arthur Appleton, Partner, International Trade and Arbitration, Appleton Luff International Lawyer

Mr Ujal Singh Bhatia, Member of the Appellate Body; former Permanent Representative of India to the WTO

Dr Shuaihua Cheng, Strategic Analysis and China Programme Officer, International Centre for Trade and Sustainable Development (ICTSD)

Dr Jean-Pierre Lehmann, Emeritus Professor, IMD; Founder, The Evian Group @ IMD; Senior Fellow, Fung Global Institute (FGI)

### Organized by

The Evian Group @ IMD

### Report written by

The Evian Group @ IMD





## Presentations by the panellists

### *Dr Carlos Braga, Director, The Evian Group @ IMD; Professor of International Political Economy, IMD*

Is the lack of progress in the Doha Development Agenda (DDA) determined by the fact that we no longer have an effective hegemon or a working balance of power – which, in the title of this session, is characterized as the North Atlantic hegemony? Or is it due to more structural weakness (linked to technology and major changes in global trade in the last ten years) of the WTO, which is no more able to fill the needs of its members and to facilitate a purposeful deal? With this opening question Dr Braga invited each panellist to share their insights and explore other factors to address the current crisis in multilateral trade and governance.

### *Mr Ujal Singh Bhatia, Member of the Appellate Body; former Permanent Representative of India to the WTO*

Mr Bhatia argued that a misalignment between the changed realities of the global economy (moving towards greater interdependence and integration) and systemic rigidities in institutional responses, mainly caused by multilateral processes designed in an earlier era, were at the heart of the crisis in multilateralism.

He believed there were limits to the contribution so-called “deep-integration” regional trade agreements (RTAs) could make in terms of providing a template for multilateral rule-making. There will always be apprehensions that such initiatives will accentuate discrimination and create a two-tier global trading system.

Innovations in information processing, and transactions and manufacturing automation are essentially labour saving. Global supply chains, which enable firms to break down activities by function and geography are adding to tensions in labour markets in many developed economies. This adverse impact is not being offset by fiscal interventions due to the compulsions of deleveraging. The combined pressures of low growth and high unemployment limit the leadership role that such countries can play in the WTO.

The question of how the WTO can move forward was posed. Mr Bhatia believed that a sustainable resolution of the current deadlock involved addressing the concerns of all members, developing and developed, as well as aligning the work programme with new challenges in the global market place – food security and climate change were specifically mentioned. Furthermore, he suggested that in a rapidly changing trading environment, the primary preoccupation of the WTO should be to seek its unique selling proposition through its ability to formulate and monitor trade disciplines, to resolve trade disputes and to provide predictability through consolidation of liberalization. Equally important is the WTO's role as the guardian of the non-discrimination principle and the defender of the principle of inclusiveness. In his opinion, this was the core of its unique selling proposition and the basic reason why the world needs the WTO.

### *Dr Arthur Appleton, Partner, International Trade and Arbitration, Appleton Luff International Lawyer*

“The decline of a hegemonic leader is not the explanation for the failure of the multilateral trade talks,” stated Dr Appleton. He argued that while US leadership was fundamental in the earlier General Agreement on Tariffs and Trade (GATT) days – giving rise to the quip about “a member-driven organization” – resistance to textile and clothing trade reform and a slow approach to agricultural reform were the hallmarks of the GATT system. Resistance to agricultural reform still plagues the WTO – a resistance which extends beyond the North Atlantic hegemons.

There was not one or two hegemons driving the system, and there had not been for a long time – if ever, Dr Appleton argued. A member-driven organization requires a driver. There is none – either inside or outside the house. At best there are a series of leaders with disparate views concerning trade and agricultural issues. Even though the European Union and the United States are still needed to reach global consensus, their interests are not always identical – and the politics of recession and deficits has altered those interests.



He explained that for major trading countries, including BRICS (Brazil, the Russian Federation, India, China and South Africa), the age of altruism (if it ever existed) was over. The “Majors” use the system to advance – and to protect – their own economic and developmental interests. If they were to speak with one voice, there might be progress, but they are unable to speak with one voice. BRICS are no different.

In the absence of clear direction from the major trading powers, the old (consensus-based) structure for trade negotiations is not feasible for coping with the new issues like climate change and environment. Dr Appleton also outlined that the trade system was not suitable for coping with supply chains and integrated production. “Last substantial transformation” is an inadequate concept when the intellectual property for a laptop may be owned by a US company, the screen manufactured in the Republic of Korea, the components produced all over South-East Asia and finally assembled in China by a foreign-owned company. In addition, a tariff-based system is anachronistic in an era of globalization. Only elimination of the tariff-based nature of the system – and the rules of origin that encumber the system – would be suitable for coping with this brave new world.

The question of where does this leave the DDA was raised. Dr Appleton emphasized that, first and foremost, the name DDA was a misnomer. This round of negotiations was not going to solve development issues, he warned. The poorer countries already largely enjoy duty-free, quota-free market access to the European Union and the United States for most products. Poorer country exports are instead hampered by non-tariff barriers (NTBs), rules of origin and poor governance that discourages investment. Most of the regulatory rules are not going away, not in the DDA or in any other round. And investment was kept off the agenda after the Cancun cataclysm – mistakenly, believed Dr Appleton.

To conclude, he reiterated his preliminary statement, by saying that the multilateral crisis had many facets beyond the lack of a clear hegemon.

*Dr Shuaihua Cheng, Strategic Analysis and China Programme Officer, ICTSD*

In his introduction on legitimacy, inclusiveness and the effectiveness of the multilateral trading system, Dr Cheng proposed a small survey to the audience:

- Do you agree that global challenges need multilateral solutions?
- Do you agree that multilateralism should be exclusively government-driven?

The survey outcome led Dr Cheng to conclude that we have strong belief in multilateralism but we have little trust in the current multilateral architecture that is exclusively driven by governments.

In the twenty-first century, the cart of multilateralism cannot and should not be pulled by only one “horse” – governments. The cart of multilateralism shall be pulled jointly by three horses: governments, the business community and civil society organizations and individuals. Only when these three horses work together, can multilateralism move forward.

*Dr Jean-Pierre Lehmann, Emeritus Professor, IMD; Founder, The Evian Group @ IMD; Senior Fellow, FGI*

Dr Lehmann opened his speech by saying that he had just come back from the Singapore Global Dialogue, where 60 per cent of the discussions had been about whether there would be war in Asia. The general feeling is that there may well not be, but we are in this paradigm and living in a very explosive global environment. “How can we develop a robust mechanism that will try to prevent war taking place,” asked Dr Lehmann, referring to the WTO. He was struck by the similarity of trade-related communiqués of the League of Nations, which took place between 1934 and 1936, and the Group of 20 or the WTO ministerial meeting communiqués of the past few years.

Dr Lehmann felt bitter about the Doha Round because it would have never happened without 9/11 and because Doha was a lie from the very beginning. He believed that there was no intention of living up to the principles and goals of a development agenda. In Cancun, in 2003, there was no wavelength coordination,



no compromise and no dialogue undertaken on the part of the hegemon. The view of the European Union and the United States had been that the other states “won’t get their acts together”. However, we have lived in an environment over the course of the last decade in which the world has changed dramatically – but the WTO has not. There is now a mindset and institutional paralysis in light of the new realities that have taken place. He stated that “there is a problem of mindsets, a problem of institutions, a problem of people and this leads to a problem of governance,” adding that the WTO was to be seen in the context of a problem of a systemic breakdown in global governance.

Dr Lehmann presented five major discontinuities that have impacted the global environment:

- China and its re-emergence after 200 years of economic humiliation.
- The global market revolution where over 150 countries are seeking to get into the global supply chain.
- The information and communication technology (ICT) revolution and its impact on global governance issues.
- Demographics, the rise of a new middle class and its needs in terms of urbanization and food security.
- Climate change, an issue that cannot be dealt with a “silo-ed” approach

“We don’t know where we are going but we are on our way,” concluded Dr Lehmann. He stated how important the WTO was to the multilateral trading system and the global equilibrium, but also that the institution seriously needed to renew itself in light of the new realities taking place.

## Conclusions

In this session, some new ideas were presented – including the concept of a WTO cross-sectoral co-directorship and the recommendation that WTO ministerial meetings should be eliminated. Beyond these practicalities, there was consensus that the WTO remains a very important institution. However, in order for it to maintain its relevance, it must rekindle itself while addressing the many relevant contemporary challenges and factors influencing trade flows around the world.

## Perspectives on sustainability: renewable resources, trade and WTO governance

### Moderator

Professor Gabrielle Marceau, Senior Counsellor, Legal Affairs Division (LAD), WTO; Visiting Professor, International Law, Graduate Institute of International and Development Studies (IHEID)

### Speakers

Professor Rachel Brewster, Professor of Law and Co-Director, Center for International and Comparative Law, Duke University School of Law

Mr David Moore, Applied Research Scientist, Global Footprint Network (GFN)

Mr Ronald Steenblik, Senior Trade Policy Analyst, Trade and Agriculture Directorate, Organisation for Economic Co-operation and Development (OECD)

Ms Marie Wilke, Programme Officer, International Trade Law, ICTSD

### Organized by

GFN

ICTSD

IHEID

Centre for International Environmental Studies (CIES)

International Economic Law Interest Group (IECLIG), American Society of International Law (ASIL)

### Report written by

Professor Elizabeth Trujillo, Suffolk University Law School; Co-Vice Chair of IECLIG, ASIL

The last two centuries have been marked by a trend in the “globalization” of natural resources, both renewable and non-renewable, due to many factors such as population growth, colonization, industrialization and the revolution in transport technology. The focus of this session was on the sustainability of trade in natural resources – both renewable and non-renewable. Renewable resources can be further divided into biological resources (timber and fish) and flux resources (the energy provided by tides, waves, the sun and the wind). Though non-renewable resources are considered exhaustible because they are finite, many, such as metals, can be re-used or recycled almost indefinitely. Equally, renewable biological resources can be destroyed through over-exploitation. Technological advances both in transportation and in the extraction of natural resources have contributed to their increased use and growth of international commodities markets. Changing global supply chains have contributed to changing patterns of trade in natural resources, especially those extracted for use as primary inputs in the production of manufactured goods. Many formerly net exporters of natural resources have become net importers.

Against a backdrop of changing production and consumption patterns of natural resources, the various interlinked and sometimes competing policy interests around clean energy demands, and the environmental impact and price volatility of food commodities, this panel examined the meaning and value of “sustainability”. It provided an overview of trade and natural resources linkage, focusing on primary industries, where primary products are processed before consumption. The panel explored the links connecting agricultural and biofuel subsidies to export control policies and price volatility. In considering the “value” of sustainability, the session looked closely at global footprint accounting methods for better understanding the human impact on the environment. The relevance of WTO rules and domestic trade policies as they relate to natural resources were also discussed – specifically, regional and domestic regulatory tools on renewable resources, such as the impact of export restrictions and their practical applications, for example in the case of Viet Nam and the timber trade. Finally, this session also considered these issues in the context of climate change and multilateral solutions for governance, and whether the WTO dispute settlement mechanism should be used to provide a good governance mechanism for resolving conflict between domestic trade policy and national climate change measures.



## Presentations by the panellists

### *Professor Gabrielle Marceau, Senior Counsellor, LAD, WTO; Visiting Professor, International Law, IHEID*

Professor Marceau provided an overview of the session and introduced the panellists. She commented on the key points of each panellist's presentation, highlighting the need for global solutions while recognizing the benefits of regional experiences.

### *Mr Ronald Steenblik, Senior Trade Policy Analyst, Trade and Agriculture Directorate, OECD*

Mr Steenblik started the panel with a discussion on the peculiarities of natural resources in the context of trade. He emphasized their uneven geographical distribution, vulnerability to changing climate, economic rents, and fact that the large and lumpy investments involved in the production of some natural resources, such as minerals and fossil fuels, can lead to economic boom and bust cycles in these sectors. He pointed out some challenges that specific industries had with respect to trade and domestic policy. For example, trade in agriculture is closely associated with health issues, which led to the WTO creating special rules under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Fish products bear the nationalities of the flags of the ships that catch them, rather than the waters from which they are caught, which in turn determine whose import tariff may be applied.

Mr Steenblik stressed the poor coordination among states with respect to natural resource management and trade policy in natural resources. He cited national policies on biofuels as examples of the competing interests that arise when governments try to solve one distortion by creating another. When petroleum prices were rising, prices on commodities such as sugar and corn were initially low, so governments used subsidies and other policy tools to stimulate fuel production based on these food crops. The result was a surge in agricultural commodity prices, which, in turn, adversely impacted the developing world. Rather than facilitate multilateral negotiations on agriculture, as some had hoped, it gave impetus to policy-makers who favoured agricultural self-sufficiency.

Mr Steenblik cautioned that government efforts to solve one commodity problem can lead to unintended consequences. One government response, particularly in developed countries, to environmental problems arising from increased pressure on biological resources issues has been to adopt process and production method (PPM) based regulations.

### *Ms Marie Wilke, Programme Officer, International Trade Law, ICTSD*

Ms Wilke picked up on Mr Steenblik's points regarding government intervention in the trade of natural resources. She began by providing an overview of the changing landscape of natural resource trade in the last decade, emphasizing that the extraction rate was increasing rapidly due to rising demand growth as a consequence of population growth, increasing middle classes and the development of developing countries. At the same time, trade in natural resources faces changes in global supply chains where former net resources exporters have become net resources importers. In response, states have turned to regulatory tools that influence the market, often with the aim of securing national resources supply – export restrictions in the form of high export duties and quantitative restrictions. The pursued objectives range from resources conservation to enforcement and food security.

This development raises several questions: first and foremost, to what extent export restrictions can be effective to achieve these public policy goals. To discuss this point, Ms Wilke turned to an ICTSD case study on Viet Nam and timber trade, the second largest exporter of timber and furniture in the world and once a net deforestation country. As part of broader forest conservation policies aimed at reversing the deforestation trend, Viet Nam implemented various quantitative export restrictions on non-processed timber products in the mid-1990s. She explained that export restrictions may alleviate stress on the renewable resources and mitigate the negative effects of extraction, allowing the source to regenerate. For Viet Nam, the result of such forest conservation policies – coupled with support for the domestic furniture industry and export restrictions on unprocessed timber – was the recovery of 13.2 million hectares of forest and the return to a net forestation country. However, Ms Wilke also emphasized that despite this positive result, as a consequence of these policies, Viet Nam now imports 70 per cent to 80 per cent of

its timber, and much of this comes illegally from Cambodia and the Lao People's Democratic Republic. Furthermore, the European Union and the United States have implemented trade PPM measures to prevent the importation of timber from Cambodia and the Lao People's Democratic Republic that is being processed in Viet Nam. Ms Wilke concluded that where short-term export restrictions can play a positive role in conservation policies by signalling to the market the need for change, long-term export restrictions can lead to market distortions resulting in "exporting" environmental externalities to other countries.

Regarding the role of the WTO, she noted that increased transparency was a first important step towards addressing the negative impacts of export restrictions while realizing their positive potential. Furthermore, increased research was needed on the use and functioning of export restrictions intended to achieve various public policy goals in different sectors and for different commodities, in order to develop more nuanced policies regarding the use of export restrictions in natural resources trade.

*Professor Rachel Brewster, Professor of Law and Co-Director, Center for International and Comparative Law, Duke University School of Law*

Professor Brewster picked up on the theme of the 2012 Public Forum, "Is multilateralism in crisis?", to highlight the difficult challenges facing trade in light of the current crisis in climate negotiations. She stressed that the debate was not about the science around climate change, but rather about the best policies for climate change mitigation. There are distributional concerns around which nations should bear the costs of remediation policies, and multilateral impasses result in pushing solutions towards national policies.

Professor Brewster highlighted factors that intrinsically linked trade to environmental measures. First, trade must be part of any climate change policy, since one sustainability policy can result in incentivizing unsustainable production to other parts of the world. Second, environmental policies are costly and under the current, difficult financial climate, governments are hard-pressed to create policies that may be perceived as not focused on domestic job creation. Despite the hopes in green economic growth, states may in fact rely on protectionist measures instead. Third, trade is an excludable good, since WTO members can restrict access to national markets for lack of trade rule compliance. This is harder to do in the case of environmental violations. In this way, trade and the environment are necessarily linked. Fourth, domestic sustainability policies, such as labelling measures, require baselines which are set at the national level and reflect underlying values regarding the national distributional choices of who should bear the cost of environmental remediation. There is little consistency with respect to environmental policies.

Finally, Professor Brewster stressed that while there was an opportunity for global governance on these issues at the WTO, the dispute settlement bodies may not necessarily be able to resolve fragmentation. Rather, she suggested that allowing conflict may in fact foster a shift in priorities and new interests to emerge.

*Mr David Moore, Applied Research Scientist, GFN*

Mr Moore spoke on ways of promoting a concept of sustainability by quantifying it. He explained that a large portion of human activity rests on services provided by the biosphere, which can take one of two general forms: renewable resource provision and waste absorption. Furthermore, the provision of resources and waste absorption must stay within the natural capacity of the biosphere to achieve sustainability. GFN measures the demand and provision of these services and terms them as ecological footprint and biocapacity, respectively. In applying measurable metrics for a global ecological footprint, the emphasis must be on the rate of resource extraction compared to the rate of resource regeneration. The rate of resource extraction must be equal to or less than the rate of resource regeneration. Mr Moore explained that at a national level, economic activity can also be supported through the import of commodities, so the renewable resource security of a state is dependent upon the sustainability of both local production and imports. GFN looks primarily at national production sustainability and international trade of embodied resources to help understand sustainability. Specifically, it attempts to measure national sustainability by focusing on national footprint accounts, considering the relative economic intensity on various commodities, and examining the trade and flow of natural resources in a given country. It compares the amount of inputs that come from sustainable and unsustainable resources in order to better understand



resource security. Through a combination of national footprint accounting and multiregional input–output tables, GFN has identified Eastern Africa and the Indian sub-continent as being regions with economies that have low resource security, while Europe has only marginal security. Mr Moore concluded that the incorporation of quantifiable sustainability measures within trade analysis had the potential to revive and to inform the multilateral system in order to improve national economic security.

## Conclusions

This session highlighted the complexity around trade in natural resources, including the peculiarities of renewable and non-renewable resources and the various competing interests that coalesce around environmental policy intended to address sustainability. It illuminated the need for metrics to measure national ecological footprints and to better assess national sustainability efforts on the production-side of supply chains. Broader themes included the fragmented nature of environmental policy, due in part to multilateral impasses with respect to climate change mitigation, and varying values affecting distributional choices. Furthermore, trade governance through the WTO can play an important role in steering national regulatory tools for sustainability while limiting protectionism. As Professor Marceau summarized, this session provided some possibilities for multilateral solutions, including:

- amending or adding to WTO provisions to introduce more detailed rules on export restraints that may have to vary depending on the commodities
- concluding an agreement on those issues within or outside the WTO
- heightened transparency
- allowing conflict to occur so that new interests and solutions may emerge.

Finally, this session left open the possibility of finding solutions for trade and sustainability concerns through trading blocs that may better address regional challenges to climate change and then, in due course, bring these solutions to the multilateral.

## The multilateral trading system in the twenty-first century: interaction between trade and competition policy

### Moderator

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

### Speakers

Mr Robert Anderson, Counsellor, Intellectual Property Division (IPD), WTO

Dr Carlos Braga, Director of The Evian Group @ IMD; Professor of International Political Economy, IMD

H.E. Mr Yoichi Otabe, Ambassador and Permanent Representative of Japan to the WTO

Mr Eduardo Pérez-Motta, Chairman, Mexico Federal Competition Commission; Chair, International Competition Network (ICN) Steering Group

H.E. Mr Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO

Mr Hassan Qaqaya, Head, Competition and Consumer Policies Branch, United Nations Conference on Trade and Development (UNCTAD)

### Organized by

CUTS International

### Report written by

Mr Julien Grollier, Assistant Programme Officer, CUTS International, Geneva

Interactions between trade and competition could not be more intimate than they are today, with countries all over the world severely affected by the volatility of trade in primary commodities. The major commodity spike of 2007-2008 set alarm bells ringing, when the prices of many primary goods doubled. Much of this is attributable to trade-related competition distortions (e.g. export restrictions) and competition-related trade distortions (e.g. export cartels) that continue to operate in these markets. Since competition was taken off the Doha Round negotiations in 2004 as a result of developing countries' opposition, more than 120 states have adopted a competition law, compared to 35 in 1995.

The objective of the session was to revive the discussions about the critical interaction between trade and competition policy, and to move towards shaping elements of multilateral rules on competition. Some of the questions addressed by the panellists included:

- How do trade and competition policies interact with one another?
- What are some of the costs of the cross-border anti-competitive practices?
- How effective would the multilateralization of rules be in addressing the negative externalities caused by anti-competitive practices of a country beyond its borders?
- Given the growing number of national competition regimes in the world, would such rules be better received by countries?
- What is the appropriate forum for negotiating and hosting such an agreement?





## Presentations by the panellists

### *Mr Pradeep S. Mehta, Secretary General, CUTS International*

Mr Mehta, who is also a member of the WTO Panel on Defining the Future of Trade and was moderator of the session, said that as a result of price fixing conspiracies during the 1990s, developing countries paid around US\$ 20 billion to US\$ 25 billion in excessive prices. In a recent study for CUTS International, the noted economist and chairman of the OECD Competition Committee, Mr Frédéric Jenny, highlighted the overcharge paid by India due to anti-competitive practices in the global potash market, which was estimated to be US\$ 1 billion per year.

Mr Mehta pointed out that the Havana Charter for an International Trade Organization already included competition provisions which were not included in GATT, and that the attempt to include such provisions in the current Doha Round had been opposed by developing countries because of politics. Seeking a unilateral solution has limitations for developing countries due to capacity constraints. It now seems that the Doha negotiations do not have an immediate future and that the WTO has to redirect its focus from trade negotiations to analyses. And given the reforms in competition regimes brought about across the world, since the collapse of the agenda in the WTO, there is a need to revive the study on interaction between trade and competition. He proposed that UNCTAD and the WTO should establish a joint forum to undertake this.

### *H.E. Mr Yoichi Otabe, Ambassador and Permanent Representative of Japan to the WTO*

When analysing the implementation of competition rules by different states, all panellists acknowledged the substantial improvement that had taken place in the last 20 years. Back in 1995, only around 35 states had implemented competition rules into their legal systems.

Ambassador Otabe observed that 15 years on, many developing countries had since adopted competition laws and even signed free trade agreements (FTAs) that include competition provisions, which have become the most commonly used instruments to enact competition rules at an international level.

### *Dr Carlos Braga, Director of The Evian Group @ IMD; Professor of International Political Economy, IMD*

Dr Braga pointed to what he called a difficult “intellectual environment” surrounding the debate on trade today, making references to the “mercantilist” (pro-export, anti-import) attitudes expressed during both the French and US presidential debates. He stressed the need to make a strong case for trade liberalization and competition policy.

According to Dr Braga, developing-country opposition to competition law was initially a result of the aftertaste of the Uruguay Round and concerns over the costs of implementation. However, he went on to note that over 100 states had adopted some form of competition policy over the past decade. The world has changed and if the proposal were to come today, it would be received very differently.

### *Mr Eduardo Pérez-Motta, Chairman, Mexico Federal Competition Commission; Chair, ICN Steering Group*

Mr Pérez-Motta argued that the two main sources of increasing competition are international trade and effective competition policy. He expressed agreement that the multilateral trading system is currently experiencing a deadlock, reflected in WTO members' inability to conclude the Doha Round. For this reason, Mr Pérez-Motta believed creating a pro-competitive regulatory framework represented a new way forward.

He pointed out the fact that the ICN currently has 123 members (including many developing countries). He contends that this proved there was an increasing awareness of the importance of competition law in relation to international trade, and international coordination on competition issues was also improving.

*Mr Hassan Qaqaya, Head, Competition and Consumer Policies Branch, UNCTAD*

Mr Qaqaya was of the opinion that competition policy can be an important tool for meeting the Millennium Development Goals and reducing poverty through better opportunities for job creation. Their work at UNCTAD has shown that international cartels have a negative impact on the poor.

Several panellists also stressed the need for developing countries to adopt competition law provisions in order to fight against the numerous international and export-based cartels, which usually target developing countries and have their origins in developed countries.

*Mr Robert Anderson, Counsellor, IPD, WTO*

Mr Anderson pointed out that competition authorities in the countries of origin did not act against these cartels because they did not affect their domestic markets, while competition authorities in the victimized countries often did not have powers to act against the export cartels. Among the many possible reasons, Mr Anderson highlighted the fact that they may lack extra-territorial jurisdiction, or they may not have the means to gather the evidence they would need to convict the cartels in their jurisdiction. The strongest argument in favour of the adoption of competition rules is the high cost that the lack of these rules entails for consumers. In fact, export cartels have a significant influence on prices in general and on the swing of prices of primary products in particular.

*H.E. Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO*

Finally, while advocating in favour of reviving the debate on the linkages between trade and competition policy and recognizing the possible legitimacy of the WTO in hosting such discussions, several panellists pointed out that several other international organizations might be ready to take this issue on board (e.g. OECD, UNCTAD) and that the WTO may not be the most appropriate forum for enforcing competition law provisions given the current difficulties.

Ambassador Yeend said that Australia could certainly be ready to participate in such discussions, whatever the forum. Nevertheless, it was suggested that the WTO and UNCTAD could jointly host such a forum, as UNCTAD has been highly active in promoting the interaction between trade and competition. In fact, Mr Qaqaya recalled that UNCTAD gives support to developing countries in developing their competition regimes.

**Questions and comments**

During the discussions and comments from the floor, several participants reacted to the proposal for a multilateral set of rules on competition. While concern was raised about the fact that one-size-fits-all rules may not suit all countries depending on their level of development, Mr Pérez-Motta recalled that there were already informal standards that most domestic competition laws followed, and they were divided into the three standard elements of merger control, abuse of dominance and cartel sanctions.

However, several speakers made it clear that it was not yet time to plan for such rules but rather to seek a renewal of discussion to see what were the areas of complementarity between trade and competition policy. It was also pointed out that the discussions about competition should not forget the central importance of the consumers' interest, as it is their welfare that is eventually sought.

**Conclusions**

Mr Mehta concluded the session by reiterating that the world had changed in the last 15 years and there were now better prospects as well as greater need to explore multilateral disciplines for competition, which could be done through a joint UNCTAD–WTO forum.



This panel explored the complex international landscape on intellectual property relating to agriculture. The panel considered the main features of the international intellectual property framework through the following questions:

- Does the intellectual property system stimulate innovation?
- How does it meet the needs of farmers and consumers?
- In what directions is it likely to evolve?
- Are new rules or new processes needed to ensure it responds to changing farming needs?

## Agricultural innovation for the twenty-first century: matching the intellectual property framework with farmers' needs

### Moderator

Ms Caroline Dommen, Representative for Global Economic Issues, Quaker United Nations Office (QUNO)

### Speakers

Mr Guy Kastler, Coordinator, European Coordination Via Campesina (ECVC)

Ms Krystyna Swiderska, Senior Researcher, International Institute for Environment and Development (IIED)

Mr Antony Taubman, Director, IPD, WTO

Dr Derek Eaton, Executive Director, CIES, IHEID

### Organized by

QUNO

IIED

### Report written by

Ms Lynn Finnegan, Project Officer, Food and Sustainability, QUNO

## Presentations by the panellists

### *Mr Antony Taubman, Director, IPD, WTO*

Mr Taubman outlined the framework of trade-related aspect of intellectual property rights (TRIPS) and the relevant legal provisions. He pointed out that since the 1990s, the debate about TRIPS has broadened to "TRIPS-plus" to incorporate broader concerns such as food security, biodiversity and public health. He commented that seeds can be viewed in a range of ways, from a commodity to a crop to a livelihood, and with these notions come different approaches of how to value seeds and how to assign ownership of them. Examples of these different notions are embodied in the International Convention for the Protection of New Varieties of Plants (UPOV Convention), farmers' and indigenous rights, traditional knowledge and the protection of genetically-modified organisms.

Recent progress on the agriculture-related facets of the TRIPS-plus debate has been slow. The review of Article 27.3(b) of the TRIPS Agreement, which started in the late 1990s, has thrown up interesting questions, such as: the substance of Article 27.3(b) itself; links between TRIPS and the Convention on Biological Diversity (CBD); and links between intellectual property, traditional knowledge and folklore. Over 120 WTO members have provided information about their legislation in this area, and one contribution the WTO can offer is to make this information more easily available to further inform the debate around intellectual property and agriculture.

### *Dr Derek Eaton, Executive Director, CIES, IHEID*

Dr Eaton approached the topic as a question of empirical interest, considering the appropriateness of intellectual property on seeds and how to incentivize research in plant breeding, given that seeds – or better said the plants they grow in to – are self-reproducing. Research has traditionally been carried out by the public sector, but there has been a significant increase in activity in the private sector – mostly in developed countries – for the last 50 years. This has been accompanied by the growth of the intellectual property system, including plant-variety protection (PVP), the UPOV Convention and patents. Dr Eaton discussed the difficulty of measuring whether intellectual property had incentivized or hindered innovation. Research shows mixed results of any correlation between the granting of intellectual property rights and innovation in new plant varieties. It is extremely difficult to systematically and statistically analyse this link. Some have looked at the number of plant varieties registered in a particular jurisdiction, but this measure is imperfect, as the registered varieties could be only marginally improved seeds. He said that we needed more appropriate indicators.

Alongside this lack of empirical evidence, there is a growing concern among researchers that changes are needed to the intellectual property system. There are several reasons for this. Firstly, there are signals that increased burdens of intellectual property systems – especially patents – are impeding plant breeders' ability to carry out new research. Furthermore, intellectual property laws in some cases are in place on paper, but many developing countries find it difficult to meet their obligations. This raises questions about the ambitions of the international community in some developing countries. Finally, it is important to keep in mind one of the main goals of the TRIPS agreement is to promote the dissemination of innovation as well as incentives for innovation.

### *Ms Krystyna Swiderska, Senior Researcher, IIED*

Ms Swiderska discussed the issues from the perspective of her expertise in innovation among farming communities. To find ways that farming innovation can be strengthened and protected, we need a more balanced intellectual property system that protects plant breeding, but does not miss out a huge sector of important innovators who continually adapt plant varieties and protect an astounding level of plant diversity and livestock.

She believed the ability to adapt to changing temperatures and precipitation patterns would be a major issue not just for farming communities but food security for all of us. Therefore, we urgently need to protect, preserve and strengthen seed systems that are centres of genetic diversity. It would help to link them to scientific seed systems so the two are mutually supportive, but this is not happening for four reasons.



- Scientific breeding systems are promoting increased production and uniformity, but we need diversity for resilience among small farmers.
- Giving farmers incentives for preserving genetic diversity is not being implemented either in law or in practice.
- There is a rapid spread of hybrids, which is feeding into the critical loss of agricultural biodiversity.
- intellectual property frameworks are impeding the exchange and sharing of seeds across landscapes – a process which is essential for food security in the context of climate change.

### *Mr Guy Kastler, Coordinator, ECV*

Mr Kastler explained that during the last 40 years of agricultural development half of the varieties his network of farmers uses had been lost. Seeds are suffering more and more with changing temperatures and precipitation, but when the conditions are right, farmers' seeds often give better results than commercial seeds.

Farmers are not involved enough in drafting seed laws. Mr Kastler commented that it was difficult to see how these seed laws could encourage innovation, because farmers did not innovate in the way described by these laws, even though they have been breeding plants for thousands of years. Farmers innovate in an ongoing way, constantly adapting to local conditions. Farmers – whether in the North or in the South – grow plants from their seeds and also often exchange seeds to mix the genetic base and maintain diversity, but this is not recognized by intellectual property and seed laws. The UPOV Convention, for instance, defines a plant variety according to the “characteristics resulting from a given genotype or combination of genotypes”. Farmers do not take this approach, but seek new, diverse varieties and characteristics in their fields. The European Commission recognizes this and uses “plant populations” rather than “plant varieties”. The problem is, however, that in many countries, meeting the UPOV definition of plant variety is a condition for access to the market and can restrict farmers from freely exchanging or selling their seeds.

Mr Kastler said the commercial UPOV-related system brings us homogenous, stable varieties that cannot actually adapt to changing climatic and agricultural conditions. If used with pesticides, inputs and mechanisation, these kinds of varieties can increase yields per hectare (relative to the number of people employed), but this involves chemicals, health concerns and fossil fuels. He emphasized that farmers' and agro-ecological systems used less fossil fuel and fewer harmful chemicals and also created jobs.

He recognized that the UPOV Convention had positive aspects, even though he would like to see it return to its 1961 or 1978 revisions, which were more respectful of farmers' needs and concerns. Mr Kastler particularly favoured the UPOV system over the patent system, which is more restrictive for new breeding and is also more harmful for farmers. He emphasized that farmers did not need the intellectual property system and encouraged breeders to join with them against patents – warning that otherwise, patents may be the end of breeders and farmers.

### Questions and comments

“As a farmer myself, I have nothing against patent research, but it is only a small part in increasing production. Food security is about access to food, and in developing countries, multinational corporations want us to be slaves and do not think about food security.”

“I would like to flag the research WIPO [World Intellectual Property Organization] is embarking on in attempting to contribute to empirical evidence in the link between wheat innovation and intellectual property in East Africa.”

“We need to think about where and how reform will happen. The WIPO-IGC [on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore] is including provisions on traditional knowledge, but will these help? Do we want to preserve traditional knowledge through subsidies like benefit sharing or do we want to protect farmers’ rights? These two objectives might lead to different measures.”

“intellectual property is important for improving funding in plant breeding, but we have seen that a safety box has had to be created in the case of public health. Do you think compulsory licenses could play a role here, in the context of decreasing biodiversity and climate change?”

“UPOV carried out an impact study in 2005. There is a lot of information and evidence about the role of PVP. UPOV has discussed the need for mutual supportiveness between UPOV, the CBD and the FAO [Food and Agriculture Organization of the United Nations] international system, but this requires understanding of the UPOV system.”

“There is a misperception of the intellectual property system among farmers. There needs to be better explanation of the use and action of the intellectual property system at national level to improve communication and understanding.”

## Conclusions

Panellists reflected on what type of intellectual property system or systems should be considered for the future, and how that would mesh with the current international intellectual property system.

Mr Kastler stated that the ECVA was not against patents but was against patents on living organisms. He was concerned that patents encouraged research that responded to the need to make money rather than the actual needs in the areas of food and agriculture. Mr Kastler recognized the value of initial PVPs, which really did bring useful innovations to agriculture. He was more concerned about the UPOV Convention, which was moving closer to the patent system. He would like the intellectual property system to recognize farmers’ collective rights on their seeds. States and farmers spent years defining the rights of farmers to save, sell and exchange seeds. These are recognized in the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) – even if the words “subject to national legislation” in the ITPGRFA undermines the Farmers’ Rights principles. He believed farmers’ rights were inalienable and should be discussed and recognized within UPOV and WIPO.

Ms Swiderska said there was no international agreement that protects or incentivizes small farmers’ traditional knowledge and breeding practices. The ITPGRFA is a positive step but it has no teeth – unlike WTO agreements. The way forward is to look at customary practices. Whereas the characteristics of innovation in intellectual property systems are exclusivity, uniformity and stability of plant varieties, in customary systems innovation is primarily driven by subsistence needs, social networks and collective sharing. Access to genetic biodiversity is farmers’ seed bank and food security (as illustrated in the current IIED research in China, India, Kenya and Peru). So to promote innovation and resilience in farming communities, we need to examine key elements of customary systems, valuing diversity and reciprocity more than uniformity and exclusivity. She concluded that there was a real lack of understanding at the policy level, and small farmers must be brought into discussions in both national and international forums.

Mr Eaton declared that the intellectual property system – in theory – was meant to be about sharing. The disclosure provision in the patent system was supposed to be as important an element as the incentive component. A current complaint in the wider intellectual property debate is that disclosure is being overlooked. The “breeders’ exemption” is a characteristic of the PVP system and the UPOV Convention and is meant to perform this disclosure function effectively. Essentially Derived Varieties, however, is a move towards patents by some actors in this area.



With an anecdote, Mr Taubman reflected back to working in the field. People would either go to an intellectual property lawyer together in partnership when they valued each other's input, or the lawyer would try to capture what a partnership should look like. The former just needed a lawyer to capture the spirit of intended collaboration, while the latter could create problems. This shows that in reality, the role of law is to provide a framework for healthy collaboration.



## Technical barriers to trades on the rise: the future of consumer information labels, sustainability standards and product bans in the light of latest WTO case law

### Moderator

Mr Hannes Schloemann, Director, WTI Advisors; Attorney-at-Law, MSBH Bernzen Sonntag Rechtsanwälte

### Speakers

Professor Mario Aguilar, Minister Counsellor, Embassy of Mexico, Washington, DC

Mr Hadelin Feront, Campaign Officer/ Trade Policy, International Fund for Animal Welfare (IFAW)

Ms Géraldine Kutas, Senior Adviser to the President on International Affairs and Head of International Affairs, União da Indústria da Cana-de-Açúcar (UNICA)

Mr Amnath Bipin Menon, First Secretary, Permanent Mission of India to the WTO

Mr Erik Wijkström, Counsellor, Trade and Environment Division (TED), WTO; Secretary of the WTO Committee on Technical Barriers to Trade (TBT Committee)

### Organized by

WTI Advisors Ltd, Oxford, Geneva Branch

### Report written by

Ms Hadil Hijazi, Director, WTI Advisors Ltd, Oxford, Geneva Branch

Governments increasingly turn to product labels and standards as a means of regulating consumer information and addressing undesired product characteristics. Biofuel standards, flavoured cigarette bans and origin labels all bear witness to this trend. As consumer preferences become more nuanced, awareness of production methods increases and production processes threaten common interests such as the climate, this trend is likely to continue.

But finding the appropriate balance between regulation and permissible trade barriers can be difficult, especially when the regulation addresses arguably subjective preferences. Recent WTO disputes over “dolphin-safe” labels for tuna products (*US – Tuna II*), country of origin labels for meat (*US – COOL*) and tobacco bans and regulations (*US – Clove Cigarettes*) are likely to be only the first of a series of conflicts on technical barriers to trade (TBT).

Ruling on the three disputes this year, the WTO Appellate Body, for the first time, established case law on various key TBT issues. The approaches deployed will critically inform future policy-making on related areas – be it on biofuels, animal welfare or climate-related standards.

It is against this background that the session explored the current technical regulation and standards landscape and the outlook for selected policy areas. Speakers representing a variety of angles addressed, among others, the value of international standards, the future of labelling and the outlook for regulation in areas such as biofuels, tobacco, animal products and meat.



## Presentations by the panellists

### *Mr Hannes Schloemann, Director, WTI Advisors; Attorney-at-Law, MSBH Bernzen Sonntag Rechtsanwälte*

Mr Schloemann welcomed the participants on behalf of WTI Advisors and ICTSD and set the stage by positioning the session both in the context of the jurisprudence on technical questions that have serious policy implications emerging from the three Appellate Body decisions this year alone:

- United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (*US – Tuna II*)
- United States – Measures Affecting the Production and Sale of Clove Cigarettes (*US – Clove Cigarettes*)
- United States – Certain Country of Origin Labelling (COOL) Requirements (*US – COOL*).

He stressed that this jurisprudence raised a broad variety of questions on the ever more sophisticated use of technical measures. The focus of the *World Trade Report 2012* on non-tariff measures (NTMs), he said, underscored the topicality of this session. The overarching question for panellists and participants was this: Where do we stand in regard to TBT, conformity assessments and standards, and where do we go from here?

### *Mr Erik Wijkström, Counsellor, TED, WTO; Secretary of the TBT Committee*

Mr Wijkström provided an overview on where things stand in regard to TBT and highlighted the role of the TBT Committee in addressing WTO members' TBT-related trade concerns. Considering the recent TBT jurisprudence, he stressed that out of the 45 requests for consultations with TBT claims, only four disputes had been addressed at the Dispute Settlement Understanding (DSU) level. Main complainants in dispute settlement cases on TBT were the United States, Canada followed by the European Union, while the main respondents were the European Union and the United States, followed by developing-country members.

Mr Wijkström mentioned that the key issues addressed in disputes revolved around non-discrimination, necessity, conformity assessment and international standards while most of the issues dealt with at the TBT Committee revolved around international standards.

On non-discrimination, he said that while the Appellate Body's clarification of the content and relevance of the concept of a "legitimate regulatory distinction" was welcome, its use in practice remained particularly challenging, and discrimination hard to ascertain. On necessity, the challenge was to create the balance between achieving the legitimate regulatory objective and not creating an unnecessary barrier to trade. On international standards, he said that the issue was in some ways more concrete than the previous issues mentioned. International standards had arisen in the context of the non-agricultural market access negotiations, in discussions at the TBT Committee and in dispute settlement cases, namely *US – Tuna II* and *EC – Sardines*. These cases, he said, had created some clarity on international standards, but it was clear that more work was needed on this issue.

### *Professor Mario Aguilar, Minister Counsellor, Embassy of Mexico, Washington, DC*

Professor Aguilar started by reminding participants that Mexico had been involved in two of the three recent TBT-related dispute settlement cases: *US – Tuna II* and *US – COOL*. He then provided an overview of Mexico's involvement in the tuna case and presented the main findings in the panel and Appellate Body reports.

Professor Aguilar observed that TBTs could promote or lead to unsustainable environmental practices such as the US dolphin-safe label and that government measures aimed at protecting animal welfare brings the opposite result. The tuna case had come about when – despite Mexico's efforts to protect dolphins and other species from fishing practices – its tuna producers could not use the US dolphin-safe

label needed to market their tuna in the United States, while tuna from seas other than the Eastern Tropical Pacific (ETP) was allowed to be sold as “dolphin-safe” despite significant dolphin mortality and other negative effects.

He provided an overview of the various fishing methods of tuna worldwide, highlighting that the mortality of dolphins and other species, including sharks and turtles, occurs in any of the regions. The challenge for Mexico is: (i) the difficulty in ascertaining mortality of species when fishing tuna with methods other than the one used by Mexico because observers were not admitted on board of vessels in regions other than the ETP; and (ii) that the association of tuna and dolphin, although occurring in any region, was more intensive in the ETP, the area where Mexico conducts its tuna fishing.

*Ms Géraldine Kutas, Senior Adviser to the President on International Affairs and Head of International Affairs, UNICA*

Ms Kutas, against the background of recent experiences of UNICA, the Brazilian sugarcane industry's association, explored the thorny matter of sustainability criteria for bioenergy products. She highlighted the main categories of sustainability initiatives:

- technical regulations for industries
- voluntary standards, including sustainability schemes and “score cards” with sustainability criteria used by financial institutions
- guidelines highlighting aspects that governments should consider before enacting rules for biofuel.

She then explored how the various categories were adopted in various countries, including those with stringent sustainability criteria such as the European Union and the United States.

Ms Kutas said that the very diversity (in design and application) of sustainability initiatives relating to biofuels created a significant burden for business as different markets use different criteria and implementation measures. Recognition of sustainability measures taken in for one market was often not available in other markets, leading to the unnecessary multiplication of efforts.

In conclusion, she said that the worldwide demand for a “greening” of the supply chain was clearly rising – driven by consumers. However, the unnecessary burden on businesses as a result of fragmented legislation on sustainability needed to be addressed through the harmonization of rules and mutual recognition of sustainability measures.

*Mr Hadelin Feront, Campaign Officer/Trade Policy, IFAW*

Mr Feront began with a short overview of IFAW's work on, and interest in, protecting biodiversity and the environment, which is embedding its core work on animal welfare in a broader perspective of interrelated matters.

Stressing that IFAW often did not advocate labelling schemes and argued against them where their impact would be insufficient, such as in the ongoing *EU – Seals Products* dispute, he underlined the importance of labelling in developing a more transparent trading regime in terms of consumer protection (economic and moral) and ensuring fair competition. An important challenge, however, he said, resulted from the applicability of different rules and the often imbalanced consumer/citizen approach to labelling.

In conclusion, he believed that there was a clear and rising need to increase collaboration upstream where labelling is developed to improve its application downstream, including within the work of the WTO on TBT.



*Mr Amnath Bipin Menon, First Secretary, Permanent Mission of India to the WTO*

Concluding the panel's exposés Mr Menon offered a developing-country perspective to TBT, taking India as a point of reference. He described in interesting detail how India had developed and operated well-structured TBT-related institutions, used equally well-structured methodologies and benchmarked its standards against international standards when such relevant international standards exist.

He stressed the sheer practical importance of adopting international standards especially in regard to products destined for exports and highlighted the role regional cooperation can play in effective standard setting.

Challenges faced by countries like India, he said, included, among others:

- issues related to transparency including in regard to receiving comments on draft legislations
- the question whether to develop its own or to rely on external accreditation systems
- issues related to developing disciplines on standards, including on the process of standard setting.

### Questions and comments

Most of the comments raised from the floor related to voluntary labelling, international standards, the role of non-state actors in standard setting and issues of fragmentation in standard setting and implementation.

On international standards, issues raised by the floor included the discrepancy between the role international standards play in setting international benchmarks, establishing the relationship between trade and the pursuit of growth and in determining the outcome of disputes at the WTO on the one hand, and the fact that they are in practice often the lowest common denominator, and as such arguably not suitable to protect the environmental or other policy objectives they are meant to address. This, it was observed, further raised the need to reflect on the use and implementation of international standards.

### Conclusions

TBT are on the rise, and so are the attention, debate and need for both principled and practical solutions they attract. The Dispute Settlement Body will likely deal with more TBT cases than previously, as WTO members are increasingly applying more and more sophisticated technical measures.

It appears fair to anticipate that while the recent Appellate Body jurisprudence has certainly helped to clarify a number of matters, the fact that the TBT Agreement is largely silent on some issues, such as relevant international standards, and arguably unclear about others, such as discrimination and necessity, will invariably lead to more disputes and trigger further clarifications, hopefully of practical applicability.

Technical regulations to achieve legitimate societal objectives such as environmental protection or animal welfare are clearly rising, a trend partly led by consumers. The result of this trend, however, is often fragmentation in legislation and, as a result, a significant and partly unnecessary compliance burden on businesses, highlighting the urgent need for increased harmonization of legislation and mutual recognition of measures.

Meanwhile, it is important to recognize that developing countries are often grappling with compliance with the TBT Agreement – including with regard to transparency and in setting quality infrastructures. These are challenges which should attract broader attention and support.

## Value chains, labour rights and development

### Moderator

Mr Yorgos Altintzis, Policy Officer,  
International Trade Union Confederation  
(ITUC)

### Speakers

Mr Douglas Lippoldt, Senior Economist and  
Trade Policy Analyst, Development Division,  
Trade and Agriculture Directorate, OECD

Mr Hubert Escaith, Chief  
Statistician, Economic Research and  
Statistics Division (ERSD), WTO

Ms Emily Sims, Senior Specialist,  
Programme on Multinational Enterprises  
and Social Policy, International Labour  
Organization (ILO)

Ms Jenny Holdcroft, Policy Director,  
IndustriALL Global Union

Dr Anthony Miller, Economic Affairs Officer,  
UNCTAD

### Organized by

ITUC

### Report written by

Mr Yorgos Altintzis, Policy Officer, ITUC

Experience and studies show that global value chains (GVCs) might be an efficient way to respond to global demand. However, the distribution of the benefits of these organizational innovations in production is problematic. The outcome of the reorganization of global production into supply chains might be delivering cheaper products more quickly, but the developmental impact of this mode of production is under question.

The questions this session addressed included:

- Do GVCs benefit developing countries?
- Do GVCs assist or undermine industrial development in developing countries?
- Would effective implementation of labour standards help disseminate benefits more broadly?
- Could smarter taxation as well as capital controls be used in order to keep the benefits in the local economy?
- Could GVCs be connected to improvements in social protection?



## Presentations by the panellists

### *Mr Yorgos Altintzis, Policy Officer, ITUC*

Mr Altintzis, the moderator of the panel, began by stating that GVCs were dominating the world and that trade had become a part of production. The shift in the production methods has changed the basics of economy: the producer used to have a cost-plus approach to setting a price. Now the price is set and the producer needs to adapt the process to the price.

However, he explained that the situation was radically different for unskilled workers who were replaceable and disposable. Many of them work in informal factories to which second-tier companies outsource their production. As technology and investment can move around easily, the total investment in capital goods has increased and productivity has followed suit. These workers are increasingly being replaced by machines.

In concluding, he said it was evident that the different stages in GVCs involved much bargaining over the distribution of gains. What share one is entitled to is decided by how replaceable the buyer and the supplier are for each other.

### *Mr Hubert Escaith, Chief Statistician, ERSD, WTO*

Mr Escaith said that production has moved from the Taylorist model, where all production took place in one firm, to Toyotism, where firms outsource globally. There are two important consequences: first, what were considered manufacturing jobs turned into outsourced services jobs; and second, it became a challenge for the WTO to capture the real value added and traded.

The WTO now tries to analyse the value added of each export by deducting the foreign value added and imports from a final product, and measure only the direct and indirect domestic value added.

He explained that most trade is in intermediate goods: around 75 per cent to 80 per cent of total world trade is actual value added in the form of services. The implications for jobs differ in developed and developing countries. Between 1997 and 2007, the share of low-skilled wages in total production cost decreased in all OECD countries. There were mixed trends for medium skills, and every OECD country increased its share of high-skilled workers. Mr Escaith concluded by saying that in developing countries, trade alone had no direct effect on the quality of jobs. Most of the globalized production in developing countries takes place within Export Processing Zones (EPZs) and evidence shows that wages EPZs provide above-average national wages because of a higher skills premium.

### *Mr Douglas Lippoldt, Senior Economist and Trade Policy Analyst, Development Division, Trade and Agriculture Directorate, OECD*

Mr Lippoldt explained the details of the International Collaborative Initiative on Trade and Employment (ICITE). He said that GVCs and production networks were not new, but had greatly expanded with trade liberalization, the ICT revolution and the declining costs of trade. One study showed that trade in intermediates as 56 per cent of goods and 73 per cent of services during 1995 to 2005. This trend transformed the understanding of comparative advantage. It was historically done by industry, but now it is increasingly by task. However, not all services tasks can be unbundled or delivered at a distance. The fragmentation of production by tasks has led to increased specialization and productivity growth. One study found that a one per cent increase in share of intermediates imported was associated with a 0.3 per cent increase in productivity. This happens because imports give access to new technologies, new varieties and more price and quality competitive inputs. Wages are linked to productivity, so workers should be supportive of trade.

However, continued Mr Lippoldt, respect for ILO fundamental principles and rights at work, especially freedom of association and the right to bargain collectively, ensured that workers were able pursue an appropriate portion of the gains. Workers in emerging economies benefit from relatively well-paid jobs via GVCs. Nevertheless, some workers find their labour contributions facing substitution by imports and they may be dislocated. Adjustment costs increase, especially if the dislocated workers change

occupation. But as open economies grow faster, protection is not the appropriate response. Rather, market openness is important for economic growth, while protectionism can disrupt important processes like technology transfer, importation of competitive inputs needed to maintain competitive final goods and services industries, as well as consumer welfare. Adjustment challenges should be addressed via enabling investment in infrastructure, education, social safety-net policies and retaining measures.

*Ms Jenny Holdcroft, Policy Director, IndustriALL Global Union*

Ms Holdcroft focused her presentation on electronics and apparel industries which are mostly produced in EPZs – typical of GVC conditions. Most EPZ workers are women, and young and internal migrant workers. She explained they suffered from low-quality employment and precarious work. Due to extended outsourcing and subcontracting it is impossible to identify the employer with which to bargain. There is much forced overtime due to abuse of buyers' power – with buyers making unrealistic production demands and poor labour conditions. In EPZs, national labour law is not adequately enforced, partly due to under-resourced labour inspectorates or because labour inspectors are denied access. Hostility against trade unions and even legal exemptions on unionization in zones, impede workers' power to claim a fair share of the gains. In addition, EPZ incentives encourage profits to be repatriated to buyer's home country.

Reporting on the initiative "Capturing the Gains", Ms Holdcroft noted that increases in export market share and export unit value were not necessarily accompanied by increases in employment and wages. Minimum wages are also generally not adequate to meet basic needs. The failure to pay wages on time and in full is endemic: studies reveal that more than 50 per cent of suppliers do not comply. She also showed that with an increase of 6 euro cents on the price of a pair of jeans, workers in Bangladesh would receive a living wage. Furthermore, it is not unusual to find workers earning less than 0.5 per cent of a garment's retail price. Trade union organization and collective bargaining in the workplace are the only means by which any increases can reach workers. What is needed is integrated industrial development strategies as opposed to the enclave approach of EPZs linked to the development of local industries. However, trade agreements have reduced the policy space in which governments can regulate to develop industrial policy.

*Ms Emily Sims, Senior Specialist, Programme on Multinational Enterprises and Social Policy, ILO*

Ms Sims began with an anecdote. At US\$ 682 billion, Apple's market capitalization exceeds the market capitalization of all companies in Greece, Ireland, Portugal and Spain combined and currently has US\$ 80 billion in cash. However, Foxconn – Apple's main supplier – pays workers only US\$ 22 a day, including overtime. There is also a power relationship that creates asymmetries and in order to respond to this, trade should not be only seen as market development but also as economic and social development. Revisiting the use and design of tools such as trade and investment agreements is essential. She believed this was possible by embedding protection for workers' rights in such agreements and by embedding respect of workers' rights in company operations regarding supply chains.

According to Ms Sims, there are different approaches to trade and investment agreements that include some clauses intended to promote social development. One approach is by a declaration of principles (EU-CARIFORUM Agreement), but this has proved to return no results. Another approach is a capacity-building mechanism including awareness-raising among workers and training of inspectors. The third approach is the provision of a complaints' mechanism. However, its efficiency depends on the political will to make use of it. The most efficient way is trying to achieve any gains in the negotiation process of such agreements, as the experiences of Oman-US and US-Panama FTAs show.

*Dr Anthony Miller, Economic Affairs Officer, UNCTAD*

Dr Miller declared that corporate social responsibility (CSR) should not be seen as a way to avoid the responsibility of companies to obey and respect the law – this is also reflected in the International Organization for Standardization definition of CSR. He explained that in the 1990s, multinational enterprises (MNEs) would claim that the suppliers were completely different legal entities. Sensitive of reputation, MNEs adopted codes of conduct, and most today have some sort of code. However, the code's enforcement weakens further down the supplier chain. On the other hand, some fair-trade companies





that ensure the application of social and environmental standards in their production have gained some share of the global market.

Dr Miller concluded by stating that the most efficient institution for promoting labour rights was trade unions. The role of these frameworks and codes of conduct that are based on them is to create the necessary space for workers to act. Nonetheless, there should be a movement from soft to hard law on international labour and human rights and, as inspection costs money, resources should be channelled to capacity-building. Strengthening compliance and redress mechanisms among intergovernmental standards and strengthening CSR disclosure are also needed.

### Questions and comments

An audience member from Oman said that increasing wages in general and raising the minimum level to living wages might lead to higher unemployment and higher prices. With regards to the US–Oman FTA, Omanis felt that the labour standards had been imposed from outside. A local journalist said that workers in the west had been historically against globalization, but workers in the south did not share this view. A WTO staff member said that people in developing countries were running away from rural poverty to work in EPZs. He also asked Mr Miller whether there were CSR initiatives in developing country companies.

Mr Altintzis replied that trade agreements which include labour standards tended to improve the labour conditions. The problem was that there was no agreement with an enforceability mechanism to achieve even better results. He proposed that the DSU should include labour conditions in the definition of “sustainability”, and that the Trade Policy Review Mechanism should start examining labour performance in their reviews.

Mr Miller said that many developing countries had better legislative frameworks, but they lagged on enforcement. He added that there were CSR initiatives in developing countries even with more advanced models in CSR, for example South Africa’s mining sector. The issue was not to have only efficient companies but also to distribute the gains evenly.

Ms Sims was not surprised by the superb treatment companies get in developing countries, which resulted from the improvement of “doing-business” efforts. However, workers’ treatment is not analogous. It would be better that governments not only ratify conventions but also enforce them. She added that the effort to improve standards was best driven by local powers.

Ms Holdcroft said that the minimum wage question was quite complex. The minimum wage is the floor below which workers should not fall, but usually they were below the poverty line. She gave the positive example of the island of Patan, in Indonesia – where there are many GVCs – which systematically applied higher minimum wages. However, this was not extended to the rest of the country.

On answering the question about compassion, Mr Lippoldt said that working conditions were largely associated with local conditions in the market. Paul Krugman in *Accidental Theory* writes that “bad jobs are better than no jobs”. Guidelines, labour rights in FTAs and ethical initiatives should be strengthened to improve the situation on the ground. He also reiterated the need to keep markets open, as they were a precondition to growth.

Mr Escaith said that there was a wide realization that trade lifted millions of people out of poverty. China faced a famine some decades ago, but nowadays it can import food when yields are low. These transformations took place in only 15 years. He also reiterated the need to avoid protectionist policies because they were trapping people in poverty.

## A menu for renewed WTO relevance: natural resources and preferential trade agreements

### Moderator

Mr Pablo Heidrich, Senior Researcher, Trade and Development, The North–South Institute (NSI)

### Speakers

Mr Eduardo Bianchi, Co-chair, Facultad Latinoamericana de Ciencias Sociales (FLACSO)–WTO Chair; former Secretary of Industry, Argentina

Ms Sandra Polónia Rios, Director, Centro de Estudos de Integração e Desenvolvimento (CINDES)

Professor Debra Steger, Senior Fellow, Centre for International Governance Innovation (CIGI); Professor, Faculty of Law, University of Ottawa

Mr Rolf Traeger, Economic Affairs Officer, UNCTAD

### Organized by

FLACSO

NSI

### Report written by

FLACSO

NSI

The objective of the session was to analyse WTO relevance in today's context for developing countries. The key questions were:

- How can the WTO still contribute today through its different capacities – surveillance, arbitration and capacity-building – for developing countries?
- What new negotiations and activities of the WTO can help developing countries deal with the commodities' prices boom?
- How can the WTO contribute to support preferential trade agreements (PTAs) to strengthen global trade governance?



## Presentations by the panellists

### *Ms Sandra Polónia Rios, Director, CINDES*

Multilateralism is going through a general crisis, and the Doha Round is only one of its many manifestations, began Ms Rios. Nevertheless, there has been no movement towards traditional protectionism, and the crisis is more related to the impossibility of reaching new agreements and commitments for further trade liberalization. Some very specific factors are the main cause of the impasses in trade and other trade-relevant multilateral economic arenas. She began with the emergence of the South, and particularly the rise of China as a strong player in international trade, which had radically altered trade flows and competitive conditions in the global market. Market access in northern markets is less relevant today than in previous times.

The second factor she gave was the multiplication of PTAs, which is causing difficulties in multilateral negotiations, as they compete as mechanisms to obtain better market access and also generate distortions in global trade flows. More work on the WTO side to untangle this could result in the latter's increased relevance.

She also believed that the policy consensus arising from emerging economies was less committed to liberal economic policies and preferred policies and instruments that were typical of state capitalism. The WTO does not seem to have much to offer states with such development agenda, thus generating their low levels of interests for WTO rounds of trade liberalization.

She noted that restrictions on natural resources and food exports had an impact on domestic and international economic policies. The WTO has been historically concerned with imports restrictions but not exports restrictions, and this calls for a change in the agenda.

### *Professor Debra Steger, Senior Fellow, CIGI; Professor, Faculty of Law, University of Ottawa*

Professor Steger explained that the WTO had changed dramatically since the growth of BRICS, who were now big players in the organization. It is now less clear what the future mandate of the WTO will transpire to be, as big differences among their members have arisen regarding its purpose, and that has, in turn, affected the Doha Rounds. In parallel to this, bilateral investment treaties (BITs) have to be addressed, since foreign direct investment (FDI) flows play today a huge role in the reconfiguration of the global economy, even more than international trade. The significance of this for the WTO is that these BITs and the previously mentioned PTAs have been negotiated outside the WTO.

She believed it was therefore necessary to find coherence in the system in order to coexist with PTAs and to regulate the signing of BITs, so that principle of the common good for developing countries' populations was preserved over the interests of specific multinational firms benefiting from such agreements. One way, she suggested, would be to create a committee within the WTO to discuss the new issues that are being negotiated in the PTAs and BITs. Another idea may be to review the resulting dispute settlements from these treaties within the WTO, which currently has no jurisdiction.

### *Mr Eduardo Bianchi, Co-chair FLACSO–WTO Chair; former Secretary of Industry, Argentina*

The rise of India, China and some Asian countries has impacted on the price of natural resources, began Mr Bianchi. In this context, it may be that commodity prices go up and manufacture prices decrease. The core issue is how to distribute revenues domestically from the increasing trade in natural resources that are also increasingly becoming more expensive. He explained that we were dealing here with what is known as the Dutch disease: a strengthening of the local currency due to an increase in the trade of natural resources which in turn makes the country less competitive in the manufacturing sector. Mr Bianchi cited Brazil and South Africa as examples of this problem. Most trade restrictions in the last three years have been a direct consequence of local currency overvaluation. Therefore, it is urgent that the effects of exchange rate on trade flows and market access are included in the WTO agenda in the near future.

He warned of a new paradox caused by the rise of China and India: GVCs have caused a regional effect, particularly in Asia. This increased complexity in trade has called for more complex rules, but mainly

regionally through PTAs. This new regionalism is a threat to the multilateralism we know now and thus requires a negotiated solution. A good start could be that the WTO gets involved in providing technical capacity-building on the resulting GVCs anchored around the emerging powers of the developing world, such as BRICS.

*Mr Rolf Traeger, Economic Affairs Officer, UNCTAD*

Traditionally, the challenge to the multilateral system has been thought to come from RTAs. However, noted Mr Traeger, the rise of Asian and other emerging countries had given more importance to some specific sets of bilateral ties. These have often been accompanied by bilateral agreements with several components, which include trade, investment and intellectual property, among others. An enduring problem posed by these, he explained, just as those that were North–South before them, was the asymmetry between the signing states. That is most clearly exemplified today by agreements between African states and China or India.

For low-income countries, the increase in their trade in commodities and raw materials will not necessarily mean accelerated development beyond economic growth. The traditional questions of development shall remain most present for these countries.

Mr Traeger concluded with the differences between bilateral relations and the multilateral field, where smaller players have more opportunities to make their voice heard in the latter. It is precisely there where the WTO could potentially gain relevance again if it became interested in the issues of LDCs. These will then gain more chances to maintain policy space and thus space to lead their own development.

### Questions and comments

Mr Heidrich, the moderator, asked about the future of the WTO with a new panorama of overvaluation for commodity exporting countries seeming incompatible with the original goal of this multilateral body – the liberalization of trade. Specifically, who would want to attend the Doha negotiations today and what for? And if those fail, what is the future of the WTO?

Professor Steger believed it was fundamental to reflect on the WTO mandate. It was about regulation and maybe today more about economic regulations rather than further trade liberalization.

A member of the audience noted that while multilateralism is about non-discrimination, bilateral agreements and PTAs are based on discrimination. In this latter case, the huge problem is China and its relationship with small African states, for example. The WTO is not intervening there and is not preventing low-income countries from using their policy space whichever way they want to. The main problem with these countries is internal – and not external – policy and political space.

Ms Rios remarked that the WTO did not have the instruments to deal with PTAs, noting that they were not transparent and were increasingly not about trade preferences. With regards to Mr Bianchi's presentation, the relation between commodity volatility and the exchange rate has been "the" question in Brazil, where she comes from. She doubted whether we should include the exchange rate issue in the WTO agenda, although it could be discussed within the institution. Perhaps, this issue should be better dealt with at the International Monetary Fund (IMF) or Group of 20.

Another audience member believed there was a need for reflection on the fact that there were more PTAs than multilateral agreements, and suggested looking into the impact of the liberalization of trade and thinking beyond it.

Professor Steger thought the current lack of coherence between PTAs and WTO agreements would cause more problems. For example, some PTAs have provisions protecting the environment – in contrast to WTO agreements which do not. If there is a conflict between these two, the dispute is usually brought to the WTO. She warned that one of the problems was that WTO rules are old and not adequate. In one



dispute in the Southern Common Market (MERCOSUR), where a MERCOSUR tribunal had already ruled, an appeal instance made at the WTO ignored that tribunal ruling. This is an example of the terrible lack of coherence in the system.

An audience member asked whether the WTO was still the right place to be discussing environmental issues. Ms Rios replied that the WTO did not rule about the scientific aspects of environmental issues. However, she thought its rulings should bear in mind any scientific matter which influences domestic policies and thus trade flows.

Mr Heidrich posed the following question: Could it be that PTAs and BITs are related to investment and development more than trade and development?

In response, Mr Traeger stated that when countries have 40 per cent to 50 per cent of their budget coming from bilateral donors, policy space is de facto very limited. Some of the agreements between China and low-income countries involve trade and investment and they have become a way to bind the supply of natural resources from those nations. Emerging countries are thus securing their access to natural resources. These agreements are often not transparent and include numerous aspects such as investment for infrastructure, trade and financing, among others, that limit policy space on the aggregate.

Mr Heidrich then asked how we could have a non-discriminatory multilateral system in the face of so many diverse behaviours and policy approaches towards development.

Mr Bianchi remarked that there were some companies exerting pressure on governments to get a better position in GVCs. In relation to PTAs, the WTO gets to keep its function as a liberalizing agent, but it is losing its rule-making capacity. Still, the WTO has a role in the new geography of trade flows and therefore should get more involved with PTAs. Nowadays, we see that it is sometimes trying – but it is not trying its best.

A member of the audience believed that the limitations of some countries to develop were not closely related to WTO rules. Its impact is minimal. In contrast, the most important factor that affects development efforts is political economy space. Another audience member wondered whether the PTAs and bilateral agreements between China and low-income countries could be considered quantitative restrictions infringing Article 11 of GATT. Professor Steger noted that it was not clear from a legal perspective what kind of instrument these were. If they do not fit under Article 24, what was their legal status, she asked.

Mr Traeger believed it would be very difficult to characterize these agreements as voluntary exports restraints. Regarding the question of policy space, low-income countries are bound by agreements that limit them in some way, although he agreed that this was not the main cause of their limitations. Ms Rios stated that most of these agreements involved public concessions so they could not be characterized as being between companies. In fact, he said, governments were involved. On a final note, he stressed the need for macroeconomic global rules to avoid volatility in the exchange rate markets and the right of governments to regulate capital flows.

## Better jobs through trade: presenting the results of the ICITE Project

### Moderator

Ms Carmel Cahill, Senior Counsellor, Trade and Agriculture Directorate, OECD

### Speakers

Mr Marc Bacchetta, Counsellor, ERSD, WTO

Dr Marion Jansen, Head, Trade and Employment Programme, International Labour Office, ILO Secretariat

Mr Douglas Lippoldt, Senior Economist, Development Division, Trade and Agriculture Directorate, OECD

Mr Ralf Peters, Trade Negotiations and Commercial Diplomacy Branch, Division on International Trade in Goods and Services (DITC), UNCTAD

### Organized by

OECD

### Report written by

Ms Carmel Cahill, Senior Counsellor, Trade and Agriculture Directorate, OECD

Mr Doug Lippoldt, Senior Trade Policy Analyst, Trade and Agriculture Directorate, OECD

In a unique collaboration led by the OECD, ten international organizations – the Asian Development Bank, the African Development Bank (AfDB), the Economic Commission for Latin America and the Caribbean, the Inter-American Development Bank, the ILO, the Organization of American States, the OECD, UNCTAD, the World Bank and the WTO – have pooled research around the theme of trade and jobs. The fruits of this collaborative effort – the ICITE – are now available in a book: *Policy Priorities for International Trade and Jobs*. The book and other materials are available free at [www.oecd.org/trade/icite](http://www.oecd.org/trade/icite).

Results strongly support the view that protectionist measures at this juncture can only exacerbate the growth and employment problems being experienced by some countries. Instead, states are called on to continue market opening efforts, while making sure that the overall policy environment is conducive to growth and that complementary policies are in place to protect workers affected and to help them to take up the new opportunities that trade affords.

The findings also highlight how different aspects of trade, including its more novel facets such as global services, outsourcing and production off-shoring, play a pivotal role in boosting growth and creating high-value, well-paid jobs.

This session sought to improve understanding of the complex reality of interactions between trade and jobs and to promote dialogue among stakeholders.



## Presentations by the panellists

### *Mr Douglas Lippoldt, Senior Economist, Development Division, Trade and Agriculture Directorate, OECD*

Mr Lippoldt presented a general overview of ICITE findings and indicated: the association between market openness and growth; improved employment and wages; and better working conditions. He also emphasised that the benefits of openness were not automatic. Complementary policies are also needed to ensure that the benefits occur and are shared widely. These include investment in human resources and physical infrastructure, and economic policies and governance systems that create a positive environment for business and investment. Social safety nets are important to assist those individuals adversely affected by the processes of adjustment triggered by market opening. Finally, protectionism has a high cost and impedes the ability of the economy to benefit from trade.

### *Mr Marc Bacchetta, Counsellor, ERSD, WTO*

Mr Bacchetta reminded the audience that, as reflected in the preamble to the Marrakesh Agreement establishing the WTO, the linkages between trade and employment had always been of crucial importance to the WTO. He reviewed work undertaken at the WTO on trade and jobs and notably the common research programme on trade and labour that the WTO launched jointly with the ILO in 2006. Three publications have been issued under this joint research programme, which aims at contributing to a better understanding of the mechanisms through which trade and globalization affect workers and of the measures that governments can take to minimize the possible negative effects on workers of opening trade. The third publication was an edited volume entitled Making Globalization Socially Sustainable. He concluded by outlining the WTO's contribution to ICITE.

### *Dr Marion Jansen, Head, Trade and Employment Programme, International Labour Office, ILO Secretariat*

Dr Jansen reviewed the ILO book Trade and Employment, Myths and Facts, as well as an ILO working paper on services trade and employment in Indonesia. She then summarized the three ILO chapters in the ICITE book. She highlighted:

- the role of unions,
- convergence in labour protection levels between developed and developing countries in RTAs
- the role of social protection in adjustment
- supply capacity-building in developing countries.

### *Mr Ralf Peters, Trade Negotiations and Commercial Diplomacy Branch, DITC, UNCTAD*

Mr Peters spoke about UNCTAD's priorities in relation to development-friendly economic integration, and then presented UNCTAD's contribution to the ICITE book on Southern African Development Community regional integration. He also discussed the UNCTAD/ILO Indonesia paper considering the impact of the Association of Southeast Asian Nations FTA with China, noting the conclusion that negative effects on the labour market were limited and smaller than expected by some observers.

Each of the speakers expressed appreciation for the collaboration that had taken place within ICITE and drew attention to other joint efforts, all of which had contributed to improved understanding among the international organizations and which were gradually leading to improved, less-contradictory communication to the wider public.

## Questions and comments

From the floor, Dr Vinaye Dey Ancharaz, formerly at the AfDB, and an ICITE participant, presented a rather pessimistic assessment of trade and jobs in Africa. He stated that trade remained focused



on capital-intensive extractive industries and commodities, although it had created some additional employment opportunities in textiles for women in some countries. Mr Lippoldt made the case for optimism of Africa's potential, noting the positive experience of some of the middle-income African countries and the potential for further development based on regional liberalization (i.e. it should not be more difficult to trade locally than with distant partners).

Others spoke of the dangers of regionalism in Africa limiting economic perspectives, the importance of human-capital development for positive labour market outcomes in relation to trade, and a lack of statistics in key areas of services – especially in developing countries. Dr Jansen pointed out that the interface between education, employment and trade remained an under-researched area.

## Conclusions

Ms Carmel Cahill, the moderator, closed the session by drawing attention to the growing trend for international organizations to collaborate together and by pointing out the benefits that strengthened collaboration could bring. First was the insight that there are very large areas of agreement, and that apparent disagreements are often more a question of emphasis and priority than of fundamental substance. Second, that by pooling research resources, many aspects of complex issues around trade and jobs can be covered and the wide differences among regions and countries, including in their level of development, can be better reflected. Finally, collaborative efforts make it possible to present a more coherent synthesis of the state of knowledge to a wide public, together with a clearer view of the policy implications and to avoid seemingly contradictory messages.



The session's premise was that today's agricultural sector is demand driven as compared historically to being supply driven, and discussed whether this change requires a new intellectual framework for the WTO's work on agricultural issues. The global food system must respond to a dramatic increase in the demand for food, to policies encouraging the production of biofuels and to more frequent incidents of extreme weather. The world has recently witnessed two food price spikes, and with population and income growth projected to continue to exceed productivity growth, prices are likely to remain both higher and more volatile. There also has been a proliferation of RTAs that influence trade patterns. The fragmentation of production through highly complex value chains offers new opportunities and challenges to world agriculture.

## Moving towards a demand-driven agricultural sector: implications for trade policy

### Moderator

Mr Carlo Trojan, Chairman, International Food and Agricultural Trade Policy Council (IPC); former Ambassador of the European Commission to the WTO

### Speakers

Dr Manzoor Ahmad, Senior Fellow, ICTSD

Professor Tim Josling, Senior Fellow, The Freeman Spogli Institute for International Studies, Stanford University; Member, IPC

Ms Ellen Terpstra, President and CEO, IPC

Mr Sun Zhenyu, former Ambassador of the People's Republic of China to the WTO

H.E. Mr Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO

### Organized by

IPC

### Report written by

Ms Ellen Terpstra, President and CEO, IPC

## Presentations by the panellists

### *Mr Carlo Trojan, Chairman, IPC; former Ambassador of the European Commission to the WTO*

Mr Trojan introduced the session, noting that the agricultural system was fundamentally different today compared to when the DDA was launched. A surplus commodity situation has been replaced with a demand-driven one, characterized by shortages and price hikes. Agricultural trade policy discussions used to focus on supporting producers and exporting interests, but focus has now shifted to consumers and importing countries. In particular, major areas of concern are export restrictions, environmental constraints and the environmental impacts of agriculture. Finally, the proliferation of regional or plurilateral trade agreements and the development of highly complex value chains were noted.

### *Professor Tim Josling, Senior Fellow, The Freeman Spogli Institute for International Studies, Stanford University; Member, IPC*

The first panellist was Professor Josling, who set the stage for his view on how agricultural trade might look 38 years in the future, in 2050. He recalled how much had changed in the last 38 years – in 1974, there was lower grain production, a jump in oil prices and accompanying inflation, macroeconomic instability and unprecedented high prices for several major commodities. US farm policy was transformed by the elimination of the reserve policy and encouragement of large-scale production “from hedgerow to hedgerow”. Trade expanded rapidly as the Soviet Union purchased large quantities of grain. Developing countries were not at that time major players in the commercial market, although they were absorbing large quantities of food aid. The European Economic Community, including the newly acceded United Kingdom, had implemented policies that made it impervious to world market conditions.

The United Nations convened a world food conference in 1974 to address the crisis of unstable prices and food security. New institutions were created: the Committee on Food Security, the International Fund for Agricultural Development (IFAD) and the World Food Council. Today, only IFAD remains. It was not until the mid-1980s that serious attention was paid to the “disarray” in world agriculture. This led to the adoption in the Uruguay Round of new rules on domestic support, market access and export subsidies to address the distortions to world markets emanating from domestic farm policies.

In the 1980s and 1990s, new challenges to agricultural trade rules evolved. This was one consequence of a wave of globalization in the industry, with food processors sourcing material from overseas and retailers marketing to consumers around the world. Many of these challenges were in the form of standards. The SPS Agreement increased transparency for public-sector standards, but private standards bloomed in the less regulated environment of the TBT Agreement. Biotechnology brought productivity improvements to producers but faced consumer resistance. High oil prices and environmental concerns spawned the increasing use of biofuels in transportation. Strong economic growth in emerging markets resulted in increased demand for meats and added to pressures in the grain market. The demand-driven system had emerged, replacing the concern about surpluses and falling prices.

Turning to trends over the next 38 years the demand driven nature of agricultural trade is likely to continue. Nine billion people will need to be fed in 2050, and a 70 per cent increase in agricultural output will be required. The use of new land can address around 10 per cent of the needed increase in supplies, but yield increases will have to account for around 80 per cent. Increased trade flows and relatively firm prices can be expected. There will be greater development of niche products, and the use of branding and labelling to promote products. Resistance to genetically modified organisms (GMOs) will shrink as developing countries adopt the technology to achieve productivity increases. Variability in supply will continue and stocks will be too small to give price stability. Consumer safety-nets will develop by addressing high prices through consumer assistance (e.g. food stamps) rather than meddling with supply. Crop insurance will likely replace price supports in more developed countries. The bulk of agricultural policy interventions will shift to developing and emerging countries.

More creative institution building will be needed to make the best use of limited resources in the face of increasing population and demand for food. Though the World Food Council no longer exists, it may



be worth considering how existing institutions can address the future challenges and whether new institutional frameworks are needed.

*H.E. Mr Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO*

Ambassador Yeend expressed extreme concern that there was so little focus on agriculture at the WTO today. The focus had previously been on the major distortions to food markets caused by developed economies trying to address surpluses, which disadvantaged the ability of developing countries to increase production. Today, we have increased instability in food prices and spikes, which is a cause for international concern. There have been a number of international initiatives which are relevant to broader food security concerns, such as the UN High-level Task Force on the Global Food Security Crisis and the Group of 20's work on the agricultural market information system. All have reconfirmed the positive role trade should play in addressing food security issues. At the Cairns Group meeting in 2011, food security was discussed in terms of the importance of policy reform, so that farmers receive market signals and also can use new practices for increasing productivity. Australia firmly believes that as a long-term advocate for agricultural reform and reflecting the changing dynamics of agricultural trade and where we will go by 2050, we need strong multilateral rules for agricultural trade.

The greatest debate in DDA has been regarding maintaining policy space for market access. Yet the proliferation of FTAs aimed at opening agricultural markets is a bit at odds with the problem in DDA. There are debates about self-sufficiency and reserves. This leads to questions regarding the work in WTO. What role does trade play to answer these issues, and what can be done in a multilateral context to find solutions?

*Dr Manzoor Ahmad, Senior Fellow, ICTSD*

The next panellist was Dr Ahmad, who serves as theme leader in the IPC-ICTSD Expert Group on Agricultural Trade and Food Security. The project, supported by the government of the Netherlands, will examine three themes: agriculture and rural development; agriculture and food security; and trade policy and the environment. The organizers' aim is to provide the options paper at the 9th WTO Ministerial Conference, to be held in Bali in 2013.

Dr Ahmad reviewed why this initiative was being undertaken and discussed the process for reviewing the matter and plans for the outcomes. He noted that the DDA impasse was unfortunate, especially given the 2008 food crisis, which in part was caused by trade policies. The WTO really had no reaction, although other institutions did. The question is whether a new intellectual framework is required for the negotiations and if so, what should it be?

Dr Ahmad indicated the project's purpose is the development of well-reasoned policy options for food and agricultural trade for governments and negotiators to help move forward. The intention is to stay out of technical details of Doha, but to touch on institutional reforms. The project may suggest different approaches – it does not have to be a consensus document.

### Questions and comments

Mr Sun Zhenyu, former Ambassador of the People's Republic of China to the WTO, and Ms Ellen Terpstra, President and CEO of the IPC, served as discussants and provided their reactions to the panellists. Mr Sun kicked off the discussion with a number of provocative questions. The ensuing discussion with questions from the audience touched on a wide range of topics, in particular: food security, GMOs, biofuels, the role of speculation, export restrictions, and whether trade negotiators were taking into account the changes since DDA was initiated.

Noting the importance of China's and India's policies, it was suggested there would be a fundamental debate in the future concerning how much the two states want to protect agriculture through direct subsidies and their flexibility to manipulate prices by border measures. Doha cannot move forward until these issues are solved. Mr Sun stated that if these two states can solve their own people's food security, that would be significant. Mr Trojan noted that food security does not equal food self-sufficiency, and pointed to water availability, the impact of climate change, and environmental effects as reasons that more trade is needed.

A member of the audience noted that the food price hike was a bigger concern, as it was in combination with rising fuel prices, and suggested that food security needed to be approached in the context of sustainability – a huge challenge for many developing countries. Another participant commented that high prices should be good for small farmers in developing countries. Professor Josling suggested that self-sufficiency was possible for China, India, the United States and a few other states, but self-reliance was the only feasible objective for others. High prices should be good for small farmers, but to address price hikes, policies should provide subsidies to consumers instead of attempting to artificially reduce high prices through supply management.

Dr Ahmad commented that export restrictions did contribute to the food price crisis, and many were understandable. Farmers did not especially benefit from export restraints, but the middlemen did. If restraints are imposed, buyers lose confidence in supply availability. The Group of 20 said emergency supplies for the World Food Programme should be allowed and not be affected by export restrictions – however, more transparency is needed.

Ambassador Yeend felt a Doha outcome was possible if the goals were improving market access, dealing with export subsidies, addressing trade-distorting domestic subsidies and having strong development outcomes – but not especially using the 2008 text. Creative thinking is needed, particularly on market access, and it is important to move forward where agreement can be reached. Australia's preference is to address these issues multilaterally, as domestic supports are not solvable in FTAs.

An audience member asked why negotiators were sticking to a supply-side approach and noted concern that the European Union and the United States were diverting supplies to biodiesel purposes in a time of shortage.

Professor Josling addressed the question as to why, if prices are increasing, had there not been more pressure to reduce subsidies, particularly since all governments are under budget constraints? He cited the probable elimination of direct payments in the US Farm Bill as an example of where budget pressures have been decisive.

Regarding whether US ethanol policy diverts corn from other uses, Professor Josling noted that US tax credits had been removed and the European Union was reviewing its biofuels policy. He commented there was serious discussion in the United States regarding the mandate and believed it would change over time to address the problem of pressures on the corn market in times of high prices. In the future, ethanol production will be based on its competitiveness with oil rather than government mandate.

## Conclusions

The agricultural system will increasingly be demand-driven, reflecting the 70 per cent growth in production needed by 2050 and the increased demand for biofuels. Farmers are being impacted by more frequent severe weather, and more price volatility and hikes are likely. This raises concern about food self-sufficiency, sustainable production, reserve policies and disciplines on export restrictions.

While the Doha negotiations are at an impasse, agriculture has been included in a proliferation of FTAs, thereby improving market access but encumbering trade with a myriad of regulatory systems. There are new issues to be discussed reflecting today's situation, but it is still important to resolve the aims of the Doha agriculture negotiations so that developing countries have an opportunity to produce in response to markets.



Farmers have the important task of producing and feeding a growing worldwide population. The FAO predicts that food production will need to increase by 70 per cent to feed an additional 2.3 billion people by 2050. As 50 per cent of the world's food needs is provided by smallholder farms (2 hectares or less) in developing countries, these farmers will ultimately be responsible for future global food requirements.

The objective of the session was to explore the various challenges farmers face in meeting food security goals and whether the multilateral system addresses farmers' real concerns. The panellists discussed the importance of the multilateral trade system to agriculture and global food goals. The current legal framework has contributed towards a more level playing field in agriculture, and the Doha Development Round (DDR) has the potential to achieve additional benefits.

While the multilateral system plays an important role in food security, it is only one tool to boost productivity. The panellists discussed various challenges faced by developed and developing country farmers in increasing production and accessing international markets. The answer to food security requirements instead lies in a mix of multilateral, national and regional policies and programmes specifically targeted to the respective country or region.

## Does the multilateral system address farmers' real concerns?

### Moderator

Mr Robert Carlson, President, World Farmers' Organisation (WFO)

### Speakers

Mr Enrique Domínguez Lucero, Agricultural Counsellor, Permanent Mission of Mexico to the United Nations

Ms Shelby Matthews, Chief Policy Advisor, COPA-COGECA

Mr Charles Ogang, President, Uganda National Farmers Federation (UNFFE)

H.E. Mr John Adank, Ambassador and Permanent Representative of New Zealand to the WTO

### Organized by

WFO

### Report written by

WFO

## Presentations by the panellists

### *H.E. Mr John Adank, Ambassador and Permanent Representative of New Zealand to the WTO*

Ambassador Adank explained that the current WTO Agreement on Agriculture (AoA) provides an important legal framework for trade in agriculture products, and that the DDR could further address core barriers inhibiting the participation of farmers in the international trading system.

The AoA is a landmark achievement that successfully brought agriculture into the international trade law framework and contributed significantly to a more equitable, efficient agriculture trading system. The AoA provided strengthened, more operationally effective GATT rules and disciplines on market access, government domestic support and export competition, and a range of flexibilities for both developed and developing countries. Important elements include:

- permitted non- or minimally distortive support programmes (green box)
- exemptions for developing countries' development measures (Article 6.2)
- the SPS Agreement and a commitment to ongoing reform.

Agriculture remains a highly distorted sector, noted Ambassador Adank, and farmers in many parts of the world remain disadvantaged. They continue to face high tariff barriers and competition from producers who receive high levels of trade distorting and export support. WTO members have repeatedly committed themselves to reforms in this area. As such, the stated goal and intent of the round is the removal of trade distortions in agriculture, while allowing for a range of flexibilities. Ambassador Adank believed that the DDR had the potential to provide enhanced market access opportunities, reduced trade-distorting support, the elimination of all forms of export subsidies, and special and differential (S&D) treatment for developing countries. The draft modalities retain and strengthen a wide range of flexibilities to allow developing countries to maintain their chosen food security policies.

He expressed that it was unfortunate that food security was sometimes interpreted as food self-sufficiency. While governments clearly have a sovereign right to pursue food security policies, food self-sufficiency would result in significant diversion of labour and capital resources from one sector to another, and ultimately negatively impact development. A rules-based multilateral trade regime allows countries to take full advantages of their comparative advantages and provide food to more deficient areas.

Ambassador Adank concluded by stating that trade was not the magic bullet to guarantee food security, but only part of a wider package, which included irrigation, land management and property rights, among others.

### *Ms Shelby Matthews, Chief Policy Advisor, COPA-COGECA*

Ms Matthews indicated that EU farmers wanted fair rules of trade, and that the multilateral trading system remained the best approach to level the playing field and to achieve trade growth. The current rules have been positive for agriculture, and the ongoing DDR negotiations can provide further improvements in trade.

That being said, she believed that the multilateral system was only one part of the solution. As only 10 per cent of the global production is actually traded, the WTO cannot be expected to address all of farmers' concerns or even most of them. In the European Union, farmers' main concerns include:

- a weak position in the food chain
- difficulty in receiving their fair share from the market
- accelerating costs
- an increase in regulations (food safety, environmental protection, animal welfare and traceability)
- price volatility.





Climate change and dwindling land and water resources create a series of new challenges to increasing production, warned Ms Matthews. Green growth, solutions that take into account the environment and climate concerns in a way that have a positive impact on farmers and production capacity, can provide the necessary solutions. Examples include water and nutrient use efficiencies, better irrigation techniques, precision farming and soil management. Trade agreements must be designed to assist and not hinder farmers and governments that decide to move in this direction.

Farmers' concerns are society's concerns, she concluded. If farmers' economic situation is not in a sound, healthy position, the necessary investments in production advancements and new resources will not occur. The food on everyone's plate will be at risk.

*Mr Enrique Domínguez Lucero, Agricultural Counsellor, Permanent Mission of Mexico to the United Nations*

Mr Lucero noted that Mexico had increased its focus on food security during its leadership of the Group of 20, and that there had been a number of negotiations and commitments on how to best address the issue.

Agriculture growth is limited to current systems. To advance the sector and increase production, new infrastructure and investments are required. Adjustments to public policies that encourage improved productivity and living standards of the rural population are needed. Programmes should be aimed at the small-scale producer. Boosting productivity increases production, resulting in both improved income and development. Innovative products and tools, such as genetics, irrigation, harvesting and storage, are also necessary.

He remarked that agriculture was not isolated from the rest of the economy, and that farming was ultimately a business, and that farmers want to secure fair market returns. Agriculture needs to be economically viable like any other industry, and a well-ordered and managed trading environment is required to expand production and ensure development.

The 2007-2008 food crisis presented new obstacles for trade negotiators and the WTO. New questions on price volatility, guaranteed supply and the use of export restrictions are closely linked to food security and will increasingly influence the discussions.

*Mr Charles Ogang, President, UNFFE*

Mr Ogang argued that while the multilateral system provided some benefits, it had not met the expectations of the majority of small-scale farmers. In Uganda, over 85 per cent of people depend on agriculture for their livelihood and smallholder producers (less than one hectare of land) account for the bulk of production. Ugandan farmers continue to face challenges in accessing the international market due to high tariffs, distorting subsidies and burdensome SPS and technical trade measures.

Mr Ogang spoke of the various challenges faced by Ugandan farmers in both accessing international trade opportunities and increasing domestic production were discussed. He listed the following as necessary to enhance production:

- a better understanding of different customer requirements
- better tax regimes and land tenure
- access to capital
- improved technologies and infrastructure (storage, transportation and processing).

In addition, different policy environments and initiatives between national and sub-national governments determine farmers' access to the international trading regime and domestic incentives.

The DDR has the potential to further benefit developing countries and help small-scale farmers integrate into the international economy. While the round reaffirms the principles of improved market access opportunities, reductions in trade-distorting support and elimination of export subsidies, it continues to fall short of its stated goals. In addition, the WTO needs to tackle the issues African farmers encounter in complying with SPS measures and ensuring that such measures are not in fact disguised protectionism.

In conclusion, with the goal of meeting production challenges and assisting smallholder farmers, Mr Ogang asked whether an alternative to the multilateral system should be explored.

### Questions and comments

The audience discussed whether the WTO could modify its agenda to address the challenges faced by agriculture, and the potential role the organization could play in enabling food security goals. Various perspectives exist on the role of agriculture in society, but in the realm of trade policy, battle-lines are drawn. There was a sentiment amongst delegates that a different conversation is required that goes past traditional WTO issues and involves other international institutions and programmes. Given the stalemate in the DDA, an opportunity exists for countries to increasingly explore these issues.

The panellists further explored the impact of increased bilateral and regional FTAs, and the impact this trend has at a multilateral level. Does the WTO need to carve out a new role to maintain its relevance? The proliferation of bilateral agreements and the impact on the multilateral system raises some interesting questions. The Committee on Regional Trade Agreements (CRTA) provides a transparency function, as well as a space to further address the issue should members raise the issue. Countries will naturally seek out market access and better rules where possible. The WTO remains relevant, as bilateral or regional FTAs are limited in their scope and lack the leverage to affect structural changes.

Delegates also discussed the various challenges faced by farmers, and identified potential policy responses and solutions.

### Conclusions

In conclusion, Mr Robert Carlson, WFO President and moderator, reiterated that the WTO was important to ensuring transparent trade rules and creating a level playing field for agriculture. Above all, ensuring farmers profit from their farming operations is the best way to ensure food demand will be met in future.



## Water and agricultural trade

This session's objective was to explore the relationship between agricultural trade and water resources and, in particular, the ways in which agricultural trade and agricultural policies affect the availability, use and quality of water. According to the FAO, agriculture accounts for 70 per cent of global water use, and water availability is already a limiting factor for the development of agriculture in some regions. In addition, experts predict that expected climate change could reduce availability of water in some regions and increase availability of water in others, altering the distribution of agricultural production. Changing growing conditions not only create new risks both for agricultural producers and downstream processors, but also for consumers in terms of access to food and water. States can respond to these new risks by adapting their policies.

A wide variety of national policies influence the allocation and efficiency of use of water within the agricultural sector. Some policies directly target the use of water in agriculture, such as irrigation subsidies, investments in technological innovation and water pricing. Other policies, such as trade policies, indirectly affect national water use by affecting the movement of agriculture products across borders. New approaches for labelling "virtual water" content in products have been proposed as one way to inform consumers on the potential impact of their choices on water use. The challenge is to develop policies to manage risks associated with changing conditions, without introducing market distortions or damaging water quality.

Discussions during this session covered the following topics:

- impacts of policy interventions on water use patterns and agricultural production
- the concepts of virtual water and the water footprint
- public and private partnerships to enhance sustainable water use
- linkages between agricultural trade, water and food security.

### Moderator

Mr Manzoor Ahmad, Senior Fellow, ICTSD

### Speakers

Dr Maite Aldaya,  
Water Observatory/Consultant, United  
Nations Environment Programme (UNEP)

Dr Mohammad Ait Kadi, President, General  
Council of Agricultural Development,  
Ministry of Agriculture and Fishery,  
Morocco

Ms Anke Schulmeister, Senior Policy  
Officer, European Policy Office, World  
Wildlife Fund (WWF)

Mr Ron Steenblik, Senior Trade Policy  
Analyst, Trade and Agriculture Directorate,  
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### Organized by

Agriculture and Commodities Division  
(ACD), WTO

### Report written by

Ms Lee Ann Jackson, Counsellor,  
ACD, WTO

## Presentations by the panellists

### *Mr Manzoor Ahmad, Senior Fellow, ICTSD*

Mr Ahmad welcomed the discussion on water being brought to the WTO for the first time. He stressed that in the context of services, some states are concerned that future liberalization and privatization of public services will jeopardize water supplies to the citizens. Mr Ahmad introduced the topics to be discussed during the session, including the water footprint debate and farming subsidies, among others.

### *Mr Ron Steenblik, Senior Trade Policy Analyst, Trade and Agriculture Directorate, OECD*

Mr Steenblik warned that the linkages between water and trade were going to become increasingly important. As trade in fresh agricultural products increases, more water is transported around the world embodied in agricultural products. Without policy interventions, water use patterns would normally be determined by physical characteristics such as the amount of water required by different products, water endowment and water evaporation patterns. However, government policy interventions can play a large role in determining water use patterns, in both intentional and unintentional ways.

In some cases, governments directly impact irrigation through targeted public investment. Establishing the right investment and management systems was challenging, explained Mr Steenblik. Governments seeking local self-sufficiency have often over-invested in irrigation. He explained that when irrigation systems are not managed effectively, the results can be siltation and salinization.

Government interventions can also indirectly affect water use. Policies that alter the relative prices of resources also influence the allocation of water and create trade flows that differ from what they would be in the absence of subsidies. An example he gave was policies that lead to the subsidization of other inputs, such as electricity or diesel, also encourage the production of water-intensive crops. This type of subsidy is likely to lead to increased demand for thirsty crops grown where water is artificially cheap. More research is needed to understand the ultimate impact of these types of subsidies. Mr Steenblik recommended the first step of increasing the transparency of these subsidies, since only broad figures of support to irrigation were currently available.

Given the expected changes to global water systems, getting the policies right to encourage efficient use of existing water resources is critical. He suggested that the first best approach for water policies was to avoid the distortions by reforming subsidies and establishing the right water prices, including through the allocation of water rights. When farmers have access to cheap water from subsidized irrigation, the value of their land increases. Farmers who benefit from subsidized irrigation infrastructure lose value if these irrigation subsidies are removed. Thus, the political economy of irrigation subsidies, as other subsidies, makes subsidy reform difficult.

Given the challenges to reforming irrigation subsidies, alternative market-based approaches are beginning to be explored. Specifically, some environmental groups advocate labelling based on the concept of the water footprint. These labelling schemes are useful to highlight the intensity of water use in different parts of the world. According to Mr Steenblik, it is important to note that these schemes differ from carbon footprint labelling schemes because the environmental impacts of water use are critically linked to the biophysical characteristics of land where agricultural production occurs.

### *Dr Maite Aldaya, Water Observatory/Consultant, UNEP*

Dr Aldaya began with the concept of the water footprint, which was originally introduced in 2002 as an indicator of indirect and direct water use. Water statistics had traditionally focused on surface water, she explained, and did not consider water use through the whole supply chain. The water footprint incorporates a life cycle perspective of resource use analogous to ecological footprint and thus provides an indicator of water use intensity in goods production (with a differentiation between green, blue and grey water).

She believed that concept of virtual water trade provided an alternative framework for considering water transfers through trade. Trade provides one mechanism for water to be transferred between countries, embedded in products. When products are traded between high water productivity and low water



productivity situations, water can be allocated more efficiently. Water stressed countries can import water-intensive crops and save water for other high value services. Trade can be the messenger between production and consumption. Dr Aldaya stressed, however, that when water prices did not accurately reflect water scarcity water, resources may not be allocated efficiently. For example, when subsidies are proportionate to the crop yields, agricultural subsidies can have perverse effect on water use practices.

*Ms Anke Schulmeister, Senior Policy Officer, European Policy Office, WWF*

Since water is not distributed evenly around the world, the main water management challenge is to satisfy water demand without destroying natural systems, began Ms Schulmeister. Given the expected changes in rainfall as a result of climate change, water supply and distribution will change over time. There are also expectations that global water requirements are increasing. She revealed, for example, that McKenzie & Company – a global management consultancy – predicts that the global water requirements by 2030 will have increased from 4,000 to more than 6,000 million cubic metres. Sustainable management of global water requires an understanding of how water fits into economies generally. While the concept of the water footprint can help illustrate the way in which water moves through economic systems, the concept also needs to be embedded within the context of the system. Water scarcity should not be equated with unsustainable water use in resource poor regions.

To increase water efficiency, suggested Ms Schulmeister, government policies could create incentives for improved governance, fostering partnerships with the private sector and promoting more responsible water use. Governments who have not adopted water management strategies need to start building up partnerships in catchment areas. While industries can be seen as the causing problems, they also have an incentive to contribute to sustainable solutions for water – particularly because water is often an essential input into their production processes.

In concluding, she stated that one key policy objective should be to ensure that incentives are set up to promote the sustainable use of water within a watershed, instead of simply on individual farms. Since every water user in the watershed has an interest in maintaining water resources, a multi-stakeholder process can be used.

*Dr Mohammad Ait Kadi, President, General Council of Agricultural Development, Ministry of Agriculture and Fishery, Morocco*

Demand for water resources was growing worldwide, explained Dr Kadi. Food production is the largest water user on the planet and competes for water with other uses. Demand for water from cities and industry has doubled over the past 20 years and is expected to increase by 2.5 by 2050. More than 1.2 billion people live in water basins where water shortages are increasing in frequency.

He considered trade the most effective way to share the world's scarce water resources. Domestic production combined with international trade flows determines food availability. With the expansion of agricultural trade, countries have historically moved away from self-sufficiency and have begun to rely on international markets. Ideally, the liberalization of agricultural trade, which widens the spectrum of economic possibilities, will allow countries to make most of comparative advantages and to diversify risks.

Dr Kadi noted that in the debate over food policies, there was agreement that agricultural productivity needed to be boosted. This would smooth food prices and increase the number of food exporting countries. In particular, inappropriate and uncoordinated policy interventions can contribute to price volatility. In order to meet expected demand, agricultural production needs to double by 2050. The constraints to increased production relate to water scarcity. The only way to produce enough food to meet expected demand in environmentally friendly manner is to mobilize all kinds of agriculture production, including through partnerships and coordination among farmers, market operators, governments and consumers.

### Questions and comments by the audience

Quite a few questions were on how the concept of the water footprint could be put into operation. The data presented on the water footprint were general and intended to be used to raise awareness rather than for more detailed analysis. Some commented that given the amount of information that was already included on labels, there would be the risk of overloading the consumer – making labels useless. Others were concerned that water labelling could become another non-tariff barrier (NTB) for imports from developing countries. In the context of water footprints of various crops, it is important to understand the different implications of water use by rain-fed and irrigated crops, as well as the implications of different types of management system on the sustainability of particular crops. In order for a water stewardship system to function, fragmentation along the value chain must be addressed. Once it is in place, producers can use the idea of water stewardship to reach out to supply chains that are seeking to meet sustainability criteria.

Another set of questions focused on subsidies to water as an input to agriculture. One audience member wondered what the impact on consumers would be if irrigation subsidies were removed. The state of knowledge on the extent to which water is underpriced is quite low. There has not been much demand from countries for multilateral agencies to explore this question. These subsidies have been around for so long that policy-makers treat them as if they were built into the economic system and not something that arises out of policy intervention. Some comments were made that increasing commodity prices would relieve the pressure from farmers for subsidies. This would in turn remove some distortions in water markets. It was also noted that Africa used only a small part of its water potential.

### Conclusions

In closing, panellists recognized that the discussion on these issues were at a preliminary stage and were being addressed in various forums, including the Consultative Group on International Agriculture Research (CGIAR) system. Panellists also highlighted some of the areas where further work would be valuable. These included development of techniques to estimate the market value of water resources and improved transparency regarding the use of irrigation subsidies.



The WTO has a newer institutional pedigree than most other international organizations. The WTO dispute settlement system is effective and efficient, making it a model for other systems. The consensus-driven rule-making procedures, while guaranteeing representativeness and equal participation, are cumbersome and slow. As a result, the Doha Round has languished and members anxious to negotiate agreements on new issues have embraced PTAs. The sessions addressed the following questions:

How can the WTO regain its centrality as the forum for multilateral rule-making?

- Would accepting some plurilateral agreements on the basis of “critical mass” or “variable geometry” be worth exploring as mechanisms to keep the WTO alive?
- Is it time to rethink whether the “single undertaking” concept is helping or hindering the cause of multilateralism?
- How could new issues identified in PTA negotiations be brought into WTO negotiations in a more systemic way?
- Are there interface mechanisms that could be established to provide greater coherence between the WTO and the PTAs to develop a truly multilateral trading system?

## The WTO: staying alive – the quest for coherence in challenging times

### Moderator

H.E. Mr Mario Matus, Ambassador and Permanent Representative of Chile to the WTO, to the World Intellectual Property Organization (WIPO) and to UNCTAD

### Speakers

Professor Manfred Elsig, Assistant Professor, World Trade Institute (WTI)

H.E. Mr Eduardo Muñoz Gomez, Ambassador to the WTO, Permanent Mission of Colombia to the WTO; Chair of the WTO Trade Policy Review Body

H.E. Mr Joakim Reiter, Ambassador and Permanent Representative of Sweden to the WTO

Professor Debra Steger, Senior Fellow, CIGI; Professor, Faculty of Law, University of Ottawa

### Organized by

CIGI

WTI

### Report written by

Professor Manfred Elsig, Assistant Professor, WTI

Professor Debra Steger, Senior Fellow, CIGI; Professor, Faculty of Law, University of Ottawa





## Presentations by the panellists

### *H.E. Mr Mario Matus, Ambassador and Permanent Representative of Chile to the WTO, to WIPO and to UNCTAD*

In introducing the topic, Ambassador Matus sketched some of the challenges, presented the panellists to the audience and moderated the discussion.

### *H.E. Mr Eduardo Muñoz Gomez, Ambassador to the WTO, Permanent Mission of Colombia to the WTO; Chair of the WTO Trade Policy Review Body*

Ambassador Muñoz Gomez started with a basic question: What is the WTO for? He posited that in principle, there is an important commitment of WTO members to keep opening markets. This principle is expressed, among others, in the Marrakesh Declaration and the Marrakesh Agreement Establishing the World Trade Organization. He described three important pillars of work in the WTO to achieve the above objective: market access negotiations; the rule-making function; and the monitoring and implementation of the agreements in various bodies. In addition, he referred to the dispute settlement mechanism as an essential binding element of the systems by ensuring that members do not stray from their commitments.

He shared concerns about the conclusion of the Doha Round. In his assessment, the organization showed a marked inability to produce new rules needed by traders and even to update or clarify old ones. There is a lot of room for improvement on implementation, beginning with lack of transparency in notifications (non-existent, incomplete and outdated). Furthermore, in the face of creeping protectionism, there is increasing “push-back” against the WTO’s attempt to exercise its monitoring role and a growing unwillingness to commit even in political forums to refrain from adopting protectionist measures. At the same time, the dispute settlement system is under a heavy strain due to an increased case burden, the complexity of new cases and the lack of clarity in rules – both of a substantive and a procedural nature.

He suggested engaging in an open and frank dialogue among the WTO members about common objectives related to market opening and how to achieve them. Members may have to start by agreeing to disagree on the present objectives in that regard. As a result of such a conversation, the conclusion could be that to keep opening markets is not necessarily an objective to be achieved by all under all situations. In such a scenario, the conclusion of an all-encompassing round of negotiations, the single undertaking and even the most-favoured-nation (MFN) application of outcomes would necessarily have to be reviewed.

### *Professor Manfred Elsig, Assistant Professor, WTI*

Professor Elsig talked about three challenges and presented ideas how to move forward. First, based on research conducted in the area of PTAs, he did not see any immediate return of WTO members to the multilateral negotiation table. He provided some information about a new data-set which compiles information on PTAs called Design of Trade Agreements. In particular, more recent and far-reaching PTAs show substantive positive trade-flow effects. He also discussed the question of legal forum-shopping and reported that newer agreements attempt to constrain these practices. Second, the decision-making procedures need to be changed. The so-called triangle of rule-making – member-driven nature of the organization, the consensus principle and the single package approach – does not work anymore. Third, he presented the paradox of the success of the WTO dispute settlement system. He referred to unintended effects of the strong dispute settlement arm of the organization vis-à-vis negotiations, such as WTO members’ reluctance to make, concessions knowing that negotiated results are enforceable in the future.

In terms of ideas for reflection, Professor Elsig presented three points. First, the WTO should engage even more pro-actively with PTAs. On the one hand, the WTO Secretariat should be an information hub where members receive advice and can report on the progress of the negotiations. In addition, more discretion should be granted to the WTO Secretariat to study the compatibility of PTAs with WTO obligations. On the other hand, WTO members should inform more pro-actively about issues raised in PTA negotiations. A new committee should be created at the highest possible level. Second, he advocated a reform of decision-making. While a significant reform is not possible, incremental reform should be pushed. This could involve the use of variable geometry, critical mass or sectorals in the negotiations. He emphasised



that potential discrimination is necessary for a group of members to have sufficient incentives to go ahead. As to the consensus principle, he advocated a differentiated approach depending on the nature of the decision to be taken. New forms of weighted voting needed to be explored. Third, he formulated some ideas how multilateral dispute settlement could be regionalized, such as asking Geneva judges to interpret obligations flowing from PTAs and creating new regional dispute settlement offices to provide advice and information, as well as certain mediation and litigation functions.

*H.E. Mr Joakim Reiter, Ambassador and Permanent Representative of Sweden to the WTO*

Ambassador Reiter warned against excessive “doom and gloom” or singling out the WTO. He argued that the WTO had successfully continued the transformation, which began in the latter part of GATT, from a club – albeit with quasi-global reach – into a truly global institution. And it would be unfair not to credit the institution for helping to prevent a massive surge in protectionism following the recent economic crises. What is different is that the key players have changed and have not yet found a method of resolving their differences. What matters is that we, in the meantime, work to preserve the primacy and credibility of the WTO. No political organization can derive legitimacy and centrality, at least in the long term, without delivering results for its constituencies.

In terms of moving forward, Ambassador Reiter stressed the need to work on all fronts with small and positive steps. He explained that the negotiations were one area, but there was also work in the regular bodies. The good news about the method of “small steps” of global negotiations is that we do not need to invent something new. This is actually what happened after the Uruguay Round (Information Technology Agreement, financial services and basic telecommunications), as well as during the DDA (pharmaceutical agreement and more recently Government Procurement review). He also declared that there was a large “bank” of PTAs from which to draw experiences and solutions, and that there was the possibility, as in the past, of allowing members to move ahead on a plurilateral basis if they wanted to (including non-MFN).

Ambassador Reiter continued that there was a need to agree, at least among the major players, that we cannot stay where we are and that members should be allowed to pursue their different agendas in the WTO rather freely. He explained that the alternative was not that they stop, but that they would go outside the house. But he warned that we were not even there yet. And, equally troubling, a number of states cherished the inaction of the WTO, as it left a vacuum which was now being explored to roll back on trade openness and to return to “old school” industrial policy.

*Professor Debra Steger, Senior Fellow, CIGI; Professor, Faculty of Law, University of Ottawa*

Professor Steger began by assessing the current situation. Not only have the Doha Round negotiations broken down, but challenges for the global economy were increasing. At this time, more than ever, the world needs a strong, vibrant, multilateral organization for world trade. She also observed that new issues, relevant to business, were negotiated in PTAs rather than the WTO. While she emphasised that PTAs were here to stay, she urged that PTAs had to fit within the multilateral system and be consistent with Articles XXIV of GATT and Article XIV of General Agreement on Trade in Services (GATS). There is a system – a hierarchy – which the WTO governs, and it is the central governance institution in that system. Finally, WTO dispute settlement system was strong, but could face challenges in future.

Professor Steger advocated that new institutional mechanisms must be found to manage the interface between the WTO and PTAs. It is important to maintain the centrality of the WTO as the primary rule-maker, judicial body and watchdog/supervisory body for the trading system. The WTO has developed supervisory mechanisms to review new PTAs. However, resources are limited to do this properly. The Doha stalemate has prevented the WTO from moving on to the new issues that are critically important in today’s rapidly changing world – issues that are now being dealt with in the PTAs. She suggested that a WTO committee or working party could be established to review and to consider new provisions in PTAs that are not covered by WTO agreements as subjects for possible consideration in future negotiations.

On dispute settlement, she observed that parties overwhelmingly choose to bring disputes to the WTO, rather than PTAs. This has arisen in a number of cases (*Canada – Autos, Mexico – Soft Drinks, Brazil – Tyres* and trade rules cases) and will increase in the future. She also acknowledged that the WTO

panels and the Appellate Body had so far been reluctant to consider the PTA provisions, stating that they do not have jurisdiction. She suggested that this could be examined in the Dispute Settlement Review negotiations and should be considered in PTA negotiations. The best solution would be to give the WTO panels and the Appellate Body jurisdiction to deal with these matters explicitly in the DSU and in PTAs.

On rule-making, she suggested the creation of an executive board with the mandate to prevent stalemates and to facilitate planning and administration. She also suggested experimenting with plurilateral agreements in the WTO and allowing voting under special circumstances. She reminded the participants that WTO agreements provided that consensus is the preferred practice, but voting is available as an option if consensus should prove impracticable.

### Questions and comments

The discussion was very animated and centred around questions on how to implement critical mass or plurilaterals within the system, how to allow the WTO dispute settlement to be used (or not used) by WTO members in respect to their PTA obligations, and how to design the interface in more details.

The session was concluded by Ambassador Matus calling on continuing the lively debate launched by the panel participants.



This session assessed the current situation of BITs and investment provisions in bilateral, regional and multilateral trade agreements, examined how they impact on development and the multilateral system, and pointed to a way forward towards a framework for the utilization of investment for development. The speakers first described specific provisions of BITs and the investment chapters of FTAs, with examples of their problematic legal interpretation. Following that, specific examples of cases were given from FTAs with the United States and in Latin America. A government representative from South Africa gave a summary of his country's review of their investment policy based on its contribution to development and resulting policy changes. Finally, an UNCTAD representative discussed the new approach regarding investment being developed by the agency.

## Investment provisions and agreements: what is the right 21st-century approach?

### Moderator

Ms Kinda Mohamadieh, Programs Director,  
Arab NGO Network for Development

### Speakers

Mr Roberto Bissio, Director, Third World  
Institute (ITeM); International Coordinator,  
Social Watch

Mr Xavier Carim, Deputy Director General,  
International Trade and Economic  
Development Unit, Department of Trade and  
Industry, South Africa

Ms Sanya Reid Smith, Legal Advisor and  
Senior Researcher, Third World Network  
(TWN)

Ms Melinda St Louis, International  
Campaigns Director, Global Trade Watch,  
Public Citizen

Dr James Zahn, Director, Investment and  
Enterprise Division, UNCTAD

### Organized by

Our World Is Not For Sale network

ITUC

Public Citizen

### Report written by

Ms Deborah James, Director of International  
Programs, Center for Economic and Policy  
Research

## Presentations by the panellists

### *Ms Kinda Mohamadieh, Programs Director, Arab NGO Network for Development*

Ms Mohamadieh stressed that this section would be focused on investment provisions as well as policy and regulatory space in developed and developing countries. Investment provisions had been a greatly demanded topic during the 2012 Public Forum and it was important to reflect on the implications of the expanding number of BITs and investment provisions through trade agreements. She underlined that the role of investors had been highly regulated by the respective agreements signed between different states – with the total number of BITs at more than 3,000.

Recently, many countries have started to look at the impact of BITs on the development processes. Sharing the experiences of different states in reviewing their investment policy frameworks was the main objective of the session, Ms Mohamadieh concluded.

### *Ms Sanya Reid Smith, Legal Advisor and Senior Researcher, TWN*

Ms Smith highlighted the provisions contained within the BITs and the investment chapters of North–South FTAs that had been problematic. She said that the purpose of the BITs was to protect the rights of foreign investors and traditionally had no protection for the rights of government.

The clause on “expropriation” is widely defined to cover any government action which reduces the value of the investment. Where disputes arise between an investor and a government under a BIT, arbitral tribunals are used for enforcement, but some of these tribunals do not have sufficient conflict of interest rules for judges, said Ms Smith. This allows judges who have an interest in the company bringing the dispute to hear the case, she added, citing an example in one case where one of the judges in a dispute was on the board of a parent company which brought the case – and the investor won.

She noted another provision, “fair and equitable treatment” (FET), which appeared to sound good but actually had been interpreted by some tribunals to mean that there was a standstill on regulations and that the government was prevented from amending or passing new laws to ensure a constant regulatory environment. Citing a recent study by Public Citizen on US FTAs and BITs, Ms Smith said that in instances where investors raised a violation of the FET provision in tribunals, they won 81 per cent of the time. This indicated that the provision was very powerful in striking down government actions.

On the type of cases that have arisen, she explained that investors had successfully challenged health and environmental measures taken by governments. There have also been cases by investors challenging government measures related to government procurement, state-owned enterprises, taxation, financial regulation, industrial policy, sovereign borrowing and agriculture.

### *Ms Melinda St Louis, International Campaigns Director, Global Trade Watch, Public Citizen*

Ms St Louis spoke on investor–state disputes brought under the US FTAs and BITs and highlighted several cases. She said that BITs had existed since the 1950s, but most investor–state disputes had occurred in the last ten years. In reference to 1999, she said that only 69 cases were launched in the International Centre for Settlement of Investment Disputes (ICSID), but today, there were over 370 cases – a 436 per cent increase in the total stock of investor–state cases in this body alone. Ms St Louis said that private investor–state dispute enforcement skirts the normal court system, where foreign corporations receive special privileges and greater rights. Investors can demand compensation for loss of expected future profits related to non-discriminatory environmental, health, safety, land-use and zoning policies. The concept of “sovereign immunity” is waived, she elaborated further. She said that under the North American Free Trade Agreement (NAFTA), US\$ 365 million had already been paid out to corporations, with US\$ 13 billion in pending claims under US NAFTA-style deals alone – relating to land-use, timber, water rights, public health, environment, mining, energy and transportation.

She gave a specific example of the case of a metal smelter in Peru where an investor–state case was brought against Peru under the US–Peru FTA by the Renco Group, a company owned by one of the richest men in the United States. The dispute related to Renco’s investment in a metal smelter in Peru



which has been designated as one of the top ten most polluted sites in the world. Peru's Health Ministry found that around 99 per cent of children at this site had lead poisoning and 20 per cent of these needed urgent medical attention. Renco's Peruvian affiliate promised to install sulfur plants by 2007 as part of an environmental remediation programme. Although not contractually obligated, the company sought (and Peru granted) two extensions to complete the project. In 2010, Renco sent Peru a Notice of Intent that it was launching investor–state proceedings, alleging (among other claims) that Peru's failure to grant a third extension of the environmental remediation obligations constituted a violation of the firm's FTA rights as a foreign investor. The company is demanding US\$ 800 million in compensation.

*Mr Roberto Bissio, Director, ITeM; International Coordinator, Social Watch*

Mr Bissio noted that nearly every country in Latin America voted against the establishment of ICSID in 1964, and that they did not join until they were pressured to by the IMF as part of the debt crisis in the 1980s. He also noted that Brazil has not signed the treaty, which is interesting because Brazil is the recipient of the most FDI in Latin America. The majority of cases currently being brought up in ICSID are against Latin American states. Three Latin American states have since denounced (and exited) ICSID: the Plurinational State of Bolivia, Ecuador and the Bolivarian Republic of Venezuela.

He highlighted the case of Philip Morris, a transnational tobacco company, which has brought an investor–state claim against the Uruguayan government for imposing restrictions on cigarette packaging for health reasons. Around 5,000 people die each year in Uruguay, with the associated government costs in the hundreds of millions. Now Philip Morris claims to be based in Switzerland and is utilizing a provision from a Uruguay–Finland BIT which does not include an exception for public health to claim millions of dollars of damages – even though total sales of Philip Morris in Uruguay are less than US\$ 4 million.

*Mr Xavier Carim, Deputy Director General, International Trade and Economic Development Unit, Department of Trade and Industry, South Africa*

Mr Carim stated that the South African government's experience has shown that there was no clear relationship between signing BITs and increased inflows of FDI. He noted that South Africa does not receive significant inflows of FDI from many partners with whom it has BITs, but it receives investment from states with which it does not have a BIT.

He noted that over the last decade, South Africa had to confront several challenges arising from various BITs – most of which can only be described as spurious or frivolous. These threats showed that BITs did not take into account the conditions of the country, and the broad objectives of government policy. As the government assessed the BITs that it had entered into, it began to identify a range of inconsistencies with the constitution, he noted. This prompted South Africa in 2008 to review its investment policy.

The government, Mr Carim said, had held extensive and intensive consultations over a three-year period, inviting international experts. The review identified a range of concerns associated with expansive interpretations of the provisions usually found in BITs: definitions of investment, investor, national treatment, FET, MFN clause, expropriation, compensation and the transfer of funds.

The review also identified difficulties with respect to international arbitration: fragmentation in the system; lack of common standards of protection; inconsistent interpretations by arbitration panels, even on similar matters; and the growing complexity of the international system through an evolving jurisprudence. All this exacerbates uncertainty and risk, he added. In particular, the government were concerned with investor–state dispute provisions in its BITs. In their view, it opens the door to narrow commercial interests on subject matters of vital national interest and to unpredictable international arbitration outcomes, and is a direct challenge to constitutional and democratic policy-making, said Mr Carim.

In April 2010, the South African Cabinet reached the following conclusions:

- Refrain from entering into BITs in future, except in cases of compelling economic and political circumstances.

- Review – with a view to terminate – all “first generation” BITs which South Africa signed shortly after the democratic transition in 1994, many of which have now reached their termination date, and possible renegotiation on the basis of a new model BIT to be developed.
- Strengthen domestic legislation of the protection offered to foreign investors. Key considerations would be to codify BIT-type protection into law and clarify their meaning in line with the constitution. It would also seek to incorporate legitimate exceptions to investor protection, where warranted, by public policy considerations such as national security, health and environmental reasons or for measures to address historical injustice and to promote development.
- Elevate all decision-making in respect of BITs to an inter-ministerial committee tasked with oversight of investment, international relations and economic development matters.

*Dr James Zahn, Director, Investment and Enterprise Division, UNCTAD*

Dr Zhan said that investment treaties had not been functioning for sustainable development. The issue was how to ensure the move away from agreements for “freedom for investors” to “enabling investment for development”, and there was need for policy-makers to have policy tool-kits and know-how. He wanted to see: new policy frameworks with a new generation of investment policies with guiding principles; national investment guidelines; and international policy guidance. On investment treaties, the option for governments was whether to have them or not. Dr Zhan believed, however, that there was no “one-size-fits-all” option, but instead a range of options for countries to pick and choose from. There was need to analyse the development implications and a set of indicators for assessing effectiveness.

## Conclusions

We are living in a key moment of unfolding international debate on investment policies. On one hand, the freedom of investment model claims that investment promotes development. Governments should continue to liberalize their investment policies, reduce or limit regulations and conditions on investors – realizing the benefits of FDI. Existing BITs and investment provisions in existing FTAs reflect this approach. Yet, they have wrought incalculable damage on developing countries that have tried to undertake reasonable and non-discriminatory regulation in the public interest.

On the other hand, a new investment for sustainable development model approach recognizes that while FDI can make a positive contribution to sustainable development, the benefits to host countries are not automatic. It posits that regulations are needed to balance the economic requirements of investors with the need to ensure that investments make a positive contribution to sustainable development in the host state. The benefits of investment as they relate to technology transfer, skills development, research and establishing local economic linkages need to be built into the investment regime – and not taken for granted. New thinking and practice in international economic policy, notably on the role of the state in economic development, must also find expression in international investment policy-making.





This session discussed the various future challenges for the WTO subsidies disciplines, drawing upon the history of their negotiation and lessons learned from their current application in the context of disputes. Discussion revolved around the need to ensure that members have adequate policy space to address political and economic issues, such as climate change, macroeconomic emergencies and the interests of developing countries, while also ensuring that rent-seeking through protectionism is curtailed. Participants asked whether it was necessary to revise the Agreement on Subsidies and Countervailing Measures (SCM Agreement), to leave it to the dispute settlement system to grapple with difficult policy issues, or whether the attention of participants in the system should shift to meaningful discussions through the SCM Committee.

## The Agreement on Subsidies and Countervailing Measures: past, present and future

### Moderator

Mr Gary Horlick, International Trade Lawyer, Law Offices of Gary N. Horlick; former International Trade Counsel, US Senate Finance Committee; first Chairman, Permanent Group of Experts on subsidies, WTO

### Speakers

Professor Dukgeun Ahn, Professor of International Trade Law and Policy, Graduate School of International Studies, Seoul National University

Dr Luca Rubini, Reader in Law and Deputy-Director of the Institute of European Law, Birmingham Law School, University of Birmingham

Dr Sadeq Bigdeli, Senior Lecturer in Law, University of Waikato

### Organized by

Rules Division (RD), WTO

### Report written by

Michelle Healy, Counsellor, RD, WTO

## Presentations by the panellists

*Mr Gary Horlick, International Trade Lawyer, Law Offices of Gary N. Horlick; former International Trade Counsel, US Senate Finance Committee; first Chairman, Permanent Group of Experts on subsidies, WTO*

Mr Horlick, the moderator, provided a brief overview of the evolution of the subsidies disciplines in the Tokyo Round Subsidies Code and the Uruguay Round SCM Agreement. He explained that the present subsidy rules, incorporating disciplines on export subsidies, actionable subsidies and countervailing measures – countervailing duties (CVDs) – were developed relatively recently. Before the 1980s, the attention of GATT contracting parties was mainly focused on export subsidies. However, due to domestic legal developments, the United States began to apply CVDs to non-export subsidies, which led to discussions between Canada, the European Communities, Japan and the United States, which basically set the scene for the negotiation of what became the SCM Agreement.

On present developments, he noted that the SCM Agreement appears to have weathered the challenge of the global financial crisis relatively well, in the sense that governments did not resort to the use of explicit export subsidies. However, he acknowledged that the SCM Agreement was not as successful in restraining the use of import-substitution subsidies. He also noted that, although the global financial crisis resulted in government bail-outs around the world, they were not widely advertised, and only in isolated cases have such actions been challenged by other WTO members.

*Dr Sadeq Bigdeli, Senior Lecturer in Law, University of Waikato*

Dr Bigdeli discussed the changing ways in which subsidies have been imagined over time, which he saw as being linked to changing ideological notions as to the proper role of government in a market economy. His discussion addressed the history of international trade since the seventeenth century, noting that “bounties” were originally conceived as a specific form of dumping. He posited that the relative lack of action taken against domestic production subsidies up until the 1980s probably reflected a consciousness of what forms of government action properly constituted “protectionism”. This arguably changed during the 1980s and 1990s, with the definition of subsidy in the SCM Agreement as a “financial contribution” (defined through an exhaustive list), which confers a “benefit”. He posited that this broader approach to the concept of a “subsidy” reflected the small government ideology of the Reagan and Thatcher governments. He noted that during the Clinton administration, there appeared to be an ideological shift which favoured exceptions for research and development and environmental measures, with a focus on the role of subsidies in promoting innovation. He argued that the jurisprudence on the meaning of benefit failed to acknowledge the role of government in addressing market failure and may also run the risk of encouraging rent-seeking behaviour in the form of unwarranted use of CVDs. In his view, the objective of the SCM Agreement should be to strike a balance between legitimate government activities and the curtailment of protectionism.

*Dr Luca Rubini, Reader in Law and Deputy-Director of the Institute of European Law, Birmingham Law School, University of Birmingham*

Dr Rubini posed the question whether the SCM Agreement gave WTO members sufficient policy space to pursue climate change measures that were legitimate from policy and economic perspectives. He started from the premises that public support that met certain requirements was justified in certain areas, such as climate change, and that WTO members chose to use different forms of regulation, such as taxation, feed-in tariffs, renewable energy portfolio standards and others, to promote environmental objectives. He pointed to several respects in which the SCM disciplines were either unclear, complex or potentially in conflict with better policy solutions: for example, the application of the SCM Agreement to tax and regulatory incentives; the determination of “benefit” in situations where markets are distorted or where the purpose of the government intervention is to correct market failure; and the rules on “specificity”, where targeting of government incentives is largely regarded as “efficient” but may lead to conflicts with the SCM Agreement. In short, he saw a danger that legitimate measures could fall subject to the SCM Agreement disciplines, and regarded the lack of clarity itself as leading to a significant constraint on policy space.



In light of this, he asked which approach should be taken for reconciling the apparent ambiguities in the SCM Agreement with legitimate environmental policies, noting that the limited category of “exceptions” in Article 8 of the SCM Agreement expired in 1999 and the application of GATT Article XX may be problematic or unsatisfactory. He also noted the recent and increasing tendency, at both domestic and international levels, towards litigation of issues relevant to green policy space, including in a number of recent WTO disputes.

With respect to particular ways that climate change subsidies could be regulated under the SCM Agreement and other WTO rules in the future, he expressed the view that it was not good enough to leave it to the vagaries of litigation. The dispute settlement system is overburdened and the rules themselves are unclear. In his view, a case law approach would most likely lead to unpredictable results and criticisms of “judicial activism”. He suggested that the practical solution to this problem lay in the hands of WTO members. He hoped to see a revival of the idea that certain subsidies that satisfy agreed conditions should be permitted even if they cause trade distortions, as well as institutional reforms, promoting better transparency. He argued that WTO members should assume responsibility for these issues.

*Professor Dukgeun Ahn, Professor of International Trade Law and Policy, Graduate School of International Studies, Seoul National University*

Professor Ahn noted that the provisions concerning CVDs in the SCM Agreement permitted an importing member to pass judgment on the policy actions of the exporting member, particularly as they focused on the subsidy amount rather than the price effects. He took the view that the application of the CVD disciplines could be problematic where governments provide indirect subsidies in macroeconomic emergencies, as demonstrated by the CVD actions taken by the European Union, Japan and the United States against Hynix (a Korean company) following the Asian financial crisis.

He discussed the concept of entrustment and direction, in contrast to the concept of a “direct” subsidy, and explained that in the example of the support provided to Hynix, debt was restructured by creditor banks on the view that the company was worth more as a going concern than it if went bankrupt. In his opinion, the standard of review applied by WTO panels also provided a wide margin of discretion for the authorities of importing members to assess the policies of exporting members regardless of the underlying circumstances or domestic context in which those policies were implemented. He believed that the SCM Agreement disciplines were not devised for macroeconomic emergencies which were a lot more common than is usually acknowledged. He noted that huge bail out programmes had been put in place in the context of the current financial crisis, and that other members not directly exposed to the crisis had become more lenient towards the provision of subsidies. He saw this question of how the SCM Agreement deals with macroeconomic emergencies as posing a challenge for the system in the future.

### Questions and comments

A question was asked to the panellists whether there was any need to update the WTO subsidy rules in light of the discussed challenges, and if so, which particular rules should be modified.

Mr Horlick responded that updating might be warranted to address the expired exceptions for “non-actionable” subsidies, subsidies granted for developmental purposes and subsidies in the area of trade in services. Moreover, it might be useful to refine certain issues in light of interpretations of the SCM Agreement in case law. Professor Ahn believed that the current subsidy rules did not account for macroeconomic emergency situations, in which governments are expected to act. He added that the SCM rules mandate an assessment of a company’s situation at a given point in time, and that a “snapshot” of companies’ financial situation in times of macroeconomic emergency may show that none of them was creditworthy. He was also of the view that there should at least be a moratorium under the SCM Agreement when a country is subject to IMF conditionalities. In addition, the panellists discussed possible improvements in subsidy rules aimed at enhancing the institutional framework, such as the role and functions of the SCM Committee and the Permanent Group of Experts.

A discussant from the floor noted that one of the main challenges in negotiating the SCM Agreement had been to define a subsidy in a limited way so as to ensure that not every government intervention would be caught by the SCM Agreement disciplines. He referred specifically to dual pricing, minimum incorporation requirements for fuel and export taxes to reduce the price of raw materials as government actions that have effects akin to subsidies. The question is whether the SCM Agreement applies to these sorts of measures, or whether there is a need to change the rules.

Another discussant suggested that the SCM Agreement was designed to address trade distortion from a mercantilist perspective of government action that impeded export opportunities. Policies such as feed-in-tariffs and mandates were unlikely to be challenged under the SCM Agreement provided they were non-discriminatory. In his view, the challenges arose from tying those policies to local content requirements. This discussant also questioned why the revised WTO subsidy rules should shelter climate change subsidies, as opposed to a wider range of subsidies incentivising the production of “merit” goods, such as those relating to education and health.

Mr Horlick responded that any decision as to which subsidies would have special treatment under the SCM Agreement would ultimately be made by members, a consensus may be emerging on climate change, which was yet to emerge in respect of other types of issues.

Additional questions included:

***Which particular problems in the SCM Agreement should be rectified?***

In this respect, Drs Bigdeli and Rubini discussed a range of definitions in the SCM Agreement (e.g. the definition of which forms of government support will fall within the scope of a financial contribution in Article 1) which, in their opinion, were overly broad.

***The regulation of which subsidies should be strengthened under WTO subsidy rules?***

In his response, Mr Horlick addressed problems relevant to developing countries, including their participation in the WTO dispute settlement system, as well as trade-distorting agricultural subsidies. While some discussants raised the concern that, despite so many challenges, WTO members rarely tabled proposals for improving subsidy rules, a remark was made that some major amendments had indeed been proposed in the area of fishery subsidies.

## Conclusions

In concluding, one extensive comment from the audience suggested that the various ambiguities in the SCM Agreement which were mentioned during the discussion reflected the reality of the negotiations, noting that some were left deliberately to overcome deadlocks and conclude the Uruguay Round. These were intended to be resolved in the course of subsequent negotiating rounds, or within the SCM Committee, as opposed to through WTO litigation. According to this discussant, a danger for the future is the tension that occurs when members consider that new rights and obligations were being created through the dispute settlement system. This discussant also suggested that the future of the SCM Agreement should be focused on implementation through meaningful discussions in the SCM Committee rather than through dispute settlement.



The session explored the coexistence of regional and bilateral trade agreements with the multilateral process from a number of different angles. In the first part of the session, an experienced trade diplomat and negotiator offered his thoughts on the dynamics between different level negotiation processes. His presentation was followed by two real-life private sector accounts of what difference the existence of multilateral or regional provisions on the protection of intellectual property makes for investment decisions. One speaker offered insights into a pharmaceutical multinational's decision to invest in a new production facility in Brazil, highlighting the importance that an assessment of the predictability and security of Brazil's intellectual property regime played in that regard. The final speaker of the first session explained the pivotal role that copyright protection plays in film producers' decisions to invest in a new film project.

In the second part of the session, one speaker described the main features and challenges of the exportation of intellectual property rules through FTAs. Another illustrated the role of the multilateral rules beyond providing a minimum standard, in a situation of proliferation of regional agreements. The two presentations were followed by a speaker that highlighted the possible role played by the WTO in monitoring the consistency of FTAs with multilateral rules. The second part of the session ended with the comments from an experienced negotiator, who noted that balance should be the essential element of the intellectual property system.

## Are agreements occurring outside the multilateral process helping or hindering multilateralism?

### Moderator

Mr Antony Taubman, Director, IPD, WTO

### Speakers

#### *Part 1: Addressing 21st-century innovation issues in the multilateral system*

H.E. Mr Fernando de Mateo y Venturini, Ambassador and Permanent Representative of Mexico to the WTO

Mr Bertrand Moullier, Advisor International Affairs, International Federation of Film Producers Associations (FIAPF)

Dr Alexander Triebnigg, President, Novartis Biociencias S.A. Brazil; Vice-President, Interfarma

#### *Part 2: What role for the WTO?*

Dr Henning Grosse Ruse-Khan, Senior Research Fellow, Max Planck Institute for Intellectual Property and Competition Law

Mr Pedro Roffe, Senior Associate, ICTSD

Dr Xavier Seuba, Senior Lecturer, Public International Law, Pompeu Fabra University; Senior Associate Researcher, Centre for International Intellectual Property Studies (CEIPI)

### Commentator

Mr Andres Guggiana, Counsellor, Permanent Mission of Chile to the WTO

### Organized by

ICTSD

Global Intellectual Property Center (GIPC)

Max Planck Institute for Intellectual Property and Competition Law

### Report written by

Mr Alessandro Marongiu, Research Assistant, ICTSD

Mr Aaron Smethurst, Director, International Intellectual Property, GIPC

## Presentations by the panellists

### Part 1: Addressing 21st-century innovation issues in the multilateral system

#### *H.E. Mr Fernando de Mateo y Venturini, Ambassador and Permanent Representative of Mexico to the WTO*

Ambassador de Mateo y Venturini challenged the widespread belief that regional and bilateral agreements are hindering the multilateral process and presented the following facts and arguments. First, 84 per cent of all world trade is on a multilateral basis, and in some areas, such as trade in services, it is even 100 per cent. He explained that there are a number of reasons for this, one being that in some areas it does not make sense to have different regimes running in parallel. Second, he pointed out that WTO dispute settlement is the best dispute settlement mechanism in the world and that governments, having issues under FTAs, turn to the WTO dispute settlement to solve them. Ambassador de Mateo y Venturini went on to show that regional agreements actually helped the multilateral process, providing the example of NAFTA, which brought many disciplines into the Uruguay Round – particularly in GATS and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). He then turned to the Doha Round, which he found “not to be in the best shape at the moment”. As he explained, because Doha was not concluded, there were many pressing issues which could not move forward in the WTO and were thus being deliberated in other forums, such as trade and climate change, competition policy, trade and investment, trade and employment, value added chains and enhanced intellectual property rights. Ambassador de Mateo y Venturini summed up his presentation by stating that there is a “two-way interaction” between regional and bilateral agreements, on the one hand, and the multilateral system, on the other, and that neither could do without the other.

#### *Dr Alexander Triebnigg, President, Novartis Biociencias S.A. Brazil; Vice-President, Interfarma*

Dr Triebnigg provided an example of the positive benefits and advantages that Brazil acquired adhering to multilateral agreements, by sharing his experience of how Novartis made its decision to invest in a new production facility in Brazil. Dr Triebnigg explained that at the time of making the investment decision, Novartis evaluated Brazil and other emerging markets. He said that demographic considerations – and namely that the incoming workforce would be steadily growing until 2025 – spoke in favour of Brazil. However, the additional consideration which provided for the “winning combination” in favour of Brazil was the legal environment in terms of intellectual property protection. Brazil, he said, had managed to build a solid framework of robust intellectual property protection based on the rule of law and had done so while making smooth transitions from one political administration to the next. The decision to invest US\$ 500 million in a Biotech facility in Brazil was then presented to President Lula da Silva, who played the decisive part in choosing the location within Brazil. Dr Triebnigg lauded Brazil’s commitment to fostering innovation and local intellectual property creation through policy measures such as the “Plano Brasilo Major” and provided some examples of the social and economic benefits that this had already brought to Brazil. However, Dr Triebnigg also referred to a “cloud on the horizon”, in the form of a recent reform to the Brazilian law on filing patents providing for a new “prior consent” requirement by the National Health Surveillance Agency (Anvisa). As he explained, this was an example of how quickly a business environment can face legal uncertainty. Dr Triebnigg concluded his presentation by appealing to Brazil to return to the safe investment environment that it had provided so far in terms of intellectual property protection.

#### *Mr Bertrand Moullier, Advisor International Affairs, FIAPF*

In his presentation, Mr Moullier explained the pivotal role that intellectual property rights play for the business of film-making entrepreneurs. Mr Moullier explained certain factors that lead to the market failure in the production and sale of films as a product. He pointed out that a film cannot be tested on the market before being released, and therefore carries a risk of non-success. He also referred to the high sunk costs of preparing for production, the high production costs and the signing expenses, as well as significant bottlenecks that arise in accessing markets. As Mr Moullier explained, government subsidies may address such market failures, but public budgets had competing priorities. Film-makers therefore need to turn to equity and debt. This, according to Mr Moullier, is where intellectual property rights come



in, as they are traded against production finance. As he put it, intellectual property rights are not an option in this context, but the “main game”. He explained that in order to be able to obtain financing to produce a film, the film-maker needs to sell pre-sell rights. For that, film-makers need to demonstrate that they control the underlying rights (chain of titles), otherwise distributors will not be able to obtain errors and emissions insurance policies. Mr Moullier stressed that the film-making industry’s expectation of the multilateral system is legal certainty and predictability. All countries needed to recognize copyrights and need to implement the international agreements providing for intellectual property protection. Giving the example of the Nigerian film industry, Mr Moullier made the point that developing countries also need intellectual property protection.

## Part 2: What role for the WTO?

### *Dr Xavier Seuba, Senior Lecturer, Public International Law, Pompeu Fabra University; Senior Associate Researcher, CEIPI*

The second part of the session was opened by Dr Seuba, who highlighted some of the issues that arise in what he called “the exportation of intellectual property law” to developing countries –what can be observed in the content and implementation of the intellectual property chapters in FTAs. He noted that this exportation can be problematic, not only in terms of access to public goods, but also in constructing a coherent intellectual property system, since the exportation is unbalanced and tends to exacerbate existing problems in the laws exported. Dr Seuba emphasized that the exportation of intellectual property norms does not take into account the level of economic development of the states importing the rules. The exportation of intellectual property norms can also be read as a race among a small number of states, seeking to export intellectual property rules for the benefit of their right-holders despite the comprehensive legal norms to promote innovation and competition found in the intellectual property exporters’ internal legal regimes. Dr Seuba called upon the WTO to play a more decisive role in aligning the intellectual property system with other regimes pertaining to a wider legal order, including competition law and human rights law.

### *Dr Henning Grosse Ruse-Khan, Senior Research Fellow, Max Planck Institute for Intellectual Property and Competition Law*

Dr Grosse Ruse-Khan noted that in most FTAs, negotiating parties go beyond minimum standards of the TRIPS Agreement, setting so-called TRIPS-plus standards, which often take away flexibilities provided in international legal instruments. In this context, the TRIPS Agreement has few obligations implying some kind of maximum standard or ceiling. According to Article 1 (1) of the TRIPS Agreement, WTO members may not contravene these ceilings when introducing additional intellectual property protection in their national laws. In addition, Dr Grosse Ruse-Khan noted that under general international law principles, the TRIPS Agreement may serve as an interpretative framework for intellectual property provisions in FTAs. Finally, FTAs among WTO members may modify TRIPS standards as the multilateral treaty framework, but they cannot derogate from the application of provisions essential to the objective and purpose of the TRIPS Agreement. Dr Grosse Ruse-Khan concluded by stating that FTAs should not undermine the core objectives established in Article 7 of the TRIPS Agreement, which strike a balance between protection and access and thereby serve to reintroduce flexibilities in FTAs.

### *Mr Pedro Roffe, Senior Associate, ICTSD*

Mr Roffe said that TRIPS-plus provisions in FTAs had become an important feature of the global intellectual property system. However, while multilateral processes are transparent and subject to public scrutiny, FTAs are not. According to Mr Roffe, the reactions against the Anti-Counterfeiting Trade Agreement showed that there was a lack of confidence about initiatives taken outside the multilateral system. In addition, TRIPS-plus standards contained in FTAs are a major challenge for developing countries, adding complexities to those originated by the implementation of the TRIPS Agreement. In many cases, this implementation is still a work in progress, requiring important resources and institutional capabilities. There is a case for re-establishing the authority of the WTO, particularly in terms of the monitoring functions of the TRIPS Council. Mr Roffe stressed that the TRIPS Council should have a say in verifying that new agreements are fully consistent with WTO obligations in order to achieve the goal of reducing



distortions of international trade and determine in which cases a more extensive protection of intellectual property rights might conflict with provisions of the TRIPS Agreement.

*Mr Andres Guggiana, Counsellor, Permanent Mission of Chile to the WTO*

Mr Guggiana emphasized that balance should be the essential element of the intellectual property system. He noted that most developed countries' national legislations had achieved balance through the inclusion of intellectual property exceptions and limitations, but this was not the case in many developing countries. Commenting on the presentations, he also raised the challenges for a possible oversight role of the TRIPS Council as it would be difficult to sanction contracting parties if plurilateral agreements and FTAs were found to be inconsistent with WTO obligations. Mr Guggiana concluded hinting that a meaningful analysis of the issues on the table should not isolate multilateral and regional agreements, but rather consider TRIPS-plus provisions as being part of the system if they are allowed by the system.

### Questions and comments

In the open discussion, it was pointed out that the CRTA would be appropriate to play the monitoring role suggested by one of the speakers, but that it had faced many difficulties in exercising such role in an effective manner. Another question that arose was whether there was space for a positive agenda. Dr Grosse Ruse-Khan said that due to technological changes, there needed to be a flexible intellectual property system to adapt to them. The TRIPS Agreement is already pretty flexible, while FTAs tend to be more stringent. Mr Roffe commented that developing countries entering in FTAs negotiations should seek to advance their own positive agenda and Dr Seuba ended by noting that a positive agenda would be possible for these countries at the national implementation level.



This session was on the basis of two practical business cases and examined the spread between global business reality and multilateral rule-making. There has been a growing gap between companies who operate increasingly integrated global supply chains and trade negotiators who have yet to catch up with the globalized market they have helped to create. This gap was highlighted by a publication of AmCham EU and a study by the Kommerskollegium, both presented at the WTO Public Forum. This was then illustrated by business cases from Ericsson and Caterpillar, and supported by data from the OECD.

## Global business reality and global governance challenges

### Moderators

Ms Sharon Leclercq-Spooner, Chair, Trade and External Affairs Committee, American Chamber of Commerce to the European Union (AmCham EU)

Ms Eva Sjögren, Director, Department for Trade and Policy Developments, Swedish National Board of Trade (Kommerskollegium)

### Speakers

Mr Ulf Pehrsson, Vice-Chair, ICC Commission on Trade and Investment Policy; Vice-President, Sales and Marketing, Government and Industry Relations, Ericsson

Dr Sébastien Miroudot, Senior Trade Policy Analyst, Trade and Agriculture Directorate, OECD

Mr Dick Snodgress, Commercial Manager, Remanufacturing and Components Division, Caterpillar

### Organized by

AmCham EU

Kommerskollegium

### Report written by

AmCham EU

Kommerskollegium

## Presentations by the panellists

### *Ms Eva Sjögren, Director, Department for Trade and Policy Developments, Kommerskollegium*

Ms Sjögren presented the report "Business Reality and Trade Policy: Closing the Gap". In the report, the Kommerskollegium looks at GVCs as trade networks of intermediates. The scale and complexity of GVCs is not new to firms and constitutes a paradigm shift in the world economy. The rise of intermediary trade implies that the cost of trade barriers has grown, undermining the case for protectionism and non-discriminatory regulation. This development has, however, not triggered an obvious change of trade policy, leading to a growing gap between trade policy and business reality. This needs to be addressed, noted Ms Sjögren. It is time for policy-makers and negotiators to find new ways to negotiate global rules that better reflect the reality of how companies organize their business. Recommendations for a trade policy that is in line with how global business operates are:

- invest in infrastructure and ICT
- reduce barriers for intermediary goods
- adopt more international standards.

Ms Sjögren discussed a phenomenon that called "servicification", whereby the distinction between services and goods has become ever more blurred. Manufacturing firms have always used and produced services, but the quantity and their importance appears to have grown due to significant changes in both production and consumption in the world. Manufacturing companies need more services for their production, but they are also becoming an increasingly large part of their business operations. Manufacturers not only buy and produce more services than before, but they also sell and export more services as an integrated part of their product. Ms Sjögren illustrated this by listing the services used by a Swedish multinational, Sandvik tools, to ensure an effective supply chain and delivery of their goods.

There is a growing gap between the trade policy and this business reality. Policy-makers and politicians should take this new economic paradigm into account. Ms Sjögren stressed that was important that this message also came from industry.

### *Ms Sharon Leclercq-Spooner, Chair, Trade and External Affairs Committee, AmCham EU*

Ms Leclercq-Spooner called for a new approach to enabling global trade and investment in an interdependent world. The nationality of a product, company or service is very hard to define. This complicates governments negotiating and representing national interests on issues in a market place which is completely global, where people, goods and capital are all moving around. In its publication, AmCham EU examines this interdependent world and whether some new approaches are needed to enable global trade and investment.

Ms Leclercq-Spooner thought it clear that the shared goal of business and governments was economic growth, and that their economies and interests were interdependent. Business needs an open market place with agreed rules enabling fair competition, and governments need business to trade and invest and so create wealth and jobs. We all need user-friendly regulatory frameworks that facilitate responsible trade, investment and entrepreneurship and better labour and environmental standards worldwide.

She spoke of AmCham EU as a very firm supporter of the multilateral rule system. In a very rapidly changing economy, AmCham EU believes that the wealth generation and job creation by business should be underpinned by a strong WTO. However, she asked whether traditional approaches to trade negotiations could deliver in today's interdependent world. She found it quite worrying when trade negotiators talked about "concessions", while they were actually talking about opening markets that would bring benefits to their country.

Is a "single undertaking" on the scale of the DDA feasible, she asked. Linkages may aim to ease political decisions on market opening, but how can an unmanageable complexity and gridlock be avoided?



Regulations should be designed for the purpose they are to serve. She also thought that domestic political attitudes needed to catch up with the reality and benefits of global interdependence and encourage governments to:

- move away from adversarial national negotiating approaches
- adopt collaborative approaches
- find approaches and formulas that work through sectorals, bilaterals, plurilaterals and regional agreements and scale up to multilateral level
- support internationally agreed principles and standards
- deliver multilateral results more quickly and frequently, for example issue specific agreements such as on trade facilitation.

*Mr Ulf Pehrsson, Vice-Chair, ICC Commission on Trade and Investment Policy; Vice-President, Sales and Marketing, Government and Industry Relations, Ericsson*

Mr Pehrsson made a case for enabling the networked society, and illustrated the point made by the Kommerkollegium: Ericsson may be the largest supplier of mobile equipment infrastructure in the world, but more than half of their staff works in services. "Servicification" is definitely a fact in the ICT industry.

The networked society brings benefits, he explained. If you connect 10 per cent of a country's population to broadband, it has a sustainable impact on the growth potential of that economy of more than one per cent of the gross domestic product. In addition, 1,000 extra people connected to broadband in a country, lead to a net creation of 80 jobs.

He believed that there should be zero duties on ICT products. Customs duties and taxes only slow down the uptake of technology, and as a consequence, slow down the enabling effects of ICT products for society.

Because the ICT industry is such a globalized industry, FTAs are not the preferred option. Mr Pehrsson listed the following factors:

- a lack of recognition of global supply chains in FTAs
- an absence of rules of origin harmonization in FTAs
- trade diversion will result from competing FTA activities on different time tables
- the cost of analysing content (to meet rules of origin requirements) exceeds the benefit of preferential treatment.

Mr Pehrsson concluded that the Information Technology Agreement (ITA) is a sectoral agreement in the WTO that was initiated by the ICT industry. The ITA is a success story that could be an example for agreements for other industries. He stressed that this was a stand-alone agreement and not part of a negotiation round or a broader agreement. An ITA Expansion negotiation with the ambition to broaden the product and membership scope was initiated in May 2012, once again as a stand-alone effort.

*Mr Dick Snodgrass, Commercial Manager, Remanufacturing and Components Division, Caterpillar*

Mr Snodgrass provided the audience with a clear example of how trade negotiators could close the gap with global business. Caterpillar is the leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. The company is also a leading services provider. The remanufacturing business of Caterpillar is the process of returning an end-of-life,

broken or blemished product to “same-as-new” condition in a manufacturing environment. Caterpillar also provides remanufacturing services for third parties. Mr Snodgrass stressed that remanufactured products are brought back to original condition and have “same-as-new” quality and reliability.

He explained that remanufactured goods were not used goods but were covered by the same warranty as equivalent new parts. Remanufacturing is an exchange business. Caterpillar is not leaving these used components in various markets around the world as scrap or as landfill. Instead, they are brought back as raw material for the remanufacturing process. It is the highest level of recycling you can do, he assured. All existing laws for new parts apply to remanufactured parts.

The trade concern for the remanufacturing business model is that there is no multilateral common reference for remanufactured parts. Too many states still impose tariff and non-tariff barriers on remanufactured goods:

- classified as “used” goods
- import prohibited
- core export prohibited
- heavy bureaucratic processes.

Caterpillar would like a common multilateral reference definition for remanufacturing goods and the removal of NTBs on remanufactured goods. In his opinion, remanufactured goods should be treated the same as new goods and subject to the same international rules. This could be best achieved in the WTO. Remanufactured goods should be recognized as environmentally friendly.

*Dr Sébastien Miroudot, Senior Trade Policy Analyst, Trade and Agriculture Directorate, OECD*

Dr Miroudot and his colleagues at the OECD are developing new data and indicators, in cooperation with the WTO and others, which would make policy-makers aware of and understand the interdependency of trade policies. The data tries to decompose the export of a good in GVCs to identify precisely where value was added in this supply chain. Next to trade value added, the OECD is also looking at the length (i.e. the number of production stages) of the value chain as an indicator of interdependence. The longer the value chain, the greater the systemic risk of disruption of the value chain. Based on these indicators, a country can also know its position along the value chain. All this will influence the incidence of trade costs and the impact of protectionist measures.

In order to be competitive in GVCs, import matters for a national economy (contrary to old export-based views). Protectionism is much more costly because a good is imported and exported cumulative trade costs along the value chain arise. The impact of protectionist measures depends on the participation and position of countries in the value chain. There is a magnification effect along the value chain: upstream suppliers are more impacted than downstream producers.

Dr Miroudot described that another effect of the GVC was the specialization of countries, which would rather take place in terms of production stages, activities or tasks rather than in terms of industries.

The implications of the GVC for trade negotiators are:

- dealing with trade, services, investment and competition – “deep integration” agreements covering all dimensions of market access, including “private” barriers
- involving the private sector in trade negotiations – from “commitments” to actual policies facilitating business



- neutrality vis-à-vis sourcing strategies of firms and forms of market access – outsourcing versus vertical integration, and modes of supply
- a new case for multilateralism – international production networks versus the spaghetti bowl of RTAs
- towards a more granular approach – heterogeneity of GVCs, and more targeted approaches for policies to have an impact on firms.

## Conclusions

The analysis and data by Dr Miroudot showed clearly the complexity and interdependency of global business as explained by Ms Sjögren and Ms Leclercq-Spooner. Ericsson highlighted how an alternative approach to have stand-alone agreement has been a success for the global development of the ICT industry. Caterpillar made a clear case for how simple policy measures could give a boost to successful and sustainable business model. Both the Kommerskollegium and AmCham EU are dedicated to supporting free trade and multilateralism when identifying possible measures that could close the gap between this interdependent business reality and trade negotiations. They urged the trade negotiation community to rethink how this gap can be bridged in cooperation with business.

## 21st-century trade and global trade governance

The nature of trade governance in the twenty-first century is critically influenced by the changed nature of international commerce. Over the past two decades, trade has changed substantially. Twentieth-century trade was conceptually simple — it meant goods crossing borders, and trade agreements were correspondingly simple. In the twenty-first century, following the “second unbundling” of globalization, international trade flows have become far more complex, involving multiple exchanges of goods, services and investment, together with managerial, technical, design and marketing know-how embodied in offshored production networks. Trade today requires doing business abroad and managing a network of connective productive facilities. This changed nature of international commerce requires a new type of international trade governance. Many policies and practices that were viewed as primary domestic in the twentieth century have become international trade issues in the twenty-first century. This session explores the set of issues arising from these changes and what they mean for public policy.

### Moderator

Dr Theresa Carpenter, Executive Director,  
Centre for Trade and Economic Integration  
(CTEI), IHEID

### Speakers

Professor Richard Baldwin, Professor of  
International Economics, IHEID

Dr Bernard Hoekman, Director, Trade  
Department, World Bank Group

Professor Jaime De Melo, Emeritus  
Professor, University of Geneva

### Organized by

CTEI, IHEID

World Bank Group

### Report written by

IERD, WTO Secretariat





## Presentations by the panellists

The panel presented a number of facts: the rising share of emerging countries in trade, regional manufacturing centres and supply chains; and the emergence of a multi-polar world economy. The panel argued that 21st-century trade needs new disciplines. Global supply chains call for more interconnected policies that involve a “nexus” of trade, investment, services and intellectual property.

Professor Richard Baldwin, IHEID, proposed a “WTO 2.0” or “Global Supply Chain Organization” in which firms are involved in the negotiations. He tentatively suggested that WTO 2.0 could have universal membership and that S&D treatment provisions be removed. The issues to be included could possibly be those that US-driven RTAs address, such as investment, movement of capital, visas, competition policy, and intellectual property rights.

Dr Bernard Hoekman, World Bank, discussed a number of new approaches to update WTO rules. These included greater reliance on plurilateral “critical mass” approaches, a shift to a “business process” approach, more flexibility in defining negotiating agendas, a reduction of emphasis on reciprocity and binding commitments, and for the WTO to serve as a forum for identifying good practices. As an example, he cited trade facilitation, where various services such as distribution, transport and logistics are not addressed. He suggested identifying “clusters” of policies that matter from a business process/supply chain perspective.

Professor Jaime De Melo, University of Geneva, looked at the global governance issue from the angle of trade and environment negotiations. He examined the current progress on the liberalization of environmental goods and services, and listed the main difficulties involved, including strategic behaviour (a bargaining chip when negotiations are multi-dimensional), problems in identifying environmental goods, and different perceptions and interests among members.

## Questions and comments

The audience asked about implications of global supply chains for least-developed countries, the future of S&D treatment provisions and discussed the practicability of certain proposals.



## Sub-theme III: The role of non-state actors in strengthening the multilateral trading system



## Trade and Africa's agricultural policy in 2025: possible ways out of a debacle

Agriculture is still one of the most important sectors in Africa's trade policy. Besides other raw materials, agriculture commodities continue to be a major source of income for African countries. It provides the greatest amount of employment and of export earnings. This session focused on:

- the global commodity value chain and the lack of diversification of Africa's agricultural sector
- examples how the current trade rules can impede or support local producers in Africa
- how important agriculture is for Tanzania
- how a poor country can be hit hardest by opening its borders to international markets if local circumstances are not properly taken into account by policy-makers.

### Moderators

Dr Matthes Buhbe, Director,  
Friedrich-Ebert-Stiftung (FES), Geneva

H.E. Mr Marwa Joel Kisiri, Head, African,  
Caribbean and Pacific Group of States  
(ACP), Geneva Office

### Speakers

Ms Fanny Coustaline, Trade Expert,  
RONGEAD

Mr Bernard Njonga, civil society activist for  
agricultural policy, Cameroon

Mr Aimable Uwizeye-Mapendano,  
Economic Affairs Officer, Special Unit on  
Commodities, United Nations Conference  
on Trade and Development (UNCTAD)

Hon. Ms Anastazia James Wambura,  
Member – Special Seat, Parliament of  
Tanzania

### Organized by

FES, Geneva

ACP, Geneva Office

### Report written by

Ms Maria Walter, intern, FES, Geneva



## Presentations by the panellists

*Dr Matthes Buhbe, Director, FES, Geneva; H.E. Mr Marwa Joel Kisiri, Head, ACP, Geneva Office*

Dr Buhbe and H.E. Mr Kisiri opened the session by focusing on the importance of sustained agricultural development in Africa. Most African countries remain net food importers and thus are highly affected by effects of unstable food commodity prices. Which role trade can, should and does play was addressed by the presentations.

*Mr Aimable Uwizeye-Mapendano, Economic Affairs Officer, Special Unit on Commodities, UNCTAD*

Mr Uwizeye-Mapendano's main argument was that Africa needs a new trading policy in order to strengthen its own agriculture instead of importing food from elsewhere. In his presentation, he explained the pricing structure for agricultural commodities in the past 50 years and its decline. Since the 1990s, there has been an increasing concentration of the global market in the hands of a few transnational corporations in the area of processing, trading and retailing. They are controlling the entire food production from farm to fork and have shaped the sector to what is called the global commodity value chain. The present economic situation is shaped by African history and its traditional agricultural commodities such as coffee, tea, cocoa and cotton. Very little innovation has been developed to achieve higher value in the agricultural sector by African countries.

According to Mr Uwizeye-Mapendano, the agricultural policies of the Organisation for Economic Co-operation and Development (OECD) countries had led to internationally low-price food. Africa, however, had been going through an adjustment process while their markets were flooded with cheap products from elsewhere. African governments had also decided to focus on urbanized areas. This is a paradox. The majority of Africans lives in rural areas and works as farmers. Therefore, the policy environment for growth in Africa was problematic. Africa's challenge is to force social and economic development as well as to increase peoples' income and to ensure food security. To reach that goal, healthy and nutritious food is needed.

*Mr Uwizeye-Mapendano listed the following approaches to solve the problems:*

- Agriculture can be a solution for Africa, but programmes and peoples' minds need to change and to dedicate more attention to farmers.
- Resolve the policy vacuum among neighbouring countries and foster their trade. African states need to focus more on trade within Africa.
- Increase political awareness about food security and Africa's opportunities through diversity. Infrastructure programmes developed in cooperation with the private sector are required.
- Develop regulations and interface with transnational cooperation on competition issues as well as on intellectual property and know-how transfer modalities.

*Ms Fanny Coustaline, Trade Expert, RONGEAD*

According to Ms Coustaline, the most important point for the upcoming years regarding food security was the availability and access to food. Nearly one billion people are starving, and this might become even more – not least because of food waste. Around 3 million tonnes of food is wasted each year. Therefore, there is no need to produce more food, but to produce and to use it better and more efficiently. A better infrastructure within the whole production chain is required as well as higher and sustainable technical standards. Assistance is especially needed in the sub-Saharan areas.

Ms Coustaline believed that the main goal was to reduce poverty and to create jobs, in order to develop African economies. However, there are two main challenges to overcome. She said the first was market access for African products. African products need to have the chance to enter international markets, but access is restricted by international market standards. The European Union, for example, has increased

the permitted limit of coumarin in cinnamon. Cinnamon produced in Africa exceeds this limit, although it has not been scientifically proven that this level is dangerous. Consequently, Europe is not importing cinnamon from Africa because of the strict limits.

She explained the second challenge was restrictions and rules, which was a question of governments and their decisions. A positive example can be found in Senegal, where onions produced there are sold mainly in the local market. This practice strengthens the local market as well as the local producers, since the market is served with enough products and regional trading is developing. In addition, Senegal is able to export its onions outside Africa, mainly to EU member states, such as France or Germany. The export enables Senegal to increase the extent of production as well as the capacity to develop the own economy. This example shows the importance for developing countries to act locally as well as globally.

*Hon. Ms Anastazia James Wambura, Member – Special Seat, Parliament of Tanzania*

Hon. Ms Wambura's main topic was the importance of food security in Tanzania's agricultural policy. Tanzania is a least-developed country (LDC) and agriculture is a very important sector in its economy. According to Hon. Ms Wambura, 77 per cent of the total labour force is involved in agriculture, including 90 per cent of active women, producing 70 per cent of the country's food requirements. The contribution from the agricultural sector to the gross domestic product (GDP) reached 23.7 per cent in 2011. However, food security is still one of the main focuses on the agenda. By 2025, the Tanzanian government wants to have raised the majority of low income farmers to the middle class, which is one of the main national development goals.

The Tanzanian national trade policy is to promote the country's agricultural activities. The policy focuses on rationalizing and better structuring within the system, on competitiveness in local, regional and international markets and on exporting agricultural goods. The policy puts value on self-sufficiency to the people's demands as well as on exporting their goods.

As a last comment, Hon. Ms Wambura emphasized the importance finally to conclude the Doha Round in order to address and ensure food security.

*Mr Bernard Njonga, civil society activist for agricultural policy, Cameroon*

Mr Njonga provided information from the ground on how trade opening can affect a poor country if local circumstances are not taken into account seriously and if trade opening is not combined closely with political caution.

When Cameroon became a WTO member in 1995, it immediately opened up its borders – including for agricultural products. Chicken, for example, is found on almost everybody's plate in Cameroon. Almost 90 per cent of chickens are raised by small farmers with very few animals and land. They were seriously hit by the opening of borders as the domestic market was swamped by thousands of tonnes of cheap frozen chicken from elsewhere.

It took more than ten years and pressure from civil society, led by Mr Njonga's non-governmental organization (NGO), to succeed in an interdiction of the importation of frozen chicken, which formally came into effect in 2007 and is still valid today.

The restriction did not lead to an entire self-sustained chicken production. Mr Njonga stressed the large amount of maize required for feeding chickens, but maize is unfortunately not produced in the amount farmers in Cameroon need. His country is thus still dependent on maize imports, and the government still needs to develop technical assistance in a proper and uncorrupted manner.

Mr Njonga further underlined the absence of appropriate policy by highlighting that farmers in Cameroon were not able to trade with their neighbouring villages and had no access to products from other regions in the country. He raised the question on how those farmers should then be able to participate under fair conditions in a globalized world.



Mr Njonga concluded with the topic of responsibility. First, farmers themselves are the first to be held responsible for today's situation in Cameroon. They need to become better organized. Second, the government should fulfil its role in acting first and foremost for the domestic producers and by focusing less on importing products from abroad. Third, consumers have a crucial role by choosing local products first and not, for example, rice from another country.

### Questions and comments

An important concern was about international protectionism. Europeans and Western countries protect their agricultural products. The main challenge for Africa is to develop a real strategy. Africa is still importing food it could and does produce itself. In addition, the African market is very much fragmented and states hinder each other or even prevent trade with neighbouring countries. To solve that problem, investment and infrastructure plans are necessary.

The question of which sector would be the one with the greatest competitiveness was raised with regard to food security. For Tanzania, mining is the most important sector, followed by tourism. As a contributor to GDP, agriculture is only in fifth place. But the agricultural sector is crucial because it employs the most people.

A last remark was given to the fact that there is no association for farmers in Africa. An association can have a stronger voice for the needs and demands for farmers and can set rules and regulations such as for fair incomes. Associations in Africa do exist, but they do not speak on the behalf of farmers. The lack of a farmers' association in Africa also shows the lack of government support for farmers and a lack of democracy, since associations can put pressure on governments to improve the circumstances of their members.

### Conclusions

The general agreement in the discussion lay in the fact that the relationship among African countries regarding trade needs to be strengthened. Agriculture is probably the most important branch for the African economy and secures daily income and nutrition for millions of people. To achieve the goals, there is not only a need for a better (infra-) structured system, but there is also a need to rethink political strategies within Africa as well as within European and other Western countries.



## New models for trade and development in the twenty-first century: an opportunity-driven approach to building African regional markets and increasing trade and food security

Trade can be a significant driver of economic growth, but it does not automatically create new opportunities in developing markets, particularly in the agriculture sector. The potential conflicts among increased economic growth, more open markets, regional market development and enhanced agricultural productivity are not well understood. More informed policy based on real private-sector experience is critical – especially within the public sector, which still directs much of the support for African agricultural development. New and more inclusive ways of identifying and advancing opportunities for investment, entrepreneurship and innovation are required.

The session explored a ground-up, market-focused approach to trade and development that focuses on building African regional markets, strengthening supply chains and enhancing food security. In particular, it explored an integrated approach to trade and development policy that rests on strong collaboration between the public and private sectors. It brings together policy approaches – including WTO disciplines, trade agreements and tools such as capacity-building and technical assistance – and innovative solutions from business, non-profit and research communities that address development needs. It drew on the work of the Advisory Council on Trade, a group of leading experts in the field that came together to develop a new model for encouraging increased trade, investment and development. The Advisory Council on Trade has developed its first set of recommendations focused on the East African Community, which outline a market-focused process for combining trade and development policy tools. It is now engaged in consultations around these initial recommendations and deeper research needed for implementation of the approach.

### Moderator

Ms Katrin Kuhlmann, President,  
TransFarm Africa

### Speakers

Mr Antoine Bouet, Senior Research Fellow  
and Co-leader of the Globalization and  
Markets Program, International Food Policy  
Research Institute

Mr Mombert Hoppe, Trade Economist,  
World Bank

### Organized by

TransFarm Africa, Advisory Council on  
Trade

### Report written by

Ms Katrin Kuhlmann, President,  
TransFarm Africa



## Presentations by the panellists

This session focused on the challenges facing the African agricultural sector and the implications for trade policy. The panel presented an analysis of existing trade barriers, including from the economic perspective, which was illuminated by anecdotes and real examples of how such impediments affect different economic actors across the continent. The panel's overarching recommendation was that a better understanding of the growth potential in the agricultural sector and the specific trade barriers that stand in its way is necessary and that mechanisms are needed to ensure that trade policy is better tailored and implemented to address these challenges to investment and growth.

The panel identified different obstacles to the development of a healthy and diverse agricultural sector in Africa. All speakers identified barriers to trade – be they regulatory barriers or impediments created by poor infrastructure – as significantly affecting the growth of the industry.

The panel also highlighted that responses to food crises – such as, for example, export restrictions – may have deleterious effects to which poor farmers in Africa are particularly vulnerable. The panel recommended that these measures be studied further and that they be considered in the context of WTO discussions.

The panel supported the importance of regional agreements and efforts for integration, but several of the panellists questioned the extent to which regional trade agreements (RTAs) are having a positive development impact, mainly because these agreements are not being implemented. The panellists concluded that these agreements may not be affecting domestic farmers and entrepreneurs in the manner envisaged by the drafters and that additional analysis and better mechanisms for private-sector input and engagement would be helpful.

## Conclusions

While there was support for liberalization of, and growth in, agricultural trade through the multilateral system, one of the main conclusions of the panel was that direct investment opportunities, underpinned by empirical research and informed by the experiences of farmers, investors and other private actors, should form the basis of identification and analysis of impediments to the development of the industry. Such an approach could help build what Ms Katrin Kuhlmann, moderator of the session and President of TransFarm Africa, described as the “missing middle”: that is, the lack of connection between local entrepreneurs and larger, better functioning markets required to develop a robust, diverse and sustainable agricultural sector in Africa.

## Liberalization, predictability, trade facilitation 2012: what can the WTO still deliver to economic operators?

### Moderators

Mr Ralph Kamphöner, Director, International Trade and Wholesale, EuroCommerce

Mr Pierre-Michael Gröning, Trade Policy Advisor, Foreign Trade Association

### Speakers

Mr Olivier Ganne, Head, International Customs Department, Oxyane Group

Mr Paolo Garzotti, Head of Unit, WTO Coordination, OECD, Export Credits and Dual Use, Directorate General for Trade, European Commission

Hon. Mr Vital Moreira, Member of the European Parliament; Chair, Committee on International Trade

Mr Ruslan Kokarev, Chief Operating Officer, Association of European Businesses in the Russian Federation (AEB)

### Organized by

EuroCommerce

Foreign Trade Association

### Report written by

Mr Olivier Ganne, Head, International Customs Department, Oxyane Group

Mr Paolo Garzotti, Head of Unit, WTO Coordination, OECD, Export Credits and Dual Use, Directorate General for Trade, European Commission

The crisis of multilateralism is expressed, among others, not only by the slow progress of the Doha Round, but also by a continued disinvolvement of the very economic operators to whom the WTO is ultimately addressed. This panel sought to trigger renewed interest among companies to the multilateral process by highlighting the tangible realistic prospects.

Against the background of the slow Doha Development Agenda (DDA) progress, many companies question the usefulness of investing time in the multilateral process. Trade policy-makers in many WTO members focus on an increasing number of bilateral agreements. At the same time, the existing WTO framework continues to offer significant advantages to the private sector in terms of stability and predictability. Trade facilitation negotiations have made reasonable progress, and early harvest could soon deliver tangible benefits to economic operators.



## Presentations by the panellists

*Mr Ralph Kamphöner, Director, International Trade and Wholesale, EuroCommerce; Mr Pierre-Michael Gröning, Trade Policy Advisor, Foreign Trade Association*

Mr Kamphöner welcomed all participants and underlined the importance of commerce in the overall picture of the European economy. Mr Gröning introduced the topic of the session by emphasising that economic success in international trade was dependent on a favourable political and legal environment based on three key factors: liberalization, predictability and trade facilitation. In reaction to the outbreak of the financial crisis in 2008, the number of trade-distorting measures around the world has increased significantly.

Against this background, he stressed the need to strengthen the multilateral rules framework to prevent national policy-makers opting for protectionist temptation. The WTO would be the ideal platform to do so because of both its procedural capacities to impose binding rules and its dynamic nature to adapt its rulebook regularly. One cornerstone in shaping healthier business conditions would result from the conclusion of a trade facilitation agreement.

Mr Kamphöner recalled the high expectations at the start of the DDA and economic operators' disappointment of the current stalemate. Beyond liberalization, companies need predictable and stable framework conditions to plan their international trade transactions. Importers' buying cycles usually stretch over several months. The need for predictability and stability becomes visible in various areas related to imports where there is no advanced level of multilateral simplification and harmonization – for instance rules of origin.

The WTO has not yet been able to address these issues effectively. On the other hand, it does already provide stability through its Dispute Settlement Body (DSB). Additional tangible progress can be expected also on trade facilitation and by implementing the Russian Federation's accession.

EU–Russian trade will now take place under clearer, more transparent and non-discriminatory rules. European commerce welcomes the liberalization commitments. One hundred per cent of foreign-owned companies will be allowed to engage in wholesale, retail and franchise in the Russian Federation. Tariffs, quota and non-trade barriers for goods will be dismantled significantly. The accession package will boost the economy both in the European Union and the Russian Federation.

The simplification and harmonization of customs procedures (trade facilitation) is a vital building block for economic growth and development. It is the simplest, most regulatory efficient way to recover economic performance and generate wealth creation for the good of all societies, regardless of location or region. In times of immense challenges, economic operators worldwide are waiting anxiously for negotiators to show leadership and demonstrate the ability of the WTO to really deliver.

The consensus-driven negotiations and the Draft Agreement on Trade Facilitation now have sufficient shape to be concluded and implemented, for the good of all economies, without awaiting the formal conclusion of the single undertaking. Early agreement to implement the Trade Facilitation Agreement would offer a key and significant boost for the global trading community during these critical economic times and show that the WTO has the determination to deliver.

EuroCommerce and the Foreign Trade Association presented a joint statement with these messages, co-signed by the Retail Council of Canada, the Conseil québécois du commerce de détail and the National Retail Federation.

*Hon. Mr Vital Moreira, Member of the European Parliament; Chair, Committee on International Trade*

Hon. Mr Moreira recalled the crucial role of the European Parliament in forging the EU trade policy and acting as a liaison within the political sphere with the civil society and the business community. Furthermore, he stressed the Parliament's strong support of the WTO and the Doha Agenda. His particular attention

dedicated to the ongoing negotiations for an agreement on trade facilitation as a successful outcome would generate significant and immediate benefits for both developing and developed countries.

In his presentation, Hon. Mr Moreira referred to four key considerations. Firstly, he underscored that while tariffs and quotas – and to some extent behind-the-border obstacles – had been removed or at least reduced, impediments at the border remained substantial. Poor quality of border management is a serious threat to the free circulation of goods in the global supply chain, and therefore it is time to deliver on trade facilitation. Secondly, he provided a definition of trade facilitation, referring to it as the simplification (eliminating unnecessary paperwork), standardization (adopting uniform procedures) and harmonization (converging procedures) of international trade procedures. Key words in this context are transparency and the fight against arbitrary decisions. For developing countries, modernization of customs procedures is a powerful tool to increase integration into global markets.

Thirdly, he analysed the overall impact of the issue: the implementation of the trade facilitation measures discussed in Geneva could reduce total trade costs by almost 10 per cent. This statement was further supported by other statistics. Fourthly, the special needs of developing countries have to be addressed. A WTO agreement would include preferential treatment provisions for poor countries and supporting policies such as an early warning system to signal implementation obstacles and technical assistance by donor states. Even today, "Aid for trade programmes deliver assistance – the European Union alone provided more than € 10 billion in such frameworks in 2009. In his concluding remarks, Hon. Mr Moreira emphasized that that 2012 should not be a lost year for multilateral negotiations and that states should demonstrate more realism to unlock the Doha Round.

*Mr Olivier Ganne, Head, International Customs Department, Oxylane Group*

Mr Ganne briefly presented the Oxylane Group, a sporting goods producer, importer and reseller including the chain store Decathlon, and running stores in Asia, Europe and the United States. He explained that Decathlon is facing two major concerns when dealing with customs rules. The first challenge is to determine the correct amount of customs tariffs to be paid to authorities. Due to lack of transparency, this is often a difficult task. The second concerns relates to the physical import of goods, a complicated and time-consuming operation with many obstacles at the border. In this context, one practical example given by Mr Ganne was the abrupt and arbitrary modification of transaction values by customs authorities.

Mr Ganne submitted five concrete proposals to improve customs procedures and remove impediments for economic operators. Firstly, mutual recognition of classification procedures and the status of authorized economic operator (AEO) have to be promoted. Secondly, the number of computerized and dematerialized procedures has to be augmented. Thirdly, more transparency in defining the transaction value is needed to avoid countries applying different rules. Fourthly, the fight against corruption, which is still a major obstacle to the circulation of goods, must be intensified. Finally, more training for customs officers is required to transform customs authorities into modern service providers.

*Mr Paolo Garzotti, Head of Unit, WTO Coordination, OECD, Export Credits and Dual Use, Directorate General for Trade, European Commission*

Mr Garzotti emphasized the relevance of the WTO. Three quarters of world trade take place between operators in more than one country. Beyond its liberalization agenda, the WTO provides for predictability through the enforcement of rules. The accessions of the Russian Federation and soon Kazakhstan provide for additional stability.

Although the DDA is currently in an impasse, issues like subsidies, trade defence and trade facilitation are difficult to deal with outside the multilateral system, which still leaves room for the WTO to consider solutions for the future. When currently exploring the path of free trade negotiations with several trading partners, the European Union nevertheless seeks to consolidate those in the WTO, which is easier in some areas (tariffs) than in others (non-tariff barriers).

Mr Garzotti illustrated several beneficial aspects of the trade facilitation negotiating proposal, such as systems comparable to the EU binding tariff information in every WTO member, AEO status and expedited



shipment channels to help delivery on time. The European Union is willing to deliver its contribution in the field of technical assistance and aid for trade.

*Mr Ruslan Kokarev, Chief Operating Officer, AEB*

Mr Kokarev introduced the AEB, an independent, non-commercial organization based in the Russian Federation, advocating the opinion of 640 European companies.

The Russian economy has grown significantly in recent years and shows great potential for future development in all industries. The majority of the AEB companies have reached their break-even points within one to three years. Business culture evaluation and assessment of business environment are quite modest in the country. Interaction with regulating authorities, especially with the customs and tax, is viewed rather negatively. But there are some latest indications for slight positive changes in the future. Regulation restrictions are the main obstacles for production operation.

The majority of AEB members have positively evaluated the Russian Federation's WTO accession, and they consider that it will bring benefits to the country and their companies. They support simplification and harmonization of customs procedures and implementation of other trade facilitation measures within the customs union and the WTO. Following accession, the overall effect of both the change in tariff rates and the improvement of the conditions for Russian manufacturers' access to foreign markets will be 0.5 per cent of the level of aggregate consumption in the country (in the short term).

Measures to be taken following WTO accession include:

- restructuring non-competitive industries
- increasing the potential of Russian non-raw-material exports by reducing the obstacles to Russian companies' entry into foreign markets
- developing competitive industries and redirecting those which cannot be competitive within the framework of the existing global division of labour
- improving the business climate in the Russian Federation and general conditions for foreign direct investment by reducing administrative obstacles, investments in infrastructure, counteracting corruption and creating conditions of equal competition for all business entities.

### Questions and comments

After the presentations, participants were invited to contribute with questions and comments:

- Mr Jonathan Peel, President, Permanent Study Group on WTO and Other International Trade Agreements, European Economic and Social Committee (EESC), floated the idea of civil society monitoring the implementation of a future trade facilitation agreement.
- Mr Michael Hindley, trade consultant and former Member of the European Parliament, commented that donors are in competition when providing technical aid to developing countries – and not always to the advantage of the latter.
- A representative from the Ethiopian Chamber of Commerce expressed some concerns about liberalization and trade facilitation and the need to adjust trade facilitation measures to LDCs.
- The trade delegate of Angola to the WTO expressed that negotiations on trade facilitation did not represent a priority for African states.

In his response, Hon. Mr Moreira stressed the importance of distinguishing between trade liberalization and facilitation. The implementation of trade facilitation would create an inevitably win-win situation.

### Conclusions

The panel signalled bold business support to the WTO and sensibilized economic operators for the opportunities the WTO continues to offer. Special emphasis was attached to the Russian Federation's accession and the need for quicker progress on trade facilitation. Much remains for the private sector and trade policy-makers to do in order to secure the deliverables of the WTO.





The principal objective of the panel was to discuss possible topics global business leaders involved in the ICC Business World Trade Agenda (WTA) initiative could present as a set of business priorities at the WTA Business Summit in Doha, Qatar, on 22 April 2013. The session addressed the following issues:

- trade facilitation
- food security
- information technology (IT) products and electronic commerce
- services
- investment
- plurilateral and other preferential trade agreements (PTAs).

## ICC World Trade Agenda: business priorities for 21st-century multilateral trade negotiations

### Moderator

Ms Nicolle Graugnard, Policy Manager, Trade and Investment, Department of Policy and Business Practices, International Chamber of Commerce (ICC) Secretariat

### Speakers

Dr Jan Atteslander, Member, ICC Commission on Trade and Investment Policy; Member of the Executive Board, Economiesuisse

Mr James Bacchus, Member, ICC Commission on Trade and Investment Policy; Chair, Global Practice Group, Greenburg Traurig; former Chairman, WTO Appellate Body

Mr Geoffrey Gamble, Chair, ICC Commission on Trade and Investment Policy; Director, International Affairs, DuPont Company

Mr Ulf Pehrsson, Vice-Chair, ICC Commission on Trade and Investment Policy; Vice-President Sales and Marketing, Government and Industry Relations, Ericsson

### Organized by

ICC

### Report written by

Ms Nicolle Graugnard, Policy Manager, Trade and Investment, Department of Policy and Business Practices, ICC Secretariat

## Presentations by the panellists

### *Mr Geoffrey Gamble, Chair, ICC Commission on Trade and Investment Policy; Director, International Affairs, DuPont Company*

Mr Gamble began by citing a recent report by the Peterson Institute for International Economics that calculated a WTO agreement on trade facilitation was expected to deliver gains of at least US\$ 130 billion annually, with most of the gains benefiting developing countries. Such an agreement would significantly reduce costs, speed up and streamline administrative and other official procedures, and create a more transparent, predictable and efficient environment for cross-border trade. Furthermore, by making their trade processes more efficient, countries would become more attractive as destinations for foreign direct investment. Mr Gamble argued that more efficient trade processes would allow countries to leverage the opportunities that flow from the strong complementarity between cross-border trade and investment as effective means for companies to produce and deliver their goods to market in a globalized economy.

Mr Gamble went on to state that the food crisis of 2007-2008 underscored the need to address food security at the global level. A confluence of soaring fuel costs, erratic weather patterns, restrictive trade policies and changing consumer demand has led to a new peak in the prices of food commodities. At the 2011 Cannes Summit, G20 leaders recognized this need and agreed to remove food export restrictions and extraordinary taxes for food purchased for humanitarian purposes by the World Food Programme (WFP). Recently, Asia-Pacific Economic Cooperation leaders reinforced their commitment to ensure fair and open markets, reduce price volatility, and establish greater regional and global food security. Furthermore, Mr Gamble stated that meaningful disciplines on export restrictions might facilitate a greater readiness by import-sensitive countries to undertake greater market access opening. He also noted that members reached a conditional agreement during the 6th WTO Ministerial Conference, in 2005, to phase out agricultural export subsidies and disciplines on all export measures with equivalent effect by the end of 2013. Members agreed to a progressive phasing-out, such that a substantial part would be realized by the end of the first half of the implementation period. In recent years, high commodity prices and national budgetary constraints have further reduced the need for most of these subsidy payments.

### *Mr Ulf Pehrsson, Vice-Chair, ICC Commission on Trade and Investment Policy; Vice-President Sales and Marketing, Government and Industry Relations, Ericsson*

Mr Pehrsson's presentation focused on the importance of the digital economy and IT. He noted that the endorsement of the Information Technology Agreement (ITA) by WTO members in December 1996 was a major milestone in liberalizing trade in the information communication technology sector for the global economy. Since the ITA came into force almost 15 years ago, numerous IT products incorporating increasingly sophisticated technologies have entered the world market. Mr Pehrsson argued that the primary characteristics of the products originally covered by the ITA remain unchanged, even if equipped with more sophisticated and technologically advanced additional features. Given the key role that IT plays in driving global growth, ITA expansion could make a significant contribution in lowering tariff and non-tariff barriers to and increasing trade in IT products, providing a strong stimulus to the world economy.

Moreover, Mr Pehrsson indicated that WTO members should continue to support the digital economy by sustaining expansion of electronic commerce, which has generated billions of dollars in trade, growth and jobs over the last decade. Recognizing the importance of e-commerce for the world economy, WTO members agreed in 1998 to a "standstill", whereby they refrained from taking measures that would have a damaging effect on digital trade and business. More specifically, they agreed not to impose customs duties on e-commerce transactions. This standstill has been repeatedly extended. However, it remained an informal agreement. Agreeing to make the standstill a formal agreement would foster growth in e-commerce and inject confidence and support for the millions of companies worldwide that provide goods and services to consumers through e-commerce.

Mr Pehrsson then turned to the issue of services. He noted that the General Agreement on Trade in Services (GATS) provided a legal framework for negotiating and binding multilateral liberalization of trade in services. With the exception of members who recently acceded to the WTO, GATS had not been used to its full extent by WTO members as a driving force for services liberalization and reform.



Nonetheless, the potential for liberalizing services multilaterally through WTO negotiations should not be under-estimated. Indeed negotiations under GATS have already shown that they can produce impressive results (e.g. post-Uruguay Round negotiations on basic telecoms and financial services).

*Mr James Bacchus, Member, ICC Commission on Trade and Investment Policy; Chair, Global Practice Group, Greenburg Traurig; former Chairman, WTO Appellate Body*

Mr Bacchus introduced the issue of the international investment by citing the 2012 *ICC Guidelines for International Investment*, released during the UNCTAD World Investment Forum. He noted that the increasing level and expanding nature of international investment flows and associated transactions spoke to the recognition by host governments – particularly in the developing markets – of the contribution international investment makes to their sustainable development. Businesses and governments in both developing and developed countries were keenly aware of the importance of investment as a driver of growth. Mr Bacchus hoped that these guidelines would be useful for investors and governments alike in creating a more enabling environment for cross-border investment and in understanding more clearly their shared responsibilities and opportunities in fulfilling the vast potential of cross-border investment for shared global growth.

As former Chairman of the WTO Appellate Body, Mr Bacchus then addressed the need to reform the WTO dispute settlement system. The WTO Dispute Settlement Understanding (DSU) is a cornerstone of the rules-based multilateral trading system. It provides an assurance that WTO members respect their commitments. Since the creation of the WTO, over 400 disputes have been filed with the DSB and over 100 reports have been issued by the WTO Appellate Body. These disputes had involved a broad spectrum of issues brought by WTO members at all levels of economic development. As part of the work achieved during the Doha Round, members had agreed to a number of practical modifications to the DSU. These modifications should result in more rapid decisions, greater possibility to settle without going to final judgment, and more transparency of hearings and submissions by parties. Proposals for reform included:

- the extension of third-party rights, provided that an adequate balance between the rights of main parties and third parties is maintained
- improved conditions for members seeking to be joined in consultations
- the introduction of remand, allowing the Appellate Body the ability to remand the case back to the panel for factual findings
- the “sequencing” issue and other problems concerning the suspension of concessions or other obligations, thus clarifying ambiguous language in the DSU
- the enhancement of compensation as a temporary remedy for breach of WTO law
- the strengthening of notification requirements for mutually agreed solutions
- the strengthening of special and differential treatment for developing country members.

*Dr Jan Atteslander, Member, ICC Commission on Trade and Investment Policy; Member of the Executive Board, Economiesuisse*

Dr Atteslander noted that WTO members advanced liberalization through RTAs and PTAs, which could bring faster results than the multilateral process, could enable parties to conclude levels of liberalization beyond the multilateral consensus, and could be able to address specific issues that did not register on the multilateral menu.

The resulting achievements in trade liberalization could be substantial complements to the WTO system, and they could be important building blocks for future multilateral liberalization. However, RTAs and PTAs should maintain and strengthen momentum towards global economic integration. Business was concerned that regulatory fragmentation may increase with the continued proliferation of RTAs and PTAs, thus increasing tangible economic costs in terms of compliance. While it was true that large multinational enterprises had teams

dedicated to the strategic use of PTA Rules of Origin, their proliferation made it increasingly difficult for small and medium-sized enterprises especially to participate in international trade, since they often lacked the capacity to adapt to each new set of conditions posed by these agreements. Dr Atteslander concluded by suggesting that the multilateralization of generally accepted PTA rules into WTO rules should be considered in the long run.

### Questions and comments

A rich debate ensued, covering the spectrum of issues raised by panellists. It was noted that on the issue of food security, great advances had been achieved in the area of genetically modified organisms (GMOs). For example, a strain of flood-resistant rice had been developed to enable farmers in Viet Nam to cultivate rice while simultaneously using the same area of flooded land for shrimp farming. Previously, the land was drained for rice cultivation and subsequently flooded for shrimp farming. Through the development of flood resistant rice, the land was able to sustain dual use. Efforts such as these to increase production illustrate how GMOs can help ensure food security.

### Conclusions

Ms Graugnard, who moderated the panel, said that the session had presented a diverse range of business perspectives on the role of the multilateral trading system in the global economic recovery, and that this had elicited a rich exchange with the panellists and audience.

The main conclusions from the session included the following:

- A stand-alone WTO agreement on trade facilitation should be concluded by the 9th WTO Ministerial Conference, in Bali, Indonesia, in December 2013.
- WTO members should commit not to impose export controls, or at least agree to exempt food shipments contracted by the WFP from export restrictions. They should commit to make best efforts not to tighten other restrictions on food trade and to remove “buy national” requirements that impede the distribution of food supplies.
- Make concrete progress on the liberalization of trade in services through alternative negotiating approaches, including plurilateral approaches and approaches focused on particular sectors, such as the Agreement on Basic Telecommunication Services or the Agreement on Financial Services. These approaches should be pragmatic, results-oriented, consensus-based, transparent, as inclusive as possible, and should lead to multilateral outcomes across all modes of supply.
- Lower barriers to trade in IT products and services – especially by expanding product coverage under the ITA – and make the standstill commitment on e-commerce permanent by the 9th WTO Ministerial Conference.
- Make the WTO Transparency Mechanisms for RTAs and PTAs permanent by the 9th WTO Ministerial Conference and make progress on strengthening WTO procedures and rules to increase compatibility and complementarity between RTAs and PTAs and the multilateral trading system.



In a rapidly evolving multipolar world, in which economic wealth is gradually shifting eastwards and southwards, and natural resources are more and more limited, international cooperation is going through a major crisis. The emergence of countries such as Brazil, China, India and South Africa, coupled with the relative decline of the traditional economic powers, has opened up new opportunities, as reflected in the unprecedented growth of South–South trade over the past decade. But at the same time, new tensions have emerged, notably between countries with significant trade surpluses and those with growing trade deficits. These tensions are having an impact on international negotiations, particularly trade negotiations, but also in areas such as climate change and food sovereignty.

Fair trade is a trading partnership based on dialogue and transparency. The francophone parliamentarians are therefore convinced that with the advent of multilateralism, the development of countries in the south can only be truly meaningful in the framework of renewed multilateral cooperation. It is with this in mind that la Francophonie is supporting the efforts of all its members, particularly its LDC members, to revive the multilateral trade negotiations at the WTO so that developing countries can at last participate effectively in the world economy in keeping with the objectives of the DDA. The purpose of this workshop is to share and confront the different viewpoints surrounding this topic, including the views of parliamentarians on their involvement in multilateralism in general and in fair trade in particular.

## Is a multilateral approach to fair trade possible? The parliamentary point of view

### Moderator

Mr Hervé Cronel, Special Adviser to the Secretary General, Economy and Sustainable Development, International Organization of la Francophonie (OIF)

### Speakers

Mr Mbuku Laka, Vice-President, Commission on Cooperation and Development, Assemblée Parlementaire de la Francophonie (APF)

Hon. Mr Germinal Peiro, Member, National Assembly of France

### Organized by

APF

### Report written by

Information and External Relations Division (IERD), WTO

## Presentations by the panellists

### *Mr Mbuku Laka, Vice-President, Commission on Cooperation and Development, APF*

The session opened with remarks from Mr Laka, who gave his perspectives on the development of fair trade in his home country, the Democratic Republic of the Congo (DRC), as well as that of the APF in exploring it as an option in francophone Africa. His brief presentation covered two overarching themes: the difficulties that a heterogeneous approach to fair trade poses to African countries; and the need to support and protect “food sovereignty”.

According to Mr Laka, African states such as the DRC face great difficulties in developing fair trade and organic crops. As standards are not harmonized, producers find it costly to take the necessary measures to become certified. These challenges were echoed by an NGO representative working with farmers in West Africa. Mr Laka suggested a new approach was needed to ensure standards were more accessible, including efforts to further institutionalize these systems.

Mr Laka regularly referred to “food sovereignty” as a major concern for his country and others in Africa. He said that rapid liberalization of agricultural markets can lead to insecure conditions for countries like the DRC to meet its own needs. He suggested that fair trade could be used as a way to give producers greater income, thereby ensuring the means to achieve “food sovereignty”.

### *Hon. Mr Germinal Peiro, Member, National Assembly of France*

Hon. Mr Peiro focused his presentation on the French consumer experience with fair trade and organic products. He echoed Mr Laka’s call for “food sovereignty” and the need for states to be able to feed their own populations. He highlighted the environmental concerns that agriculture faces and also the role it plays in exacerbating the degradation of habitats, particularly through the contamination of waterways. He called for a more locally based form of food production and consumption in light of dwindling fossil fuel supplies, while also underlining the need for more accurate and transparent labelling systems.

## Questions and comments

As moderator, Mr Hervé Cronel, Special Adviser to the Secretary General, OIF, fielded the audience’s questions. One participant claimed that organic agriculture actually harmed the environment when compared with conventional methods. Mr Peiro defended organic agriculture, particularly its ability to reduce chemical run-off into waterways, while Mr Cronel cited Brazil as an example of supporting both large-scale and small-scale farming techniques.



Panellists discussed the preliminary findings of a research project on the role played by notifications and specific trade concerns (STCs) in the context of the Technical Barriers to Trade (TBT) Committee and the Sanitary and Phytosanitary (SPS) Committee. This project is conducted under ENTWINED, a research consortium focused on trade and environment issues and funded by Mistra.

The panellists explained that under the TBT and SPS committees, there is a strong culture of notifying and presenting STCs. Data on the use of these measures indicate that there may be a relationship between such processes and a relatively small number of formal disputes, as they allow states to clarify rules and share information. At the same time, it is observed that these processes are not employed to the same degree by all members or all committees. Compliance with notification obligations in particular is highly variable across the WTO.

## Managing conflict in the WTO without formal disputes: enhancing the use of notifications and specific trade concerns

### Moderator

Mr Mark Halle, Vice-President,  
International, International Institute for  
Sustainable Development (IISD)

### Speakers

Mr Ahmed Irfan Aslam, Counsellor,  
Permanent Mission of Pakistan to the WTO

Professor Petros Mavroidis, Global  
and Regional Economic Law, European  
University Institute (EUI)

Mr Erik Wijkström, Counsellor, Trade and  
Environment Division (TED), WTO

Professor Robert Wolfe, School of Policy  
Studies, Queen's University, Canada

### Organized by

Swedish Foundation for Strategic  
Environmental Research (Mistra)

Environment and Trade in a World of  
Interdependence (ENTWINED)

### Report written by

Mr Christopher Beaton,  
Research Analyst, IISD



## Presentations by the panellists

### *Mr Mark Halle, Vice-President, International, IISD*

Mr Halle, the moderator, opened the session by posing the question: Without progress on negotiations, how do issues advance in the WTO system? Much attention has been brought to bear on dispute settlement procedures – but there are there other mechanisms too. The session focused on transparency.

### *Professor Robert Wolfe, School of Policy Studies, Queen's University, Canada*

Professor Wolfe presented preliminary research from a project under the ENTWINED research consortium on the extent to which notifications and STCs have been used as an informal mechanism to resolve disputes in the TBT and SPS committees.

He illustrated activity in the legal order as a pyramid. At the base, millions of informal interactions governed by an understanding of legal requirements, and at the tip, a tiny proportion of issues that results in disputes. Between these two extremes is a range of more and less formal interactions. Among these, the TBT and SPS committees employ: (i) notifications – announcements of measures that might have an effect on other members as defined by legal obligations; and (ii) STCs – raising an issue as a specific area of concern to foster dialogue.

It is difficult to measure the “universe of conflict” in WTO committees other than SPS and TBT, since the culture of notifications can vary greatly and STCs only exist in the context of TBT and SPS. This inconsistency of information makes it hard to determine whether there is a relationship between the use of these informal mechanisms in the TBT and SPS committees and a smaller number of formal disputes.

His research project looked at the role of these informal mechanisms in resolving environmental issues in the TBT and SPS committees by dividing such issues into those which resulted in:

- immediate dispute
- an STC or equivalent, and then dispute
- only an STC.

Preliminary findings indicate that notifications and STCs respond to incomplete transparency or information asymmetry, and that disputes arise when there is no notification or no agreement on what to notify. This implies that having these transparency mechanisms can help end disputes – although notification may be hard to do in many cases. He invited his colleagues to discuss the specific findings in more detail.

### *Professor Petros Mavroidis, Global and Regional Economic Law, EUI*

#### *Mr Erik Wijkström, Counsellor, TED, WTO*

Professor Mavroidis stated that the central question of his research had been to explore the relationship between transparency and dispute settlement. The review of the record regarding STCs had proved most appropriate for this purpose because of the enhanced notification requirements in the TBT/SPS context, and that the record of notifications in these committees has been judged more than satisfactory.

Data was collected on TBT and SPS committees over the period 1995–2012. Having no formal definition, STCs were defined as concerns about the practices of other members.

Mr Wijkström presented the data. He explained that few STCs raised in the TBT Committee had turned into disputes: only four fully-fledged TBT disputes and two pending cases. With regards to SPS, the majority of STCs have been related to agriculture; in the case of TBT, due to the broader scope of the TBT Agreement, the products affected are more varied: around 29 per cent related to agriculture, with the rest covering a wide range of measures affecting trade in chemicals, alcohol, textiles and electronics. For TBT, the main objective of the measures discussed typically relate to the protection of human health, followed by the environment.



Member engagement has been strong, even among developed and developing countries in both committees. Most issues are only raised between two states and relate to matters of clarification. Involvement by LDCs is, however, weak – particularly from sub-Saharan Africa.

With respect to resolutions, SPS Committee data show that almost a third of all SPS STCs are reported as “settled”. In the TBT Committee, settled STCs are not reported. The data indicate that while there are many STCs, few have resulted in formal disputes – whether SPS or TBT. There is strong engagement in committee work with significant input from experts. It appears to be a useful multilateral review process of a large subset of non-tariff measures.

*Mr Ahmed Irfan Aslam, Counsellor, Permanent Mission of Pakistan to the WTO*

Mr Aslam began with the principle that not all committees are the same. They vary in terms of work, frequency and participation. Committees are not designed to be forums for settlements of disputes. They are platforms for people to raise concerns but not to have their issues resolved. That is the role of the dispute settlement procedures.

Committees are structured on a system of states making notifications, which tend to serve as an early warning system of a complaint. However, there is no legal enforcement of this. As a result, there are differences between what is notified and what ought to be notified. Many states do not notify. Some very large players in agriculture have not submitted domestic support notifications for six to seven years. When states do notify, they may notify only fairly insignificant matters, while omitting serious ones. Looking at the number of notifications is not a good measure for identifying under-notification: one state might submit 50 notifications, yet only have raised one per cent of matters it is obligated to notify; while another country may make just one notification, and in so doing have complied 100 per cent with its obligations.

Looking at the activities of committees in the context of the ENTWINED research project, he argued that three points emerge:

- **Capital based dynamics influence committees.** Sometimes countries do not notify because they lack the capacity. Although sometimes it is because they want to cover an illegality or not draw attention to a short-term policy measure. They may also not notify because a regional power is not notifying the same thing either.
- **Lobbies play an important role in the domestic constituency.** STCs will almost always be related to a domestic constituency affected by the trading measure in question. There are also situations where governments are concerned about the impacts on a powerful group, without even being pressured.
- **“Settled” concerns are not necessarily resolved.** Just because an issue has not been raised a few times does not mean that a measure has been withdrawn or that the state has accepted the resolution. What happens in many cases is that the domestic lobby might have lost interest in the issue or the government may not find it prudent to keep pressing.

### Questions and comments

Mr Julian Arkell, an independent consultant, posed two questions: (i) Will the analysis be extended to committees looking at services?; and (ii) Are these issues raised in the Trade Policy Review Mechanism reviews? Mr Wijkström replied that insufficient details were available on services to extend the analysis; and that yes, issues brought up in committees were sometimes raised in trade policy reviews. Professor Wolfe concurred, adding that notifications in services were very poor.

Mr Ronald Steenblik, Senior Trade Policy Analyst at the OECD, also posed two questions: (i) Do you think that a reversal of burden of proof might help promote subsidy notification?; and (ii) In OECD research on regulations, we found that large companies are sometimes reluctant to be fully transparent about

their operations because part of their competitive advantage is having figured out the “run arounds” to get around barriers. Have you run into this problem on notifications? Professor Wolfe replied that the Secretariat had successfully proactively sought out notifications from delegations in the context of responses to the fiscal crisis, becoming a kind of “reverse notification”. He agreed that countries might not be fully transparent about bilateral processes around concerns. Mr Halle observed that mapping incentives and disincentives to notify under different WTO issues could be a useful exercise.

Dr Bernard Hoekman, Director of the Trade Department at the World Bank, asked whether there was any correlation between STC interactions and membership of a PTA. You might hypothesize that PTA members would consult outside of committees. Professor Wolfe noted that this was a good question and that the project ought to look at it.

Ms Sophia Murphy, Senior Advisor at the Institute for Agricultural and Trade Policy, asked what would happen if a committee wanted to reform how it worked? Can they set their own rules for operation? Mr Wijkström replied that part of a committee's function was to develop guidance and principles for the work of the committee and, in this sense, both SPS and TBT committees had changed how they dealt with STCs. In some of the latest disputes, the appellate body has given some importance to rules and guidance developed by the committee. Professor Wolfe added that there were different provisions set out in treaty texts, but that any committee was master of its own procedures.

Ms Shandan Gulzar Kahn, Legal Affairs Officer at the Permanent Mission of Pakistan to the WTO, noted that within non-agricultural market access negotiations members are looking at a mechanism to address non-tariff barriers before they make it to a real dispute, and that similar proposals are in other committees. She said there was once something similar in an agreement on textile and clothing, and asked whether the panellists knew if that had been successful and could it be used as a model? She also wondered whether it would help to have more meetings. Mr Wijkström replied that, first, he was not familiar with the example on textile on clothing, and second, he was not sure that more meetings would improve the outcome of committees. Mr Halle added that it should be remembered, too, that disputes are not necessarily a bad thing – bringing them to the WTO can be a good way to clarify what rules are intended to mean. Professor Wolfe noted that rather than having “more meetings”, an issue of greater interest should be “who is asking and answering questions in meetings”, and how can we improve the analytical capacity of the membership not currently engaging in this way.

## Conclusions

Mr Halle concluded that thinking about how the WTO works had evolved quite a bit over the past years. Beginning with an exclusive interest in negotiations, it moved to increased interest in the DSU, and now it focuses on the more intimate workings of the machine and how it can be improved.

He argued that the panellists had shown that transparency mechanisms were a significant way of dealing with issues. In some areas, they work very well, but in others, they do not. Incentives and capacity to bring issues to the table differs greatly between states, and the reasons for not pursuing a dispute might not be very positive. This underlines the reality that WTO members do not have equal capacities, institutions or access to markets.

He concluded that while most sessions in the WTO Public Forum had found fairly depressing answers to the question “Is multilateralism in crisis?”, this one had shown that where issues need to be dealt with, they would go forward. There is, however, a great deal to do to make the system work effectively. He thanked everyone for their participation, noting that the ENTWINED project would continue to dig deeper and refine this work, making all of the results freely available.



The session focused on the contribution of non-state actors (NSAs), such as businesses, industry groups, NGOs and civil society, in WTO dispute settlement. Drawing on the expertise of government, the private sector, civil society and legal counsel representatives with extensive experience in WTO litigation, the panel discussed the critical role of NSAs at different stages of the dispute settlement process, including in the identification of the relevant trade barriers, the information gathering leading to the initiation of a formal dispute, the legal proceedings and the implementation of a WTO ruling. The session addressed questions such as:

- What is the input of NSAs in WTO dispute settlement and how does it contribute to shape trade litigation strategies?
- Do private actors view the WTO dispute settlement system as an effective tool to defend their interests?
- What are the challenges and limitations of public–private cooperation in the context of WTO disputes, both from the point of view of members and NSAs?

The presentations offered a cross-section of perspectives on the nature and extent of public–private collaboration in WTO dispute settlement and provided useful insights on the importance of such collaboration for global trade governance.

## The role of non-state actors in WTO dispute settlement: fostering effective public–private collaboration in support of global trade governance

### Moderator

Ms Valerie Hughes, Director, Legal Affairs  
Division (LAD), WTO

### Speakers

H.E. Mr Dacio Castillo, Ambassador to the  
WTO, Permanent Mission of Honduras to  
the WTO

Ms Cherise M. Valles, Deputy Director,  
Advisory Centre on WTO Law (ACWL)

Mr Fabian Delcros, Director, European  
Government Relations and Policy, General  
Electric Company (GE)

Mr Iain MacVay, Partner, Bird & Bird

Professor Jaemin Lee, School of Law,  
Hanyang University, Republic of Korea

### Organized by

LAD

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International Centre for Trade and  
Sustainable Development (ICTSD)

### Report written by

Ms Marie-Isabelle Pellan, Counsellor, LAD,  
WTO

## Presentations by the panellists

### *H.E. Mr Dacio Castillo, Ambassador to the WTO, Permanent Mission of Honduras to the WTO*

Ambassador Castillo, speaking in his personal capacity, emphasized the importance of the WTO rule-based multilateral trading system and dispute settlement mechanism for developing country members. He addressed how the contribution of private actors influenced members' decision-making in dispute settlement. He also discussed the challenge of coordinating the efforts of multiple actors, particularly in cases involving several complainants. Members engaging in dispute settlement had to identify their key objectives and priorities and to balance carefully the interests of different sectors of their economy, taking into account factors such as production, marketing and distribution. In this context, it was essential to consult with civil society at home to explain the social and economic implications of the dispute and the adverse effect of not defending the country's trade interests. An open dialogue had to be maintained with civil society throughout the proceedings. He noted that NGOs could provide strategic advice on the background to the dispute and the position of different players at the domestic level, as well as technical assistance and statistical data. However, in certain circumstances NGOs could also obstruct dispute settlement efforts. He stressed that a complaining party to a dispute had to monitor media coverage and engage in lobbying efforts both at home and in the respondent's country to ensure that its position was appropriately reflected, and that the voice of the smaller players in the WTO dispute settlement system was also being heard.

### *Ms Cherise M. Valles, Deputy Director, ACWL*

Ms Valles said that as an intergovernmental organization, the ACWL fell within the broad definition of an NSA. However, the ACWL plays a different role from that of other NSAs, such as NGOs, as it does not seek to influence the policy decisions of the member governments entitled to its services. In dispute settlement, the ACWL acts on behalf of a government and carries out its instructions. It is the complainant government, with the assistance of the affected industry, which identifies the relevant trade barrier in the pre-litigation phase and then comes to the ACWL for an assessment of the WTO-consistency of the measure. In the post-litigation phase, the ACWL advises governments on the WTO-consistency of measures that policy-makers decide upon to implement DSB recommendations. During the litigation phase, the ACWL works closely with both government and the affected industry in assembling the evidence necessary to support the legal arguments. This coordination work is similar to that carried out by private law firms assisting governments in WTO dispute settlement proceedings. Ms Valles noted that it was difficult for governments to absorb the costs of obtaining the complex evidence frequently submitted in WTO dispute settlement proceedings and in this context, the participation of the industry became extremely important.

### *Mr Fabian Delcros, Director, European Government Relations and Policy, GE*

Mr Delcros noted that while GE had not been a proactive user of the WTO dispute settlement system, it nevertheless had a strategic interest in preserving the integrity and credibility of the system. The WTO dispute settlement mechanism increases predictability and improves the rule of law in foreign markets where GE operates. He added that WTO membership reduced the "risk premium" of investing in a foreign country, as it provided assurance that all WTO commitments would be legally enforceable. In the current context of the Doha Round of trade negotiations, the WTO could also play a key role as a repository of sectoral agreements in areas such as services, trade facilitation and clean technologies, to the extent that the commitments undertaken pursuant to such agreements could also be subject to dispute settlement provisions. His presentation highlighted the fact that it was difficult for corporations to adopt what could be seen as an offensive stance against a foreign government. Businesses are often local players in the foreign markets where they encounter WTO-incompatible measures. Therefore, acting as the driving force behind a dispute could expose the business to potential retaliation or undermine its position vis-à-vis the foreign government. In the complex reality of global value chains, working through trade coalitions and industry associations could be a way for businesses to protect their individual and long-term commercial interests. He noted that governments were sensitive to the concern of private actors of being singled out in the case of retaliation, which explained in part why more cases were brought to the WTO on an *ex officio* basis.



*Mr Iain MacVay, Partner, Bird & Bird*

Mr MacVay noted that the WTO remained the cornerstone of the rule of law in international trade. While traders are the effective subject of international trade rules, the WTO system provides limited scope for direct intervention by traders. His presentation emphasized the critical contribution of the industry in producing the economic data and evidence that provided the basis for a WTO case. This information gathering could be a massive undertaking for the traders or industry group concerned. Throughout this process, the industry is generally engaged in a dialogue with all government actors involved. Many trade disputes are resolved at that stage and never reach the WTO. Once the decision has been taken to introduce a case at the WTO, the dynamics often shift as the government assumes control over the process. Despite the considerable amount of time and effort already invested, private actors have no control over the proceedings, they are not entitled to any form of retroactive compensation for the damages incurred and are often not consulted on implementation aspects. Mr MacVay pointed out that the issue of compliance should be discussed at the outset with all the actors involved. He added that the role of the industry could be further enhanced, including in the consultation phase. Private actors could assist governments in finding amicable ways of resolving disputes within the WTO rules. Collaboration with the industry could also be enhanced in the work of WTO bodies such as the TBT Committee, where WTO members review and discuss the impact of behind-the-border measures. Finally, he noted that dispute settlement panels could also make greater use of their discretion to seek information from non-governmental sources.

*Professor Jaemin Lee, School of Law, Hanyang University, Republic of Korea*

Professor Lee noted that the WTO dispute settlement system was arguably the most successful state-to-state dispute settlement mechanism in existence today and was regarded as one of the signature achievements of the WTO. Disputes in the WTO are initiated by governments at the request of private actors. Yet, private actors are often unclear about how the WTO system functions or what they could gain from WTO litigation. While both government and NSAs share a common goal, namely to prevail in the dispute, their respective interests do not always converge. On the one hand, the government's fundamental objective was to preserve "systemic" interests as a party to the WTO agreements. On the other hand, business actors were generally seeking to obtain an immediate and retroactive relief for the damage incurred. However, the WTO dispute settlement system only permits a prospective remedy in the form of the withdrawal of the measure at stake and the suspension of concessions by the prevailing member. Professor Lee noted that this encouraged companies to seek solutions outside the DSU framework, including through investment dispute procedures, which could offer monetary compensation. WTO members could reach out more to private actors in an effort to raise awareness about the unique aspects and fundamental objectives of the WTO dispute settlement mechanism. He added that members could also explore ways of addressing the corporations' desire for an effective remedy within the current framework of the WTO dispute settlement system.

**Questions and comments**

Commenting on the session's presentations, the ICTSD welcomed the fact that civil society's engagement in WTO dispute settlement seemed increasingly to be considered as a two-way road. Indeed, the contribution of civil society was no longer viewed strictly through the lens of *amicus curiae* briefs but also extended to providing essential information and evidence, including in key areas of the WTO, such as agricultural subsidies. The representative from the ICTSD asked the panellists about their perception of the role of the media and the strategies used to manage the press and public opinion in the course of dispute settlement proceedings. Other questions and comments were addressed to the panel including on practices to improve transparency and access to the dispute settlement process.

In response to the question by the ICTSD, one of the panellists noted that the media was an effective tool to reach out to civil society and to disseminate information on a dispute. It was suggested that proactively feeding information to the media could prevent misrepresentation of the member's position or arguments in a dispute. Another panellist pointed out that the media acted as a filter for the numerous voices of civil society that were expressing themselves through multiple channels. With regard to transparency, it was noted that the decision by certain members to make their written submissions publicly available had had a

positive impact on the public perception of the dispute and the general understanding of the legal issues under consideration, particularly in cases involving public policy considerations. Similarly, the practice of opening hearings to public viewing had had a positive effect on how civil society and NGOs viewed the WTO. While increased transparency was generally considered as a positive development from a systemic viewpoint, one panellist argued that it could also add a layer of complexity to members' interaction with private actors in the dispute settlement process.

## Conclusions

The session emphasized the significant role of NSAs in providing evidentiary, legal and financial support to WTO members in trade disputes. The contribution of NSAs benefits in particular developing-country members facing considerable resource limitations in their use of the WTO legal regime. At the same time, members' cooperation with NSAs in the litigation process could give rise to tensions and coordination challenges, especially where NSAs' specific interests differed from the more systemic interests of the member party to a dispute. Panellists generally shared the view that NSA participation could be further enhanced through increased transparency and access to the WTO dispute settlement system. In this regard, it was suggested that dispute settlement panels could make greater use of their discretion to seek information and advice from outside sources, in particular from private parties. Public-private collaboration could also be enhanced outside of the litigation context, including through the work of WTO bodies, such as the TBT Committee.





The session discussed how civil society can play a monitoring role in the implementation of trade agreements illustrating the debate by examining, in particular, the monitoring mechanism under the Chapter on Trade and Sustainable Development of the EU–Korea FTA. The panel agreed that a similar mechanism should be set up in other EU FTAs, as well as be streamlined as a model to follow by other states in their bilateral trade relations. The model should also be considered at the multilateral level. A structured involvement of civil society is essential to overcome the general opposition of civil society to trade liberalization. However, it was recognized that, with the European Union having set the bar very high, it would be difficult to replicate this model in other contexts.

## Civil society in action – monitoring sustainable development and wider FTA implementation: lessons to be drawn from the EU experience

### Moderator

Mr Jonathan Peel, President, Permanent Study Group on WTO and Other International Trade Agreements, EESC

### Speakers

Ms Monika Hencsey, Head of Unit, Trade and Sustainable Development, Generalized System of Preferences, Directorate General for Trade, European Commission

Dr Marion Jansen, Head, Trade and Employment Programme, International Labour Office, International Labour Organization (ILO); Faculty Member, World Trade Institute (WTI)

Mr Ricardo Meléndez-Ortiz, Chief Executive, ICTSD

Mr Staffan Nilsson, President, EESC

Ms Evelyne Pichenot, EESC Rapporteur on Sustainable Impact Assessments (SIA) and EU Trade Policy

Hon. Mr Niccolò Rinaldi, Member of the European Parliament, Rapporteur for the Safeguard Clause Regulation for the EU–India Free Trade Agreement (FTA)

### Organized by

EESC

### Report written by

Ms Chiara Miglioli, Administrator, EESC

## Presentations by the panellists

### *Mr Jonathan Peel, President, Permanent Study Group on WTO and Other International Trade Agreements, EESC*

Mr Peel moderated the discussion and set the tone of the session by explaining that the EESC's experience in being involved in civil society monitoring mechanisms for trade and sustainable development in the framework of EU FTAs could be a useful example of how civil society might be involved in trade matters more generally. This example could also give food for thought when thinking how to involve civil society in topics other than sustainable development and at the multilateral level.

### *Mr Staffan Nilsson, President, EESC*

Mr Nilsson explained that the EESC was very active in trade matters, a policy that is gaining more and more relevance in the current public debate in EU member states. More specifically, the EESC has a particular interest in following the environmental, social, labour and sustainable development implications of trade, and it is strongly in favour of a significant involvement of civil society in trade matters. He confirmed that the EESC could share a very valuable experience of involving civil society in trade affairs, since the EESC – and more broadly, representatives of EU civil society – was participating in monitoring mechanisms set up in FTAs to monitor the implementation of commitments in the area of sustainable development. He stressed the uniqueness of this experience, which is an example of institutionalized involvement of civil society. Mr Nilsson, however, made it clear that the EESC's experience was still a process in evolution. While civil society involvement in monitoring mechanisms is provided in several bilateral agreements that the European Union has signed with its trade partners, the one established in the framework of the EU–Korea FTA is the only operational one.

### *Ms Monika Hencsey, Head of Unit, Trade and Sustainable Development, Generalized System of Preferences, Directorate General for Trade, European Commission*

Ms Hencsey explained that all new-generation EU FTAs have in principle a sustainable development chapter that includes provisions on labour and the environment. The FTA with the Republic of Korea was one of the first agreements in this respect. The chapter is very much based on internationally agreed principles, and the approach is to build on these shared values while taking into account the different levels of development of trade partners. There are therefore provisions on the implementations of ILO conventions, the sustainable management of natural resources and also a provision on the right to regulate. As regards to dialogue and transparency, civil society is involved domestically in the European Commission's impact assessment, as well as in SIA. In the case of SIA, civil society is involved by the consultant responsible for carrying out the study in the partner country. Civil society also has the role of implementation and monitoring, which means providing advice and help to assess how provisions are implemented on the ground. Ms Hencsey concluded that as far as monitoring mechanisms were concerned, the principles would be the same in all FTA negotiations – the involvement of civil society, even though the final outcome may vary, as they reflected trade partners' preferences.

### *Ms Evelyne Pichenot, EESC Rapporteur on SIA and EU Trade Policy*

Ms Pichenot explained that the importance of the EESC was about ensuring the true functioning and effectiveness of the monitoring mechanism. Moreover, the EESC provides a logistical support to the activities of the Domestic Advisory Group and the Civil Society Forum. The EESC also ensures the longevity of these mechanisms, since it is an EU institution well anchored in the Treaties and is therefore a very stable partner of the European Commission and the European Parliament. Ms Pichenot further explained that the key objective of these monitoring mechanisms, besides ensuring implementation, was to strengthen civil society in EU partner countries as well as to consolidate the support of public opinion of trade liberalization. In this respect, it would be fundamental to stir aid for trade also towards the training of civil society in developing countries for them to be able to play their role in monitoring mechanisms. Finally, Ms Pichenot suggested that SIAs should become a reference for all monitoring activities. With regards to the possibility of spreading EU monitoring practices, Ms Pichenot added that for this to happen, third countries should share the perspective of ex-post evaluation of public policies, improve the quality of analysis before agreements are negotiated and have the capacity to correct insufficient or negative effects.



*Hon. Mr Niccolò Rinaldi, Member of the European Parliament, Rapporteur for the Safeguard Clause Regulation for the EU–India FTA*

Hon. Mr Rinaldi warned that the main problem in trade policy is the lack of communication between the world of business community and the world of civil society, which was also generally worried about the effects of trade agreements implementation. He reminded that there was also an important human rights dimension in trade and that the relation with civil society was crucial to make sure that the legal obligation to respect human rights is actually made compulsory on the ground. Hon. Mr Rinaldi stressed the need to give FTAs a justification, as acceptance was there only if they brought prosperity and jobs, and this had to be the real benchmark. Against this background, civil society is important both in the phase of negotiations and during implementation. However, he reiterated the important constraints: first of all, civil society's starting point is always suspicion towards trade – hence the need to overcome mistrust. On the other hand, trade liberalization is a relatively new phenomenon, especially the bilateral approach. Trade is very technical, and not necessarily all civil society organizations are able to cope with technicalities. There is the need to engage and support them for a good understanding of trade provisions. In general, civil society is a good ally to try and have sustainable development chapters and, for instance in the case of India, there is really a need to mobilize civil society to this purpose. He concluded that the European Parliament could certainly ensure coalition building with local partners to try and convince decision-makers about the inclusion of sustainable development chapters.

*Dr Marion Jansen, Head, Trade and Employment Programme, ILO; Faculty Member, WTI*

Dr Jansen confirmed that in all countries, there was suspicion of trade agreements even leading to government instability, proving that if civil society was not involved from the beginning, a trade agreement may not be fulfilled in the end. She reported on the ILO capacity-building activities with civil society and also on the work on building a mutual understanding on trade and labour matters. However, there remains a general absence of trust between trade unions and governmental authorities, and in some countries, this could be an obstacle to try and involve civil society in monitoring mechanisms. As regards to the design of trade agreements in the EU sustainable development chapters, she announced that the ILO had been conducting a study on RTAs to assess to which extent labour provisions had actually had an impact on the ground. The relevant provisions in EU FTAs provide that all partners should implement fundamental principles and rights at work according to ILO standards. US agreements sometimes even contemplate dispute settlement, but where it existed, it was never used because behaviours under scrutiny had already changed beforehand. More generally, it appears that the situation on the ground in the majority of cases has not changed in spite of labour provisions. Therefore, the role of civil society in monitoring could be very useful. The study also shows that whenever there was a threat that national parliaments would not ratify without the sustainable development chapter, the outcome of negotiations changed. Certainly, technical assistance and capacity-building to strengthen the capability of some countries to implement the agreement – for example conducting labour inspections – would certainly help make the case for a sustainable development chapter. Dr Jansen stressed that although there were cases where a stand-alone trade and sustainable development chapter was not an option, provisions on the implementation of the current domestic law without lowering the protection in national legislation upon signature of the agreement were key.

*Mr Ricardo Meléndez-Ortiz, Chief Executive, ICTSD*

Mr Meléndez-Ortiz explained that the question of the involvement of civil society was very much related to the question of achieving the whole objective of sustainable development. Certainly, the biggest innovation comes from the European Union, but it has also to be kept in mind that there is nothing similar in the world to the EESC. The EU–Korea FTA arrangement is certainly a best practice. However, the bar has been set very high. At the multilateral level, there has been progress in involving civil society – yet, there is no systematic engagement of civil society. He concluded that it would be interesting to see what the implementation of the monitoring mechanisms in the framework of an EU–Peru/Colombia FTA or an EU–Central America Association Agreement would lead to in the end.

## Questions and comments

Questions from the audience pointed to the fact that lowering tariffs in India and African, Caribbean and Pacific States for agricultural products risked creating bad social consequences. Hon. Mr Rinaldi replied that social consequences were being kept very well in mind and that a social clause, like the one in the EU–CARIFORUM Economic Partnership Agreement, should be negotiated. Another question enquired how civil society could be kept duly informed of ongoing negotiations while keeping limited access to sensitive information. Ms Hencsey ensured that a good balance between transparency and sensitivity is reached in regular civil society dialogues led by the Directorate General for Trade of the European Commission.

## Conclusions

The panellist agreed that civil society monitoring mechanism should generally be included in trade agreements – also as a way to compensate for the lack of sanctioning or legal dispute settlement mechanisms that cover labour and environmental commitments. Moreover, the active involvement of civil society in this sense is important to overcome their general mistrust in trade liberalization. However, the parties agreed with the fact that the EU model of civil society involvement, though certainly being a best practice, had set the bar very high. Hence, the difficulty of having the same model set up with all trade partners as well as at the multilateral level.



# Ideas Workshop

# ideas workshop





## Ideas Workshop 1

How can we ensure that green economy policies work together rather than at cross-purposes?: A closer look at policies to support renewable energy

This Ideas Workshop was an effort to collect and share the latest thinking, experiences and recommendations on the critical issue of how to ensure that green economy policies are environmentally effective, economically efficient and coherent with trade and other policies. Environmental effectiveness is a key consideration when evaluating the extent to which a specific policy can be qualified as “protectionist” from the perspective of international trade. Therefore, assessing the effectiveness of green economy policies lies at the heart of the debate on the risks of green protectionism.

### Keynote address

Dr Carolyn Fischer, Senior Fellow,  
Resources for the Future

### Discussant

Mr Ronald Steenblik, Senior Trade Policy  
Analyst, Trade and Agriculture Directorate,  
Organisation for Economic Co-operation  
and Development (OECD)

### Report written by

Mr Karsten Steinfatt, Counsellor, Trade and  
Environment Division, WTO



The workshop kicked off with a lecture by Dr Carolyn Fischer, who shared the main findings of her research on the interaction between support policies for green energy. Mr Ronald Steenblik was the discussant. Around 25 participants from academia, research institutes, non-governmental organization (NGOs) and government attended the session. The relatively small audience and the structure of the session, which was centred on the lecture by Dr Fischer, contributed to focused and substantive discussions. The following were among the key issues raised.

Governments around the world are enthusiastically supporting a plethora of incentive measures for renewable energy. Examples of incentives include portfolio standards such as required production shares for renewable energy; production subsidies and tax relief for wind, solar, geothermal and biomass generation; research and development (R&D) subsidies; and energy efficiency programmes. The purported objectives of these measures are to enhance energy security, spur job creation and innovation, achieve a competitive advantage in technologically advanced markets, and tackle climate change.

Understanding the implications of multiple, overlapping policies is essential for the design of environmentally effective and economically efficient policies. Economists generally advocate pricing emissions through a carbon tax or cap-and-trade scheme as the most efficient way to attain greenhouse gas reductions. If cap-and-trade is in place, supplementary policies such as renewable energy subsidies will result in zero incremental emission reductions.

Renewable energy policies may be valid instruments to tackle specific market failures. Possible justifications for renewable energy support include the public-good characteristics of inventions and innovations, which result in investment in renewable energy that is less than socially optimal, or the spillover effects of learning-by-doing. In an optimal scenario, emissions would be priced according to the marginal damages, R&D would be subsidized according to the spillover rate, and renewable energy production would get a modest subsidy to compensate for spillovers from learning-by-doing. Actual support policies for renewable energy seem to reflect political, rather than efficiency, considerations.

Support policies for renewable energy may affect international trade. The most damaging would seem to be packages of support measures that include more or less explicit barriers to trade, including tariffs and domestic content requirements. More research is needed to determine the effects of these local content requirements on innovation, competition, and trade. Other avenues for trade-related research include an analysis of the long-run impacts of renewable energy support measures, a comparison of the trade effects of support policies for different competing technologies, and the effects of renewable energy support schemes on electricity trade.

## Conclusion

Nowhere is the vital task of ensuring policy coherence in the context of green economy strategies more evident than in the area of renewable energy sources. Policy-makers at all levels of government and around the world have introduced a wide range of incentive schemes and other policies related to renewable energy, reflecting efforts to tackle climate change, enhance energy security, spur job creation, improve air quality and achieve a competitive advantage in technologically advanced markets. This has led to concerns about the interactions and possible overlap between multiple renewable energy policies and the effects of such policies on international trade.

Successful green economy strategies are rooted in government policies that shift consumer behaviour away from unsustainable patterns, leverage private investment for green infrastructure, and spur green technology innovation and diffusion. Not only must these policies reinforce each other, but they must also be consistent with policy objectives in other areas, including trade openness. This presents a considerable challenge, not least due to the interaction and possible overlap between a rapidly growing number of green economy policy initiatives at the international, regional, national and sub-national levels.



## Ideas Workshop 2

### The future of the WTO dispute settlement system

This Ideas Workshop focused on the future of the WTO dispute settlement system (DSS) in the light of the current state of multilateral trade negotiations. The aim of the workshop was to foster discussion of five key issues and to elicit suggestions on a way forward in WTO dispute settlement. The participants were divided into five study groups, each guided by an expert in the field.

The workshop began with a keynote address by Mr James Bacchus. He initiated the discussion with provocative questions and comments regarding the subjects to be considered by each of the study groups. After breaking out into the study groups, participants engaged in robust discussions regarding their specific areas of study. Facilitators shared the results of their respective study groups' discussions with all the other participants in a round-table format, at the end of the workshop.

#### Keynote address

Mr James Bacchus, Member, International Chamber of Commerce (ICC) Commission on Trade and Investment Policy; Chair, Global Practice Group, Greenburg Traurig; former Chairman, WTO Appellate Body

#### Study groups and facilitators

##### *Group I*

Minding the gap in trade negotiations: The effect on the WTO dispute settlement system

##### *Group II*

Enhancing the efficiency of the WTO panel and Appellate Body review process

##### *Group III*

Developing countries' participation and the role of special and differential treatment in the WTO dispute settlement system

##### *Group IV*

Improving compliance

##### *Group V*

The adjudicative process in the WTO: Contributions from outside the WTO

#### Report written by

Ms María J. Pereyra, Counsellor, Legal Affairs Division (LAD), WTO

Ms Chibole Wakoli, Legal Affairs Officer, LAD, WTO



## Keynote address by Mr James Bacchus

Mr Bacchus commenced by stating that “the biggest threat to the WTO dispute settlement system is the fact that the trade negotiations are not working”. He then addressed each of the five study group topics with a view to provoking discussion.

Concerning the first study group, dealing with the effect of the negotiations stalemate in the Doha Round, Mr Bacchus posited that lawyers should be present during the negotiation of WTO Agreements to ensure precision in the language of the agreements. Lawyers could guard against producing ambiguous texts that leave the job of discerning a single meaning to panels and the Appellate Body.

With regard to the second study group, Mr Bacchus recognized that panels and the Appellate Body currently face resource and time constraints. He suggested implementation of measures such as: (i) providing a page limit for submissions; (ii) eliminating the interim review stage of panel proceedings; and (iii) increasing the staff of the Appellate Body Secretariat, the Legal Affairs Division and the Rules Division.

In referring to special and differential treatment (S&D), a matter dealt with by the third study group, Mr Bacchus affirmed, “if it is not in the text, it does not exist”.

In relation to the fourth study group, dealing with compliance, Mr Bacchus stressed that big players should set an example of complying with WTO rulings.

Finally, as regards the fifth study group, on non-state actors, Mr Bacchus was of the view that the submission of *amicus curiae* briefs is a way for the outside world to have a say in the WTO process.

Following his introductory remarks, Mr Bacchus answered questions from the participants. A few of the questions and Mr Bacchus’ responses are paraphrased below.

One participant agreed with Mr Bacchus’ comments that lawyers should have more input in the negotiation of the covered agreements so as to avoid unnecessarily ambiguous language. However, she was concerned that there was no guarantee that the intention of the negotiators would be taken into consideration when panels and the Appellate Body interpret the agreements. Mr Bacchus was of the view that the Vienna Convention rules applied to WTO adjudicators and these rules include an examination of the “negotiating history” of the covered agreements.

A second participant opined that a possible difficulty in the application of the S&D provisions of the Dispute Settlement Understanding (DSU) may be the absence of a definition of “developing countries”. He sought Mr Bacchus’ view on this. Agreeing with this participant, Mr Bacchus reiterated that if it is not provided for in the text, it does not exist. And without such legal definition, no member wanted to be bound to provide S&D treatment to any self-designated “developing country”.

A third participant asked Mr Bacchus for his ideas about what measures should be put into place to “induce” members to comply with Dispute Settlement Body (DSB) recommendations and rulings. In his response, Mr Bacchus noted that the primary function of DSB recommendations and rulings is to positively resolve disputes. Retaliation, while provided for in the text, must be understood in this context. Thus, retaliation is aimed at encouraging, rather than “inducing” compliance.

A fourth participant noted that the statistics indicate that most members comply with DSB recommendations and rulings. However, he questioned whether the said “compliance” was only to the letter of the law and was not “substantive compliance”. He wondered, in other words, about compliance that only brought the member’s measures into conformity but did not resolve the key issues underlying the trade dispute. Mr Bacchus observed that “every dispute at the WTO is two disputes”. However, in paraphrasing a statement by former Appellate Body Member, Mr Julio Lacarte, Mr Bacchus noted that panels and more particularly the Appellate Body only answer the questions asked by the parties. Their mandate is limited to this. This also means that the Appellate Body’s response or “solution” in a report

should be read as the solution to the question that was raised in a particular case, and not a solution to all the underlying issues relating to that case.

## Conclusion

Following in-depth discussion of the five key issues in respective study groups, the participants reconvened into a round-table format for the conclusion of the workshop. The facilitators concluded the workshop by sharing the results of their respective study groups' discussions along the lines of the summaries set out. A full list of the findings of the groups at the Public Forum 2012 can be found on the WTO website.

The results of the discussions may be summarized as follows. Group I identified two types of gaps: (i) the "gaps" in the covered agreements; and (ii) a growing gap between the legislative aspect of the WTO Agreements and the practical developments in dispute settlement. The group was of the view that the drafting technique of constructive ambiguity is no longer acceptable because it leaves the door open for "gap filling" by the Appellate Body, which may not align with the negotiators' intent. The group also considered that, over the long term, there will be increasing concerns regarding the legitimacy of WTO law emanating exclusively from the work of WTO adjudicative bodies rather than from members through negotiation.

Group II divided its discussion into two phases: (i) the panel process; and (ii) the appellate review process. Concerning the panel process, the group proposed finding efficiencies through double briefing and written questions posed before the first meeting, as well as the elimination or avoidance of Article 6.2 DSU arguments. As regards efficiency in Appellate Body proceedings, the group proposed tightening the criteria for Article 11 appeals, which could eliminate or reduce focus on factual matters at the appellate level, and suggested that burdensome time constraints be eliminated so as to allow more time for drafting reports.

Group III identified four areas of focus with respect to developing-country participation in WTO dispute settlement: (i) access to the system including domestic legal capacity; (ii) time-frames; (iii) existing provisions of the DSU on S&D treatment; and (iv) the way disputes are dealt with in different regions. The group identified a number of issues associated with access to the DSS and acknowledged that the DSU was functioning well, but proposed that the members refine the language of the DSU to make the S&D provisions more precise and operative

Group IV observed that the use of counter-measures is very low in the WTO (4 per cent) because retaliation is not an effective means of inducing compliance. The group noted that retaliation in the same sector is often impracticable and suggested that the DSU preference for same sector retaliation be eliminated. The group also proposed a mental shift in the approach to compliance: members should shift from thinking about "how to make non-compliance more difficult" to determining "how to make compliance with the rulings easier for members". The group also encouraged the use of Alternative Dispute Resolution in finding solutions in problematic compliance situations.

Group V considered that non-state participation in disputes is underscored by three concepts: (i) legitimacy; (ii) permeability; and (iii) discursiveness. The group acknowledged that participation by non-state actors in dispute settlement could add to legitimacy in that non-commercial interests would be brought to light, but noted that resource asymmetries among private actors affect participation. The group concluded that private actors should not have standing in their own right.

This Ideas Workshop was declared a success by the participants and facilitators. The workshop attracted a diverse group of participants including delegates from developing and developed countries (Geneva-based and capital), academics, NGOs, industry and private practitioners. Given the format (small study group discussion), a maximum of 40 people were permitted to register. It was not possible to accommodate everyone interested in attending the session and hence priority was given to developing-country delegates.



## Ideas Workshop 3

### “Trade-related aspects of intellectual property” in today’s global economy

The Ideas Workshop on trade-related aspects of intellectual property (IP) in today’s global economy sought to understand the interplay between the IP system and international trade, a generation after Uruguay Round negotiations were launched on the trade-related aspects of intellectual property rights (TRIPS). It discussed the radically different character of IP rights in the contemporary economy, tracking the evolution of IP and trade, with IP first seen by trade policy-makers as a “behind the border” regulatory issue, to a matter dealt with through trade rules in the form of the WTO TRIPS Agreement, to the recent emergence – thanks especially to technological change – of trade in IP as such, as valuable content was exchanged increasingly without the need for physical media (discs, tapes and printed paper) which had in the past been counted as a component of “trade in goods” but was now disseminated more and more as digital content. Just as the very character of what is considered to be “trade” has changed dramatically, against a backdrop of globalized value chains and entirely new markets in “content”, so has the way in which IP is regulated, managed and distributed.

#### Keynote address

Professor Kamal Saggi, Professor of Economics; Director, Graduate Program in Economic Development, Vanderbilt University

#### Report written by

Mr Antony Taubman, Director, Intellectual Property Division, WTO



## Conclusion

Understanding the role and significance of IP in international trade posed challenging questions for analysts and theoreticians. The workshop explored the limitations of current statistical methods for measuring the scale and the nature of trade in IP licences, especially at the consumer level (licences purchased on line for software, music, e-books and the like), which are becoming major forms of marketing and accessing these materials, displacing to some extent the traditional (and more easily monitored) international flows of content embedded in physical media. The workshop explored possibility for industry-wide programmes to improve the reach and accuracy of statistics in this area. More work was needed to improve statistics and to look at the interplay between trade agreements and the use of IP – the link between regional production systems and regional trade agreements being an interesting case study to explore. Despite the consistent call for more evidence-based policy-making relating to IP and trade, there were still real constraints on reliable and useful data. And new licensing models were not always as effective and remunerative as expected, partly attributable to transaction costs and fragmentation of licences in some sectors. A key issue was how to analyse and to measure the scale and impact of different approaches to licensing IP, by contrast with the grant or recognition of IP rights as such. Discussions cautioned against aggregating all the diverse forms of IP, rather than recognizing their diverse characteristics, and noted the diverse experiences of different industry sectors, which often displayed more telling differences than points of commonality. The workshop helped open up new lines of enquiry and research for developing an account of IP and trade today that is at once better informed by economic theory, more representative of practical experience in the licensing and trade in IP rights, and more susceptible to effective measurement and analysis.



# Book Launches



## The Trans-Pacific Partnership: A Quest for a 21st-century Trade Agreement

### Moderator

Dr Deborah Elms, Head, Temasek Foundation Centre for Trade & Negotiations (TFCTN); Senior Fellow, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Singapore

### Speakers

Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official

Mr Sebastian Herreros, International Trade and Integration Division, Economic Commission for Latin America and the Caribbean (ECLAC)

Mr Aik Hoe Lim, Counsellor, Trade in Services Division (TSD), WTO

Mr Patrick Low, Director, Economic Research and Statistics Division (ERSD), WTO

### Organized by

TFCTN

RSIS, NTU, Singapore

### Report written by

Dr Deborah Elms, Head, TFCTN; Senior Fellow, RSIS, NTU

Available at  
[www.cambridge.org/gb/knowledge/isbn/item7125535](http://www.cambridge.org/gb/knowledge/isbn/item7125535)

The Trans-Pacific Partnership (TPP) Agreement, which is now being negotiated between 11 states – including Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam – is supposed to solve many of the problems that have come from overlapping trade deals in the past decade. It is also supposed to be different – “a high-quality, 21st-century” agreement that will set standards for future trade agreements.

This means that it goes beyond simply addressing trade in goods and services, and also includes investment and competition policy, aims to create new rules for intellectual property rights and standards, as well as bring whole new areas into a binding dispute settlement system, like environmental protection or labour rights. Such provisions are controversial even among the member states. These new elements may also bring the TPP into conflict with existing trade arrangements in many parts of the world.

This seminar examined different aspects of the TPP negotiations, with particular focus on market access for goods and services. It also looked at how the TPP fits with regional trade efforts underway in Latin America and in the broader multilateral trading system.





## Presentations by the panellists

### *Dr Deborah Elms, Head, TFCTN; Senior Fellow, RSIS, NTU*

Dr Elms gave a brief overview of the TPP negotiations, referring to them as a high-quality agreement. The aim of the book was to study the TPP and to identify the main differences which set it apart from other agreements. A particular feature is an accession clause, and the agreement has already expanded from four to 11 members. There have been 14 rounds of negotiations so far. The book takes November 2011 as a benchmark and describes the situation in the negotiations.

The authors argue that a high-quality agreement has to have three characteristics:

- Substantial scope, with features that are not covered in other agreements.
- Substantial depth, which means limited or no sensitivities; complete market access, including issues such as services, intellectual property, labour and the environment
- Shared set of norms and commitments that the states involved agree upon.

Dr Elms underlined the difficulties for the negotiators to come to an agreement, since most of them have a “noodle bowl” of preferential trade agreements (PTAs) between themselves. Therefore, the US proposal was not to start cutting the most-favoured-nation (MFN) tariffs, but to use preferential tariffs as an offer, and those who did not have a free trade agreement (FTA) with the United States would negotiate bilaterally. The result was a parallel track of negotiations: bilateral with the United States and plurilateral with everyone else.

In concluding, Dr Elms recounted the sticking points in negotiations over market access for goods: which included dairy, sugar, textiles, footwear and rules of origin. While the agreement overall might be twenty-first century and high quality, the goods provisions are shaping up to be distinctly twentieth century in many ways.

### *Mr Stuart Harbinson, Former Permanent Representative of the Hong Kong Special Administrative Region of China to the WTO; former Senior WTO Official*

The services issue arises from frustration of the lack of Doha progress. Some commentators have argued that this is a consequence of the negotiating framework of the General Agreement on Trade in Services (GATS), its positive list approach and four modes of supply. There is an attempt in the TPP to create a new paradigm in the future for services negotiations. However, Mr Harbinson underlined that the book’s authors did not agree with these commentators. Despite the GATS complexity, progress is possible, provided that the political will is there and the right inputs are made into the negotiations through the involvement of regulators. The TPP is seen to break out the so-called services paradox, where the great interest in services issues does not coincide with the political decisions for the negotiating framework, providing a new template and addressing the challenges that have not yet been dealt in the negotiations.

### *Mr Aik Hoe Lim, Counsellor, TSD, WTO*

The structure of TPP is somewhat similar to the US-model FTAs, explained Mr Hoe Lim. There is a chapter on cross-border trade in services, and investment as well as specific sectors such as finance and telecommunications included some new areas related to regulatory coherence for goods and services. He also urged that negotiations should go beyond the commitments in existent PTAs, otherwise liberalization would not take place, and carve outs should be reduced to a minimum. It was important to keep the package balanced, he stressed, since it was about a wider deal, with key issues such as mode 4 of supply as well as some categories for mode 1. The outcome is that a high level agreement should have a substantial sectorial approach without exclusion of any sectors. He emphasized the need to move the regulatory challenge forward to make business easier.

*Mr Sebastian Herreros, International Trade and Integration Division, ECLAC*

Mr Herreros focused on the opportunities and risks the TPP presents to participating Latin American states. He noted that for all three (Chile, Mexico and Peru), the TPP did not represent significant market access gains, due either to those countries' many existing trade agreements with other TPP partners (Chile and Peru) or to their export patterns (Mexico). Future Latin American TPP participants, such as Colombia or Costa Rica, may also find minimal market access benefits. There may be important gains for Latin American states in other areas such as cumulation of origin and simplification of trade disciplines. The main risks appear in intellectual property, followed by management of capital flows, labour and the environment. Overall, the risks look clearer and greater than the opportunities at this point.

*Mr Patrick Low, Director, ERSD, WTO*

Mr Low, the WTO Chief Economist, turned the conversation around and discussed how regional efforts like the TPP have the potential to alter relations at the global level.

With over 400 PTAs in existence, Mr Low revealed that each WTO member belonged to an average of 13 – which is hardly optimal. The question is what role the WTO could play in greater coherence. So far, efforts to discipline PTAs have not been effective, due to a fundamental reluctance of the membership to talk about it. He suggested looking at the possibility of taking what is out there and making ways of “multilateralizing” it. He also spoke of different elements of the WTO rulebook that remain underspecified or incomplete and suggested areas where the TPP might contribute to multilateral ideas going forward.

For a start, Mr Low proposed finding some low-hanging fruit in certain regulatory areas where efforts at the multilateral level have led to an MFN dividend. However, the task will be challenging, particularly due to the question whose model will prevail.

**Questions and comments**

Numbering nearly 200, the members of the audience offered many interesting questions and observations.

*When will the agreement be done?*

Dr Elms suggested that (i) if Japan did not join and (ii) if Canada and Mexico did not unduly complicate negotiations, the agreement could be signed at the November 2013 Asia-Pacific Economic Cooperation meeting.

*Why is this negotiation being conducted in secret?*

The panellists agreed that trade negotiations are generally conducted behind closed doors. Releasing information to the public makes it difficult for states to compromise. The TPP is distinguished by a stakeholder process that has allowed outsiders, including firms, academics, non-governmental organizations and others to register and present information directly to officials at the start of every round, as well as hold direct meetings during negotiations.

*What is the difference between the International Services Agreement (ISA) and the TPP on services?*

The answer was long and complex, but one primary difference is that the ISA will follow GATS, using something akin to a positive list approach, while the TPP uses a negative list.

*Could you bring the TPP into the WTO?*

While it is possible to bring some of the ideas into the WTO in the future, panellists suggested that it does not make sense to bring the TPP into the WTO or any other agreement or sets of agreements.



*Why push for stronger intellectual property protections and not simply stick with the commitments in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)?*

In brief, the TPP members have agreed that these provisions are insufficient. Since the TPP includes a sense of shared norms and values, some commitment to higher intellectual property rules is part of the package. The issue is how much beyond TRIPS the members need to go. Whatever provisions are ultimately accepted, however, the final outcome will, in practice, be “MFNed” with regards to other WTO members, as it is not possible to give higher intellectual property protections to some WTO members and not to others.

*How is accession handled and what sort of commitments do new members have to make up front?*

To join the TPP, new members have to meet bilaterally with each current member. These current members are looking for signals of intent to sign off on the aspirations of the agreement as well as a willingness to share the norms of the group. At the moment, there is no clear set of rules on what sort of “downpayments” might be necessary (if any) from a new member. Once each current member agrees, the prospective member has to meet with the whole group and get their approval to join the TPP.

## Conclusions

The panel expressed cautious optimism that the TPP might reach the “high-quality, 21st-century” goals laid out by members. The papers on the panel did not highlight as many of the new areas, some of which are better covered in the book project. For example, particularly compared to many agreements in Asia, the TPP does move into substantial new areas in investment or labour or the environment. It also tries to address new issues like regulatory coherence where many of the greatest barriers to trade can be found.

However, to get an agreement finished will require some difficult compromises in sensitive areas. It will involve some risk for member governments. So, the jury remains out on whether or not the final agreement will, indeed, be something significantly different than FTAs that have come before.

## The Ashgate Research Companion to International Trade Policy

### Moderator

Dr Kenneth Heydon, Visiting Fellow, London School of Economics and Political Science (LSE); former Deputy Director for Trade, Organisation for Economic Co-operation and Development (OECD)

Mr Alejandro Jara, Deputy Director-General, WTO; former Ambassador and Permanent Representative of Chile to the WTO

H.E. Mr Joakim Reiter, Ambassador and Permanent Representative of Sweden to the WTO

Dr Stephen Woolcock, Head, International Trade Policy Unit, LSE

### Organized by

LSE

Ashgate Publishing

### Report written by

Dr Kenneth Heydon, Visiting Fellow, LSE; former Deputy Director for Trade, OECD

Available at  
[www.ashgate.com/isbn/9781409408352](http://www.ashgate.com/isbn/9781409408352)

The session addressed the main themes of a new publication, framed within the Public Forum topic, "Is multilateralism in crisis?". The organizing theme of this volume is that trade and investment liberalization yields large gains in human welfare as long as trade policy is conducted as an integral part of broader domestic economic management, and as long as that policy facilitates the integration of all economies into a sustainable multilateral system.

The volume addresses the Doha Development Agenda (DDA) impasse and the ongoing lessons from the global financial crisis about the impact on trade policy of macroeconomic imbalances, the regulatory environment and the pervasive role of the global supply chain. Together, these developments prompt the question: Is the multilateral trading system under strain because of new complexities or simply because of the old issue of the political economy of trade?

This volume, including chapters by recognized experts such as Gary Hufbauer, John Jackson, Patrick Messerlin, Arvind Panagariya, Razeen Sally and Stefan Tangermann, addresses five key questions:

- How has the historical debate about free trade evolved?
- Why do pressures for protection persist given the strong case for open markets?
- What should be the balance between multilateral and preferential approaches to trade policy?
- What should be the scope of the multilateral regime?
- And how – in light of these questions – should we proceed in trade policy?



## Presentations by the panellists

The object of this session was to launch the *Ashgate Research Companion to International Trade Policy*. Of the panel, Dr Heydon and Dr Woolcock are the volume's co-editors, and Messrs Jara and Reiter each contributed a chapter.

The session focused on how different chapters of the book address the theme of the 2012 Public Forum: Is multilateralism in crisis? Following is a brief summary of key points emerging from interventions by panellists and widespread comments from other participants, including chapter authors Przemyslaw Kowalski and Yang Jiang. The session was conducted under Chatham House rules.

A recurring theme of discussion was the need to avoid doom and gloom. In a sector crucial to the trading environment – agriculture – reform momentum is moving in the right direction. More broadly, there has been extensive trade liberalization in recent years, both unilaterally – as exemplified by Latin America – and within the framework of PTAs. And while this has occurred outside the multilateral framework of the WTO, there is much more to the WTO than successive rounds of trade liberalization, as evidenced by achievements in the area of accessions, dispute settlement, trade policy review, and training and capacity-building. It was observed that these achievements represent a central theme of the Ashgate chapter by John Jackson and Steve Charnovitz.

Another pervasive theme of the book, reflected in discussion at the launch, is the positive role of the global value chains, helping ease protectionist forces and, in effect, lowering the optimum tariff. At the same time, participants noted that there are inherent tensions within the multilateral trading system:

- between national sovereignty and international cooperation
- between the exercise of state authority and the growing role of non-state actors
- between the interests of surplus- and deficit-states in macroeconomic imbalance and associated protectionist tendencies – highlighted in the chapter by Gary Hufbauer and Kati Suominen
- within states as a result of the uneven distribution of the gains from trade.

The protectionist threat is therefore real, not least through “green protectionism”, linked to fears about climate change, or more broadly through what is characterized in the book as “clear conscience protectionism”, as those concerned to address global challenges find common cause with those wishing to protect their own vested interests. Beyond these immediate protectionist threats, two systemic risks were identified in the discussion. First, the danger that the continued proliferation of bilateral PTAs without any action multilaterally will ultimately erode the credibility of the multilateral system. And second, the danger that recourse to dispute settlement without matching action to negotiate new rules and disciplines – proceeding by litigation rather than legislation – will ultimately erode confidence in the WTO dispute settlement system.

In discussing possible policy responses to these threats, two stood out. First, it was widely observed that ways will need to be found to re-invigorate multilateral trade liberalization: the WTO overall may not be in crisis, but the DDA certainly is. The machine is losing steam and too often policy action lags the critical judgements of the market. It was suggested that revitalising the DDA will call for incremental progress where progress can be made, abandoning the pursuit of a “big bang” reform agenda, but not abandoning the principle of the single undertaking in that at some point, the different incremental steps will need to be brought together as a package.

The second policy implication to be drawn was the need to place trade policy more firmly within the framework of the overall domestic policy environment at the national level. It was observed that the pursuit of trade liberalization needs to be backed by sound macroeconomic settings, labour market flexibility, sound regulation and supportive programmes of education and training, which together, as part

of trade-related structural adjustment, enable labour and capital to move from declining to expanding areas of activity. It was noted in discussion that this “domestic” focus, is a key element of empirical study within the Ashgate volume, notably in the chapter on services in East Africa by Nora Dihel, Ana Fernandes and Aaditya Mattoo, and in the study of Taiwan by Arvind Panagariya.

Seeing trade liberalization more within a holistic policy setting would also enable specific objectives, such as desired environmental or social standards, to be addressed directly by dedicated policies rather than by misguided attempts to ensure compliance through trade restrictions. Finally, it was suggested that a greater “domestic” focus would help foster wider acceptance of the benefits of open markets and help address the current situation where the progressive scaling down of ambition in the DDA has led many to conclude that the game is not worth the candle.



Mutually agreeable solutions have yet to be found for moving the WTO's stalled Doha Round forward. This e-book aims to help in the search for consensus by providing a collection of short essays on the most pressing issues in today's global trade environment. It deals with a variety of topics, ranging from the functioning of the WTO and the role of emerging economies to regional agreements and future challenges facing the multilateral trading system, such as food security or the trade dimension of climate change action. The essays were written by a set of leading academics, policy-makers and practitioners, which together offer a series of very rich and enlightening perspectives on the tasks ahead.

## The Future and the WTO: Confronting the Challenges – A collection of short essays

Edited by  
Ricardo Meléndez-Ortiz  
Christophe Bellmann  
Miguel Rodríguez Mendoza

Available at  
<http://ictsd.org/i/publications/138578>







# Closing session



## Is multilateralism in crisis?

The Closing Session looked back on what was discussed during the 2012 Public Forum and the guidance provided to respond to the challenges the WTO and multilateralism in general are facing. The panel looked ahead and tried to identify common ground among the many issues and concerns raised over the three days. Each panellist – from his or her own unique perspective and experience – tackled the main theme of this year's Public Forum. Ultimately, they were challenged to provide answers. They were also asked about what they thought was needed to address some of the current global problems and whether or not the 2012 Public Forum helped formulate responses and possible solutions.

### Moderator

Ms Gunilla von Hall, President,  
Geneva Association of United Nations  
Correspondents (ACANU Association)

### Speakers

Dr Marion Jansen, Head, Trade and  
Employment Programme, International  
Labour Office, International Labour  
Organization (ILO) Secretariat

Mr Mark Halle, Vice-President, International  
Institute for Sustainable Development (IISD)

Ms Maika Oshikawa, Head of Asia and  
Pacific Desk, Institute for Training and  
Technical Co-operation (ITTC)

### Organized by

Information and External Relations  
Division (IERD), WTO Secretariat

### Report written by

IERD, WTO Secretariat



## Presentations by the panellists

### *Ms Gunilla von Hall, President, ACANU Association*

The moderator, Ms von Hall, began by asking the questions: Are we in crisis? Is multilateralism in crisis? Are we off track? What lessons have we learned to put multilateralism back on track?

### *Mr Mark Halle, Vice-President, IISD*

Mr Halle agreed there were great challenges and a “gradual loss in trust in the international system”. He also agreed with other participants that the “old order” of world power is clearly dying, while a new one has yet to emerge. Speaking from an environmental perspective, Mr Halle argued consensus is hard to achieve given that we must transform our economic way of life into one which was more sustainable.

While he acknowledged the difficulties facing the multilateral system, he did point to some organizations in which it continued to work well, such as the International Air Transport Association and the Universal Postal Union. When asked how multilateralism is viewed by the “average person”, he responded by saying that it suffered from an “image problem”. Mr Halle argued that too much attention was given to trade liberalization, which the public often associated with losing jobs to growing economies like China and India. He believed more emphasis must be placed on showing that policy-makers were concerned about the domestic effects that breaking down trade barriers can have on the average person.

### *Dr Marion Jansen, Head, Trade and Employment Programme, Employment Sector, ILO*

Dr Jansen indicated that the current hesitance in moving forward through the multilateral system had come as a result of the economic crisis. As the political and economic environment had changed, she contended that it was only natural that states were moving more slowly and were more hesitant to make commitments. In terms of trade, Dr Jansen stated that the “easy issues” had already been dealt with in the past, leaving more challenging negotiations for the present. She stressed the need for civil servants to “think outside of the box”, to engage with new partners and to explore innovative ways to deal with current challenges.

Dr Jansen echoed some of Mr Halle’s statements about the negative outlook on multilateralism held by the general public. She delved a bit further by stating that such attitudes predated the current economic crisis, particularly the idea that globalization can have negative effects on local economies. She argued that people feared further integration because of the uncertainty it can generate, and cited examples such as the US housing crisis and its subsequent effects on markets around the world.

Regarding the relationship between trade and jobs, Dr Jansen stated that all countries, both industrialized and developing, had job creation as a top priority. While it was clear that trade had the ability both to create and destroy jobs, she noted that was disagreement as to the net effects trade liberalization has on the labour market. Dr Jansen also indicated that the transition between sectors losing and gaining jobs may be taking longer. As a result, she believed policy-makers must bolster social protection – particularly in the form of job training – to help people find jobs more easily.

### *Ms Maika Oshikawa, Head of Asia and Pacific Desk, ITTC*

Ms Oshikawa stated her belief that multilateralism at the WTO must go beyond the Doha Round. She underlined the need to focus on what works well about the organization, such as the Dispute Settlement Body, and to ensure it continues to fulfil its role in facilitating trade negotiations. Ms Oshikawa admitted that the current multilateral system reflects a 20th-century world-view and more needs to be done to reflect the realities of today. In particular, she noted the need to discuss pressing challenges, such as climate change, exchange rates and global supply chains. Ms Oshikawa concluded by reiterating the importance of the WTO, stating that nothing could truly replace it as a multilateral trading forum.

## Questions and comments

The first comment from the audience related to the importance of multilateralism during the response to the economic crisis, particularly through financial institutions. Mr Halle responded by agreeing that a multilateral response to some issues was often the only way to tackle certain issues. He reiterated the need to increase confidence in the multilateral system, despite the difficulties in achieving this goal. Mr Halle also stated the need to deal with issues at the local, regional and national level, using multilateralism for solving challenges that require a more concerted approach, such as climate change and trade liberalization.

A student went on to pose a question regarding the need to reconcile development concerns with global value chains. Dr Jansen responded that there was no easy answer. However, she did mention that it might be useful to explore a paradigm shift; whereas the focus has largely been on industry, Dr Jansen conjectured whether more attention should be paid to firms and individuals.

Following a question regarding the state of multilateralism and environmental agreements, Mr Halle responded that climate change negotiations suffered from having “the wrong people around the table”. He saw the issue as primarily one of economic transformation, requiring input from not only environment ministers but also finance ministers. However, the environmental field in general has experienced some forward momentum, notably in the area of chemicals, biodiversity, regional fishery agreements and tropical timber.

As a final question, a young audience member simply asked what alternative we have if multilateralism fails. Mr Halle replied that the world must not allow it to fail. He argued that states would retreat behind power politics, using their advantage to secure the outcome. He went on to urge a more “experimental approach” to multilateralism. If things are not working, let us look at new ways to solve challenges.

## Conclusions

The session concluded by summarizing the areas in which multilateralism has achieved positive results and ways it can move forward. According to Dr Jansen, the WTO proved to be a vital forum for ensuring the financial crisis did not result in a “protectionist spiral”. She also noted the success of technical cooperation as an important means of information sharing across borders. Mr Halle warned that there had been a gradual loss of trust in the multilateral system, a result of being “long on promise and short on delivery”. He urged states to focus on areas where they can come to agreement and build a restored faith in multilateralism. Ms Oshikawa stressed the need to enhance awareness of what the WTO has done well, rather than focusing on the standstill of the Doha Round.

The audience were left with a clear idea of the current state of multilateralism and the possible directions it may take. Whether multilateralism is in crisis depends very much on what happens next.



## Abbreviations

ACANU Association	Geneva Association of United Nations Correspondents
ACD	Agriculture and Commodities Division
ACFIC	All-China Federation of Industry and Commerce
ACP	African, Caribbean and Pacific Group of States
ACTA	Anti-Counterfeiting Trade Agreement
ACWL	Advisory Centre on WTO Law
ADB	Asian Development Bank
AEB	Association of European Businesses in the Russian Federation
AEO	authorized economic operator
AfDB	African Development Bank
AmCham EU	American Chamber of Commerce to the European Union
Anvisa	National Health Surveillance Agency
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
APF	Assemblée Parlementaire de la Francophonie
ASEAN	Association of Southeast Asian Nations
ASIL	American Society of International Law
BASIC	Brazil, South Africa, India and China
BIT	bilateral investment treaty
BRICS	Brazil, the Russian Federation, India, China and South Africa
CAFTA	US–Central America Free Trade Agreement
CBD	Convention on Biological Diversity
CEIPI	Centre for International Intellectual Property Studies
CEPR	Center for Economic and Policy Research
CGIAR	Consultative Group on International Agriculture Research
CIES	Centre for International Environmental Studies
CIGI	Centre for International Governance Innovation
CINDES	Centro de Estudos de Integração e Desenvolvimento
COOL	Certain Country of Origin Labelling
CPD	Centre for Policy Dialogue
CNI	Confederação Nacional da Indústria
CRTA	Committee on Regional Trade Agreements
CSEND	Centre for Socio-Eco-Nomic Development
CSR	corporate social responsibility
CTEI	Centre for Trade and Economic Integration
CUTS	Consumer Unity and Trust Society
CVD	countervailing duties
DDA	Doha Development Agenda
DDR	Doha Development Round
DESTA	Design of Trade Agreements
DITC	Division on International Trade in Goods and Services
DRC	Democratic Republic of the Congo
DS	dispute settlement

DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECLAC	Economic Commission for Latin America and the Caribbean
ECVC	European Coordination Via Campesina
EESC	European Economic and Social Committee
EFTA	European Free Trade Association
ENTWINED	Environment and Trade in a World of Interdependence
EPZ	Export Processing Zone
ERSD	Economic Research and Statistics Division
ETP	Eastern Tropical Pacific
EUI	European University Institute
FAO	Food and Agriculture Organization of the United Nations
FDI	foreign direct investment
FERDI	Foundation for International Development Study and Research
FES	Friedrich-Ebert-Stiftung
FET	fair and equitable treatment
FGI	Fung Global Institute
FIAPF	International Federation of Film Producers Associations
FLACSO	Facultad Latinoamericana de Ciencias Sociales
FTAA	Free Trade Area of the Americas
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GE	General Electric Company
GFN	Global Footprint Network
GIPC	Global Intellectual Property Center
GMO	genetically modified organism
GPA	Government Procurement Agreement
GPPI	Global Public Policy Institute
GVC	global value chain
IADB	Inter-American Development Bank
IATA	International Air Transport Association
IATP	Institute for Agricultural and Trade Policy
ICC	International Chamber of Commerce
ICITE	International Collaborative Initiative on Trade and Employment
ICN	International Competition Network
ICSID	International Centre for Settlement of Investment Disputes
ICT	information and communication technology
ICTSD	International Centre for Trade and Sustainable Development
IEcLIG	International Economic Law Interest Group
IERD	Information and External Relations Division
IFAD	International Fund for Agricultural Development
IFAW	International Fund for Animal Welfare
IFPRI	International Food Policy Research Institute





IHEID	Graduate Institute of International and Development Studies
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IMS	Information Management Systems
IOE	International Organisation of Employers
IP	intellectual property
IPC	International Food and Agricultural Trade Policy Council
IPCC	Intergovernmental Panel on Climate Change
IPD	Intellectual Property Division
IPoA	Istanbul Programme of Action
ISA	International Services Agreement
ISO	International Organization for Standardization
IT	information technology
ITA	Information Technology Agreement
ITeM	Third World Institute (Instituto del Tercer Mundo)
I-TIP	Integrated Trade Intelligence Portal
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ITTC	Institute for Training and Technical Co-operation
ITUC	International Trade Union Confederation
Kommerskollegium	Swedish National Board of Trade
LAD	Legal Affairs Division
LDC	least-developed country
LSE	London School of Economics and Political Science
MENA	Middle East and North Africa
MERCOSUR	Southern Common Market
MFN	most favoured nation
Mistra	Swedish Foundation for Strategic Environmental Research
MNE	multinational enterprise
MTS	multilateral trading system
NAFTA	North American Free Trade Agreement
NAMA	non-agricultural market access
NGO	non-governmental organization
NSA	non-state actor
NSI	The North–South Institute
NTB	non-tariff barrier
NTM	non-tariff measure
NTU	Nanyang Technological University
OECD	Organisation for Economic Co-operation and Development
OIF	International Organization of la Francophonie
OWINFS	Our World Is Not For Sale network
PPM	process and production method
PTA	preferential trade agreement
PVP	plant-variety protection

QUNO	Quaker United Nations Office
RD	Rules Division
RSIS	S. Rajaratnam School of International Studies
RTA	regional trade agreement
S&D	special and differential
SAIIA	South African Institute of International Affairs
SCCWTO	Shanghai WTO Affairs Consultation Center
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SIA	Sustainable Impact Assessments
SKP	Services Knowledge Platforms
SMEs	small and medium-sized enterprises
SPS	sanitary and phytosanitary
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
STC	specific trade concern
STRI	Services Trade Restrictiveness Index
TBT	technical barriers to trade
TBT Committee	WTO Committee on Technical Barriers to Trade
TED	Trade and Environment Division
TEPAV	Economic Policy Research Foundation of Turkey
TFCTN	Temasek Foundation Centre for Trade & Negotiations
TPGP	Trade Policy and Governance Programme
TPP Agreement	Trans-Pacific Partnership Agreement
TPRM	Trade Policy Review Mechanism
TRIMs	trade-related investment measures
TRIPP	Training and Research Institute for Public Policy
TRIPS	trade-related aspect of intellectual property rights
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSD	Trade in Services Division
TUAC	Trade Union Advisory Committee
TWN	Third World Network
UIBE	University of International Business and Economics
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNFCCC	United Nations Framework Convention on Climate Change
UNFFE	Uganda National Farmers Federation
UNICA	União da Indústria da Cana-de-Açúcar
UPOV	International Union for the Protection of New Varieties of Plants
UPOV Convention	International Convention for the Protection of New Varieties of Plants
WEF	World Economic Forum
WFO	World Farmers' Organisation
WFP	World Food Programme
WIPO	World Intellectual Property Organization
WTA	World Trade Agenda
WTI	World Trade Institute



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ISBN: 978-92-870-3879-1

Also available in French and Spanish:

French title: Forum public de l'OMC 2012  
"Le multilatéralisme est-il en crise?"  
ISBN: 978-92-870-3880-7

Spanish title: Foro Público de la OMC 2012  
"¿Está en crisis el multilateralismo?"  
ISBN: 978-92-870-3881-4

Photo credits:  
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This publication is only available electronically.

## WTO Public Forum 2012

The 2012 WTO Public Forum posed the question: “Is multilateralism in crisis?”, providing an opportunity for participants from a variety of backgrounds to discuss this question across the three-day event. The themes of the Forum included formulating new approaches to multi-lateral trade opening in areas such as trade facilitation, addressing 21st-century issues and identifying areas in need of new regulations, and examining the role of non-state actors in strengthening the multi-lateral trading system. The results of the discussions provide some guidance on how the WTO can participate in better addressing world problems and improving global governance.

This publication contains summaries of all of the sessions held and reports on the results of the WTO Youth Ambassador Programme and Ideas Workshops.



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ISBN: 978-92-870-3879-1



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