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Facts and Figures

The volume of world exports is projected to fall by 9 percent in 2009, the sharpest contraction since World War II. OECD countries are likely to see a 10-percent drop, while developing country exports will decline between 2 and 3 percent.

Source: World Trade 2008, Prospects for 2009. WTO, 25 March 2009

Recent estimates of world annual GDP growth/growth prospects 2008-2010

Source/Region	2008	2009	2010
IMF: World	3.2%	-0.5/-1%	1.5/- 2.5%
- Advanced economies	0.8%	-3/-3.5%	0/0.5%
- Emerging/developing	6.1%	1.5/2.5%	3.5/4.5%
World Bank: World	1.9%	-1.7%	2.3%
- High-income countries	0.8%	-2.9%	1.6%
- Developing countries	5.8%	2.1%	4.4%
United Nations: World	2.5%	1%*	-
- Developed economies	1.2%	-0.5%*	-
- Economies in trans.	6.9%	4.8%*	-
- Developing economies	5.9%	5.9%*	-
OECD: OECD Countries	0.9%	-4.3%	0.1%

* Baseline forecast

Sources: IMF (March 2009), World Bank (March 2009), OECD (March 2009), and the United Nations (January 2009)

India, US Agree to Work on Doha Deal

With signs of new engagement by India and the US, hopes have revived for serious political momentum to push ahead with global trade negotiations, stalled since last July.

Atmospherics in Geneva veered from gloom to cautious optimism when the new chief trade negotiators of India and United States joined the call of the Cairns Group to restart Doha Round negotiations between senior officials before the WTO's August break. In a communiqué issued after a three-day meeting in Bali in early June, trade ministers of the 19-strong agriculture-exporting countries' grouping stated: "Senior negotiators must reconvene in Geneva as soon as possible to map out a clear path towards the conclusion of the negotiations, and to start down that path before the European summer break. USTR Kirk and Commerce Minister Sharma of India fully endorsed these views." See page 6 for more on the Bali communiqué.

Although the ambiguous wording has left many wondering how 'mapping out a clear path towards the conclusion of the negotiations' will translate into practice, trade delegates have generally welcomed the signs of re-engagement. It had been widely acknowledged that substantive progress in Geneva (or elsewhere) would not occur until the new administrations in New Delhi and Washington had given some indications of where they stand vis-à-vis the negotiations. The latest attempt to reach a deal collapsed in July 2008 largely due to disagreement between the two countries on the extent of safeguard duties that developing countries would be allowed impose to ward off surges in farm imports (Bridges Year 12 No.4 page 1).

No 'Insurmountable' Obstacles; Lamy Eyes 2010 Conclusion

US Trade Representative and India's Commerce Minister Anand Sharma held bilateral talks on the sidelines of the Cairns Group meeting to explore a way forward for the Doha Round. Describing the dialogue as 'very positive', Minister Sharma told a press conference that India was "not looking at the difficulties, we are looking at the possibilities, to do our best and take this process to its culmination. There are no obstacles which are insurmountable."

Mr Kirk did not enter into the specifics of the discussions, but confirmed that the United States would outline a 'new basis' for completing the round by August. Alluding to a proposed change in approach he said: "Doing nothing, rejecting pursuing an alternative to what we have been doing for the past three rounds is in fact a decision that leads to a failure of Doha, and that is not an acceptable conclusion." Many developing countries have expressed serious concerns over this emphasis on pursuing an 'alternative' negotiating track (see page 2).

During his visit to the WTO in May, Mr Kirk had reaffirmed the Obama administration's continued commitment to reaching a conclusion in the long-running negotiations, which it viewed as "a critical component of what the president believes should be an overall worldwide response to the current economic crisis." Nevertheless, he emphasised that without evidence of new export opportunities for American businesses, the administration would not be able to convince a trade-sceptical Congress to endorse the deal (see related article on page 23).

Ambassador Kirk and Minister Sharma were to meet later this month in Washington to follow up on their discussions in Bali. Meanwhile, WTO Director-General Pascal Lamy likened the flexibility shown by the two negotiators to pushing the 'reset' button on the Doha Round. "What I got from here is that ... yes, we should conclude this by 2010," he told reporters.

Continued on page 2

Bridges

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See inside back cover for information on other ICTSD periodicals.

New Approach to Doha Is Controversial

While visiting Geneva in May, Mr Kirk noted there was a need to consider changes in the negotiating process. "Whatever vehicle we've all been loaded on to get to Doha hasn't gotten us there," he said. The United States has repeatedly complained that it is easy for other Members to see what they stand to gain from its concessions, but that the US cannot determine the extent of future benefits due to the uncertainty surrounding the way in which large developing economies will implement the exceptions and flexibilities in the negotiating texts.

As a possible way of dealing with this problem, Canada and the US have informally suggested bypassing the negotiations on 'modalities' – the broad outlines for tariff and subsidy cuts required from developed and developing countries – and moving directly into scheduling specific tariff commitments.

The idea is controversial. Most developing countries are wary of changing tactics this late in the game. Skipping the modalities phase would be 'completely outside the mandate' of the Doha Round, one developing country delegate said, and could risk erasing the delicate balance that has been painstakingly built up in negotiations thus far.

Speaking to Washington Trade Daily after the Cairns Group meeting, Indonesia's trade minister Mari Pangestu said that the follow-up to Bali must be "to identify the problems and gaps to finalise modalities before going to the scheduling process." South Africa's new trade minister Rob Davies has also stressed that Members need to focus on the framework agreement: "I think we have reached an impasse in the process. To break the logjam we need to go back and address the fundamental issue of an imbalance in the underlying deal. It's a complicated deal that has made huge concessions to developed country needs."

Attempting to bridge the gap, Pascal Lamy suggested to the General Council in May that further work on modalities and a scheduling exercise could run on 'two simultaneous tracks'. Although the modalities approach was 'sacrosanct' for some Members, he noted that certain other countries believed it would lend greater clarity to the process if governments could indicate what products would be accorded more flexible treatment in the scheduling stage, whether on sensitive and special farm products, on duty- and quota-free market access for least-developed countries, or on the use of flexibilities regarding market access for non-agricultural products.

"This is, in my view, doable provided that we see serious political engagement on the part of Members. In other words, provided [that] ministers give the necessary instructions for substantive work to happen on these two tracks," Mr Lamy concluded.

It was not clear at the time of writing whether Mr Kirk and Minister Sharma intended to base their discussions in Washington on the dual-track proposal.

Date Set for 'Different' WTO Ministerial

At long last, the General Council agreed in May to hold the first regular WTO Ministerial Conference in four years from 30 November to 2 December in Geneva. The 'scaled-down, no-frills, low-key' event will allow Members to focus on an "overall review of the WTO, and one that is not inextricably tied to any particular ongoing negotiations," General Council chair Mario Matus said. Discussions under the general theme of *The WTO, the Multilateral Trading System and the Current Global Economic Environment* will be held in open plenary sessions rather than in the small informal negotiating groups that hogged the limelight – and excluded many – at recent ministerials. The last three such meetings focused almost exclusively on advancing the Doha Round (see page 4 for more details on the Geneva ministerial).

Calls for an event such the one now planned for December have been multiplying in recent months. Many have argued that regular ministerial involvement is necessary to reinforce the WTO's institutional legitimacy and to ensure good governance practices. A number of countries also wish to discuss a broader agenda, including, for instance, the risks to the multilateral trading system arising from the proliferation of preferential trading schemes, particularly if Doha fails, or the WTO's response to global challenges, such as climate change.

Dead Aid or Recovering Patient?

Eveline Herfkens

Dambisa Moyo's book *Dead Aid* has created quite a storm within the development community, which struggles with an appropriate response.

Of course, the easy retort is that her recipe – more foreign investment and access to international capital markets – while feasible (and actually happening) at the time she wrote her book, offers no alternative at present: due to the economic crisis foreign money flows have been reversing and there were no international bond issues by African countries in 2008. In fact, Kenya, Nigeria, Tanzania and Uganda have all cancelled plans to raise funds in the capital market. In the meantime, some well-performing African economies are re-evaluating their intentions to phase out official development assistance (ODA).

But regarding her criticism of aid, frankly, I feel the 'aid-business' has reacted too defensively. The practices she condemns are exactly the ones the OECD Development Assistance Committee (DAC) and the more enlightened donors have been trying to reform. I see Moyo's book as a great opportunity for a public discussion regarding aid effectiveness and trade, for which it has always been hard to get public attention. Such attention might create the constituency and political will to finally implement the reforms in aid delivery agreed by all donors in the Paris Declaration of 2005 and the Accra Agenda for Action last year.

I am especially delighted that Africans have joined the debate, which has been dominated for too long by Westerners, some of whom have too often portrayed Africans as incompetent and helpless. It was time for Africans to stand up against the insulting paternalism of some parts of the international aid community. Suggesting that it is up to *us* to fix global poverty denies the primary responsibility of developing countries to fix themselves – as embedded in the division of labour in the Millennium Goals.

It is high time to attack the underlying myth of Western superiority: we lecture – you listen; we give – you receive; we know – you learn; we take care of things – because you can't. Undermining Africans' self confidence, we take over. Neo-colonialism is what I call it. Or, as an African friend of mine put it: "When you move to Africa, you are per definition an expatriate expert. But when I move to Europe, I am only an immigrant."

Getting rid of these perceptions is essential for public opinion to understand what underpins the necessary reforms as agreed in the Paris Declaration and the Accra Agenda for Action: the recognition that we, donors, don't develop them; they develop themselves. Only if Africans – not donors – set their development agenda, can aid be used productively.

In particular, Moyo's point that "without aid, it would be easier for citizens to hold governments accountable" should not be dismissed. Indeed, the attitude of 'we' (standing for experts/money) will save Africa or 'we' will end poverty, leads to undermining incentives for poor people to demand action from their own government to improve governance, fight corruption and ensure that resources – not just aid, but also the far larger domestic resources – are spent transparently and well.

This implies that donors have to deliver aid in a fashion that does not allow developing country governments to shirk that responsibility, nor shift their citizens' expectations away from their own governments to those of the donors. Indeed, the type of aid that removes the link of accountability between political leaders and their electorate ultimately perpetuates poor governance and poverty. Aid must be channelled through recipient budgets to allow domestic accountability.

I also agree with Moyo's observation that too much aid has been driven by donors own economic and geopolitical interests. Where 'aid' is given for geopolitical or export promotion objectives, it was never intended to reduce poverty; thus we should not be surprised if it does not.

Finally, she is also right about the importance of trade relative to aid, and the need to make trade rules fairer. Alas, while the EU has pledged more coherence between trade policies and development objectives for more than 15 years, we still fail to provide genuine market access to the poorest countries, or to reform our agricultural policies.

However, I disagree with Moyo's conclusion that if aid does not work, we should quit the aid business. We should not throw out the baby with the bathwater, but should draw the lessons from its failures and successes. And that is exactly what we have been doing the last decade. Now, seriously, for the first time in aid history we do have an agreed broad-ranging agenda of measures to ensure that aid genuinely contributes to development. The Paris-Accra agreements are not just slogans or buzzwords – each is backed up by a series of practical reforms, deeply grounded in reality, and responding to past failures, including the many ills Moyo points out.

What worries me most about Moyo is that she does not say much new: it has all been said before by Peter Bauer in the sixties and seventies (she was fair enough to dedicate her book to him) and by William Easterly a few years ago. By now it is not good enough for us in the aid business to just say we have heard it and debate the finer points.

It is time to *implement* Paris-Accra, so that aid responds to genuine local needs, builds local capacity to manage development, and makes governments responsible and accountable. But implementation has been lagging as it demands political leadership and understanding of the rationale for the Paris-Accra reforms by public opinion in general and parliamentarians in particular.

Moyo has done us a great favour by providing the platform, generating interest in these issues in mainstream media, and providing the right arguments for these urgent reforms.

Eveline Herfkens is Founder, UN Millennium Campaign; former Dutch Minister for Development Co-operation; and Chair, ICTSD Board.

Regular Ministerial Announced for December

The WTO General Council agreed in May to hold a much-delayed ministerial conference late in 2009. The low-key event will focus on an overall review of the organisation. The meeting also saw a number of Members rally to a call to resist protectionism and promote global trade.

The ministerial conference will take place in Geneva from 30 November to 2 December under the general theme of The WTO, the Multilateral Trading System and the Current Global Economic Environment.

General Council chair Mario Matus stressed that the event would not be a negotiating session, but rather a 'regular' gathering involving all Members. Although the WTO is mandated to hold such meetings at least every two years, the last full ministerial took place in 2005.

Ambassador Matus said that there was broad support for holding the event in plenary sessions where all ministers would be able to participate equally. Since the launch of the Doha Round in 2001, WTO ministerial gatherings (whether 'regular' conferences or 'mini-ministerials') have focused almost exclusively on advancing the Doha Round negotiations in small groups of key players, leaving many delegations frustrated at the lack of opportunity to participate.

The December 2009 event promises to be different. According to Ambassador Matus, its 'regular' nature "could help us establish a new model of ministerial-level meetings conducive to good governance and overall review of the WTO, and one that is not inextricably tied to any particular ongoing negotiations." The broader focus would also mean that ministers would not necessarily have to focus on producing a formal declaration, "although, of course, we will have to consider the most effective way of recording the substance of the ministers' discussions and any convergence or conclusions they may reach."

The General Council chair also said that the conference should be a much leaner and more economical affair than the extravaganzas of the recent past. Space constraints, both for meeting venues and accommodation, would require Members to trim down their delegations, which for some countries have numbered in the hundreds. Members should keep firmly in mind that the meeting is "not intended as a negotiating session, but rather

a regular gathering of ministers to engage in a broader evaluation of the functioning of the multilateral trading system."

It remains to be seen whether the low-key nature foreseen for the ministerial will keep media frenzy at bay, particularly if the Doha Round negotiations pick up in the meantime (see page 1).

More Countries Join G-20 Commitments

Thirteen developed and developing countries called on WTO Members to "use their best efforts to minimise the negative aspects of necessary policy measures to overcome the current crisis, and to make every effort to resist protectionism and promote global trade." They invited other countries to join their decision to take on the commitments related to resisting protectionism adopted by the G-20 leaders in April (see page 11), "as well as to join forces in order to develop complementary initiatives to this effect together with the WTO Members ready to do so."

A number of countries expressed support for the proposal, including, among others, Israel, Taiwan, Tanzania (on behalf of the least-developed countries), Thailand and Ukraine. Their joining the G-20 pledges reinforces the WTO's mandate to monitor the extent of protectionist action. Among the new promises made by the leaders of the world's biggest economies was a commitment to promptly notify any such measures to the WTO, and to ask the global trade watchdog "to monitor and report publicly on our adherence to these undertakings on a quarterly basis."

Most G-20 members have taken measures to restrict imports one way or another since they first promised to refrain from doing so in November 2008. At least the EU and the EU have reinstated export subsidies, a move widely condemned by Members at the General Council meeting (see page 8).

Although the WTO's March protectionism report included long lists of trade-related actions taken by Members since September 2008, it carefully refrained from assessing whether the measures were 'protectionist in nature', WTO-consistent, or whether they had an impact on, or were related to, the global financial crisis (see page 5). The mandate to 'monitor and report publicly on our adherence to these undertakings' could make it easier for the WTO secretariat to be more explicit, and thus possibly make the 'naming and shaming' exercise a more effective tool in curbing protectionist pressures.

Argentina proposed that the WTO should pay more attention to the trade-distorting elements of subsidies in fiscal stimulus packages and sectoral rescue plans (see sidebar on page 6).

Lamy Endorses Dual Track for Speeding Round

WTO Director-General suggested that Members could work on two parallel tracks in the Doha Round negotiations. In addition to continuing technical work in the various negotiating groups, they could also start testing possible outcomes through a scheduling exercise that would indicate the level of future market access for agricultural and industrial products. The latter approach, proposed by Canada and the US, is controversial, but the US in particular has complained that while it is easy to see what Members stand to gain from its concessions, the US cannot determine the extent of future benefits due to the uncertainty surrounding how countries will apply the flexibilities in the negotiating texts (see page 2 for more).

Mr Lamy, who will start his second term as WTO chief in September, also informed the council that he had decided to retain all four current Deputy Directors-General in their positions.

Protectionism Is Spreading, but Not Yet Alarming, WTO Says

Global commerce is in danger of an incremental build-up of restrictions that could slowly strangle international trade and undermine worldwide attempts to boost demand and restore growth, the WTO warned in March.

There has been ‘significant slippage’ in WTO Members’ success at resisting protectionist pressures since the start of this year, according to a report on trade-related measures taken in response to the economic crisis released on 26 March. Governments have increased tariffs, introduced new non-tariff measures, and sought to use trade remedies such as anti-dumping duties on imported goods.

Nevertheless, the investigation found “no indication of an imminent descent into high intensity protectionism, involving widespread resort to trade restriction and retaliation.” Maybe not, but some tit-for-tat retaliation has already occurred.

For instance, the US 2009 Omnibus Appropriations Act prohibits the Department of Transportation from allocating funds necessary to maintain an inspection programme on cross-border trucking services from Mexico, which has prompted Mexico to suspend preferential tariffs accorded to 89 US tariff lines under NAFTA. And, in May, the US reinstated dairy export subsidies at least partly in response to those adopted by the EU in January (see page 8).

The main risk, the report concluded, was that governments would “continue to cede ground to protectionist pressures, even if only gradually, as long as the global economic situation continues to deteriorate.”

More Details Offered on Trade Measures

The March report was much more precise than its January predecessor. It included information on import and export restrictions, trade-related subsidies and trade remedy actions taken since September 2008.

A long and detailed annex, naming the countries and the measures taken, shows the variety of means that governments have used to ward off the worst of the recession. Many have introduced administrative measures, such as reference pricing, import licensing, limiting ports of entry, or new technical and sanitary standards. Some have imposed higher tariffs or quantitative restrictions on imports. Several countries have dropped export duties and increased value-added tax rebates for export products. Anti-dumping investigations are trending upwards, and ‘could accelerate rapidly’. Although steel, automobiles and footwear have been particular targets of trade-related measures, such actions run the gamut from soybeans, dairy and chemicals to dried lilies and cotton yarn.

Measures such as these are relatively simple to track compared to subsidies hidden in governments’ general stimulus plans and sector-specific rescue packages.

Extent of Subsidies in Stimulus & Rescue Packages Remains Elusive

The report recognised that some countries had increased state aids and potentially trade-distorting subsidies to support manufacturing (particularly in the automobiles and steel sectors) or financial services industries, including through direct funding, special loans and guarantees. It also cautioned that the vast majority of developing country WTO Members could not afford this alternative to border trade restrictions to protect their economies against foreign competition. The report warned that support measures such as these could prolong the operations of uncompetitive firms, denying market share to more efficient producers, including those overseas.

Some government support policies include specific conditions that can restrict or distort trade, such as requiring a firm or an industry not to de-invest domestically, or not to source labour abroad. “Since conditions such as these are often attached informally, and are of a political rather than contractual nature, it is very hard to know of their existence and how they are

being implemented,” the report noted. The list of stimulus packages attached to the report was far less detailed than the one on individual trade-related measures, often just mentioning that such a plan exists.

The report prudently explained in a footnote that the inclusion of a measure in the list did not imply that the WTO secretariat judged it, or its intent, as protectionist in nature. Nor was there ‘either direct or indirect’ judgement on the WTO-consistency of any measure, or its “impact on, or relationship with, the global financial crisis.”

The lack of such analysis was perhaps the report’s greatest weakness (see sidebar, page 6).

Developing Country Challenges

Developing countries are being hit not only by declining growth and demand for their exports, but also by the sudden jump in the cost of trade finance, a drop in remittances, reduced foreign direct investment, and outflows of portfolio investment.

The report detailed efforts by international financial institutions, government-backed export credit agencies, and some central banks to support trade finance. Traditionally, trade finance – the short-term credit or insurance that enables exporters to offset the risk that they will not be paid and importers to offset the risk that they will not receive merchandise they paid for – has been considered almost risk-free, with the traded goods serving as collateral. But with banks suddenly unwilling to lend to exporters or importers at only a tiny premium above benchmark rates, governments have had to intervene to keep trade flowing.

Many developing countries are likely to face a ‘sharp deterioration’ in their balance of payments in the second half of 2009. The World Bank has estimated that developing countries face a financing shortfall of US\$270 to US\$700 billion, while their export earnings are projected to drop.

The WTO was expected to release its next protectionism report in mid-June.

Stimulus Measures

At the May General Council meeting, Argentina submitted a proposal aimed at enhancing the WTO's capacity to assess the impacts of fiscal stimulus and sectoral relief packages.

Argentina noted that the G-20 leaders had requested the WTO to regularly monitor and report on measures adopted by the group's members as a result of the economic and financial crisis (see page 11).

It went on to say that the two reports issued by the Director-General so far had essentially referred to two types of actions: 'trade restricting or distorting' measures, such as import licensing, import tariffs and surcharges, anti-dumping duties and safeguards; and *potentially* trade restricting/distorting measures, such as state aids and subsidies through fiscal stimulus and financial support programmes.

Argentina argued that these 'potentially' trade-restricting or -distorting measures were likely to have a "strong protective and distorting impact on international trade because of their extent, resulting in a loss of competitiveness on the part of countries without any capacity to subsidise, in other words, developing countries." The fact that information on these measures was 'scarce, not systematised and not very transparent', made it difficult to evaluate and monitor their effects.

It therefore proposed a programme of work designed to "obtain information and undertake the relevant analyses in order to determine the impact of these measures, not only in the current international situation but also in the medium and long terms." The exercise should focus on four points: (i) information and statistical estimations of the trade impact of the measures; (ii) making a distinction between horizontal stimulus measures and those intended for a particular sector, and providing details on the individual measures according to their potential trade-restricting or distorting impact; (iii) a horizontal, sectoral and detailed analysis of the impact of such measures; and (iv) regular follow-up.

Farm Exporters Call for Doha Restart

Meeting in Bali in June, trade ministers of the Cairns Group said negotiations on an 'ambitious and balanced' Doha deal should resume in earnest this summer.

In their final communiqué, reproduced almost in its entirety below, the ministers stated:

"The Doha Development Round has a particularly important role to play at this time of global economic crisis. Concluding the negotiations would deliver a much needed contribution to economic recovery and demonstrate the benefits of the multilateral trading system. This outcome is within our grasp, and we are determined to make it happen.

"Agriculture lies at the heart of the Doha Round, particularly due to its importance for the development of developing countries. The outcome of the negotiations must build substantially on the foundation, disciplines and achievements of the Uruguay Round by taking a further step along the path of significant agricultural trade reform in line with the mandate.

"The Cairns Group recognises the good progress that has been made in the agriculture negotiations. We must build on that work, based on the draft modalities text, to secure an outcome that meets the Cairns Group's long-term objective of a fair and market oriented agricultural trading system through substantial improvements in market access; substantial reductions in trade-distorting domestic support; and the long overdue elimination of all forms of export subsidies as agreed by ministers in Hong Kong.

"An ambitious and balanced outcome to the Doha Development Round will generate substantial improvements in agricultural market access opportunities. It will lock in significantly reduced domestic support commitments, open up new export opportunities and reduce the level of distortions in international markets. This will benefit all agricultural producers, including low income producers in developing countries. And it will eliminate export subsidies once and for all. Such reforms will provide valuable insurance against the growing threat of protectionism, and will help move the international trading system closer to a level playing field.

"At this critical time in the global economic downturn, it is essential that we guard against increased protectionism in agriculture, which includes not only tariffs but also subsidies and other restrictive non-tariff measures. The recent reintroduction by the EU and US of export subsidies for one major commodity has deepened that risk. Cairns Group ministers remain deeply disappointed by the re-introduction of such measures. The EU and the US must show leadership by removing these export subsidies in the shortest timeframe. Even measures that are applied within WTO commitments can still have a significant protectionist effect. We therefore urge WTO Members to exercise the utmost restraint and not follow this example. All WTO Members must act responsibly and resist the temptation to resort to protectionist measures at this difficult time.

"To reach a conclusion to the round, WTO Members must now summon the political will to conclude our mandate for a balanced and ambitious outcome.

"Looking ahead, we now need a transparent and inclusive process of engagement at both the technical and political levels. Trade ministers underlined the urgency for officials to engage intensively and on an ongoing basis. Senior negotiators must reconvene in Geneva as soon as possible to map out a clear path towards the conclusion of the negotiations, and to start down that path before the European summer break. USTR Kirk and Commerce Minister Sharma of India fully endorsed these views.

"At the same time, WTO Members must take advantage of every opportunity to engage at the political level to drive progress. Cairns Group ministers committed themselves to using every opportunity over coming weeks and months to this end."

Ecuador Gets Waiver for Import Curbs

The WTO balance-of-payments committee and Ecuador have reached a compromise on Ecuador's import restrictions after two rounds of consultations.

In January, Ecuador announced a series of stiff import restrictions on 630 tariff lines, affecting 8.7 percent of its 'tariff universe', or 23 percent of the volume of imports. Duties were raised on 369 tariff lines and quota restrictions imposed on 271 others for a one-year period. They cover products ranging from processed foods and shoes to cars, mobile phones and sunglasses, as well as many other goods that can be manufactured in Ecuador. These are among the most drastic import curbs taken by any government in the wake of the economic meltdown, but Ecuador insists that they are necessary to balance its widening current account and trade deficits.

GATT Article XVIII allows developing countries to impose temporary import controls to "forestall the imminent threat of, or to stop, a serious decline in its monetary reserves; or, in the case of [a Member] with very low monetary reserves, to achieve a reasonable rate of increase in its reserves." The measures must be notified to the WTO, and the country imposing them must hold consultations with other Members in the Committee on Balance-of-Payments Restrictions.

The committee met in April to consider Ecuador's request for a one-year waiver for the measures adopted in January, but failed to reach agreement. A number of sources indicated that the reluctance to grant the waiver was largely attributable to the fear that other, perhaps much bigger, countries would be tempted to follow Ecuador's example and request balance-of-payment waivers for protectionist measures.

Lengthy consultations in early June, however, produced a compromise.

No Disagreement on Balance of Payment Problems

Members did not dispute that Ecuador was indeed experiencing balance-of-payment difficulties. In its WTO notification, Ecuador said its trade deficit was likely to rise to US\$3.5 billion by the end of the year (WT/BOP/N/65/Rev.1).

The IMF confirmed that Ecuador's external environment had deteriorated sharply since August 2008, and projected a further deterioration of external accounts until 2010.

However, the US, Canada and the EU said in April that Ecuador should have tried other means, such as spending cuts, to balance its budget before instituting import quotas. Barring outright embargoes, quotas are the most trade-restricting way of controlling imports.

Members most affected by the import curbs – Colombia, Panama, the EU and South Korea – also complained that the measures targeted particular products and sectors of export interest to them. Colombia, hit particularly hard by the quotas, had seen its exports drop by 42 percent.

In June, Ecuador made a major concession: it consented to convert most of the import quotas into tariffs by 1 September. It also promised to reassess the measures and to terminate them early if its balance-of-payment situation improves.

Had the committee not accepted this compromise, Ecuador would have been vulnerable to dispute settlement challenges. In practice, however, the threat was remote since WTO disputes proceed at a leisurely pace and the import controls were to be lifted in January 2010 in any case.

Members Applaud

Members expressed satisfaction at the result. They said it showed that the WTO system was working well despite the economic crisis: consensus could be forged through negotiations rather than by imposing conditions. China, whose exports to Ecuador have fallen by nearly a half due to the import curbs, was also pleased with the outcome, in particular because it demonstrated that the WTO could address the problems of developing countries in the crisis.

Russia Update

Prime Minister Vladimir Putin announced on 10 June that Russia was abandoning its 16-year quest for WTO membership as an individual country. Instead, Russia, Belarus and Kazakhstan will start a new accession process as a single customs union next year. Both Belarus and Kazakhstan have sought to join the WTO for more than a decade, but their accession processes are far less advanced than that of their mighty neighbour. The unprecedented joint bid could delay all three countries' WTO entry for several years.

Russian officials suggested that restarting the talks as a three-nation bloc would stimulate economic integration in the former Soviet Union, a longtime Putin priority. Many Western analysts, however, saw the surprise move as a sign of Russia's growing frustration with the tortuous accession process, and some speculated that it could be a ploy to force a quick deal.

Just days before Mr Putin's announcement, the EU and Russia had made significant progress on the thorniest bilateral issues in the accession negotiations, and Russia's Economy Minister Elvira Nabiullina and EU Trade Commissioner Catherine Ashton had agreed that the negotiations should be completed this year. US Trade Representative Ron Kirk also said there had been progress, although he expressed some doubts about wrapping up the negotiations by December. The US is particularly concerned about Russia's use of sanitary regulations to keep out imports of US beef, pork and chicken.

Up to now, the EU and the US have supported Russia's WTO bid, which would bring the country within legally binding multilateral commitments. As a member of the G-20 major economies group, Russia is in principle bound by the promise to avoid protectionist measures (see page 11), but since November 2008, the government has raised import duties to 15-20 percent on iron and steel products, 30 percent on cars and 25 percent on trucks and buses, and has threatened to raise tariffs on a raft of other goods ranging from shoes to furniture.

Tuna–Dolphin Update

A dispute settlement panel was established on 20 April on Mexico's claim that the criteria for the dolphin-safe logo administered by the US Department of Commerce discriminate against its tuna exports.

At the core of the dispute is the Mexican tuna fleet's use of purse seine nets, which often trap and kill dolphins that swim above the fish. Tuna captured by this method does not meet US dolphin-safe criteria. Mexico argues, however, that its exports should be entitled to the label since its fishing practices are in line with an international agreement in force since 1999 under the auspices of the Inter-American Tropical Tuna Commission (Bridges Year 12 No.5 page 8).

The case marks the first time that a panel will examine the WTO compatibility of a non-mandatory label, albeit one administered by a government. The proceedings will be of systemic interest since WTO Members have engaged in a heated but inconclusive debate on private sector standards in the Committee on Sanitary and Phytosanitary Measures. The issue has been pushed by developing countries concerned about the proliferation of non-governmental standards, which they see as significant market access barriers.

The US argued before the Dispute Settlement Body that the case should be arbitrated under the North American Free Trade Agreement. NAFTA gives the respondent in an environment-related dispute the right to choose the forum where it will be heard.

But Mexico said it was determined to have the case resolved at the WTO. "Many countries have informally indicated their wish to participate in or to follow the dispute, something that would not be possible under the NAFTA. Mexico believes that the substantial concern that this dispute has generated at the international level must also be taken into account," the Mexican delegate told the meeting.

The US suggested that submissions in the case be made publicly available and panel hearings opened to public observation.

Dairy Subsidies Raise Storm of Protest

Both the EU and, more recently, the US have reinstated export subsidies for dairy products. The moves have been strongly condemned by many WTO Members.

The European export refunds have been in effect since January. In March, the EU also restarted buying excess butter and milk from farmers at intervention prices set respectively at €2,218 and €1,698 per tonne. The US subsidies – primarily for milk, butter and, to a lesser extent, cheese – were announced on 22 May.

Ironically, the EU and the US renewed their pledges to refrain from raising new barriers to investment or to trade in goods and services at the G-20 summit in April (see page 11). Both have now taken advantage of the caveat in this declaration: measures to stimulate exports are not covered by the commitment if they are WTO consistent.

US Agriculture Secretary Tom Vilsack said the subsidies would support the dairy industry, which had "seen its international market shares erode, in part due to the reintroduction of direct export subsidies by the European Union earlier this year." EU Agriculture Commissioner Mariann Fischer Boel called it 'very unfair' of the US to use Europe's reinstatement of export subsidies "as an excuse to go ahead in this direction."

WTO Members Call for Leadership, Reversal of Decisions

At the May General Council meeting, a number of delegates made it clear that they considered both countries in the wrong, although they did not dispute that the measures were within WTO export subsidy limits.

That, Australia's WTO ambassador Peter Grey said, was not the point. "If other economies follow the example set by the US and the EU and raise tariffs, domestic support and export subsidies toward their maximum WTO commitment levels, it would undermine the effectiveness and credibility of the WTO system." He also warned that "subsidy wars only drive prices even lower, thereby delaying economic recovery further. They punish those trying to compete without the help of subsidies, and particularly damage unsubsidised farmers in developing countries, jeopardising their agricultural production, food security and their most competitive export sectors."

In a press release, Australia's trade and agriculture ministers Simon Crean and Tony Burke charged that the US move flew in the face of the commitments made by G-20 leaders not to impose protectionist measures. Australia had protested strongly at the time of the EU decision, and warned that it would invite retaliatory action. "Now, both the EU and US are using export subsidies and setting a poor example for the rest of the world. We strongly reaffirm the need for the US and the EU to show better leadership," the ministers thundered.

The G-20 coalition of developing countries called the US reintroduction of dairy export subsidies a sign of 'murky protectionism', not directly violating WTO obligations and yet potentially weakening the WTO system at a time of economic crisis. "Protectionism is not about raising tariffs or controlling imports only. Protectionism also includes any form of government intervention, such as subsidies, which artificially tilts the field in favour of domestic enterprises, to the detriment of competitors abroad. In this case, the unsubsidised farmers in the developing world will also be negatively affected," the group stated.

New Zealand's trade minister and former chair of the WTO agriculture negotiations Tim Groser said in a press statement that the long-term solution was clear: "We need to complete the Doha Round in order to secure the elimination of agricultural export subsidies. In the meantime, restraint is needed, not a resumption of retaliatory subsidisation." The G-20 and the Cairns Group of agriculture exporting countries also said the tit-for-tat action highlighted the importance of concluding the round, and urged the EU and the US to withdraw the subsidies as soon as possible (see page 4 for more on the General Council meeting).

Truce Declared in Beef Hormones Dispute

On 13 May, US Trade Representative Ron Kirk and EU Trade Commissioner Catherine Ashton signed a Memorandum of Understanding, suspending WTO litigation while the parties explore the possibility of settling the long-running dispute through a market opening deal.

The agreement does not affect the EU's decades-old import ban on beef produced with growth-enhancing hormones. Instead, it sets up a four-year process that could resolve the conflict through more market access for high-quality US beef raised without growth hormones. USTR Kirk and Commissioner Ashton called the agreement a 'pragmatic way forward' in the long-running dispute, but not all beef growers are convinced.

In the US, a number of producers have complained that the ultimate 45,000 metric tonne duty-free quota is not large enough to make raising cattle without artificial growth enhancers commercially attractive. Instead, they say, the administration should have used the bargaining chip of hitting new EU products with retaliatory tariffs as leverage to get the ban lifted. Critics also argue that the EU's prohibition of antimicrobial washes in cleaning beef, a common practice in the US, is likely to result in under-fill of the new quota. However, Philip Seng, President of the US Meat Export Federation, said the agreement was preferable to new sanctions since an "actual increase in trade is much more beneficial to US interests."

Pekka Pesonen, Secretary-General of the European farmers' organisation Copa-Cogeca, called the deal 'another blow' for already struggling EU farmers. The agreement was 'highly unbalanced', he said, since the EU would be offering "upwards of €400 million worth of market access over four years but still [have] to 'pay' an additional €110 million in sanctions."

Currently, the US and Canada share an import quota 11,500 metric tonnes of hormone-free beef at a 20-percent ad valorem tariff. Depending on the type of cut or product, out-of-quota imports face specific duties ranging from €176.8 to €303.4 per 100 kilogrammes in addition to the 20-percent ad valorem rate.

The Deal in Detail

The May 2009 agreement is set to be implemented in three stages.

- **Phase 1** consists of two commitments spanning three years:
 - As of 3 August 2009 at the latest, the EU will open a new duty-free quota of 20,000 metric tonnes for hormone-free US beef.
 - The United States will not change the scope or the amount of trade sanctions in force on 23 March 2009. That was when the US dropped ten EU products from its original retaliation list, bringing the total amount of annual sanctions down from US\$116.8 million to US\$37.8 million in order to facilitate a negotiated solution to the conflict.

Without the deal, the original list was set to be modified so as to affect 45 new European export products, including a 300-percent tariff on French Roquefort cheese.

- **Phase 2**, if the parties agree to launch it, would last a year and involve:
 - the EU increasing the duty-free quota to 45,000 tonnes; and
 - the US suspending its trade sanctions.

Alluding to the unresolved issue of cleaning methods, Mr Kirk said that the US's decision on whether to move on to phase 2 would "depend on the existence of conditions at the end of phase 1 that would allow the US beef industry to make full use of the additional quota."

- **Phase 3** could lead to a final solution of the conflict if the parties agree that the arrangement is working to their mutual satisfaction. Should that be the case,
 - the EU would make permanent the 45,000 mt import quota; and
 - the US would definitively scrap all retaliatory duties.

WTO Case Suspended

The deal delays further WTO litigation for 18 months from the date the EU establishes the 20,000 mt duty-free quota. As of February 2011, either side can request a dispute settlement panel, but the parties have agreed that no interim report will be issued until the fourth year of agreement. Interim reports are in principle confidential, but in practice their contents are often leaked to the press.

Background

In the 1980s, the European Union banned the use of six growth-enhancing hormones in beef production across its territory. Imports of hormone-treated beef were also banned. The US and Canada challenged embargo at the WTO, and in 1998 the Appellate Body ruled that it was not based on adequate risk assessments as required by the Agreement on Sanitary and Phytosanitary Measures. The complainants subsequently imposed retaliatory tariffs on a range of European goods, respectively worth US\$116.8 million and C\$11.3 million.

In 2003, the EU notified to the WTO its new directive (2003/74/EC) on the use of growth hormones in stockfarming. The directive was fully WTO-compatible, the EU asserted, since it was based on new scientific evidence showing that health risks warranted a definitive ban on one of the hormones, as well as a prolonged prohibition of the other five on precautionary grounds. The US and Canada, however, kept the sanctions in place, prompting yet another dispute.

The Appellate Body confirmed in October 2008 that the sanctions were legal, but urged the parties to initiate compliance proceedings so as to definitively clarify the scientific basis for Directive E2003/74/EC. In December 2008, the EU requested dispute settlement consultations with the two complainants over the matter. The highly unusual move in essence amounted to a complainant asking the WTO to scrutinise its own legislation rather than challenging measures taken by the defendants (Bridges Year 12 No.6 page 17).

Major Trade & Environment Case Looms over Seal Trade

The European Parliament overwhelmingly approved a ban on the sale of seal products on 5 May. Although the trade restriction is to apply to domestic and foreign products alike, it has raised the prospect of WTO disputes by potentially affected exporters.

The ban, which must still be approved by EU member states, concerns all seal products except those that result from traditional hunts conducted by Inuits in Alaska, Canada, Greenland and Russia. In addition, by-products of seals culled under national laws for the ‘sole purpose of sustainable management of marine resources’ may be placed on the market on a non-profit basis, and travellers may import non-commercial quantities for their personal use.

European lawmakers’ principal motive in introducing the quasi-total sales ban was the perceived cruelty of the killing methods used rather than concern about a decline in seal populations. Proponents claim that the spikes used to crush the seals’ skulls cause unnecessary and ‘inhumane’ suffering, and that the animals are often skinned while still alive.

Several EU member countries, including Belgium, the Netherlands, Luxembourg and Italy, already have national-level bans in place. The EU prohibited the sale and import of ‘whitecoat’ products in 1983. The term refers to seal pups whose white fur has not yet moulted, a process that takes only two to three weeks from birth. Canada outlawed whitecoat hunting in 1987, but even today, more than 90 percent of the seals hunted worldwide for commercial purposes are less than a year old, and many are as young as three or four weeks.

EU member states are widely expected to approve the sales ban without major modifications before July. It could enter into force as early as October 2009.

WTO Challenges Possible

While animal welfare groups in Europe and elsewhere warmly welcomed the parliament’s decision, both Canada and Norway announced that they would challenge it at the WTO unless their seal products were excluded from final EU legislation. Both countries claim that they use humane killing methods, backed by science and consistent with international guidelines. For instance, their regulations require seals

to be killed before they are skinned; the visual impression to the contrary is created by powerful muscular spasms occurring after death.

“If the EU imposes a trade ban on seal products, it must contain an exemption for any country [...] that has strict guidelines in place for humane and sustainable sealing practices,” Canada’s Trade Minister Stockwell Day said in a statement. “If there is no such acceptable exemption, Canada will challenge the ban at the World Trade Organisation.” The proceedings will be initiated if EU member states approve the legislation as it currently stands. Nevertheless, Canada’s Prime Minister Stephen Harper said the issue should not be allowed to ‘contaminate’ the bilateral free trade negotiations launched in early May (see page 16).

Announcing Norway’s likely WTO challenge, Foreign Minister Jonas Gahr Støre said that a broad EU ban would affect his country’s liberty to “decide how we manage our own marine resources.” He also noted that a “ban on trade in seal products [would] set a dangerous precedent in the matter of sustainable harvesting of renewable resources.”

In addition, the potential litigants maintain that sustainable management of marine resources requires culls to keep seal populations in check. They also argue that sealing provides much-needed income for isolated coastal communities when fishing activities are limited.

Possible Elements of a WTO Dispute

GATT Article XX and similar exceptions in the Agreement on Technical Barriers to Trade (TBT) allow WTO Members to take otherwise prohibited trade measures if they are necessary to protect public morals, animal life and health, or are related to the conservation of exhaustible natural resources. The seal product dispute, if it goes ahead, could hinge on whether the ban can be scientifically justified; and whether the EU could resort to less trade-restrictive means (such as labelling) to achieve its goal of preventing inhumane seal kills.

The Inuit exemption could also be challenged as a violation of the GATT national treatment principle. In that case, the panel would need to determine whether Inuit seal products are ‘like’ those subject to the ban. The determination could only be based on the way the seals are caught, raising the controversial question of differentiating between products on the basis of their ‘process or production methods’ (PPMs).

Two major precedents exist. In 1991, a GATT panel ruled that the US could not embargo tuna products from Mexico based on the way the tuna was captured, i.e. using nets banned in the US to avoid dolphin deaths. (Mexico has recently resuscitated the dispute, alleging that US criteria for ‘dolphin safe’ tuna discriminate against its exports, see Bridges Year 13 No.1 page 11, and page 8 in this issue). In contrast, a landmark WTO Appellate Body ruling in 1998 found that the US could ban shrimp imports from countries where fishing methods caused endangered sea turtles to drown so long as the trade restriction was not applied in an arbitrary manner (Bridges Year 2 No.7 page 9).

Seal Catches and Trade

Pelts account for the lion’s share of seal trade. Seal meat and oil are also traded.

Canada, the world’s largest sealing nation, allows an annual hunt on its Atlantic coast. For 2009, the quota for harp seals, the most hunted and traded species, was 280,000. Norway’s quota was 47,000 adult seals. In 2008, Canada’s total seal exports to the EU stood at US\$4.7 million. Greenland and Namibia also hunt seals on a commercial scale. From 2004 to 2007, Greenland’s average annual catch was 160,000, with 63,000 pelts exported each year. Namibia’s 2008 quota was 86,000 animals. Export statistics were not available at press time.

G-20 Promised Much, but Monitoring Will Be Key

Much has been made of the G-20 leaders' commitment to refrain from taking protectionist measures at their London summit in April, but the language is vague enough to allow governments plenty of leeway to restrict imports, encourage exports and subsidise domestic recovery plans.

The leaders stressed that the financial contributions they had pledged to the International Monetary Fund and multilateral development banks, as well trade finance to be disbursed through various channels, constituted an "additional US\$1.1 trillion programme of support to restore credit, growth and jobs in the world economy. Together with the measures we have each taken nationally, this constitutes a global plan for recovery on an unprecedented scale" (see related article on page 12).

As foreshadowed by the G-20 finance ministers, the International Monetary Fund was the big winner of the summit (Bridges Year 13 No.1 page 5). The leaders committed to immediately increasing the Fund's resources by US\$250 billion. The money will eventually be merged with a US\$500 billion cash injection when new, more flexible borrowing arrangements available to a greater number of countries are put into place. If these commitments are kept, the IMF would see a three-fold increase of its current resource pool. In addition, the leaders said resources from agreed IMF gold sales would be used for concessional finance for the poorest countries.

The power structure within the IMF will also see some revisions after the summit. The G-20 leaders called for a 'realignment' of the quota shares that determine countries' voting power and contribution levels; the shift is expected to give emerging economies like China and India a greater say in how the IMF is run. Moreover, the leaders agreed that future chiefs of the Fund will be chosen on their merits, not their country of origin.

Another US\$100 billion was promised to support multilateral development banks' lending to low-income countries.

The funds made available to the international financial institutions are to be used to "support growth in emerging market and developing countries by helping to finance counter-cyclical spending, bank recapitalisation, infrastructure, trade finance, balance of payments support, debt roll-over and social support."

Anti-protectionism Pledges

The leaders reaffirmed the commitment they made in Washington in November to "refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organisation (WTO) inconsistent measures to stimulate exports." They extended the pledge until the end of 2010, and promised to "rectify promptly any such measures."

A draft declaration circulated shortly before the summit contained stronger language: "We reaffirm the commitment made in Washington not to raise new barriers to investment or to trade in goods and services, *including within existing WTO limits*, not to impose new trade restrictions, *and not to create new subsidies to exports*." Had this wording been retained, G-20 members would have been honour-bound to keep their tariffs and export subsidies at their April 2009 levels for a year.

Opting instead for the Washington language, G-20 members continue to have considerable latitude to raise tariffs or subsidise exports. The US used this flexibility in May, when it reinstated export subsidies for 92,000 metric tonnes of non-fat milk powder, butter and some cheeses. Agriculture Secretary Tom Vilsack stressed that the measure was 'fully consistent' with the United States' WTO obligations (see page 8).

The leaders promised in London to "minimise any negative impact on trade and investment of our domestic policy actions including fiscal policy and action in support of the financial

sector." They pledged to promptly notify the WTO of any such measures and called on the WTO and other international bodies "to monitor and report publicly on our adherence to these undertakings on a quarterly basis."

In addition, they committed to making available at least US\$250 billion over the next two years to support trade finance through their export credit and investment agencies, as well as multilateral development banks.

Doha Text Papers over Cracks

In November, the G-20 had promised to "strive to reach agreement this year on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an ambitious and balanced outcome." Striving, alas, did not prove sufficient, and a planned ministerial gathering to finalise the modalities was cancelled in December.

In London, the leaders said they were still committed to reaching an ambitious and balanced conclusion to the round, "which is urgently needed. This could boost the global economy by at least \$150 billion per annum. To achieve this we are committed to *building on the progress already* made, including with regard to modalities."

Again, an earlier draft was more robust, calling for a "rapid agreement, *on the basis of progress already made on modalities* leading to a successful conclusion of the Doha Development Round."

The wording in the London declaration papers over differences within the G-20, as well as the WTO membership, on whether the latest negotiating texts on modalities are an acceptable basis for moving forward: 'building on progress already made' does not necessarily mean that future discussions would be 'based on' the chairs' texts.

The leaders promised to give 'renewed focus and political attention' to efforts to wrap up the negotiations, using relevant international meetings to drive progress.

The Global Economic Crisis, the G-20 Summit and Africa

Faizel Ismail

The current global economic crisis, which Africa had no part in creating, is threatening to reverse much of the gains of the last decade, including the reduction of high poverty levels and advancing their Millennium Development Goal targets.

African countries grew by an average of over 5 percent between 2002 and 2007. They also made solid progress in strengthening democratic processes and building good governance. Nearly 30 countries signed on to the African Peer Review Mechanism, and the New Partnership for African Development – a socio-economic programme developed by African leaders at the beginning of the decade – was starting to bear fruit.

In 2009, however, average growth in Africa is expected to fall to 2.5 percent, below the rise in population increases. Even South Africa, the continent's largest economy is projected to grow by less than 2 percent in 2009. The continent is experiencing massive outflows of capital as foreign banks and companies retreat to their home markets, and credit is drying up for their exports and long-term infrastructure projects. The fall in rich country demand has resulted in a drastic reduction in global commodity prices and the consequent closure of mines in several African countries. In addition, growing unemployment levels in developed countries have had a direct negative impact on the flow of the remittances that have become an important part of African incomes in recent years. Revenues from tourism are expected to fall significantly, while overall levels of aid, in decline even before the financial crisis, are projected to slump further.¹

What Africa Needs

African countries have called for a three-fold response to the crisis: a stimulus package to support recovery, an inclusive new architecture of global economic governance and a halt to rich countries' protectionist practices in finance and trade that continue to undermine Africa's development.

The stimulus package would include more resources for multilateral development agencies such as the IMF, the World Bank and the African Development Bank, as well as relaxing some of these institutions' current conditionalities and front-loading concessional finance.

At the 2005 Gleneagles summit, leaders of the G-8 promised that developed countries' aid to Africa would see an increase of US\$25 billion a year by 2010, more than twice the level of 2004. Most donor countries, however, are not on track to meet either their Gleneagles commitments or the UN official development assistance (ODA) target of 0.7 percent of their gross national incomes. African countries, which lack the means to provide social safety nets for the poor, have embraced World Bank President Robert Zoellick's call for developed countries to allocate 0.7 percent of their stimulus packages to a 'vulnerability fund' to support developing countries.

Meeting in Addis Ababa in March, African Union trade ministers expressed concern over developed countries' growing use of protectionist measures, such as the US Buy American scheme and the EU's re-introduction of export subsidies for dairy products. The huge bailout packages of rich nations have had negative impacts on African countries, including through crowding out credit for trade finance and infrastructure improvements. African agriculture has suffered for decades from the huge subsidies handed out to developed country farmers. Fulfilling the promise of the Doha Development Agenda to substantially reduce such support would go a long way in addressing Africa's concerns, especially for the four major cotton producing countries of West Africa (Benin, Burkina Faso, Chad and Mali), the ministers said.

The G-20 Response

The response of the G-20 leaders to the challenges faced by African countries as a result of the current crisis, was a small step in the right direction, but will require a major effort to ensure that the progress made by African countries in the past decade is not wiped out in the next year or two due to negligence on the part of the world to Africa's plight.

The leaders agreed in London to increase funding to the World Bank and the IMF to support those developing countries most affected by the crisis (see page 11). They also promised:

- to take steps to increase the voice and representation of developing countries in the functioning of these institutions;
- to maintain their ODA pledges and commitments to meeting the Millennium Development targets, including to Africa; and
- to refrain from increasing financial and trade protectionism, and reiterated their commitment to an 'ambitious and balanced conclusion' of the Doha Round.

However the US\$1.1 trillion package announced at the summit was largely made up of existing commitments with real new money amounting to less than US\$100 billion.

The real impact of these pledges will only emerge in the implementation of the many promises made. While in many in developed countries are losing their jobs, rich governments are able to respond with stimulus packages and deploy existing social welfare systems. For most African countries, still highly indebted and dependant on aid for their revenues, the continuation and exacerbation of the current crisis will mean increased starvation, poverty and child mortality. The African Union was represented at the London meeting for the first time. At the next proposed G-20 summit, to be held in New York in September, Africa should use its seat to hold rich countries to account for the progress made in delivering on these promises.

Faizel Ismail is Head of the South African Delegation to the WTO in Geneva.

ENDNOTE

¹ World Bank. March 2009. *Swimming against the Tide: How Developing Countries Are Coping With the Global Economic Crisis.*

Europe Scrambles to Finalise Latin American Agreements

Any hope of a region-to-region Association Agreement between the European Union and the Andean Community seems to be definitely shattered. The race is on for concluding a similar pact with Central American countries in July, but the deadline may well slip.

Of the four the Andean countries, only Peru and Colombia are still pursuing full-scale ‘association agreements’, as the EU’s trade pacts with developing countries are called. The agreements consist of three pillars, one on trade, another on development co-operation and financing, and a third on political dialogue.

Bolivia, an original party to the talks, has boycotted the negotiations since 2007 in protest over the EU’s stance on intellectual property rights and the privatisation of services. In May, President Evo Morales reconfirmed that his country would negotiate “neither the privatisation of our natural resources, nor the privatisation of basic services, nor allow patents on living organisms.” Mr Morales added that differences in these areas were so profound that it would be impossible for Bolivia, Peru and Colombia to develop a common negotiating position vis-à-vis the EU.

Now, Ecuador’s participation in the negotiations appears in doubt as well. Although the country did attend talks on the pact in early May, two weeks later President Rafael Correa said in a weekly radio address that Ecuador was ‘very concerned’ about the direction the negotiations were taking: “The European Union can give [the deal] whatever pretty name it wants, but we are headed toward a free trade agreement, and we will not accept that.”

Ecuador’s foreign minister Fander Falconi and chief trade negotiator Mentor Villagomez said that the country would participate in discussions on intellectual property, financial services, government procurement, competition and access to agricultural markets only as an observer. This did not mean that Ecuador was abandoning the negotiations, the officials assured, but rather that it needed more time to judge whether an eventual agreement would be in line with the new constitution adopted in September 2008. The principle had been accepted by the EU, as well as Peru and Colombia, they added.

The latter two countries are still keen to push forward in the talks, but concerns remain over intellectual property issues, including the EU’s insistence on a ‘data exclusivity’ period of up to 11 years, during which health authorities cannot release confidential clinical trial data to generics manufacturers. Progress could also be frustrated by European concerns over labour and human rights violations in Colombia. “There is no disagreement on the objectives. We all want better judicial procedures, fewer killings and a government with clean hands,” said Rupert Schlegelmilch, the EU’s chief negotiator for the Andean nations. “The Colombian government is taking on board [our] recommendations,” he added. “It is certainly still a bad situation, but it is improving.”

The talks were slated to conclude in June, but many think that September is a more realistic possibility.

After Snags, Central American Pact Is (Almost) Back on Track

Neither has it been plain sailing for region-to-region negotiations between the EU and Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama, collectively referred to as CAFTA countries because all six are party to the US-Central American Free Trade Agreement.

In April, the seventh round of the talks ended in disarray when Nicaragua walked out due to lack of support for its proposal to establish an economic and financial fund of €60 billion, nine-tenths of which would be financed by the EU. European negotiators said the amount was far too large, and the other five parties agreed. However, the EU said it was ready to contribute financially within the resources already allocated to Central America in its development budget. On 25 April, the EU announced the establishment of a bi-regional working

group on a financial mechanism for regional development.

Negotiations resumed in May with a focus on trade liberalisation commitments after two years of discussions mostly centred on other aspects of the pact. The EU called for the CAFTA countries to open their markets to industrial and agricultural products considered ‘highly sensitive’. Although negotiators have been tight-lipped about the details, it is thought that the EU is particularly interested in duty-free access for its dairy and pork products, as well as olive oil, protected by geographical indications. Other items on the EU wish list include lower duties for pharmaceuticals and cars.

However, Central American sources predict that services liberalisation could prove the real stumbling block in the negotiations. The EU is known to have high ambitions in opening up sensitive sectors, such as telecommunications and financial services.

EU External Relations Commissioner Benita Ferrero-Waldner said in May that she hoped the next round of talks, scheduled for 6-10 July, would be the last. Her Nicaraguan colleague, Valdrak Jaentschke Whitaker, countered that a good deal would be preferable to a quick one.

Warning on Health Impacts

A study on the agreement’s impacts on access to essential medicines, published by European and Andean civil society groups in May, found that five million Colombians and more than six million Peruvians would lose access to affordable medicines by 2030 unless public health budgets were increased by US\$280 million and US\$250 million respectively.

Together, the EU’s proposals on patent protection and data exclusivity would increase the prices of medicines by up to 34 percent, the groups said. They also castigated the EU for adopting a more aggressive approach to IP protection by developing country FTA partners than the US.

Protests in Peru

Since April, Peru's indigenous communities have blocked roads, waterways and airports, staged strikes and shut down oil installations in an attempt to force the government to revoke investment laws passed last year and revise concessions granted to energy and mining companies.

President Garcia decreed most of the disputed laws under the special powers Congress gave him to bring Peru's regulations into line with the requirements of its free trade pact with the United States. Critics maintain that the laws were not required under the FTA, but that the government seized the opportunity to change legislation in order to lure foreign investment into the Amazon basin. Some of the decrees have been found unconstitutional.

The Amazon has massive natural gas and oil reserves, which the government is keen to develop. The region is also rich in minerals, such as copper, Peru's number one export product. Since the new laws entered into force, dozens of concessions have been auctioned to energy and mining companies. Fifteen more have been signed, most in the Amazon region.

Indigenous communities claim that about 70 percent of the Peruvian Amazon is now under some kind of foreign resource concession, either for oil and gas exploration or for mining. In addition to the repeal of the investment laws, they demand a greater say over the use of their natural resources, evoking ILO Convention 169, under which indigenous peoples have the right to be consulted prior to any project on their land.

The government has responded to the unrest by declaring a state of emergency in four regions, which allows it to impose curfews or send in troops to break up protests.

President Garcia says the decrees are non-negotiable. Instead, he has insisted that the "lands of the Amazon belong to all Peruvians and not just a small group that lives there." The area makes up 60 percent of the country's territory, but has just 11 percent of its population.

China Marches on in Latin America

China formally signed its first comprehensive free trade agreement with a Latin American country, Peru, in late April. Another, with Costa Rica, could follow early next year.

The China-Peru FTA, hailed as a 'new landmark' in bilateral ties by both parties, covers goods, services and investment. The two sides have also reached consensus on a variety of other trade-related issues, including intellectual property, trade remedies and customs regulations. The deal was concluded last November after just 14 months of negotiations.

China is Peru's second largest trading partner after the US, but could well become the first after the FTA enters into force. Bilateral trade between the two countries has grown rapidly in the last few years, totalling US\$7.5 billion in 2008, up 24 percent from the previous year. China's imports from Peru exceeded its exports by US\$1.9 billion.

Under the new agreement, tariffs will eventually be eliminated on more than 90 percent of goods. Investors will be accorded post-establishment national treatment once the agreement enters into force, most likely early next year. Many services sectors are to be opened up, including mining. Peru's mineral wealth is its main attraction for China.

The country is the world's largest silver producer, third largest of copper, zinc and tin, and fifth largest producer of gold. Minerals represent about 60 percent of Peruvian export revenue.

Peru has pursued an aggressive trade expansion agenda in the past few years. FTAs are in force with the US and Canada, and under negotiation with the European Union, South Korea and Japan. Peru's implementation of the US agreement has come under severe criticism from health activists (see related article on page 17), as well as the country's indigenous people, who contend that the government used the FTA as a means to pass investment laws that have led to huge strips of their ancestral lands being encroached by oil and gas exploration, timber harvesting and mining (see sidebar opposite).

Costa Rica Is Next in Line

Costa Rica and China started negotiations on a comprehensive FTA in January 2009. Seven rounds of talks are to take place this year, possibly culminating in the signing of the pact in early 2010. Tariff reductions have already been agreed on 90 percent of goods, but a deal on key Costa Rican products such as coffee, sugar, beef, pork and chicken remains to be struck.

China is already Costa Rica's second biggest export market. Last year, bilateral trade was worth nearly US\$3 billion, a thirty-fold increase from 2001.

Chile, Brazil Exports Surge

China's first Latin American venture was an FTA concluded with Chile in 2005, but that treaty only covered trade in goods. A complementary deal on services trade was signed in 2008.

The goods treaty went into effect in October 2006, and China is now Chile's primary trading partner. In 2007, bilateral trade soared to US\$14.7 billion, or 65 percent over the 2006 level. Chile's exports to China, led by copper and wine, reached US\$10.3 billion, while China exported US\$4.4 billion worth of consumer goods into Chile.

Resource-rich Latin American countries need not conclude FTAs to boost their China trade, however. In April 2009, China surpassed the US as Brazil's premier export destination, breaking a pattern that had prevailed for nearly 80 years. The main reason was a surge in Chinese demand for iron ore.

In addition to Chile and Peru, China has concluded free trade agreements with ASEAN, New Zealand, Pakistan and Singapore. It is still negotiating with Australia, Costa Rica, the Gulf Cooperation Council, Iceland, Norway and the Southern African Customs Union.

India Boosts Asian Trade Ties

After nearly a decade of negotiations, India is set to sign free trade agreements with the ten-member Association of Southeast Asian Nations and South Korea next fall.

A deal with ASEAN would open the Southeast Asian market, estimated at US\$1.1 trillion, to Indian exporters at a time when Western imports are contracting sharply. The combined population of all partners in the new regional trading zone would exceed 1.5 billion.

Tariff cuts are set to start in January 2010. Import duties for 'normal' products will be eliminated within four to six years, and reduced to 5 percent for sensitive products (about 10 percent of all traded goods) by end-2016. Duties on highly-sensitive products (palm oil, tea, coffee and pepper for India) will be brought down to 30-45 percent over ten years. In addition, the parties will be able to exempt ten percent of traded products from any cuts. The items on these so-called 'negative lists' vary from country to country. India's list consists mostly of agricultural and fisheries products, but also includes rubber, textiles, chemical and petrochemical products, auto components and spirits.

ASEAN accounts for roughly 10 percent of India's exports. With the signing of the free trade agreement, analysts expect bilateral trade to surpass US\$50 billion in 2010, up from US\$48 billion projected for 2008-09.

As it stands, the agreement covers only goods, but it will be extended to services, investment and other areas of economic co-operation over time. The pact was delayed several times, mostly due to differences over issues such as the number of products that can be excluded from tariff reductions, the depth of the cuts and rules related to value addition.

ASEAN member states include Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. The bloc already has free trade agreements with China, Australia and New Zealand, as well as South Korea. Talks are also underway with Japan.

The Comprehensive Economic Co-operation Agreement (CEPA) provisionally agreed between India and South Korea covers investment and services, as well as goods. It also includes bilateral co-operation pacts in several specific services sectors, and science and technology.

The main issue holding up the conclusion of the treaty had to do with India's demands for more access to the Korean services market, in particular in the educational and healthcare sectors. Access for other services professionals had been agreed earlier. Thus far, India has only a marginal share of Korea's services imports, dominated by the US, the EU, Japan and China.

Whereas the ASEAN-Indian agreement requires India to reduce import duties on all but 500 products out of a total of 5,000, the deal with Korea reportedly allows it to maintain a 'negative list' of some 700 items, including cars and auto components, farm and fisheries products, wines, edible oils and textiles, as well as certain goods produced by small or medium-sized enterprises such as perfumes, soaps and toiletries.

After double-digit growth for many years, two-way trade between India and South Korea culminated at US\$15.5 billion in 2008, but contracted by 40 percent in the first two months of this year. The CEPA is expected to lead to an overall increase in bilateral trade worth US\$3.3 billion.

Indian news agency PTI quoted a senior commerce ministry official as saying that signing the two agreements was on the '100-day agenda' of the new government. The formal ceremony could occur either on the sidelines of an ASEAN trade ministers' meeting in August or at the bloc's annual summit in October. India's newly appointed Commerce and Industry Minister Anand Sharma said he would seek cabinet approval for both agreements shortly.

EU-Asia Update

- The EU and South Korea are to hold ministerial-level talks in June in an attempt to finalise a free trade agreement, which both sides say is all but completed. Just two major issues remain: rules of origin and the duty-drawbacks Korea insists must be allowed under the treaty. The term refers to local firms being refunded the import duties they have paid on components from third parties to manufacture finished export products. The EU does not accept the practice in its free trade agreements.

European carmakers are particularly opposed to duty-drawbacks given Korea's huge trade surplus in auto trade. They also want tighter rules of origin to ensure that a greater part of a vehicle is made up of Korean inputs rather than cheaper imported products from countries such as China. Automobile trade is also the main factor keeping the US Congress from considering the FTA the two countries signed in June 2007.

Two-way trade between South Korea and the EU stood at more than US\$90 billion in 2008. Studies conducted prior to the launch of the negotiations showed that an ambitious FTA could increase bilateral trade by 30-40 percent.

- Free trade talks between the 10-member Association of Southeast Asian Nations and the EU have been temporarily halted after two years of talks.

Indonesia's Trade Minister Mari Pangestu said the two sides had decided to 'take a pause' due to disagreement over the treaty's scope. "Obviously, Europe wants to have a much more comprehensive coverage of issues like the environment and labour, which are sensitive for ASEAN countries," she said.

For the EU, however, the real impediments are Myanmar's abuse of human rights and the slow pace of democratic reforms there. So far, ASEAN countries have not appeared keen to conclude individual agreements with the EU, as proposed by the United Kingdom.

EU, Canada Seek Trade Opening Pact in Times of Crisis

Canada and the European Union launched negotiations for a free trade treaty in May. The deal would be the first between two major developed trading powers in more than a decade.

The comprehensive agreement is to cover trade in goods and services, as well investment, government procurement, intellectual property issues, the environment, and science and technology.

Currently, trade in goods and services between the EU and Canada amounts to some €70 billion annually. According to a scoping study commissioned by the Canadian government and the European Commission, an ambitious FTA could bring real income gains worth €8.2 billion to Canada and €11.6 billion to the EU. EU exports to Canada could increase by more than 24 percent, while Canadian exports to the EU could get a 20-percent boost.

Tariffs are already low for most goods traded between the two sides, although peaks exist in areas such as processed foods, fish and seafood products in the EU, and footwear, textiles and apparel in Canada. Reducing these barriers would bring some gains, but the bulk of the benefits under the agreement would flow from liberalising investment regimes and services. Tearing down existing barriers in these areas by 2 to 10 percent could translate into GDP increases worth for more than €5 billion for the EU and roughly €3.6 billion for Canada.

In addition, the parties intend to tackle non-tariff barriers through harmonising regulations in areas ranging from copyrights to animal safety. Another aim of the pact is to increase labour mobility for skilled workers, particularly in the business sector.

If all goes according to plan, the negotiations could be wrapped up within two years.

Strategic Aims

Canada hopes that the FTA will lessen its reliance on the United States, where consumer demand has plummeted since the onset of the economic crisis last year. More than three-quarters of all Canadian exports now go to the US; only 8 percent are destined for Europe. Even so, the EU is Cana-

da's second largest trading partner, while Canada is the EU's 11th most important foreign market.

A free trade agreement with NAFTA member Canada would provide the EU 'a gateway to the North American market', Canada's Prime Minister Stephen Harper stressed. He also noted that for the first time in history, his country was in a position to offer "a better environment for investors at the end of the current recession than the United States."

Frank Vargo of the US National Association of Manufacturers has expressed some foreboding about the impending deal. "The EU already has a free trade agreement with Mexico. Now they're negotiating one with Canada and that leaves us out. This has always been our concern: other countries are going to negotiate deals that will either dilute our market access or will put us at a significant disadvantage," Mr Vargo said.

Commitment to Open Trade

Both sides emphasised the symbolic importance of launching negotiations in the middle of an economic crisis. EU Trade Commissioner Catherine Ashton said: "At a time when concerns about protectionism dominate the trade agenda, the decision to start negotiations now sends a powerful message that open trade and investment are drivers of economic recovery." The WTO has predicted that global trade will drop by 9 percent this year.

Some, however, have interpreted the EU-Canada talks as a tacit acknowledgement that the parties have lost confidence in the multilateral trading system's ability to deliver and are therefore seeking out another venue for increasing trade.

A Seal in the Ointment?

The EU's sales ban on seal products could become a hot spot in the negotiations. Canada has already announced that it will challenge the measure at the WTO unless it is changed so as to exclude Canadian products. That, however, is unlikely. The European Parliament has already approved the legislation, and member states are not expected to substantially amend it. As it stands, the law permits the sale of seal products only if they result from traditional Inuit hunts. The ban could enter into force in October 2009 (see page10).

The premier of the province of Newfoundland and Labrador, Danny Williams, has vowed not to support the free trade talks in protest over the EU embargo. The province is home to roughly 6,000 sealers, and Mr Williams insists that the ban "has no basis in science or sustainable harvesting practices."

Such opposition could complicate the FTA negotiations as Canadian provincial officials have been invited to participate in the talks 'with a view to making binding commitments' to implement the agreement, which must be approved by lawmakers at both the national and provincial or territorial levels.

Canada Delays Consideration of Colombia FTA

Meanwhile, further discussion on Canada's implementation legislation for a free trade agreement with Colombia has been put on hold until next fall following a long debate in the House of Commons, which revealed deep misgivings about human rights violations and labour conditions in the Andean country. The agreement was signed in November 2008.

Canada also has FTAs with the US and Mexico, Peru, EFTA countries, Costa Rica, Chile and Israel. Negotiations are underway with South Korea, Jordan, Morocco and Singapore, as well as a number of countries in Central America and the Caribbean.

Public Health and Intellectual Property in the US–Peru TPA

Santiago Roca

Incredible but true: very few of the amendments introduced by US congressional Democrats to the IP chapter of the US–Peru trade promotion agreement have been implemented by the Peruvian government or respected by the Office of the United States Trade Representative.

In many cases, the text of the original agreement, adopted in June 2006, exceeded requirements in US legislation with regard to the length of patent protection, exclusivity for undisclosed clinical trial data, as well as the elimination of competition from generic drugs and the absence of safeguards to protect consumers. These provisions also undermined flexibilities available to countries in the Doha Declaration on TRIPS and Public Health and the WTO TRIPS Agreement.

In March 2007, a number of US Democrats expressed serious concern over the lack of balance between intellectual property, innovation and public health in free trade treaties concluded by the Bush administration, but not yet ratified by Congress.¹ In May, a bipartisan agreement was reached on a series of amendments to be brought to the pending trade pacts (Bridges Year 11 No.4 page 13).² By November 2007, the parliaments of both countries had approved the modifications. All that was left was the implementation stage, i.e. Peru's adjusting its legal and institutional frameworks to make them coherent and consistent with the amended TPA.

In December 2007, the Peruvian Congress was granted special powers to adjust national legislation within 180 days. Six months later, the government enacted 99 legislative decrees (LDs) without any discussion or public consultation.³ In January 2009, a final agreement reflecting concerns expressed by the US Trade Representative was codified in laws 29316 and 29317. These modifications made it possible for President Bush to sign the TPA into law barely a week before President Obama came into office.

So, is the new Peruvian legislation in line with the proposals and principles put forward by US Democrats? Or does it significantly depart from the balance they sought to achieve between innovation, intellectual property and access to public health? Let's look at a few examples.

Protection of Undisclosed Data

The TPA provides that data will be protected only when its generation is found to have involved 'considerable effort'. However, term is not defined in Peruvian law in either absolute or relative or terms, nor is information required on the amount of investment involved in clinical trials. Thus, even a minimal effort could be 'considerable', and all data might be protected.

According to the TPA, a 'normal' period of protection is five years, but could be less depending on the nature of the data, as well as the effort and cost involved. However, Peru did not seize the opportunity to specify the criteria for granting periods shorter than five years in its domestic legislation. Furthermore, protection has been granted to data generated in clinical trial phases I, II and III, as well as to pre-clinical pharmacology and toxicology studies.⁴

The TPA provides that if the health authority bases its marketing approval on one previously granted abroad (registration by reference), the term of protection begins to run from the date of its first adoption, thus reducing the protection period in Peru. The relevant language in domestic law, however, does not oblige foreign companies to use first registration abroad, thus allowing them to request direct registration in Peru instead. In this case, the protection period begins from the date of the Peruvian authorisation, thus circumventing the TPA provision.

With regard to the requirements for accepting applications for data protection, the Regulation attached to LD 1072 greatly facilitates access to protection, requiring only sworn statements regarding (i) the data's authenticity, (ii) the undisclosed nature of such information, and (iii) the applicant's not having been found guilty of conduct contrary to free competition. In contrast, other countries require 'full evidence' of data generation, the 'secret' (i.e. undisclosed)

nature of the trial information and a verified accounting of the investment, which must be separated from any state subsidies, as well as administrative costs not directly related to the clinical trials.

The TPA does not require protection if disclosure is necessary to protect the public, or if steps are taken to ensure that the undisclosed data or studies are protected against unfair commercial use. Legislative Decree 1072, however, limits the use of these exceptions to situations of emergency or extreme urgency, and restricts the award of compulsory licenses to circumstances described in Article 40 of LD 1075 as amended by Law 29316.⁵ Similarly, the legislation ignores the possibility of refusing exclusive data protection when steps are taken against unfair commercial use, for instance through competition laws of that penalise violators. Moreover, modifications made to Andean Decision 486 on Intellectual Property, empower patent holders to take action against the exceptions if they are found to be unjustifiably harmful to their interests.⁶

Factors Affecting Competition

Under Peruvian law, third parties that have developed, and invested in, their own clinical trials of a chemical entity already registered by some one else must wait five years before obtaining authorisation to market their product.⁷ This provision also applies to the national health authority's use of undisclosed data from other laboratories or companies in its analysis of safety and effectiveness.

Competition can also be limited through domestic legislation that allows for strong administrative and judicial opposition to requests submitted to the health registry, thus hindering the emergence of new players in the market. While Article 4.4 of Law 1072 states that it is subject to compliance with the provisions relating to competition in force in Peru, the new competition law passed in one of the 99 legislative decrees does not establish any such link.

Continued on page 18

Finally, although the TPA provides that “there shall be no limitation on any Party to implement abbreviated approval procedures for [new] products on the basis of bioequivalence or bioavailability studies,” Article 19 of LD 1072 Regulation states that in such cases sanitary registration “can only be granted after the expiry of the period of protection provided by law.” In other words, competitors cannot enter the market until the protection period runs out.

Sanitary Registration and Marketing Approval

Peruvian rules implementing the TPA broaden both the scope and the requirements for products that need sanitary registration and marketing authorisation. Sanitary registration is now obligatory for all drugs, and any marketing authorisations previously obtained must be renewed. The new equivalency studies required increase the cost of generic drugs, or make them disappear from the market. The rules also favour importers since they will not be reviewed by Peruvian authorities for a year, while domestic producers must comply immediately.

In addition, restarting the sanitary registry from scratch entails considerable risks if the many chemical entities that are currently licensed and marketed in the country are not reinstated, since this would allow foreign laboratories to seek test data protection for these compounds in the future. A balance between access to public health and intellectual property rights would have required the establishment of abbreviated procedures for updating previous registrations, as well as proactive work by the Ministry of Health to oblige third parties to identify and register chemical entities previously marketed, but not registered, in the country.

Furthermore, enforcement systems have been greatly strengthened with the establishment of detailed civil, administrative and criminal procedures and remedies, including provisions on precautionary measures and special requirements related to border measures.

Consumer Protection

Finally, several provisions that protect the consumer in the United States have been left out, including (i) the expiry of data protection if a product is not offered for sale within one year of marketing approval,

(ii) preventing the issuance of frivolous or unjustified patents based on minor changes, (iii) requiring the patent to describe the best way for others to eventually reproduce the invention, and (iv) requiring laboratories to transfer know-how in exceptional cases that are consistent with the Doha Declaration on TRIPS and Public Health.

How Did It Happen?

Differences between Democrats and Republicans in the United States form the backdrop for the current situation. Both parties share the view that innovation, technology and expanded intellectual property rights serve the interests of their companies and citizens in general, but Democrats seek a balance between intellectual property and public health, while Republicans prioritise the interests of large US-based transnational pharmaceutical companies.

When the ‘certification’ of the TPA’s implementation legislation was in the hands of the Republicans, they sought to thwart the amendments the Democrats had successfully fought for in the US Congress. Second, both the Toledo and Garcia governments in Peru viewed the TPA as an instrument to promote exports and investment, regardless of its potential negative impacts in areas such as intellectual property, among others. Moreover, Peru has apparently not understood that while any gains from trade will be diluted over time as other countries conclude similar market opening agreements, the expansion of intellectual property rights will be permanent and will always favour countries with the highest technological development. There is little or no concern in Peru for the protection of public health, the promotion of free competition, the common good and the need to promote a production structure that adds value, transfers technology and creates domestic capacity instead of protecting and expanding foreign exclusive intellectual property rights and ownership of technology.

What Can Be Done?

There are three major possibilities. The new Democratic executive in the US could ask Peru to seek a better balance without changing the TPA, but agreeing to interpret it in conformity with the text itself. Second, Peru could unilaterally abrogate those parts of the legislation that were ostensibly adopted to implement the TPA but in fact have nothing to do with it, or represent the interests of local groups related to foreign pharmaceuticals, which took advantage of the extraordinary powers granted by Congress when the laws were being drafted. Third, the Peruvian Congress could request eminent experts from civil society on health and intellectual property issues to prepare legislation that promotes generic drugs and achieves a more balanced relationship between intellectual property and public health (a kind of Hatch-Waxman law for Peru). This law should have the authority to repeal those parts of the TPA implementation legislation that contradict the TPA itself.

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ENDNOTES

¹ Letter from 12 Representatives of the Lower Chamber of the US Congress, led by Henry Waxman and Jim McDermott, to USTR Susan Schwab, dated 12 March 2007.

² Although the agreement was reached between Democrats and Republicans in May 2007, in the case of Peru, the USTR made it clear much earlier that the changes in intellectual property were due to pressure from Democrats. The modification process of the Peruvian agreement started well before the bipartisan agreement was made public.

³ Several of the legislative decrees have been questioned as being unconstitutional. See for example, Francisco Eguiguren, *Análisis de la Conformidad Constitucional del Uso de Facultades Legislativas Otorgadas por el Congreso al Poder Ejecutivo mediante Ley 29157*, manuscript, August 2008. LDs 1015 and 1073 have already been amended by the Peruvian Congress.

⁴ LD 1072 Regulation, Art. 2b and c.

⁵ LD 1072 Regulation, Art. 17.

⁶ Article 8 of Law 29316, which modifies Article 39A of LD 1075.

⁷ The wording of Art. 6 of the LD 1072 Regulation allows for this interpretation, contradicting LD 1072 Art. 4.2, which only blocks marketing approval if the sanitary authority uses test data from other laboratories to verify the safety and efficiency of the products.

Kenya under Pressure to Change Anti-counterfeiting Law

Public health activists and the Indian generics industry have expressed serious concerns over access to medicines under Kenya's new anti-counterfeiting law, which protects intellectual property rights holders anywhere in the world.

The Kenyan Congress passed the controversial legislation in December 2008, but opponents are still pushing for amendments that would reduce the bill's broad scope and expansive definition of counterfeit goods before it enters into force. That will happen upon notification by the country's minister of industrialisation, but the date has not yet been announced.

The law's avowed purpose is to prohibit trade counterfeit products. The Kenya Association of Manufacturers estimates that counterfeits cost local firms more than US\$642 million in 2008, while annual government revenue losses are thought to exceed US\$77 million. A recent survey by Kenya's National Quality Control Laboratories and the Pharmacy and Poisons Board found that 30 percent of the drugs in Kenya are counterfeit. Some consisted of no more than chalk or water.

Expansive Counterfeiting Definition

As it stands, the law defines counterfeiting as a number of actions taken "without the authority of the owner of *any intellectual property right subsisting in Kenya or elsewhere*" (editor's italics), thus potentially bringing within its scope generic copies of medicines still under patent anywhere in the world even when the patent is not in force in either Kenya or the country where it was manufactured.

Counterfeiting actions include the manufacture, production, packaging, re-packaging, labeling or making, whether in Kenya or elsewhere, of goods that are 'identical or substantially similar copies' of protected products, or 'colourable imitations' that are 'calculated to be confused with or to be taken as being the protected goods', or the 'manufacturing, producing or making of copies, in Kenya or elsewhere, in violation of an author's rights or related rights'. Bowing to vehement protests from the health community, the following clause was added shortly before the parliamentary vote:

"In relation to medicine, [counterfeiting means] the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging."

On its face, the provision seems geared to prevent the release of medicines that attempt to deceive the buyer. However, many worry that omitting the actual composition of a drug from the counterfeiting criteria may lead authorities to equate safe and effective generic drugs with sub-standard imitations of brandname medicines that are ineffective or even detrimental to human health.

Provisions on Confiscation, Transit

The legislation gives anti-counterfeit officials sweeping powers to detain or seize goods suspected of being counterfeit, including upon petition of right-holders. Applications will be processed within three working days and be granted if authorities determine (i) that the claim does pertain to protected goods, (ii) that an IPR on the subject matter exists, and (iii) the applicant is the owner of the IPR. Compensation for "damage or loss caused by wrongful seizure, removal or detention of goods alleged to be counterfeit [...] shall only be paid where the application for seizure and detention was false or negligent or made in bad faith."

Health Action International (HAI) Africa has called for the elimination of this section, arguing that the powers it gives to the Kenya Revenue Authority and the future Anti-counterfeit Agency are excessive and likely to be abused, as well as contrary to TRIPS Article 8.2, which provides that "appropriate measures [...] may be needed to prevent the abuse of intellectual property rights by right-holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology." In addition, HAI Africa protests the 'very high' threshold for compensation for wrongful seizure.

Furthermore, the anti-counterfeiting law also applies to goods in transit, making it an offence to "import into, transit through, transship within or export from Kenya, except, for private and domestic use of the importer or exporter as the case may be, any counterfeit goods." A provision along similar lines in EU law has been used repeatedly to seize or detain legitimate generic drugs in transit, as happened in December 2008, when Dutch authorities in Amsterdam confiscated a consignment of losartan en route from India to Brazil. The two countries are still mulling over the initiation of a formal WTO challenge in the matter (Bridges Year 13 No.1, pages 12 and 13).

Indian Generics Firms Protest

The Indian Pharmaceutical Alliance (IPA) is lobbying hard against the Kenyan legislation. It views the law as part of a concerted effort by multinational pharmaceutical companies to protect their branded products against generic competition through pressuring governments to adopt legislation that equates effective copies with spurious products. The alliance has enlisted the help of Indian government officials to press Kenya to drop provisions that exceed the requirements of the TRIPS Agreement, including the recognition of extraterritorial intellectual property rights and the law's application to goods in transit.

In addition, IPA Secretary-General D.G. Shah fears that other African countries will adopt similar laws, and thus potentially 'sound the death knell' for Indian generics exports to the continent. Africa currently represents some 15 percent of India's overall pharmaceutical exports, estimated at US\$8 billion. Kenya is the continent's third largest market for Indian drugs, with imports totalling some US\$70 million last year.

The Indian pharmaceutical industry also opposes proposed changes to the World Health Organisation's definition of counterfeit medicines so that it could include trademark violations. The issue was evoked at the WHO's May Health Assembly (see related article on page 20).

WHO Tackles Intellectual Property, R&D Treaty

The World Health Assembly held in May engaged in lively discussions on intellectual property, innovation and public health. A proposal for a treaty on biomedical research and development emerged as a particularly controversial issue.

After intense debate, member states of the World Health Organisation adopted a final Plan of Action on Public Health, Innovation and Intellectual Property that includes an agreed list of stakeholders who will be involved in the process of implementation, as well as a time frame and progress indicators by which to monitor progress. The plan was approved after three years of deliberations by the WHO Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (IGWG). The group had been asked to draw up a global strategy and plan of action on ways to bring new thinking on innovation and access to medicines, as well as to provide a framework for essential health research and development relevant to diseases which disproportionately affect developing countries.

But the final approval was not without contention. A number of developing countries expressed concern over the lack of inclusiveness in the process in which the negotiating text on stakeholder participation was developed and presented to the assembly. In a joint intervention, Barbados, Bangladesh, Bolivia, and Suriname noted that “only a limited number of countries were invited to negotiate on the remaining bracketed text of the WHO plan of action leaving the majority of states with no real recourse or fora to engage in meaningful negotiations prior to the convening of the 62nd Assembly.”

Mixed Reactions to Possible R&D Treaty

Discussions focused extensively on a possible international treaty on biomedical research and development (R&D). The concept has been driven by civil society groups and supported by developing countries such as Bangladesh, Barbados, Bolivia and Suriname. The WHO’s Global Strategy on Public Health and Intellectual Property calls for “further exploratory discussions on the utility of possible instruments or mechanisms for essential health and biomedical R&D, including *inter alia*, an essential health and biomedical R&D treaty.”

A 2007 discussion draft offers the following description of the purpose of the agreement: “The state parties to this treaty seek to create a new global framework for supporting medical research and development that is based upon equitable sharing of the costs of research and development, incentives to invest in useful research and development in the areas of need and public interest, and which recognises human rights and the goal of all sharing in the benefits of scientific advancement.”

Although the sponsors believe that such a treaty would considerably “transform the landscape of biomedical innovation to incorporate needs-driven health research and development,” several developed country members, primarily the US and the EU, said that the WHO was not an appropriate forum for discussing the treaty.

After informal negotiations, the WHO’s status as a stakeholder in the process was dropped. This change triggered concerns among non-governmental organisations and developing country members. Barbados stated that leaving the WHO out of the negotiations could leave the proposal without a forum for discussion or advancement once the Expert Group on R&D Financing concludes its time-limited mandate. Bolivia added that “much time, effort and hope may be lost if the WHO, which is in a position to support the needs of developing countries, is not allowed to participate in bringing it to fruition.”

Advocacy groups, such as Essential Action, Health Action International, Knowledge Ecology International and Médecins sans Frontières, also expressed concern on the matter. In an open letter to member states, they argued the WHO was the UN agency that had a mandate for global health, and said it was “unacceptable that there would be any opposition the WHO having a role in taking forward discussions on what global norms should be contained in a proposal for a biomedical treaty.”

The WHO secretariat assured members that the institution could consider the proposal, even though it would not be a formal stakeholder in the process. The WHO’s legal counsel reaffirmed that position. The “[d]ecision undertaken on agenda item 12.8 shall not prejudice the future consideration of a biomedical R&D treaty by the WHO Executive Board and the World Health Assembly,” the counsel said.

Worries Expressed over Counterfeiting in the WHO Context

Although initially on the agenda for this year’s Health Assembly, the controversial question of the WHO’s role in fighting sub-standard or counterfeit medicines was subsequently dropped as the meeting was cut short due to the recent H1N1 influenza outbreak.

Nevertheless, the issue arose during discussions on the organisation’s Mid-term Strategy Plan 2008-2019. Many member states object to the use of the term ‘counterfeit’ in the WHO context because of its association with intellectual property rights infringements rather than product safety and efficacy. They worry that work on ‘counterfeit’ drugs could shift the focus from protecting public health toward protecting the trademarks of pharmaceutical companies (see related article on page 19).

The medium-term plan allows the WHO to assist countries in implementing the International Medical Products Anti-counterfeiting Taskforce (IMPACT) strategy. The composition of this taskforce was met with much apprehension during the January meeting of the WHO Executive Board, as many developing countries raised concerns over the legitimacy of the body, arguing that it was not representative of all relevant stakeholders and perspectives. In light of these concerns, WHO Director General Margaret Chan agreed to replace the term ‘counterfeit’ in favour of other terms such as ‘sub-standard’.

US Climate Legislation Passes First Test in Congress

The first-ever federal legislation to establish nationwide greenhouse gas reduction targets and a carbon trading system is winding its way through US Congress. Although it cleared a first hurdle in May, the road to final passage is expected to be long and contentious.

The House Energy and Commerce Committee passed the American Clean Energy and Security Act of 2009 on 21 May. Dubbed the Waxman-Markey bill after its authors, the legislation would cap US greenhouse gas (GHG) emissions at 17 percent below their 2005 levels by 2020. The figure corresponds roughly to a 3 to 5 percent reduction from the levels prevailing in 1990, the international benchmark year for emissions cuts under the Kyoto Protocol. While this is a relatively modest target (see table below), it exceeds President Obama's earlier proposal to bring US emissions back to their 1990 levels by 2020. The bill's long-term goal is to reduce GHG emissions to 83 percent below their 2005 levels by 2050.

Cap-and-Trade Scheme to Begin in 2012

The main mechanism for reaching these goals would be a cap-and-trade system, under which polluting industries would have to purchase greenhouse gas emission allowances from the government, and could trade any surpluses to companies that need more than their allotted share. However, the most trade-sensitive sectors, such as steel and cement, would get full rebates for their compliance costs at least until 2025. Only 15 percent of the pollution rights would be auctioned at the start of the scheme. Similar concessions to heavy industry were made in the European climate change package (Bridges Year 12 No.6, page 19).

The cap-and-trade scheme would start in 2012, when the overall limit to GHG emissions (including carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, perfluorocarbons, nitrogen trifluoride and hydrofluorocarbons) would be set at 3 percent below 2005 levels. The bill would also spur the modernisation of the US electrical grid, provide incentives for the expanded production of electric cars, and mandate significant increases in energy efficiency in buildings, home appliances and electricity generation.

International Co-operation

Signalling a change in the US approach to combating global warming, the Waxman-Markey bill states that it is the policy of the United States to “work proactively under the United Nations Framework Convention on Climate Change and, in other appropriate forums, to establish binding agreements, including sectoral agreements, committing all major greenhouse gas-emitting nations to contribute equitably to the reduction of global greenhouse gas emissions.” It further notes that the law seeks to promote a strong global effort to significantly reduce greenhouse gas emissions and to prevent an increase in such emissions in foreign countries as a result of direct or indirect compliance costs incurred by US industry.

Some Developed Country GHG Reduction Targets

Country	Base Year	2020 Target	2050 Target
European Union ¹	1990	20%	60-80%
UK	1990		80%
Germany	1990	40%	
United States ²	2005	17%	83%
Japan ³	1990	25%	
Canada	2006	20%	60-70%
Australia ⁴	2000	5%	60%
Russia	Not set	Not set	Not set

¹ 2020 target will rise to 30 percent if other developed countries accept similar cuts in a post-Kyoto agreement.

² Targets in the 21 May 2009 draft climate change bill; would amount to 3-5 percent below 1990 level in 2020.

³ 2020 target is a commitment by the opposition Democratic Party if it wins the next elections; Taro Aso government to announce targets by mid-June 2009.

⁴ 2020 target to rise to 25 percent (below 2000 levels) if a strong post-Kyoto agreement is reached.

Source: Compiled by ICTSD from publicly available information

and-trade scheme is produced in countries that fulfil one of the following criteria:

- a nationally enforceable emissions reduction commitment that is at least as stringent as that of the US under an international agreement; or
- participation in an international sectoral agreement with the US; or
- energy- or greenhouse-gas intensity in the sector does not surpass that of the US; or
- emissions reduction policies cost the sector at least 60 percent of the cost of compliance in the United States.

However, if the president determines that less than 70 percent of global output in a sector occurs in countries that meet one of the criteria above, he ‘shall’ decide to either keep the rebates in place, or to require importers of energy-intensive goods to purchase ‘international reserve allowances’ (i.e. US pollution permits), or both.

The legislation states explicitly that the International Reserve Allowance Programme may not begin before 1 January 2025. It must be established in a manner that addresses, consistent with international agreements to which the United States is a party, the competitive imbalance in the costs of producing or manufacturing primary products in the US and “the direct and indirect costs, if any, of complying in other countries with greenhouse gas regulatory programmes, requirements, export tariffs, or other measures adopted or imposed to reduce greenhouse gas emissions.” Imports from least-developed countries and others whose GHG emissions represent less than half a percent total global emissions would be exempt.

Despite the caveats, border measures based on criteria such as the cost of energy used or the amount of greenhouse gas emitted in the production process could (and most likely would) be challenged at the WTO.

No Link to China, India Action

At the House Energy and Commerce Committee meeting, Republican Representative Michael Rogers unsuccessfully proposed an

Continued on page 22

No Border Measures, Yet

The legislation contains a number of provisions aimed at coaxing trading partners into participating in global emissions reduction efforts over time, as well as protecting US industry in case the incentives fail to produce the desired effect. The president should decide by mid-2022 how to address competitiveness concerns after 2025.

The heavy industry rebates would be phased out over 10 years if the president determines that more than 70 percent of global output of a sector covered by the US cap-

amendment that would have ended US greenhouse gas emissions caps if China and India did not adopt standards that were 'at least as stringent'.

The committee also rejected Republican proposals that would have terminated the cap-and-trade controls if unemployment rose higher than 15 percent, gasoline prices reached US\$5 a gallon, or electricity bills rose more than 10 percent on average.

Long Road Ahead

The Energy and Commerce Committee's acceptance of the Waxman-Markey bill is just the first step in a long and contentious process that will involve numerous committees in both chambers of Congress. A full House vote could take place before August, and President Obama has called upon Congress to pass the legislation before the December climate summit in Copenhagen, which is to set new international targets for greenhouse gas reductions.

'Cash for Clunkers'

The Energy and Commerce Committee also voted 50-4 to pass a one-year 'cash-for-clunkers' programme that would encourage consumers to trade in vehicles with an average fuel economy of less than 18 miles a gallon for more efficient new cars. Those who buy a car that gets at least 10 more miles out of a gallon (or a truck that gains at least five mpg) than the traded-in vehicle would qualify for a US\$4,500 voucher, the maximum allowed under the scheme.

The programme will not be limited to cars made in the US. Some trading partners, including the EU, had threatened to challenge the scheme at the WTO if it discriminated against foreign-made vehicles.

New Car Standards

On 19 May, President Obama unveiled new nationwide fuel economy and GHG emissions standards for passenger cars, light-duty trucks and medium-duty passenger vehicles sold in the US. By 2016, the GHG emissions will be capped at 250g/mile. Passenger cars must average 39 miles per gallon (about 6 litres per 100 km), and trucks 30 mpg. The new standards are expected to save 1.8 billion barrels of oil between 2112 and 2116 and decrease GHG emissions by 900 million metric tonnes.

Major Emitters Narrow Some Gaps

Meeting in Paris in late May, major greenhouse emitting countries made progress on financing climate change action, but could not agree new carbon reduction targets.

The gathering got off to an inauspicious start with participants wrangling over who should move first and by how much in cutting greenhouse gas emissions. China said that developed countries should commit to a 40-percent reduction from their 1990 levels by 2020 before asking developing countries to take on binding targets under the successor treaty to the Kyoto Protocol. Only Germany currently has a national target that high. The EU as a whole has committed to a 20-percent reduction (rising to 30 if others follow suit). At the other end of the scale, US legislation under consideration in Congress would result in a 3 to 5 percent cut from 1990 levels (see page 21).

Signs of Flexibility Emerge

At the end of the meeting, France's environment minister Jean-Louis Borloo suggested that developed nations could collectively agree to cut their overall emissions by 25 to 40 percent below 1990 levels by 2020, with "some acting faster and others doing more later." Those unable to reach such targets, could contribute in other ways, for instance by taking on a greater share of financing, he said.

After bilateral talks with the US in Beijing, Gao Guangsheng of China's National Coordination Committee for Climate Change also showed flexibility. Admitting that it would be difficult to reach an 'agreement that satisfies everyone', Mr Gao said that the specific level of a developed country target could be set aside in Copenhagen so long as the US commits to quantified emissions cuts. He added that Copenhagen "may not be the final negotiation; it may set policy intentions so that we can keep negotiating."

Green Fund Idea Gains Ground

Participants reported tentative progress on financing, which, together with future targets, will be one of the two key issues of the Copenhagen summit. In particular, ministers expressed interest in a Mexican proposal to set up a fund financed through a system of quotas similar to those of the International Monetary Fund. The quota of a country would be based on its past and current greenhouse gas emissions, gross domestic product and population.

Governments could use the money for mitigation and adaptation activities ranging from reforestation and improving energy efficiency to the promotion of renewable energy, as well as investment in flood controls or the development of drought-resistant crops.

The details regarding quota criteria, size and allocation, as well as the range of activities to be funded would still need to be negotiated. Nevertheless, minister Jean-Louis Borloo said he felt a 'real consensus' starting to form around the financial architecture of a post-Kyoto agreement. US envoy Stern called the green fund proposal 'a highly constructive contribution', but cautioned that countries still needed to "go through the details of it and look at it carefully."

It remains to be seen whether the mechanism could raise the US\$100 billion a year that the secretariat of the Climate Convention has estimated will be necessary to cover developing countries' adaptation and mitigation needs.

About the Process

The Major Economies Forum on Energy and Climate builds on an earlier initiative spearheaded by the Bush administration. It involves the same 17 economies responsible for 80 percent of global greenhouse gas emissions, but unlike its predecessor, the focus is on seeking common ground that would contribute to the UN process instead of offering an alternative to multilateral action. Participants include Australia, Brazil, Britain, Canada, China, France, Germany, India, Indonesia, Italy, Japan, South Korea, Mexico, Russia, South Africa and the US, as well as the European Union. The group will meet again in Mexico on 22-23 June.

Insights into US Trade Policy

The Obama administration's top priorities are the economy, energy reform/climate change and healthcare. Trade, for the moment at least, is far from the top of the list.

This message served as a starting point for a series of conversations on US trade policy between a group of Geneva-based developing country ambassadors and a wide range of high-ranking US politicians and civil servants, trade analysts and civil society representatives during an ICTSD-sponsored visit to Washington in May.

Once the political and economic situation has stabilised, several sources suggested that it could be possible to move the agenda forward. Both President Obama and Trade Representative Ron Kirk are internationalists by temperament; they favour the multilateral arena and appreciate the legal framework provided by the WTO.

Democrats, now firmly in control in both the House and the Senate, are also likely to be more sympathetic to a multilateral trade deal than to bilateral agreements, for which momentum – such as it ever was – is waning rapidly. In contrast, the renewal of preference programmes, such as the African Growth and Opportunity Act and the Andean Trade Promotion and Drug Eradication Act, will probably be approved more easily than was the case under the Bush administration.

Not Much Appetite for Doha

However, convincing a trade-sceptical Congress to buy into the Doha Round will be an uphill battle. Despite a growing awareness about the value of a Doha accord as an insurance policy against WTO-legal protectionism, dissatisfaction with the package currently on the table is simply too widespread for either lawmakers or the public to accept it with minor tinkering.

That explains both the administration and the business community's interest in the proposal to skip a formal agreement on modalities and proceed directly to scheduling commitments. A clear picture on future market access concessions could galvanise interest, as well as allow concrete discussions on services to start, the thinking goes. In Geneva, however, many developing countries have taken strong stance against this approach (see page 2).

Farm Subsidy Reform

President Obama has pointed to farm payments as one possible area of savings, and there is some recognition in Congress that the subsidies should come down (provided they do so in the EU as well). On the other hand, the payments remain politically popular and represent a drop in the ocean of the US budget deficit right now – and an extremely well-connected drop, at that: 50 percent of all commodity payments in the US go to the districts of the members of the House agriculture committee, a civil society representative said.

That being the case, it is unlikely that the administration will take on subsidy reform as an end in itself. It would have to be part of a broader narrative incorporating one or more of the following: global food security, the Doha Round, climate change, improved nutrition and food safety for Americans, fiscal prudence and benefits for rural America.

Climate Change

The Obama administration seems to recognise that border tax adjustments (BTAs) are an especially loaded way to encourage trading partners to rein in their greenhouse gas emissions, although a number of members of Congress take a more favourable view of such measures (see related article on page 21).

Some analysts cautioned that there was a legitimate risk of a de facto alliance between greens who support BTAs out of genuine environmental principle, and people who simply want to raise tariffs and are grateful for any justification they can get.

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy.

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Económica para el Desarrollo Sostenible (CINPE),

San José, Costa Rica

Web: <http://cinpe.una.ac.cr>

Other ICTSD Periodicals

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WTO Meetings

June 25-26	Committee on Technical Barriers to Trade
June 25-26	Working Group on Standards and Trade Development Facility
June 29	Council for Trade in Goods
June 29	Negotiating Group on Trade Facilitation
June 29	Council for Trade in Services - Special Session
July 2	Committee on Agriculture
July 6-7	Second Global Aid for Trade Review
July 14	Working Group on Trade and Transfer of Technology
July 20	Dispute Settlement Body
28-29	General Council

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