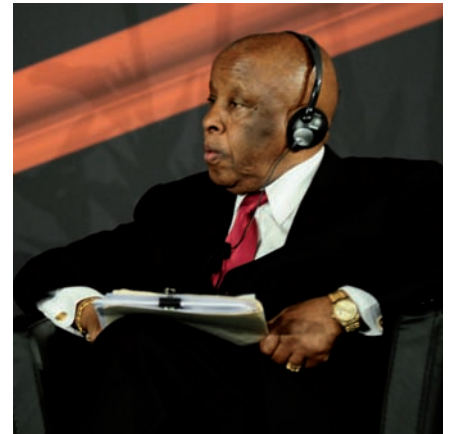


WTO Public Forum 2010

The Forces Shaping World Trade



About the Public Forum

The WTO Public Forum provides an opportunity for governments, non-governmental organizations, academics, businesses and students to come together to discuss issues regarding the multilateral trading system. The theme of this year's Forum was "The Forces Shaping World Trade". Some 1,500 participants registered to attend the 2010 Public Forum.

About this publication

This publication brings together summaries of the sessions held during the 2010 Forum. These summaries have been prepared by the organizers of each session.

Find out more

www.wto.org/publicforum



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Foreword by the Director-General

The 2010 Public Forum proved, once again, to be a valuable event that attests to the increasing relevance of the World Trade Organization (WTO) to the wider world.

This year's event, anchored in the wake of the financial and economic crisis that originated in 2009, underlined the importance of the WTO within this context and reinforced the view that a rules-based multilateral trading system can make a significant contribution to global economic recovery. The major geopolitical changes that the world has undergone in the last decades and the new context in which countries trade was also widely recognized and debated with an eye to the future of the multilateral trading system.

It is time to assess the effectiveness of the strategies put in place to recover from the crisis and to outline future directions for the multilateral trading system. This year's Forum, entitled, "The forces shaping world trade", marks the WTO's endeavour to engage in dialogue to this end with all those interested and involved in the multilateral trading system.

The Forum attracted over 1,500 participants from various backgrounds and organizations, each bringing to the fore a variety of views and concerns. This diversity contributed to a rich interactive debate among those present. Discussions were organized around four sub-themes: the shifting geo-political changes and the new actors that influence the multilateral trading system; the economic, political and technological factors shaping world trade; the role of the WTO in promoting coherence at the international level to better address world problems; and the post-crisis agenda for the WTO.

This publication is a compilation of views and ideas expressed during our three-day event that will, undoubtedly, feed into future discussions on these issues. Once again, the Forum has proven to be at the vanguard of global dialogue on the world trading system. I trust that the continued engagement of all of the relevant stakeholders in the multilateral trading system will only get stronger in the years to come and that it will contribute to reinforce a rules-based multilateral trading system that contributes to economic growth and prosperity for all.

Pascal Lamy



Acknowledgements

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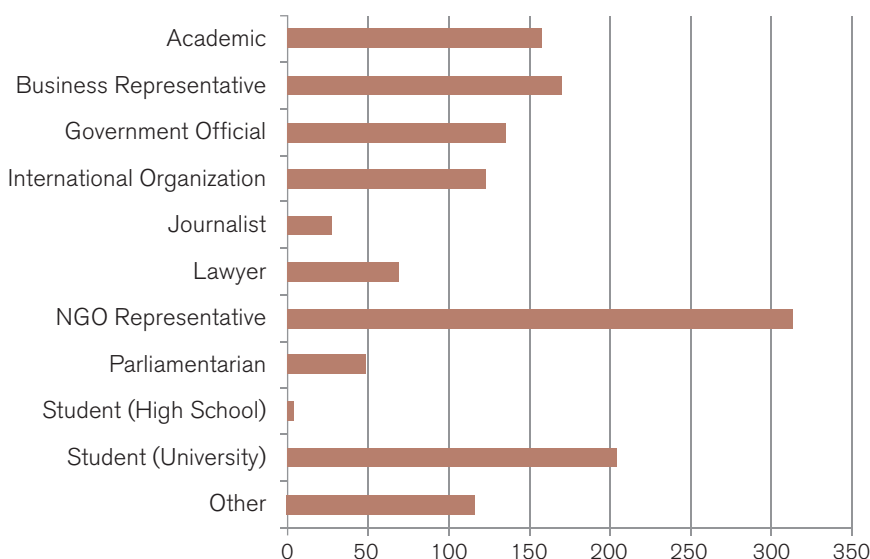
The IERD also acknowledges the cooperation of staff in the Administrative and General Services Division, the Agriculture and Commodities Division, the Development Division, the Office of the Director-General, the Economic Research and Statistics Division, the Information and External Relations Division, the Institute for Training and Technical Cooperation Division, the Intellectual Property Division, the Languages, Documentation and Information Management Division (LDIMD), the Legal Division, the Market Access Division, the Trade and Environment Division, the Trade in Services Division and the Trade Policies Review Division for submitting reports on the various sessions of the Public Forum during the event and contributing to the success of the forum. The IERD is also indebted to the volunteers in the WTO Secretariat who worked tirelessly throughout the event.

The production of the Report was coordinated by Anthony Martin and Helen Swain of the IERD. Karen Turnbull provided editorial assistance. Special gratitude is also due to the translators in the LDIMD for their hard work.

Overview of registered participants

Category	Total
Academic	157
Business Representative	170
Government Official	135
International Organization	123
Journalist	28
Lawyer	69
NGO Representative	314
Parliamentarian	48
Student (High School)	3
Other	116
Total	1367

Public Forum 2010 Statistics of Registered Participants by Category



On 15-17 September, the WTO hosted the 2010 Public Forum on “The forces shaping world trade” at its headquarters in Geneva. Against the backdrop of the global economic and financial crisis, yet also looking to the future, the Forum provided an opportunity for relevant stakeholders to take stock of the latest developments at the global level that are having an impact on the multilateral trading system and to identify steps that will contribute towards bolstering international trade flows and strengthening the WTO. The focus was placed on the new “forces” impacting global trade, including fast-growing emerging economies taking their place beside traditional powers, innovative technologies changing the face of business and the ways in which people interact, new issues that have changed the public perception of trade, and the challenges posed by the financial crisis. In addition, the contribution of trade towards the realization of the Millennium Development Goals (MDGs) was also addressed.

The Forum provided a unique opportunity to debate on the forces and factors shaping the multilateral trading system against the backdrop of the economic and financial crisis. Discussions brought to the fore the significant role played by the WTO in contributing towards mitigating the effects of the economic crisis, the potential effects of the successful completion of the Doha Round as a stimulus to the global economy, and the major geopolitical changes that the world has undergone in the last decade. Participants acknowledged that a rules-based multilateral trading system can make an important contribution to global economic recovery.

This publication provides a summary of the proceedings of the different sessions held during the Forum. Each report was prepared under the full responsibility of the organizer(s) of each panel. The publication is structured around the four themes debated during this year’s event: (i) the WTO and the players that influence the multilateral trading system; (ii) the economic, political and technological factors shaping world trade and the role of the rules-based multilateral trading system in contributing to the global economic recovery; (iii) coherence between the WTO and other areas of global governance; and (iv) looking to the future: What post-crisis agenda for the WTO in a shifting-power scenario?

Sessions under sub-theme 1 focused on the geopolitical shift of power in international politics, the role of the main actors influencing the multilateral trading system, and public attitudes towards the WTO.

Since the creation of the WTO, the world has undergone major geopolitical changes and has witnessed the rise of new state actors, who, alongside the traditional players, are asserting their own role in shaping the world’s economic and political environment. There is a growing awareness of the ascendancy of developing countries and least-developed countries, which constitute two-thirds of the WTO’s membership. The G8, as a forum for exercising global governance, has given ground to the more comprehensive G20. Civil society organizations, business groups, trade unions and other relevant NSAs are also affirming their role in shaping the world’s economic and political environment, including at the WTO. They have become increasingly important interlocutors and partners for governments, especially in the developing world.

In view of all of the above the discussions addressed the role of the G20 in WTO governance, as well as matters related to the G20’s representativeness, accountability and political legitimacy. Likewise, mechanisms for greater WTO accountability were identified. How will the G20 evolve to better serve global interests? Could the eventuality of a G192 be envisaged? How is the relationship between the WTO and the G20 likely to evolve?

How will emerging trading powers like China or the North East Asia trade area influence the nature of the multilateral trading system? Will the proliferation of South-South trade agreements affect global economic development? What are NSAs' preferred channels of engagement for seeking to influence the on-going discussions at the WTO? The effects of the economic crisis on public attitudes towards the WTO were also examined. These are just a sample of the questions raised during the sessions. In addition, discussions tackled the potential contribution of the WTO in solving global environmental problems, including the sustainability of fisheries stocks.

Sessions under sub-theme 2 aimed to shed light on the political, economic and technological factors shaping world trade and the role of the rules-based multilateral trading system in contributing to the global economic recovery. The sessions examined the factors that are determining international trade, particularly in the wake of the global economic crisis, and the role of the WTO multilateral rules-based system, including the Doha Round, in contributing towards mitigating the effects of the crisis.

Participants recognized that the development of new technologies has contributed towards shaping international trade by changing the way business is conducted and the way people interact. Rapid developments in technology have generated both new challenges and new opportunities for economic agents worldwide. Central to the discussions was the identification of the main economic, political and technological factors shaping world trade. A number of sessions addressed the potential of technological progress and innovation for improving the trading position of the poorest countries. Lastly, the role of the WTO rules-based multilateral system as a public good and its contribution to the global economic recovery was also addressed.

Sessions under sub-theme 3 sought to identify how the WTO can promote coherence at the international level to better address world problems and contribute towards improved global governance.

Human rights protection, labour standards, environmental concerns, gender equality, public health issues, climate change, scarcities in food, energy and natural resources, and new private standards were areas that a number of participants argued should be considered in the context of the WTO's daily activities, and in some cases incorporated in the negotiations.

Specific questions focused on the extent to which the WTO should coordinate its work with that of other intergovernmental organizations; whether there is a greater need for transparency and accountability at the international level; and how the WTO can address issues that are likely to confront the world economy in the future, such as social standards or climate change, without spreading itself too thin or undermining support for open trade.

Sessions under sub-theme 4 were designed to draw up a post-crisis agenda for the WTO in a shifting-power scenario and to identify steps that will contribute towards bolstering international trade flows and strengthening the multilateral trading system.

The considerable decrease in trade flows as a result of the global economic crisis and the fact that protectionist measures had largely been held in check was noted in a number of the sessions. In addition, participants acknowledged that, although protectionism remains a potential threat to the global economy and sustained economic recovery, the shock had not been as bad as expected, given that WTO members had relied on the "collective insurance policy" against protectionism, in the form of the multilateral trading



system. In this regard, the contribution of the rules-based multilateral trading system in keeping protectionism in check was widely recognized, as was the need to conclude the Doha Round in order to contribute towards enhancing market access and strengthening the WTO.

Discussions focused on developing suggestions on future issues to be considered by the WTO, drawing on the lessons learned from the economic crisis. Some focused on issues that are not part of the current talks, such as trade and investment, or trade and competition policy, among others. In addition, participants sought to identify the steps that governments can take to help revive international trade flows and the role of the Doha Round of negotiations in strengthening the multilateral trading system.

A special focus was placed on how to meet the development goals in Africa embodied in the MDGs. Some concerns were expressed over the ineffectiveness of current discussions on the transfer of technology; the limited gains that that developing countries are drawing from the DDA according to some; and the potential effects of antidumping regimes on local competition.

The interactive discussions provided an opportunity for participants to address the different forces and factors shaping world trade and contribute to enhancing the dialogue on the benefits and deficiencies of the multilateral trading system. The 2010 Public Forum allowed participants to identify ways of moving towards a multilateral trading system that is conducive to economic recovery and to improved global governance.

Inaugural speech by the Director- General

“The value of the Multilateral
Trading System”

Ladies and gentlemen,

It is my pleasure to inaugurate the WTO Public Forum 2010 – our annual rendezvous with civil society and the public. The goal of the Forum is to enable the Multilateral Trading System to respond to the hopes and aspirations of all segments of society. Its goal is to promote a frank and open exchange between all actors in the trade sphere on what is working, and what is not, in the global trading system at large.

This year's forum is devoted to debating the Forces Shaping World Trade. What are these forces? Are there new forces? Are there old forces? What form do these forces take, and are they of equal weight?

It will explore the role of the emerging developing world in impacting the Multilateral Trading System, of new technologies and innovation, and of growing concerns to do with issues such as climate change, energy, food security, and human rights – to mention but a few. What we have before us is a rich menu of sessions that will take us all the way up to Friday. A menu that has been set by civil society itself, making this truly a Forum that belongs first and foremost to you.

Ladies and gentlemen, this is your Forum. And on behalf of all WTO members and myself, let me say that we look forward to learning from you, and interacting with you. We hope that the Forum will enable our members to take the Multilateral Trading System forward based on the ideas that it generates.

Allow me first to comment on the context in which this year's Forum convenes. A context that hardly needs elaboration, since many of you may be experiencing it first-hand. One of a global economic downturn, albeit a crisis that is beginning to ease. The downturn has brought to light the real value of the Multilateral Trading System, if I may say so.

The Trading System has acted as an insurance policy against protectionism. In fact, a WTO “Radar Screen” was created shortly after the crisis to flash all the new trade restrictions that government would impose, with the aim of preventing them from spiralling – helping prevent the beggar-thy-neighbour policies of the 1930s. And I am pleased to say that we have, by and large, avoided a repeat of past mistakes. WTO disciplines have acted as a “containing force” of governments' worst instincts; which is to shut the foreigner out, or to blame the crisis on the foreigner – often, an all-too-easy path to take. And the good news is that trade volumes are picking up again nicely, after having fallen dramatically during the crisis.

Let me now comment on the topic of this Forum – The “Shaping Forces”. The Multilateral Trading System is clearly one of the most advanced engines of global governance, serving as a precursor for international legal regimes in many other domains. The richness of the programme that you have created demonstrates the wealth of expectations that we have of the WTO. Expectations that we can only afford because of the level of sophistication that the system has reached.

In a number of other international institutions, we see battle-lines still being drawn between the North and the South over their governance structure. In other words, over their “democratization.” The G-20 has signalled that the institutional reform of some international organizations, which it has listed by name, is required. The WTO was not amongst them.

That governance battle has already been fought in the trade sphere, and the outcome is a fairly democratic institution where the voice of the small cannot be ignored. No board, no quotas. One member, one vote, is the background rule against which the WTO forges its consensus.

The very fact that “agriculture” is now at the centre of the WTO's Doha Round



of trade negotiations also speaks to the enormous power that the South has gained. In addition, the WTO has a dispute settlement mechanism that has, and can, allow members to peacefully settle their trade differences. In that mechanism what matters is not the size of a country or of its GDP, but the strength of the legal and economic arguments that it succeeds in putting forward.

But, if I have a message for you today, it is this. There are other battles to fight in the WTO. They may not be of an institutional nature, but they must nevertheless be fought. I refer here to the need to rebalance the rules of the Multilateral Trading System in favour of the poor, through the completion of the Doha Development Agenda; and of the need to climb ever-higher mountains, by tackling emerging issues such as energy, climate change, and electronic commerce. We cannot afford to rest on our laurels in the WTO until our rulebook becomes outdated. Nor can we afford to misdiagnose the impasse in current negotiations as being "institutional."

As we collectively reflect on what will "shape" the WTO system in future, I also ask that we recognize the new context in which countries trade. Most products today are not "made in country X, Y or Z," most products are "made in the world".

This means that the boundaries of the nation-state are no longer the only relevant boundaries to take. Countries that impose tariffs on imported products may be imposing tariffs on none other than themselves. Countries that hand out subsidies domestically to certain sectors may be subsidizing none other than their competitor if that competitor is based on their home turf. The globalization of the manufacturing process is such that it makes even less sense now, than it did before, to obstruct trade.

This new reality requires that we go back and think about what it means to actually "trade" in today's world. It also speaks to

new methods of "measuring" trade. We can no longer measure trade by counting goods services crossing our borders. We need to look at where has the value been added to these goods. And the same goes for job creation. Jobs lost at home may simply mean jobs created for our very own citizens abroad. In fact, the very calculation of job "losses" would itself need to take account of this new reality.

Updating the WTO rulebook, in my view, must bring with it new concepts and new understandings of international trade. As country X sits opposite country Y at the WTO negotiating table, it must realize that it is no longer totally independent of it. Its products may be produced and re-exported from abroad, and its citizens may be residing elsewhere. Facilitating trade in this new world is what we must turn our minds to. We must also turn our minds to the accompanying policies of world trade; environmental and social policies alike, since we can ill-afford having trade run in a vacuum.

Greater clarity on these issues, as well as on the rich menu of topics that you have put on the table, will help take us forward. I look forward to meeting as many of you in person as I can over the course of the next few days.

Thank you for your attention. I now turn the Forum over to you.

Plenary Opening

**The forces shaping world trade:
How to use them to help achieve
the Millennium Development
Goals and contribute to
Millennium Development Goal 8:
A global partnership for
development**

Moderator

Mr Gideon Rachman, Chief Foreign Affairs
Commentator of the Financial Times

Speakers

Dame Billie Miller, former Deputy Prime
Minister and Minister of Foreign Affairs
and Foreign Trade of Barbados

Mr Jeremy Hobbs, Executive Director,
Oxfam International

Mr Festus Mogae, former President of
Botswana

Mr Ravi Kant, Vice-Chairman, Tata Motors

Mr Pascal Lamy, Director-General of the
World Trade Organization

Organized by

Development Division - WTO

Report written by
Ms Stefania Gallo, Junior Economic
Affairs Officer, WTO Development Division

Wednesday, 15 September 2010
10.30-12.30

Abstract

This session aimed to identify the numerous forces at play in today's globalized world, and explore how they interact and how they can be used to achieve the Millennium Development Goals (MDGs). The ensuing discussion benefited from the interventions of political personalities, representatives of civil society and the private sector and from the insight of the WTO Director-General.

Special attention was given to the emergence of major developing countries and their growing clout on the international scene. In the past 15 years, their growth and share of global trade has shifted the direction of trade flows and the political power equilibrium. The economic and financial crisis, which has taken a heavy toll on poorer countries, has added new pressing challenges and brought to the attention of the international community the need to rethink the overall structure of global governance. Beyond the political and economic sphere, the forces shaping world trade can also be identified in the increasing role of non-state actors, the growing pull of social demands and the technological changes that influence the way business is conducted and the way people interact.

The link between these forces raises both hopes and concerns on how they impact on economic growth, poverty reduction and the overall achievement of the Millennium Development Goals.

Against this background, the challenge for the WTO is to achieve a swift and development-oriented conclusion of the Doha Round.



1. Presentations by the panellists

The session was moderated by Mr Gideon Rachman, Chief Foreign Affairs Commentator of the Financial Times. With reference to the MDG Summit in New York, Mr Rachman commented on the timeliness of holding a discussion on the forces shaping world trade and their contribution to the achievement of the Millennium Development Goals. This was recognized as a crucial subject for the WTO, given the fact that the organization has often been considered as only serving the interests of wealthy countries.

(a) *Dame Billie Miller, former Deputy Prime Minister and Minister of Foreign Affairs and Foreign Trade of Barbados*

Dame Billie Miller commended the WTO for highlighting the complementarity of trade liberalization and trade capacity building. She recognized that more could be done to achieve important development objectives through a swift conclusion of the Doha Round of negotiations.

Dame Billie Miller touched upon the recent financial crisis, its setbacks, as well as the opportunity it creates to rethink the architecture of global governance. She recognized that the enlarged G20 was a reason for hope, but she remained concerned that the re-planning of the international system would be based on the existing flawed foundations, and that the interests of smaller and weaker economies would continue to be overlooked.

Amidst recognition of the need to recalibrate international actions to get the MDGs back on track, Dame Billie Miller praised the developments made in recent years, including the booming of South-South trade and the resilience shown by some developing economies during the recession. She hoped that these economic gains would be met by political will, and channelled towards bridging the poverty gap.

She said the achievement of MDG-8, which underpins all the other MDGs, also relies on strong political will to conclude the Doha Round. She highlighted the plight of the small and vulnerable economies, the small island developing states and the landlocked countries that would benefit greatly from a genuine global partnership for development. However, given the state of the global economy and the record of unfulfilled pledges of assistance from developed countries, she expressed little confidence that any serious commitment to MDG-8 would come out of the New York Summit.

(b) *Jeremy Hobbs, Executive Director, Oxfam International*

Mr Hobbs, said progress had been made towards achieving the 2015 deadline. He cited the declining number of people living in extreme poverty, the reduction in child mortality and increased access to HIV/AIDS treatment. These are positive developments, realized because of the concerted actions undertaken by governments, multilateral institutions and civil society organizations. He said that the world possesses the resources and the know-how to achieve the MDGs and even to go beyond them, but he lamented the lack of political will to direct those resources towards reducing hunger and poverty. Thus, deplorably, the MDGs remain off-track, and the global economic and food crises have unravelled some of the hard-won developments achieved in recent years. He recognized that startling rates of unemployment and declining flows of investment put huge pressure on national governments, but he warned that the recession experienced in developed countries should not be used as an excuse not to meet the MDG pledges.

Turning to the role of the WTO, he acknowledged that well-managed trade opening has the potential to lift millions out of poverty. Regrettably, he noted, the stalling of the Doha Round is a missed opportunity to re-balance international rules in favour of developing countries and to restore confidence in multilateralism and global governance. In his view, a development-oriented outcome of the WTO negotiations would be the most important contribution to the MDGs, as it would unlock a new spirit of collaboration that would arm us to face other challenges, such as climate change and global poverty.

(c) Ravi Kant, Vice-Chairman, Tata Motors

Mr Kant noted that the global economy had been structurally shifting towards the emerging economies, mainly India and China. However, the high growth rates of these countries have not come without contradictions. He gave eloquent examples of how economic growth in India has not been adequately inclusive. In fact, despite the increase in levels of wealth and the technological advances, 42 per cent of the population still lived below the poverty line and 40 per cent remained illiterate.

To reduce poverty and improve living standards in developing countries, the key success factor identified by Mr Kant lies in the development of an economic growth model that would include all sections of the population. Mr Kant indicated three focus areas for his model: (1) manufacturing as a tool for job creation; (2) innovation, leading to affordable goods and improvements of the education system; and (3) collaboration between nations, governments, businesses and academia to achieve the tasks that no single entity can achieve alone in an interconnected world. He recalled that the global nature of the MDGs requires that all stakeholders come together to bring their skills and resources to the table. In this scenario, the role of the WTO as coordinator becomes crucial, but he cautioned that market forces cannot be left unattended; governments will need to play a balancing role to ensure an equal distribution of trade gains.

(d) Festus Mogae, former President of Botswana

Mr Mogae emphasized the reliance of small and vulnerable countries on international relations based on equity and fairness. Echoing Mr Kant's words, Mr Mogae recognized that in recent decades, the direction of trade had changed, with some major developing countries emerging as direct competitors to the industrialized world. Even in Africa, the first decade of the new millennium had seen positive growth rates, before they declined because of the financial and economic crisis.

On the impasse in the Doha Round of negotiations, Mr Mogae expressed concern that the resulting spread of bilateral agreements might dwarf the gains that poorer countries would obtain in the multilateral process. To be weak is miserable, he said quoting Milton's *Paradise Lost*. He identified "old-fashion self-interest" as the main force determining world trade, and said that the reason why weak countries place their faith in international organizations is to be able to have a voice in shaping global governance.

His country, like other middle-income countries, looks to the WTO and the Doha Round to provide an improved trade climate conducive to development. However, he fears that, if self-interest is allowed to prevail, there would be little prospect of a reasonable agreement under the Doha Round.



(e) *Pascal Lamy, Director-General of the World Trade Organization*

Mr Lamy brought some more positive thinking to the discussion by noting that, overall, the WTO scorecard on MDG-8, development and poverty reduction has been positive. On the whole, since 2000, trade opening has worked for development and poverty reduction. The WTO's contribution to access to medicine has delivered important results by making HIV/AIDS treatments readily affordable. And the multilateral trading system was able to weather the financial crisis and protect developing countries from the anticipated protectionist wave.

Today, countries are acting against a different background, noted Mr Lamy. The patterns and flows of world trade have changed and new actors have emerged. The increase in South-South trade and the global importance of global production chains have changed the way trade is conducted, and have created new opportunities and challenges. The multilateral trading system needs to adapt to this changing environment. The WTO, so far, has been successful in addressing developing countries needs through the Aid for Trade initiative, the Enhanced Integrated Framework, and other technical assistance activities. However, Mr Lamy noted that it will be important for the system to rebalance its rules in favour of developing countries through a swift conclusion of the Doha Round.

In reply to Mr Mogae's s earlier words on the dangers of self-interest, Mr Lamy said that, in trade, the pursuit of self-interest can in fact lead to the achievement of the collective interest, and the WTO can ensure that the self-interests of the poorest are heard.

2. Questions and comments by the audience

The open discussion revolved around the link between growth and inequality and the role of the WTO. There was a reiteration of the need for social investments to accompany economic growth and, in this sense, the MDGs were deemed extremely important because they bring attention to the social aspects of growth. In turn, the role of trade to generate higher income was identified as a precondition for countries to put in place adequate social policies. Once again, the successful conclusion of the Doha Round was seen as the WTO's main deliverable to secure economic growth and to ensure further poverty reduction.

Further discussions focused on issues of global governance in the form of the representativeness of the G20. Panellists shared the overall view that the G20 was indeed a step in the right direction, but its relevance would depend on its ability to represent developed and developing countries' interests alike.

3. Conclusions and way forward

In rounding up the session, each speaker was asked by Mr Rachman to indicate what, in their view, was the major force at play today. Speakers agreed that innovation, as identified by Mr Kant, was indeed a major factor in determining the future of world trade. Next to innovation, Mr Mogae indicated that changing oil-trade patterns might influence the world scene in the coming years, while Mr Hobbs added that the growing dynamism of the East Asian economies might have a lasting impact on the equilibrium of the negotiations and

the future of trade relations. For Dame Billie Miller, addressing the concerns on rising inequalities should be the main priority for the years to come. Summing up the discussion, Mr Lamy concluded by identifying technological change, geopolitics and growing social demand as the main elements that would shape the future of world trade.



I. The WTO and the players that influence the multilateral trading system



Role of non-state actors in the WTO

Moderator

Mr Pradeep S. Mehta, Secretary General,
CUTS International

Speakers

Mr Pascal Kerneis, Managing Director,
European Services Forum (ESF)

Mr Ricardo Meléndez-Ortiz, Chief
Executive, International Centre for Trade
and Sustainable Development

Mr Michael Hindley, former Member of the
European Parliament

H.E. Mr Ujal Singh Bhatia, former
Ambassador of India to the WTO

Professor Abul Barkat, Professor and
Chair, Economics Department, University
of Dhaka, Bangladesh

Organized by

CUTS International

Report written by

Ms Archana Jatkar, Policy Analyst, CUTS
International, India

Wednesday, 15 September 2010
14.00-16.00

Abstract

Non-state actors (NSAs) have a stake in the healthy functioning of the multilateral trading system. NSAs are expected to present their concerns to the WTO through their respective governments. In recent years the WTO has made efforts to better reach out to NSAs while preserving its fundamental nature as an intergovernmental organization. For example, the WTO Public Forum is open to all participants, most WTO documents are publicly available, and regular WTO briefings are held for non-governmental organizations (NGOs) and parliamentarians. Hearings in some dispute settlement proceedings have also been opened to the public upon agreement among the parties. Despite these developments, the effectiveness of NSA participation remains debatable.

To advance this debate, it is necessary to understand how different NSA groups try to influence the ongoing discussions at the WTO, and to discuss various opinions and suggestions in order to optimize the role of NSAs in the WTO.

Some questions that the session examined include: Does the business community think that the WTO serves its interests? How successful are civil society organizations (CSOs) in influencing WTO discussions and negotiations? How crucial is parliamentarians' role in the WTO process? How do governments reconcile the interests of various NSAs with varying degrees of influence?

1. Presentations by the panellists

Mr Mehta said that, in many countries, NSAs' influence on trade policy is now stronger than ever before. He felt that international obligations, and WTO obligations in particular, have impacted on and sometimes restricted domestic policy-making by bringing in issues that are sometimes foreign to people from the global South. He stressed the need for a better-informed, more inclusive discussion on both domestic and international levels that would include both commonalities and differences. NSAs have become important players in the public policy-making process and play a crucial role in shaping trade policy at national, regional and global levels.

(a) *Pascal Kerneis, Managing Director (ESF)*

Mr Kerneis, representing the interests of the private sector/businesses, said if companies are the main trade actors, then the WTO is for businesses. He summarized the history of business mobilization on trade issues going back to the Uruguay Round with the negotiations on trade in services and the involvement of banks and telecommunications companies. He opined that the successes of the first seven General Agreement on Tariffs and Trade (GATT) rounds were without a strong intervention from businesses. It was only during the Uruguay Round that businesses started to be active towards their own governments rather than simply towards the WTO.

The WTO is first and foremost a "member-driven organization", i.e. a "governmental organization", and despite NGOs' belief that businesses have strong influence over their government, they are not very good at "shaping" their governments' agenda, and even less so at shaping the WTO agenda. Mr Kerneis added that in recent years the WTO Secretariat has made efforts to better reach out to NSAs (including business) while preserving its



fundamental nature as an intergovernmental organization. He spoke about whether the WTO serves business interests, and explained different criteria that companies look for in international business.

Mr Kerneis concluded that business interests are not yet properly served by the WTO, even though the WTO regulates the multilateral trading system, thereby allowing the market access and fair treatment of foreign products which businesses need to trade internationally. In his opinion, lack of convergence at the global level – especially the impasse in the Doha Development Agenda – has only led to an increase in regional trade agreements. He blamed the failure to conclude the Doha Round after nine years of negotiations on the absence of a distinct mechanism for including business interests in the organization.

(b) Ricardo Meléndez-Ortiz, Chief Executive, ICTSD

Mr Meléndez-Ortiz represented the interests of NGOs and delivered his perspective from fourteen years of practical experience of attempts to influence the WTO system. He discussed the historical perspective of the shift from the GATT to the WTO, which created a different game with new actors, and the need to involve these new actors constructively in the process. While it is governments that manage the relationship with other governments, he suggested that it is a good governance principle to include the general stakeholders and strike a balance between private and public interests. It is the ICTSD's role to correct the information asymmetries among stakeholders to ensure that trade policy supports the objectives of sustainable development. He concluded by stating that one cannot deny the dynamic role played by NSAs in creating a society which is better informed on the relevant issues, yet their legitimacy to represent varied interests is debatable.

(c) Michael Hindley, former MEP

Mr Hindley discussed the difficulties faced by parliamentarians in communicating and justifying international agreements in a domestic setting. Even when people think globally, they still vote locally; this raises questions of the legitimacy and accountability of NGOs. He focused mainly on the democratic deficit and role of parliamentarians in the WTO process, as well as on communication between parliamentarians and their domestic constituency. While trade policy-making is an executive power/function, it is the parliamentarian who is accountable for representing the interests of his voters. Mr Hindley called for the gap between parliamentarians and voters to be bridged to reduce the existing democratic deficit in policy-making. At the EU level, trade is often in the hands of an executive on a "very long leash", and it is necessary to make the decision-making process more accountable. He also stressed that every international agreement should be explained to the people it affects by building a social agenda between the political elites and the affected parties on the domestic, supranational (EU) and international (WTO) levels.

(d) Ujal Singh Bhatia, former Ambassador of India to the WTO

Mr Bhatia expressed his views on the consultative process with non-state actors in India and at the WTO. He said that negotiations in the WTO are of an intergovernmental nature, but the outcomes affect millions of lives in the member countries. It is therefore natural for various stakeholders to take a keen interest in the negotiations and to try to influence them. The influence of NSAs on their governments' positions varies from country to country, and the inter se strength of their influence depends on the political economy of

that country. While it is not easy to draw general conclusions about the role NSAs play in the formulation of national positions among the WTO members, some key elements can be identified. It is more difficult to say the same thing about the role of NSAs at the global level.

Mr Bhatia mainly commented on two issues: (i) the consultative process on WTO issues with NSAs in India; and (ii) the role that NSAs can or should play in the WTO in terms of agenda-setting and decision-making. On the first issue, from a governmental perspective, it is important to have a consultative process that enables the government to formulate positions that reflect the interests and aspirations of all stakeholders. While the specifics of such a process differ from country to country, the basic elements include: a structured consultative process involving concerned interests in business and civil society; a process to arbitrate differences among such stakeholders; a process to take on board the views of legislators; an inter-ministerial process to resolve differences between various government departments; and a cabinet process to take final decisions based on a consideration of all views emerging from the consultations.

He said that, in a federation such as India, it is also necessary to set up a process of formal consultations with state governments. Besides helping build consensus, such consultations are necessary in view of constitutional provisions, as a number of issues in the WTO agenda involve state jurisdiction or concurrent jurisdiction of the states and the central government. He stressed the need for such a process for the government to formulate trade policy representative of all interests. As some WTO issues affect state jurisdiction, it is vital for state governments to be consulted on the domestic level. He asserted that the Indian consultative process is a successful one and that complaints on the India-EU free trade agreement negotiations have been incorporated.

Mr Bhatia then discussed a case study on the involvement of NSAs in the international policy-making sphere, citing the fisheries subsidies case. He insisted that a few NGOs from developed countries have the resources to push their points internationally. He agreed with Mr Hindley on the need to “shorten the leash” of trade representatives, but disagreed with Mr Kerneis’ view that WTO is for businesses, as the decisions taken at the WTO affect many parties other than the private sector. He concluded that the imbalance between the reach of CSOs in developing and developed countries raises an important issue regarding the credibility of the NSA consultative processes on WTO issues.

(e) Abul Barkat, Professor and Chair, University of Dhaka

Prof. Barkat provided a theoretical and analytical basis of NSAs’ role in the WTO process. He reflected on the need to improve relationship modalities between NSAs and the WTO and raised the issues of their identity, influence and knowledge of WTO matters. Theoretically, NSAs can exert power broadly in three areas: (1) decisional power in terms of policy-making and political influence; (2) discursive power in terms of framing/reframing of discourses; and (3) regulatory power in terms of rule-making and setting standards. He made three observations based on these three dimensions of power. (1) Some NSAs are more active than others in serving public interests, and act as efficient government interlocutors and partners (e.g. business chambers in setting tariffs; academic institutions and think tanks in raising issues of non-tariff protectionist measures by developed economies; Bangladesh Economic Association in guiding development policy and WTO issues; Bangladesh Pharmaceutical Association in raising the issue of patenting life saving drugs; cultural organizations in preserving and patenting traditional and indigenous knowledge, etc.). (2) The proactiveness of various NSAs in participating in government



policy-making varies depends on the individual association's image, acceptability, strength, and interest. (3) Most actors are not adequately represented in the relevant processes, or are represented as "token". He presented some statistics of NGOs and civil society organizations in Bangladesh, but pointed out that their level of activity is very low and is limited to discursive powers due to their lack of coordination and knowledge.

The second issue on which Prof. Barkat focused was that of channels and modalities of NSA-WTO relationships. He opined that this is a controversial, complex subject. In WTO-NSA relationships, the two key areas of interaction are related to policy-setting and operations/implementation. NSAs are not fully integrated into the WTO structure and governance, and are not equal decision-makers, implying the absence of institutionalized modality (under policy-setting roles). Whether or not NSAs have formal status in the WTO through officially-defined criteria and procedures is less clear, implying a lack of accreditation/consultative status in WTO-NSA relationships. Prof. Barkat also illustrated some areas of WTO-NSA relationships which, in his opinion, need serious rethinking to make the 'WTO-NSA' nexus work better.

He concluded by saying that the WTO's individualized approach to NSAs has reached its limit. Therefore, it might be appropriate to think about some sort of standardized, coherent self-regulating organizational umbrella modality that would enhance effectiveness and accountability. NSAs are capable of reshaping patterns and outcomes of global governance – because in the rapidly-changing world, with the broadening of the development agenda and inclusion of new actors, "governing the governors" has become a real emerging issue.

2. Questions and comments by the audience

The rich and diverse presentations by the panellists set the stage for further discussions with the audience on the floor. In the question-and-answer session, the participants asked about the legitimacy and accountability of NGOs, the need for a swift resolution to the Doha Round, the lack of social agenda at the global level and the role of emerging economies in shaping trade-policy making. These questions were dealt with to the satisfaction of the participants.

Governments, non-state actors and trade policy-making: Negotiating preferentially or multilaterally?

Moderator

Professor Ann Capling, University of Melbourne

Speakers

Dr Patrick Low, Director, Economic Research and Statistics, WTO

Dr Sebastián Herreros, International Trade and Integration Division, United Nations Economic Commission for Latin America and the Caribbean, Santiago, Chile

Dr Alexander Chandra, Trade Knowledge Network, Jakarta, Indonesia

Mr Riad al Khouri, Dean of the Business School, Lebanese French University, Erbil, Iraq

Ms María Pérez-Esteve, Counsellor, Information and External Relations Division, WTO

Organized by

Economic Research and Statistics Division, WTO, and University of Melbourne, Australia

Report written by

Paulette Planchette, Economic Research and Statistics Division, WTO, and Ann Capling, University of Melbourne

Thursday, 16 September 2010
09.00-11.00

Abstract

A pressing issue facing international trade relations is how to ensure compatibility between multilateral and preferential approaches to trade cooperation. This challenge has become greater with the recent rapid proliferation of preferential trade agreements (PTAs). A good deal has been written about why governments might choose to negotiate preferentially or multilaterally, but this literature has been written almost exclusively from the perspective of governments. We know very little about how non-state actors (e.g. businesses, producer groups, trade unions, civil society organizations, think tanks, etc.) view this issue of “forum choice”, or how they position themselves to influence governments’ choices when considering whether to give preference to PTAs or to the WTO.

This session presented the findings of an international, multi-country research project that investigated this issue through case studies of trade policy-making and forum choice in eight developing countries: Chile, Colombia, Indonesia, Jordan, Kenya, Mexico, South Africa and Thailand. The case studies were based on original research, including interviews with state and non-state actors involved in the trade policy-making process in the eight countries under study. The session also doubled as a launch of the book *Governments, Non-State Actors and Trade Policy-Making: negotiating preferentially or multilaterally?*, co-edited by Ann Capling and Patrick Low, which forms part of the WTO series of publications in collaboration with Cambridge University Press.



1. Presentations by the panellists

Professor Capling opened the session by presenting the background of the project.

(a) *Sebastián Herreros, International Trade and Integration Division, United Nations Economic Commission for Latin America and the Caribbean, Santiago, Chile*

Dr Herreros presented the findings of the Latin American country case studies (Chile, Colombia and Mexico). In all three countries the business sector is the most influential type of non-state actor (NSA) and the most satisfied with the opportunities offered by government for consultation on trade policy issues; NSA involvement peaked during the free trade agreement (FTA) negotiations with the United States and later receded; civil society organizations were assembled to oppose PTA negotiations but were later disbanded or lost influence; and since all NSAs saw the WTO negotiations as being remote, slow and little influenced by smaller players, they tended to privilege FTAs. Trade policy is much less controversial in Chile than in Colombia or Mexico. There is more awareness of the value of WTO rules for the world economy in Mexico, and the WTO is preferred to the North American Free Trade Agreement (NAFTA) as a venue for dispute settlement even for disputes under NAFTA rules.

(b) *Alexander Chandra, Trade Knowledge Network, Jakarta, Indonesia*

Dr Chandra presented the two East Asian country case studies. NSAs in Thailand have a long history of engagement in policy-making. FTA Watch is a highly influential NSA network that actively mobilized against the proposed PTA with the United States. This NSA network has a strong preference for regional as well as South-South cooperation. In Indonesia, multilateral, regional and bilateral trade negotiations are seen to have equal importance, although there is a preference for regional agreements such as ASEAN (Association of Southeast Asian Nations). Bilateral FTAs are least favoured. Civil society groups in Indonesia take a cynical view of the WTO; they like the WTO because they do not think it does very much by way of market opening.

(c) *Riad al Khouri, Dean of the Business School, Lebanese French University, Erbil, Iraq*

Mr al Khouri presented the Jordan case study. He stated that, although it was the smallest of the case studies, it was nonetheless very interesting because of the political implications. Trade policy is highly centralized, with little parliamentary involvement. NSAs are not directly involved, although some engagement in PTAs is emerging. The Doha Round of negotiations is viewed as a non-issue in Jordan, with PTAs seen as very important.

(d) *Patrick Low, Director, Economic Research and Statistics, WTO*

Dr Low discussed the Kenya and South Africa case studies. In Kenya, NSAs have not really been very active in trade policy, with the exception of the business sector. They do not express strong preferences for negotiating preferentially or multilaterally. Unlike most of the other case study countries, South Africa believes it can exert influence in the WTO, and sees the WTO as a fairer playing field for dealing with powerful actors, although the slowness of negotiations is a concern.

(e) *Ann Capling, University of Melbourne*

Prof. Capling presented the study of Geneva-based NSAs, written by Maria Pérez-Esteve. The findings of this chapter confirmed that Geneva-based NSAs expressed strong views about the importance of the multilateral trade system and negotiations through the WTO. A surprising result was the fact that this agenda did not tend to permeate back to the organizations.

In her closing remarks, Prof. Capling said that the question of forum choice is not always an open one. Many governments have liberalized unilaterally, perhaps showing a lack of concern for reciprocity because they are too small to extract concessions from major trade partners. Some economic, political and political economy objectives, especially where discrimination is intrinsic to the objective, cannot be pursued in the WTO. Most countries had strong interest in negotiating PTAs with their most important trade partners. Regionalism is also important, determined in part by trade patterns but also by considerations of regional solidarity.

Prof. Capling pointed out that debate about the core functions of the WTO (especially rule-making, learning and deliberation) needs to be encouraged; that more work needs to be done in raising awareness of the value of global rules; and that the views/preferences of major traders need to be understood. This could be envisaged as a future project.

2. Questions and comments by the audience

Attendance of the session was excellent, and the audience engaged in a lively question and answer session, which filled the allocated 45 minutes. One questioner suggested that most business groups are interested in a narrow set of market access issues and were therefore more interested in negotiating preferentially in their key markets, and less likely to appreciate the value of global rules. The role of regional groups, such as ASEAN, within WTO negotiations was discussed with each panellist, with the panel concluding that group activity can be useful to raise awareness and to understand limits, but that such groups tended have a limited role in terms of moving agendas, compared to issue-based coalitions.

3. Conclusions and way forward

Overall, in the countries included in the project, all of whom are largely “price-takers” in trade agenda-setting, the non-state actors feel more engaged with regional and bilateral PTAs, and tend to see the WTO as remote, difficult to influence, and “exogenous”. It may be that the WTO does not project its core functions and potential contributions effectively enough in some of its smaller members. Perhaps the WTO should be looking at how to do more in this direction.



Abstract

Moderator Mark Halle invited panellists to discuss and comment on the preliminary thoughts emerging from a project that he and panellist Robert Wolfe are conducting on accountability and the WTO, within the Swedish-funded ENTWINED consortium.

Participants were asked to help untangle the ideas behind some difficult questions: For what, and to whom, should the WTO be accountable? Through which mechanisms? What mechanisms already exist? Could the organization be more accountable and, if so, how?

The session examined whether the concept of accountability to the WTO should be applied on a broad or narrow basis, and discussed whom the WTO should be accountable to, including the wider global public.

Rethinking accountability in and of the WTO

Moderator

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

Speakers

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

Professor Jens Steffek, University of Darmstadt, Germany

Mr Rashid S. Kaukab, Deputy Director and Research Coordinator, CUTS (Consumer Unity & Trust Society) Geneva Resource Centre

Professor Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO

Organized by

International Institute for Sustainable Development (IISD)

Report written by

Christopher Beaton, Research Analyst, IISD

Thursday, 16 September 2010
16.30-18.30

1. Presentations by the panellists

(a) *Robert Wolfe, Queen's University, Canada*

Prof. Wolfe focused his presentation on an analysis of the G20's commitment not to introduce new protectionist measures following the financial crisis. This involved an agreement by member states to notify the WTO of any new measures and encouraged international organizations to monitor and report on their performance.

He first asked if G20 members had been accountable. By and large, they had submitted notifications as agreed, and the WTO Secretariat played an important role in making the results broadly available. Where G20 members did not notify, the Secretariat had compiled information from other sources – press reports and civil society – which the countries in question were asked to verify.

He then described civil society's role, focusing on the Global Trade Alert (GTA), an initiative that built up its own database of protectionist measures. Although the GTA was very critical of the G20, Prof. Wolfe argued that, on balance, the Secretariat's compilation of measures was more comprehensive and covered more countries.

His analysis concluded that "the protectionist dog didn't bark" and that countries had been accountable: the trading system's institutions worked and the decision to embrace transparency had helped close the gap between country commitments and actions.

He closed by drawing a number of lessons from the experience. First, the special notification system can work, but the WTO Director-General should be more open about non-reporting countries. Second, the use of third-party data for non-reporting countries was interesting and could perhaps be used to improve notifications elsewhere. Third, the WTO, like the GTA, should have made data easily searchable online, to better promote accountability through increased transparency. Finally, civil society had been unable to compete with the WTO in gathering information. He suggested that civil society might be better placed to probe information gaps and offer alternative interpretations of reported data.

(b) *Jens Steffek, University of Darmstadt, Germany*

Prof. Steffek introduced the audience to the origin of the notion of accountability as we understand it today: the managerial revolution in public administration that started in the 1980s. He then explained how the concept migrated to international governance in the 1990s, where it took on two broad forms.

The first and strongest of these was legal accountability, when treaties set out rules and non-compliant participants could be sanctioned, as in the WTO. The second and weaker form was de facto accountability – recognition that multiple audiences existed who felt that they should be answered to. Closely related to this was "unsolicited accountability", when people publicly challenged an agent or agency in order to hold it to account.

He emphasized that a difficult aspect of accountability in an international dimension was the idea that public organizations should be accountable for respecting procedures and not just achieving outcomes. This presupposes that tasks are clearly delegated from the



very beginning; however, many international organizations, such as the WTO, have broad mandates and face contradictory expectations from their members.

He suggested that the WTO's mission should be broadly interpreted, including principles set out in the Preamble, such as sustainable development. This would make it accountable not just to members but also to non-state actors, international organizations and the wider public. Prof. Steffek argued that, in reality, the WTO is already responding to questions from a variety of stakeholders and tries to engage them within certain limits.

He concluded that accountability is not just a means of controlling and sanctioning. Rather, it is a learning exercise that takes place in a complex environment and requires organizational transparency and engagement with affected stakeholders.

(c) *Rashid S. Kaukab, Deputy Director and Research Coordinator, CUTS Geneva Resource Centre*

Mr Kaukab said his reflections were those of a practitioner and not a theoretician. He argued that the seemingly simple straight line relationship between the WTO and its members, and between those members and other stakeholders, is in fact fairly complex and currently includes many gaps. He gave examples, and asked the following questions:

1. Is there enough information available to accurately inform people's perceptions of the WTO?
2. Is parliamentary oversight really working?
3. Is adequate public debate and scrutiny happening, even in developed countries?

He presented some findings from a CUTS project undertaken in five African countries, which looked at the role that stakeholders play in trade policy processes and WTO negotiations.

He concluded that the major task ahead for the WTO is to improve transparency, thus reducing perceptions based on lack of knowledge and empowering national stakeholders to hold their governments to account. He also criticized the current lack of a comprehensive accreditation process for NGOs within the WTO. He argued that there was justification for increased participation by non-state actors – not on an equal footing with members, but perhaps with observer status or parallel forums.

(d) *Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO*

Prof. Marceau pointed out that she was speaking in a personal capacity. She emphasized that her immediate response was that yes, there should be a study on accountability and the WTO. In particular, she saw better accountability as vital to the WTO's legitimacy and its ability to realize the positive impacts of trade. She noted, however, that one of the difficult dimensions of such analysis would be to assess the power of initiative in the organization: the WTO is member-driven and does not have a strong secretariat compared to other international organizations.

Nonetheless, there was evidence that the Secretariat had in fact introduced a number of innovations with regard to accountability, despite having few formal powers. These were:

1. the role of the Trade Policy Review Body (TPRB) in monitoring G20 countries' notifications on stimulus measures;
2. the Aid for Trade initiative which, despite having weaknesses, remains significant, especially by working on standards for the impact assessment of trade measures;
3. the Secretariat's de facto working relationships with almost 200 international organizations.

Commenting on some of the ideas that had been raised in the course of other presentations, she agreed that opening committees to non-state actors was a good idea, but suggested that in reality some things needed to be negotiated behind closed doors. Otherwise, the ultimate result may be that the real work simply “happens in restaurants”.

She also conceded that there was no formal accreditation process for NGOs with the WTO, but queried whether this would add value, as the building and facilities are already accessible. She noted that there were already effective ways for NGOs to engage with WTO processes, such as by sending an *amicus curiae* brief to dispute panels or to the Appellate Body.

She finished by suggesting two areas which it might be interesting to explore in more detail: first, the accountability of “the green room” – the small, restricted preparatory meetings – which could be better explained and reported on and might accommodate observers; and second, the potential for promoting cross-notification, the rule where one country can notify on behalf of a non-notifying country.

2. Questions and comments by the audience

Michael Hindley, former MEP and majority leader in the parliament on trade issues, expressed his distrust of the term stakeholder on the grounds that it hides differences in power between different groups. Prof. Steffek acknowledged these misgivings but argued that there was a lack of proper alternatives.

Sheila Page, of the Overseas Development Institute, expressed surprise that the WTO could perform better than the GTA, even on things that an outsider should be able to do well – identifying things that are not tariffs and hard to quantify and justify with a legal requirement. She also expressed her doubt that the term “accountability” could be usefully applied to “big speeches by ministers”, such as those promising benefits from the Doha Round.

Mats Hellström, a member of the Global Subsidies Initiative (GSI) High Level Advisory Group, noted that, as a result of the Lisbon Treaty, the European Parliament will be a part of trade decision-making. He speculated that this would lead to increased demand for transparency and assessments of policy impacts.

Ahmed Abdul-Latif of ICTSD argued that the accountability of the WTO Secretariat and WTO processes are two different things that need different approaches and indicators. He also pointed out that there is an asymmetry between developed and developing country members in their capacity to be transparent.



Bernard Hoekman of the World Bank questioned the extent to which the GTA had influenced the G20's commitment to their promises. With respect to Aid for Trade, he argued that it is necessary to “walk on both feet” by looking at both the impact of development organizations and the impact of countries' national trade policies.

Andre Misiekaba, MP from Surinam, argued that a decade and a half of the WTO had delivered a world with closed, non-transparent and unfair trade, a growing gap between rich and poor, and unmet engagement from developed countries. He asked whether this was the accountability the WTO needed to deliver. Prof. Wolfe welcomed his point and emphasized that the ENTWINED project would aim to think about how the WTO could be accountable for sustainable development. Prof. Marceau argued that this was a moral question and that neither the WTO nor any international forum had a responsibility for wealth distribution.

Bernard Colas, a trade lawyer from Canada, asked whether there should be greater focus on the impact evaluation of measures envisaged under WTO negotiations. Prof. Steffek responded that he was not against the idea but that there would be a large fight over who should carry out the evaluations – science is not a neutral arbiter, especially in economics.

3. Conclusions and way forward

Final comments from panel

Mr Kaukab concluded that transparency had come a long way since 1995 and congratulated the WTO and its Secretariat on their achievements to date – but emphasized that more efforts could be made.

Prof. Wolfe emphasized that the purpose of the ENTWINED project is to slice up who is supposed to be accountable, for whom, for what, by what processes and using what criteria. He suggested that it is not possible to prove causal relationships between the work being conducted by the WTO and civil society it is only possible to make arguments about what structures are likely to lead to which outcomes.

Prof. Marceau highlighted that assessing the impacts of trade is complex but positive, as it can inform what sort of supporting policies might be necessary to create to positive outcomes.

Prof. Steffek concluded that discussions such as these were exactly what was needed. He noted that some evaluations might get in the way of the WTO's original mission, liberalization, but that this could be a good thing.

Moderator's summary

Mr Halle concluded that panellists tended to favour a “broad” application of accountability, embracing particularly the principles in the Preamble to the WTO Agreement, and responsibility toward the people affected by its policies. Transparency was seen to be the primary tool for improving accountability, although other mechanisms were also identified, including: making information more accessible and easy-to-use; increasing the role of civil society in WTO processes; and potentially increasing the use of “cross-notification”, where the WTO Secretariat or third parties notify on behalf of non-compliant countries.

He added that he was struck by how far things have come. He recalled explanations from when the WTO was set up that there was no place for NGOs in government business. He also remembered the WTO's "Shrimp/Turtle" case, in which the WTO Secretariat rejected an amicus curia brief from the WWF, now a routine part of dispute settlements.

He argued that often large steps forward have taken place when the Director-General has had the courage to go slightly beyond his strictly defined role. From this, he concluded that the WTO is not a system where the Secretariat is simply obedient to its members – rather, it is an interaction between the two, as well as between different stakeholders.

He thanked everyone for their participation and for providing such useful input to the ENTWINED project, assuring that the issue of accountability will not go away, but rather become a great deal more central in the trade policy community.



Abstract

In the course of the financial crisis, the global geography of power has shifted from G8 to G20. The latter, although representing roughly two-thirds of global trade, consists of a relatively small number of global players and is consequently excluding many others from decision-making on the international stage. Nevertheless, the G20 has been successful in its reaction to the financial crisis and became therewith an important new player within the international community.

When highlighting how the G20 might interfere with the WTO, the panel voiced concerns over the political legitimacy of the G20, given the limited number of members and the global impact of its decisions. It agreed on the impression that, although the G20 intends to extend its debates from the financial sector to world economy in general, it has so far achieved little in this direction, particularly when it comes to moving the Doha agenda forward. It therefore remains open how the G20 will evolve in the coming few years, and what mandates it will shed or adopt.

So far, the G20 has complemented the WTO and international financial institutions in handling the financial crisis. Yet, even if there is little evidence pointing towards a less cooperative role in the future, the desirability of a G20 commitment in WTO trade negotiations has yet to be debated. The panel concluded by providing ideas on how the potential of the G20 might be used to serve global interests even better in the future.

The role of the G20 in WTO governance

Moderator

Professor Sungjoon Cho, Associate
Professor of Law, Chicago-Kent
College of Law

Speakers

Professor Dr Marion Panizzon, Assistant
Professor of Law, University of Bern/
World Trade Institute

Professor Claire Kelly, Professor of Law,
Brooklyn Law School

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

Ms Doaa Abdel Motaal, Counsellor, Office
of the Director-General, WTO

Organized by

World Trade Institute (WTI)

American Society of International
Law (ASIL)

International Economic Law Interest
Group (IECLIG)

Report written by

Professor Sungjoon Cho, Associate
Professor of Law, Chicago-Kent College
of Law (Chair), and
Ms Charlotte Sieber-Gasser, Doctoral
Research Fellow, World Trade Institute,
University of Bern

Friday, 17 September 2010
11.15-13.15

1. Presentations by the panellists

(a) *Marion Panizzon, Assistant Professor of Law, World Trade Institute, University of Bern*

Prof. Panizzon introduced the topic by briefly outlining the history of the G20, which, during the rise of the financial crisis, was initiated by the Canadian Prime Minister, Paul Martin. Mr Martin encouraged a newer and bigger council for consultation and cooperation on matters pertaining to the international financial system. Prof. Panizzon pointed out that, contrary to the G8, some member states of the G20 are major developing countries. But not all of the most important economies with reference to their GDP are members of the G20. Thus, it is doubted whether the G20 has the political legitimacy to decide upon matters which penetrate the sovereignty of other countries. Nevertheless, the G20 unites 85 per cent of global gross national product (GNP), 80 per cent of world trade, and two-thirds of the world's population, and therefore enjoys legitimacy in economic terms.

It may be due to its informal organization and economic weight that the G20 was quite successful in dealing with the financial crisis: it introduced efficient stimulus packages, prevented its members from raising import duties and also countered regulatory protectionism. Only in terms of fiscal protectionism is the G20's success somewhat questionable. Prof. Panizzon quickly referred to the former Bretton Woods institutions, observing that the G20 continues to steady its club mentality.

Given the fast and efficient reaction to the financial crisis and the fact that the G20 has replaced the G8, it is worthwhile to think about its capability to save the Doha round of negotiations. As has happened before (with the Blair-House Agreement in 1992, which de-blocked the Uruguay-Round), a re-make of such an agreement would certainly be within the bounds of the G20's capabilities. There are two particular angles from which the G20 could tackle the Doha round: (1) services trade, which is of eminent interest to the G20 member states because their own economies are heavily based on services trade; and (2) agriculture, which could possibly de-block the Doha negotiations if a preliminary deal was struck within the G20.

However, so far the focus of the G20 has rather been on its own members and on finance. Promoting the prosecution and closure of the Doha-round would, therefore, require additional interaction of the G20 with trade policy. Prof. Panizzon described three possible scenarios for future interaction of the G20 with trade policy: (1) the G20 finance ministers could invite trade ministers to decide upon a common agenda for the Doha round; (2) the G20 could continue to focus on financial issues, which are largely outside the WTO's mandate; and (3) the G20 could selectively shape trade policy on matters relevant to the financial sector, such as agreeing on disciplining subsidization of services industries by completing the General Agreement on Trade in Services (GATS) mandate on subsidies.

She concluded by stating that it remains to be seen whether the G20 is ad hoc, or whether it will stay and continue to impact on future economic governance. Nevertheless, neither the G20's potential to have a positive impact on the Doha round, nor its role as an alternative institution for dispute resolution should be underestimated.



(b) Claire Kelly, Professor of Law, Brooklyn Law School

The financial crisis spurred a re-conceptualization of the international economic law architecture, Prof. Kelly stated. She identified the G20 as a key component of this architecture, filling a regulatory gap as an executive coordinator of a somewhat fragmented international economic law system. As the G20 demonstrated its usefulness in response to the financial crisis, there are a number of questions regarding the G20's future role as an executive coordinator, now that the financial crisis has begun to ebb away. In particular, she raised the question whether its future role may overlap and/or interfere with the WTO's role as a global trade agency.

In order to find answers to this question, she looked at the three joint reports from the WTO, the Organisation for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) to the G20 on the status of trade and investment measures. All three reports focused on trade and investment flows as well as on actions taken by G20 countries. Furthermore, all three reports were cautiously optimistic; relieved that widespread protectionist responses did not take hold, but concerned that if unemployment remained high such responses would be inevitable. In particular, the reports noted problems with regulatory protectionism, voiced concern over the manner and timing of exiting the stimulus packages and emergency measures, and all three reports observed that, while most investment measures were liberalizing, some had a trade distorting impact. Based on the findings in the reports, Prof. Kelly flagged three questions: (1) Is the G20 an effective forum for moving forward on trade and investment?; (2) Are emerging economies better represented in the G20 or in the WTO?; and (3) How can the G20 work in a complementary way with the WTO?

The very fact that the G20 dealt with the financial crisis shows that there is at least room for collaboration in trade and investment. However, this does not necessarily undermine the role of the WTO, even though there are good arguments on both sides for whether or not the G20 might be a good place to pursue trade negotiations. The G20, in addition to the WTO, has the power to put pressure on its members to stave off protectionism. Furthermore, the G20 might be able to push for broader issues such as climate change, or stalled issues – such as agriculture – in the WTO. Finally, the G20 has the ability to coordinate the work of a number of institutions, including the WTO.

Thus, she found that there is certainly a role to be played by the G20, while there is still enough on the global agenda to be dealt with within the WTO. In reference to the representation of emerging economies, Prof. Kelly pointed out that the reports reveal emerging economies as a driving engine in most upward trends. Furthermore, even though the use of coalitions in the WTO has ameliorated the representation of developing countries, the new geography of power of the G20 (China, India, Turkey, Brazil, etc.) might better facilitate strategic coalition.

She concluded by highlighting several ways for the G20 and the WTO to collaborate in a complementary way, such as benchmarks set by the G20 and monitored by the WTO or capacity building by the G20 under the Aid for Trade umbrella.

(c) Carolyn Deere-Birkbeck, Senior Researcher, Global Economic Governance Programme, University of Oxford

The G20 is not the first informal dialogue forum, and will probably not be the last, Ms Deere-Birkbeck said. The informal organization of the G20 could be an exciting

alternative to more rigid and tedious international organizations. However, the fact that the representation in the G20 is quite random, and that some concerned countries are excluded from decision-making processes, renders the replacement of existing decision-making processes by the G20 undesirable. She urged the G20 not to attack other more transparent and more democratic institutional decision-making processes (such as the WTO), but instead to use its capacity to encourage political collaboration among global institutions and to shape global agenda-setting by giving developing countries a voice.

Nevertheless, she pointed out that the success of the G20 also revealed a few weaknesses in the WTO. Why, she asked, is the WTO not saying more about development and environment? Would it not be more desirable to have these concerns taken care of by the WTO than by the G20? The success of the G20 also showed that dynamic ad hoc fora are sometimes more effective than long formal debates. Ms Deere-Birkbeck, thus, raises the question of whether and how the WTO can step up to these organizational deficiencies. However, she concluded by venturing the prediction that, despite its success, the G20 will not become the primary form of international collaboration.

(d) Doaa Abdel Motaal, Counsellor, Office of the Director-General, WTO

Although the G20 defines itself as the premiere forum for global international economic collaboration, Ms Abdel Motaal does not see much evidence of successfully targeting issues other than finance. The G20 has not yet achieved concrete measures in the area of the WTO mandate, and current intentions to broaden its agenda have yet to materialize. Thus, she is not yet convinced of the G20's capacity to show leadership in international trade policy, but would generally welcome such leadership as the latter would complement the WTO. Furthermore, she pointed out that the WTO became central to the G20 because of the magnitude of the financial crisis, which was not to be fought without the help of the WTO. Also, it was the WTO that initiated the reports to the G20 on the status of trade and investment measures, which are now done in collaboration with several other international organizations.

She noted that there prevails a considerable amount of confusion about the members of the G20, and about its decision-making process. She attributed this fact to the extent of the ongoing transformation the G20 is currently going through. On a separate note, Ms Abdel Motaal added that the fact that least-developed countries (LDCs) have a voice in the G20 is not merely the achievement of the G20, but the reflection of a new power balance which was initiated a long time ago.

2. Questions and comments by the audience

The following discussion mainly centred on the future agenda of the G20, the impact of the G20 on the WTO, and a possible formalization of the G20. It was brought up that, even though the G20 consists of relatively a small group of countries, it might not be able to act so fast because it unites 80 per cent of world economic interests at one table. Thus, the actual decision-making process within the G20 might not differ much from that within the WTO. Furthermore, it was emphasized that the advantage of flexibility of networks like the G20 comes at the cost of hardening the soft law and increasing the regulatory divide.



3. Conclusions and way forward

In their concluding remarks, the panellists agreed that it remains to be seen whether or not the G20 will further broaden its agenda. Given the ebbing away of the financial crisis, there is even the question whether the G20 will remain an important international forum for financial collaboration, or whether it has already served its purpose and will eventually disappear from the international stage. The Chair concluded the well attended and lively panel by voicing the hope that the two international bodies – the G20 and the WTO – will work together in a positive way in the future and face the challenges and opportunities in their collaboration to the benefit of everyone.

The future of trade and the environment: Creating the WTO's solution for trade, development and sustainable oceans

Moderator

H.E. Mr Peter Allgeier, Ambassador,
President, C&M International, Washington,
D.C.

Speakers

Dr Rainer Froese, Senior Scientist/
Fisheries Biologist, Leibniz-Institute für
Meereswissenschaften (IFM-GEOMAR),
Kiel, Germany

Dr Anthony Charles, Professor,
Environmental Studies Programme and
School of Business, St Mary's University,
Halifax, Nova Scotia, Canada

Mr Ricardo Meléndez-Ortiz, Chief
Executive, International Centre for Trade
and Sustainable Development

Organized by

OCEANA

Report written by

H.E. Mr Peter Allgeier, Ambassador,
President, C&M International, Washington,
D.C.

Friday, 17 September 2010
11.15-13.15

Abstract

This panel used the WTO fisheries subsidies negotiation as a tangible example of how the WTO can contribute to solving global environmental problems.

Beyond its status as the WTO's first "trade and environment" negotiation, the fisheries subsidy negotiation has several unique characteristics:

- It is more than a commercial negotiation. While one objective of the negotiations is a typical "level the playing field" commercial objective, its primary objective is to promote the sustainability of the world's ocean fisheries.
- The solutions to the negotiation do not fit the normal WTO mould of adjusting the border measures, or internal policies, of each member. The fisheries subsidy issue involves both activities within members marine borders (i.e. their Exclusive Economic Zones or EEZs) and activities on the high seas.
- The negotiations cut across North-South lines. The major fishing subsidizing members include both developed and developing countries. Those adversely affected by the subsidies – economically and environmentally – include both developed and developing countries.
- The negotiations also raise new institutional issues for the WTO. What distinguishes the WTO from other international agreements is that the members' commitments are legally binding and enforceable through a robust dispute settlement system. Is the current Dispute Settlement Understanding (DSU) equally workable for an agreement with a global sustainability objective and the commercial agreements in the current WTO?

Beyond these complications and challenges, there is the overriding challenge of finding the proper balance between development and trade on the one hand and sustainability and the environment on the other hand.

The panellists discussed three key questions in these negotiations:

1. What is the state of the world's fisheries?
2. What is the relationship between trade/development and sustainable fisheries?
3. What are the implications of this negotiation for the WTO as an institution, and for the treatment of trade and the environment in global environmental governance?



1. Presentations by the panellists

(a) *Rainer Froese, Senior Scientist/Fisheries Biologist, Leibniz-Institute für Meereswissenschaften (IFM-GEOMAR), Kiel, Germany*

Dr Froese described the trends in global fisheries, demonstrating that the vast majority of fisheries are fully exploited, overexploited, or depleted. He illustrated the dramatic expansion of commercial fishing and quoted the subsequent decline of catch per 100 hooks and reduced biomass of fish as evidence of the growing depletion of fish stocks. Global fisheries have drastically reduced the size of their target stocks, typically by 90 per cent since 1950. Global catches have been declining since the late 1980s. Mismanagement of fisheries by governments has not helped to reverse these trends.

The UN Convention on the Law of the Sea defines the biomass that can produce the maximum sustainable yield as a reference point below which stocks need to be rebuilt. But subsidies to fishing fleets have resulted in fishing well beyond maximum sustainable yield (and beyond the economically sustainable point in the absence of government subsidies). These levels of fishing can be maintained only through subsidies, which currently account for nearly 25 per cent of the value of global catch. Removing the subsidies would allow stocks to rebuild and would increase catches in the medium-term.

Dr Froese's conclusion is that fisheries could produce more food, better livelihoods and higher profit and tax collections if subsidies were eliminated and proper management according to the Law of the Seas and the UN Fish Stocks Agreement were practiced.

(b) *Anthony Charles, Professor, Environmental Studies Programme and School of Business, St. Mary's University, Halifax, Nova Scotia, Canada*

Dr Charles addressed the role of small-scale and artisanal fisheries in meeting development, conservation, and trade reform goals. He also stressed that reductions in subsidies are needed to save the oceans from overfishing. Subsidies cause problems mainly in industrial fisheries, but the elimination of certain subsidies, including fuel subsidies, would also be helpful for small-scale fisheries. There is, however, no universally accepted definitions for small-scale, artisanal, and subsistence fisheries, although there are some agreed characteristics. Support for artisanal and small-scale fisheries is needed to meet the UN Millennium Development Goals, human rights obligations, and marine conservation goals. The question is: what kind of support should be provided? Not all forms of support (subsidies) can help to meet development needs and produce conservation benefits.

So-called good subsidies include support for: research, enforcement of fisheries management, fishermen's organizations, quality improvement (e.g. inspection, certification), and diversification into other industries. Bad subsidies or subsidies favouring industrial fisheries include: fuel subsidies, tax exemptions for vessel owners, and investment in or modernization of vessels and gear.

(c) *Ricardo Meléndez Ortiz, Chief Executive, International Centre for Trade and Sustainable Development, Geneva, Switzerland*

Mr Meléndez-Ortiz spoke of the challenges that the fisheries negotiations pose for the WTO. First and foremost, he stressed that the primary objective of the negotiations is conservation of the fisheries, not commercial fairness. However, there is a steep learning curve for trade negotiators to negotiate resource scarcity issues such as fisheries. Outside groups have been playing a positive role by helping to educate the negotiators about the science of the issues. There needs to be a shared understanding of sustainability. The negotiations also raise the issue of inter-generational equity, which is inherent in resource scarcity issues. Policies also need to address the needs of countries at different levels of development. The normal North-South divisions do not make sense.

Mr Meléndez also pointed out that Aid for Trade is necessary for the fisheries sector to cope with the costs of “greening” its operations. There is a need for coastal fisheries communities to move from a quantity perspective to a value perspective.

2. Questions and comments by the audience

Most of the questions focused on understanding the concept of maximum sustainable yield. Dr Froese pointed out that it is neither excessively complicated nor overly expensive to determine the biomass of a fishery in comparison to the biomass that would produce maximum sustainable yield. Thus, it is not accurate to say that developing countries require enormous resources to determine the state of their fisheries or the sustainable catch.

Other comments dealt with issues such as “levelling the playing field” for developing countries that have not developed their fleets sufficiently to take full advantage of their fisheries resources. There also was the recognition that it would not be sufficient to address only the subsidies affecting high seas fishing, since coastal fishing accounts for 90 per cent of the catch, and many developing countries’ fishermen are having to go further out to sea because of the depletion of closer-to-shore fisheries.

An important point that emerged during the discussion was the ability of most fisheries to recover if the total catch and fishing effort is reduced (e.g. by eliminating subsidies and other destructive practices) and maintained at sustainable levels.

3. Conclusions and way forward

The session wrapped up with an affirmation of the significance for the oceans of a WTO agreement that would eliminate subsidies that support over-capacity and overfishing. As 125 scientists stated in a letter to WTO Director-General Lamy on 24 May 2007, “The WTO has in its hands the opportunity to effect one of the greatest changes toward protecting the world’s oceans”.



Abstract

The rules-based multilateral trading system (MTS) emerged from the Atlantic Charter signed in 1941. It greatly contributed to peace and prosperity in the Atlantic nations, and to the emergence of the Pacific trading nations. Until recently, however, the MTS (established first through the General Agreement on Tariffs and Trade (GATT), and continued through the WTO) remained a fairly exclusive Western/Atlantic club, albeit with the inclusion of Japan.

In the 21st century, the greatest transformation in world trade for the past two hundred years is taking place. China, a global recluse for an extended period, has "re-emerged" as a formidable trading power. Greater China – including the People's Republic of China, Hong Kong, Chinese Taipei and the Chinese overseas enterprises – are redesigning global trade patterns, refashioning the global supply chain, and redefining the basis of global competitiveness.

As these dynamics occur, questions arise regarding the future of the MTS, including its governance. One premise is that, while the emerging Pacific is keen to preserve the MTS, the stalling of the Doha Round of negotiations, among other things, is resulting in a proliferating "noodle-bowl" of free trade agreements (FTAs) which could jeopardize the future of the MTS. Arguably, this is the most critical issue to the future of global trade and the rules-based MTS.

Trade barriers do not present the main problem to China's progress, but differing regulatory environments, bilateral versus global trade agreements, and labour practices and poverty were consistently raised in comments from the floor. Acknowledgement was made that China is being held to a higher standard than any nation before on these same challenges.

Greater China and the future of the multilateral trading system

Moderator

Professor Jean-Pierre Lehman, Professor of International Political Economy at IMD; Founding Director of The Evian Group at IMD

Speakers

Mr Michael Garrett, Co-Chairman, The Evian Group at IMD; Former Executive Vice President Asia-Oceania-Africa and Middle East, Nestlé S.A.

Dr Arthur E. Appleton, Partner, Appleton Luff, Geneva

Professor James Tang, Professor and Director of the Master of International and Public Affairs Programme in the Department of Politics and Public Administration, University of Hong Kong

Professor Yong Wang, Professor, School of International Studies, Director, Center for International Political Economy, Peking University

Organized by

The Evian Group at IMD

Report written by

John-Pierre Lehman, Professor of International Political Economy at IMD; Founding Director of The Evian Group at IMD

Friday, 17 September 2010
14.15-16.15

1. Presentations by the panellists

(a) *Jean-Pierre Lehman, Professor of International Political Economy at IMD; Founding Director of The Evian Group at IMD*

The moderator, Prof. Jean-Pierre Lehmann, described China's importance in global trade and investment. Its outward direct investments are in the process of surpassing its inward direct investments. China is the leader of the rising global south, where, increasingly, South-South cross-border trade and investment dynamics are taking place. At present, China is driving globalization through trade in capital, goods and services.

He invited the panel to discuss the challenges and future of the multilateral trading system from the points of view of the People's Republic of China, Hong Kong and Chinese Taipei.

Their perspectives were broad, including business, legal and political influences and implications.

(b) *Yong Wang, Professor, School of International Studies, Director, Center for International Political Economy, Peking University*

Prof. Yong said China's rise in the last 30 years was not to be seen in isolation; it is part of a worldwide force of countries re-engaging with the global market economy. While continuing to support the multilateral trading system and being active in setting up a regionalized market in East Asia, China is in the process of giving up its old economic growth model and trying to restructure its economy, moving from growth generated by external trade, to one driven by the internal market, combined with creating a balance in the internal market.

(c) *Arthur E. Appleton, Partner, Appleton Luff, Geneva*

Dr Appleton analysed the China-Chinese Taipei Economic Cooperation Framework Agreement (ECFA). He noted that the agreement has political as well as economic implications. For Chinese Taipei, the agreement is beneficial economically, but it has also sparked a debate within Chinese Taipei's different political groups.

(d) *James Tang, Professor and Director of the Master of International and Public Affairs Programme in the Department of Politics and Public Administration, University of Hong Kong*

Prof. Tang looked at China's emergence since 1990, when it was only partially integrated into the global economy. The seventh supplement to the China-Hong Kong, China Closer Economic Partnership Arrangement (CEPA) represents a big step forward by the mainland to open up its professional services to Hong Kong, China's businesses and individuals, which will benefit both large and smaller enterprises. One significant obstacle is the lack of a sense of urgency to making MTS central to this growth.



(e) *Michael Garrett, Co-Chairman, The Evian Group at IMD; Former Executive Vice President Asia-Oceania-Africa and Middle East, Nestlé S.A.*

Mr Garrett warned that the sequels of the great recession lie in high levels of indebtedness, which will have an impact on global economic growth and trade. He said China will continue to rely on its massive production sectors, which are efficient and which currently have no significant competitors. Both foreign consumers and companies benefit from trade with China, while China also benefits from investing in commodities overseas. Completion of the Doha Round needs expediting to avoid the risk of emerging “protectionism” which has so far remained latent despite the financial/dept crises.

2. Questions and comments by the audience

Discussion ranged over a number of issues, including: the regulatory environment in China and the impact this has on trade; the increasing prominence of FTAs in the region, and prospects for a North East Asian trade area; and social developments in China arising from labour practices and conditions. It was pointed out that there is no “perfect” model of industrialization that does not involve abusive labour practices and environmental damage. However, the panel's consensus view was that China is doing much better in terms of labour conditions and environment. The critical thing is to keep issues and differences within the framework of the MTS.

3. Conclusions and way forward

The world never anticipated the extent of China's market growth and success. Whether the 21st century would be the Pacific Century was indeed a question twenty years ago. China's success should be to the benefit of all. However, the absence of a strong MTS and the risk of the Doha negotiations not concluding give pause and, because of the resulting anxiety, there is a risk that this growth and success will not achieve its potential benefits. The future of China and the future of the multilateral trading system are inextricably interlinked.

The new geography of trade: South-South agreements, South-South asymmetries and the WTO

Moderator

Ms Adriana Verdier, International Centre for Trade and Sustainable Development (ICTSD), Geneva

Speakers

Mr Umberto Celli, Professor, USP, Brazil

Ms Juliana Peixoto Batista, LATN-FLACSO, Argentina

Mr Rolf Traeger, United Nations Conference on Trade and Development (UNCTAD), Geneva

Mr Timothy A. Wise, Director of Policy Research, Global Development and Environment Institute (GDAE), Tufts University

Organized by

Latin American Trade Network (LATN) and University of São Paulo (USP, Brazil)

Report written by

Ms Linda Currán (Researcher, Latin American School of Social Sciences FLACSO/Argentina)

Friday, 17 September 2010
16.30-18.30

Abstract

Current tensions within the WTO have a number of external and internal causes, such as the global economic and financial crises, changes in the global power balance, and the revival of the North-South conflict, which mainly emerged after the Cancún Ministerial. On the one hand, leading developing countries have been increasingly expanding their roles as process drivers in the multilateral trading system. On the other hand, differentiation within the group of developing countries is increasing. In this context, it is important to discuss the ongoing South-South trade arrangements among leading developing countries. To what extent might these eventually contribute to a more balanced and equitable process of global economic development? While such arrangements may constitute a powerful tool to level the playing field in the multilateral sphere, do they help to reduce the asymmetries among southern countries?

This session was aimed at analysing recent South-South trade arrangements with the purpose of observing some trends on key development issues, such as asymmetries, and potentially important development instruments, such as the trade in services and investments. Southern Common Market (MERCOSUR) agreements with other developing countries, as well as least-developed countries' arrangements, were also addressed. Some of the challenges regarding the relationship between these arrangements and the multilateral trading system were also pointed out.

The panel had the following structure:

Ms Adriana Verdier (Projects Manager, ICTSD, Geneva) welcomed the panellists and participants and provided a general overview on South-South trade.

Mr Rolf Traeger (Economic Affairs Officer, UNCTAD, Geneva) provided an analysis of the increasing South-South economic relations of the least-developed countries, the questions of asymmetries and the institutional framework.

Prof. Umberto Celli (Professor of International Law, University of São Paulo, Brazil) focused his attention on the MERCOSUR within the South-South agreements, particularly in the case of services and investments.

Ms Juliana Peixoto (Coordinator, Latin American Trade Network/LATN, Argentina) presented an analysis of the management of asymmetries in both the internal and external agendas of MERCOSUR.

Finally, Mr Timothy A. Wise (Director of the Research and Policy Program, GDAE-Tufts University, USA) made some concluding remarks.



1. Presentations by the panellists

(a) *Rolf Traeger, UNCTAD, Geneva*

Mr Traeger's presentation provided an insight into the intensifying South-South economic linkages of the least-developed countries (LDCs). During recent years, developing countries as a group became the largest market for LDCs' exports, accounting for slightly more than half of their total exports. Consequently, over the last 15 years LDCs have considerably diversified their international economic relations, which traditionally had been heavily dependent on developed countries.

The major developing trade partners at present account for three-quarters of all South-South LDC trade flows and for 42 per cent of total LDC world trade. They have become large foreign investors in LDCs, so that in 2006-2008 they originated almost half of foreign direct investment (FDI) inflows into these countries.

The institutional framework for these growing South-South economic relations has been developed through a series of mechanisms, such as: bilateral fora to deal with development cooperation and economic relations; bilateral (unilateral) trade preferences; and also bilateral agreements.

The main problem is the multiple asymmetries on both sides of this relationship. Especially in terms of power, where such asymmetries are reflected in terms of bargaining power, negotiating capacity and institutional capacity, and also in terms of the agenda, essentially set by the stronger party (the large/dynamic developing countries). As a result, LDCs have not yet formulated or implemented their own agenda for South-South economic relations.

Finally, Mr Traeger presented different options to enable LDCs to cope with asymmetries. These included the formulation of a strategy for South-South economic relations and, on that basis, an agenda for negotiations with foreign southern economic agents among others, as well as the possibility of negotiating in blocs, and the adoption of special measures, such as preferential treatment.

(b) *Umberto Celli, Professor of International Law, USP, Brazil*

Prof. Celli expounded on the main features of MERCOSUR within the South-South agreements, focusing his attention on two aspects: trade in services and investments.

Although MERCOSUR has made significant progress in the establishment of a free trade zone, this is not the case for services and investments, two crucial subjects for both MERCOSUR's internal and its external agendas.

The Protocol of Montevideo on Trade in Services, was aimed at promoting free trade services within MERCOSUR in compliance with the conditions set out in the General Agreement on Trade in Services (GATS) for economic integration, which essentially require preferential agreements to have "substantial sectoral coverage" and to provide for the elimination of "substantially all discrimination".

On the one hand, the Protocol is a "negative integration contract", i.e. primarily concerned with the elimination of discrimination without interfering with member states' right to

regulate in accordance with their legitimate policy objectives, while on the other hand, it is an integration process whose ultimate objective is to liberalize the service sector.

The Programme of Liberalization on Trade in Services contains a mechanism based on the “positive list” approach for advancing trade liberalization through the negotiation of specific commitments on market access and national treatment, while under GATS, the “positive list” approach is the mechanism which best fits into the progressive liberalization strategy, and is therefore the most appropriate to protect developing countries’ interests. It also seems the most appropriate to MERCOSUR in view of the asymmetries among its member states.

Regarding investments, the MERCOSUR framework contains two protocols: the “Protocol of Colonia for the Reciprocal Promotion and Protection of Investments in MERCOSUR” (1994) and “the Protocol of Buenos Aires for the Promotion and Protection of Investments Originating from States non-Parties of MERCOSUR” (1995).

Neither of these Protocols is in force, due to the lack of ratification by member states. As a result, members have separate bilateral investment treaties (BITs) with different countries.

Since investment provisions will be part of regional trade agreements RTAs with developed countries and/or cooperation agreements with developing countries under the Enabling Clause and/or the UNCTAD Generalized System of Preferences (GSP) which will be signed by MERCOSUR in the forthcoming year, Prof. Celli asserted that MERCOSUR member states can no longer postpone the ratification of both Protocols in order to be in a better position to negotiate RTAs and South-South cooperation agreements. The greatest challenge, however, will be to negotiate agreements whose investment provisions contain a necessary balance between the need to attract, promote and protect foreign investments, and the need to preserve member states’ policy space to implement industrial policies aimed at their development.

(c) Juliana Peixoto Batista, LATN-FLACSO, Argentina

Ms Peixoto presented a further analysis of the management of asymmetries in both the internal and external agendas of MERCOSUR.

The actions in the multilateral system for reducing North-South asymmetries do not necessarily help reduce asymmetries among southern countries.

Even though MERCOSUR tends to follow a more pro-development integration approach, favouring South-South agreements, there are still issues, such as asymmetries – which are traditionally considered part of a North-South agenda – that also emerge in South-South arrangements.

In the case of its internal agenda, since the Treaty of Asunción (1991), MERCOSUR initially had a quite a narrow trade approach towards asymmetries among member countries. Currently, there is an increasing acceptance that the bloc needs deeper structural measures, including asymmetry reduction measures. In sum, the agenda on asymmetries has started showing changes towards the new regionalism mindset.

With regard to the external agenda, three agreements were addressed: MERCOSUR-SACU (Southern African Customs Union), MERCOSUR-India and MERCOSUR Israel.



While the MERCOSUR-India and MERCOSUR-SACU agreements are sold as part of a grand strategy to strategically influence the global trade process, they are making very slow progress, and have so far provided small stepping stones covering only small trade flows.

In the case of the SACU Agreement, the special rights of SACU's less developed members for the protection of infant industries have been granted, while Paraguay and Uruguay come into the picture only in the event that those rights cause them any detriment. This shows that those agreements involving MERCOSUR and developing countries (India and SACU) have very little to say about South-South asymmetries.

The Israel Agreement is the one that focuses the most on the asymmetries among signatories, and goes beyond exhortations. It not only establishes more flexible rules of origin for Paraguay and Uruguay, but also includes an annex about technology cooperation, which calls for special attention to be paid to less-developed signatory countries and small and medium-sized enterprises (SMEs) as well.

Ms Peixoto concluded that the management of asymmetries in trade agreements involving MERCOSUR does not follow the same pattern observed in the bloc's internal agenda, and still does not reflect much coherence with the regional political context. It can be observed that, in its external agenda, MERCOSUR is also in the middle of two South-South agreement models: one with pompous preambles and few concrete measures, and the other – North-South biased – which does not include rhetorical speeches, but protects the smallest economies of the MERCOSUR.

(d) Timothy A. Wise, Director of Policy Research, GDAE, Tufts University

Mr Wise concluded the session with some remarks related to the previous presentations. He highlighted the importance of putting the issue of South-South asymmetries on the agenda. The world has changed considerably in recent years. The G20 incorporates the most important developing countries in the decision-making process, reflecting their economic and political power in the world. That is a new reality that has an impact in world trade, and the way that this reality plays out has been dramatically evident over the last ten years. For instance, developing countries have become great capital exporters, competing with European and United States multinationals in seeking investment opportunities, access and ownership of resources.

All these facts challenge the whole idea of South-South cooperation and asymmetries. The real question is: will southern countries behave differently than their northern counterparts have in the developing world? The answer is debatable.

Mr Wise elaborated on the case of the North American Free Trade Agreement (NAFTA). Although there is a general consensus on the breadth of FTAs, he mentioned the NAFTA as the broadest and deepest FTA that has ever existed. At the same time, he considered that NAFTA was a failure for Mexico because it did not contribute to dynamic growth in the country. So, in his view, the key aspect or challenge regarding asymmetries would be the one of really learning from the failures of the global North, identifying both the elements that have been systematically put aside in the global North FTAs, and the ones that have, in fact, been shown to be important to development, and which should be part of upcoming trade agreements. Finally, he stressed the existence of some "signs of hope", such as the China-Chile FTA, in which Chile was granted a list of 152 exceptions in goods liberalization.

2. Questions and comments by the audience

The session ended with a series of questions to the panellists. The discussion during this stage revolved around the following issues, among others:

- asymmetries within MERCOSUR;
- the status of the MERCOSUR-EU bi-regional negotiations;
- MERCOSUR common policy regarding trade and investment;
- the status of MERCOSUR-specific initiatives, such as the International Political Science Association (IPSA) and the Protocol on Competitiveness;
- the challenges faced by MERCOSUR and the growing divergence of domestic interests among MERCOSUR state parties;
- the role of Brazil as an emerging country within MERCOSUR.



II. The economical, political and technological factors shaping world trade and the role of the rules-based multilateral trading system in contributing to the global economic recovery



Agricultural trade and investment rules for the 21st century

Moderator

Ms Caroline Dommen, Representative, Global Economic Issues, Quaker UN Office

Speakers

Mr Ben Hobbs, Senior Policy and Advocacy Officer, Asia and Middle East Division, Christian Aid

Mr Daniel De La Torre Ugarte, Professor of Agricultural Economics, University of Tennessee

Discussants

Mr Djibo Bagna, Chairman, ROPPA (Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest)

Mr Jerome Dimayuga Bunyi, Agriculture Attaché, Permanent Mission of the Philippines to the WTO

Organized by

Institute for Agriculture and Trade Policy (IATP) and Quaker UN Office, Geneva

Report written by

Ms Caroline Dommen, Representative, Global Economic Issues, Quaker UN Office, Geneva

Wednesday, 15 September 2010
12.30-14.00

Abstract

The world of agriculture policy has changed fundamentally since the WTO's Doha negotiations started. This session aimed to discuss ways to address some of the challenges facing world agriculture today. Presenters discussed, in particular, the potential for sustainable agriculture to feed the world, and the role that food reserves can play in ensuring food security.



1. Presentations by the panellists

(a) *Ben Hobbs, Senior Policy and Advocacy Officer, Asia and Middle East Division, Christian Aid*

Mr Hobbs described the paradox of farming households going hungry as an illustration that something is wrong with the agricultural system. People living on small farms make up half of the undernourished people in the world, and the majority of those living in poverty. Mr Hobbs pointed out that small farms provide a large share of agricultural production. The most direct way of reducing hunger and raising incomes in rural areas would be to increase the productivity and profitability of small farms.

Oft-cited causes of low productivity are soil or climatic constraints, lack of investment or extension support, and declining or fluctuating farm gate prices. A less-discussed cause of low productivity and incomes is farming strategy itself, which often involves mono-cropping, over-reliance on purchased external inputs and export-oriented strategies. Such strategies have a number of downsides: inputs are expensive; production for household consumption is not encouraged; the risk of complete crop failure and income loss when crops are bad increases; and soil and water are harmed. Yield growth has slowed in recent years, and one of the causes is soil degradation caused by farming practices that involve chemical inputs and mono-cropping.

Evidence shows that productivity and incomes on small farms can be increased by introducing more sustainable farming techniques. These aim to reduce external inputs, to benefit from farmers' knowledge, and to encourage farming communities to adopt cheaper, affordable technologies. Examples of farmer-led sustainable agriculture include participation in crop breeding and measures to conserve soil and water.

Christian Aid is supporting this kind of initiative in several countries, including India, the Philippines and Burkina Faso, and has documented the benefits. These include higher yields, improved soil fertility, lower production costs due to a minimized use of agrochemicals, better health because of reduced exposure to agrochemicals, and more food variety for household consumption. Other benefits include increased biodiversity and reduced greenhouse gas emissions. In addition, in some cases farmers can command premium prices for certified organic produce. In 2009 MASIPAG (a farmer-led network working for sustainable use and management of biodiversity through farmers' control of genetic and biological resources, agricultural production and associated knowledge) and Misereor (a German Catholic development agency) carried out a study in the Philippines. Eighty-eight per cent of the organic farmers interviewed said that their food security was "better" or "much better" than in 2000, compared to 44 per cent of the conventional farmers. Similar findings are repeated elsewhere.

Thus Green Revolution technologies are not required to boost the productivity of smallholder farming in Africa and Asia. However, sustainable techniques do need more governmental support. For instance national seed laws should support farmers who want to breed, re-use and exchange seeds; subsidies for chemical inputs should be reduced; and farmers adopting sustainable farming practices should have more financial support, particularly during the transition period when yields may dip. Other helpful governmental policies include increasing research into low-input agriculture, or into orphan crops such as millet and vegetables that grow well on marginal agricultural land, and ensuring a

regulatory framework for selling certified organic produce without damaging the interests of small farmers who grow crops organically but without certification.

(b) Daniel De La Torre Ugarte, Professor of Agricultural Economics, University of Tennessee

Mr De La Torre Ugarte¹ recalled that of 5.5 billion people in developing countries, 2.5 billion are in households involved in agriculture and 1.5 billion are in smallholder households. In many developing countries, agriculture accounts for over 50 per cent of employment. Agriculture involves millions of farmers rather than a few large companies. Production is highly concentrated in a handful of countries, which therefore has an uneven impact on world prices. He also recalled that – unlike other goods – food is essential to survival, and countries will take drastic measures to secure food supply.

He described how a reserve could help to secure the supply of commodities. He also said that reserves could be also be used to stabilize prices, and focused his presentation on this aspect. He said that a food reserve could buy food when prices are too low, to try to eliminate very low prices, and sell when prices are too high, not with the aim of fixing the price of agricultural commodities, but in order to avoid sharp fluctuations.

He argued in favour of publicly-held reserves, saying that commercial agents have no incentive to hold reserves, and when they do, they usually lack transparency. Furthermore, however free the market is, food supplies may simply not be available.

He then considered four aspects of the relationship of trade rules to reserves: (1) paying for reserves, (2) governing reserves, (3) operating reserves and (4) managing stocks. Regarding payment, the Agriculture Agreement does not allow reserves to be used as a price support mechanism, but the kinds of reserves in question would not be attempting to do this: they would be bought at food market prices with the objective of reducing price variability, rather than supporting prices.

Regarding governance, if the reserves were government operated, they would meet the conditions set out by the WTO's Agreement on Government Procurement. If a state trading enterprise (STE) operated the reserve, it would come under WTO STE rules, which undoubtedly allow the proposed type of reserve as it would not seek to maximize revenue or to exercise market power. Also, the reserve would be small in terms of volume compared to global supply, and so would not affect world prices.

Regarding the operating of reserves and the objective of keeping prices within a specified band, as this band would seek to eliminate extreme price variation (rather than set a price), it would likely be compatible with the Agriculture Agreement. To work, the reserve would require a minimum volume, without exceeding a certain volume, in order to avoid incurring undue costs. Thus, buying and selling these stocks, as long as prices were within market values, would probably be compatible with WTO rules. If other prices were applied, for instance to support farmers when prices are low, then Agriculture Agreement subsidy rules (such as aggregate measures of support (AMS)) would apply.

The speaker concluded that the Agriculture Agreement provides most of the flexibilities required to establish food reserves.

¹ See also Sophia Murphy, "Stabilizing agriculture markets; WTO Rules and food reserves", 2010, at www.iatp.org/iatp/publications.cfm?accountID=451&refID=



(c) Jerome Dimayuga Bunyi, Agriculture Attaché, Permanent Mission of the Philippines to the WTO

Mr Bunyi said that the Philippines adopted Green Revolution technology in the 1970s. This led to increased production, but also degraded soil and burdened farmers with debt due to the cost of inputs.

He agreed that low-input and organic farming can be beneficial, particularly for small farmers, but pointed out that food security in a trade context means food security for all, not just for small farmers. Food security as defined by the United Nations Food and Agriculture Organization (FAO) does not only involve self-sufficiency – imports have a role to play. Relying heavily on imports can be disastrous for national food security, so countries have to calibrate the right balance between liberalization and protection of farmers. Mr Bunyi recalled that world markets are distorted by subsidies that push food prices down: if prices drop, farmers' incomes drop. Low world prices can drive smallholder farmers to unsustainable practices, and into poverty. In the WTO agriculture negotiations, the Philippines favours "calibrated" liberalization (not unbridled liberalization) because of the need to protect small farmers. As developing countries cannot support their farmers to compete against subsidized, imported food, the Philippines, with the G33, has proposed a special safeguard mechanism in the WTO. This would permit countries to impose additional tariffs on imports when prices fall below a certain level.

Mr Bunyi said that the Philippines is a pioneer in low-input farming. As yields may decrease initially during transition to organic or low-input agriculture, government support would be necessary. He warned that managers are driven by growth and productivity targets, so are likely to adopt whatever techniques seem most likely to increase productivity and, for many, conventional farming appears to be the safest way of achieving this.

He pointed to the danger of promoting organic farming in developing countries as being about premium pricing, saying that most consumers will seek to pay the lowest possible price for reasonable quality, rather than seek premium price produce.

Regarding food reserves, he said that, in the Philippines in 2008, the price of rice (a major staple) rose substantially, not just because of lack of supply on world markets but also because of local hoarding. Concerns about unscrupulous business actors who might hoard stocks to drive prices up are relevant for food security, but are not yet addressed by WTO rules.

Mr Bunyi concluded that, in his view, there is scope for more sustainable farming methods, provided that consumers or governments are prepared to pay for it. Since developing countries have limited resources, the international community should channel more resources to sustainable production and create rules that will provide more flexibility for developing countries to be more self-sufficient and less sensitive to international price volatility.

(d) Djibo Bagna, Chairman, ROPPA (Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest)

Mr Bagna pointed out the difficulties that stricter food standards cause for small producers. While he was convinced that small producers could be capable of feeding the population, this would require a better policy framework, and appropriate investment. For instance, in Niger it is difficult for farmers to obtain affordable loans if they do not have

a title to their land. He mentioned that when Niger experienced a food crisis in 2005, neighbouring countries had food, but regulatory conditions did not allow it to be brought into Niger.

Mr Bagna called for trade rules to take into account the localized nature of agriculture, as well as the essential nature of food, and for the WTO to create a separate mechanism for dealing with agriculture. There must be support for organic agriculture and consistent policies and strategies for this. In the WTO, this should be specifically considered. Mr Bagna stressed that, in Africa, people have always practised low-input agriculture, and are also keen to continue to practice family agriculture. This permits diversification of crops and also provides jobs. He emphasized how important agriculture is as a source of employment – accounting for 85 per cent of all jobs in Niger (as compared to about 5 per cent in Europe). If this type of agriculture was abandoned and big companies took over production, Niger could face high unemployment.

Another issue Mr Bagna raised was value-added. Niger exports bananas and coffee without transforming them. Then it re-imports processed coffee, paying a much higher price for it. He said that strong involvement of all actors along the value chain is needed: sellers should be encouraged to speak to producers; producers to speak to processors, etc. Regarding food stocks, he said that to address food security, food stocks should be local, at village level, with transparent governance.

2. Questions and comments by the audience

In the discussion, Professor Tim Wise, from Tufts University, cited the case of Mexico: when the country opened its markets under the North American Free Trade Agreement (NAFTA), corn imports from the United States increased by 400 per cent, there was a 66 per cent decrease in producer prices for Mexican corn farmers, and corn came in to Mexico at 19 per cent below the US costs of production (i.e. dumped). Prof. Wise said it would be hard for a Mexican government that cared about increasing corn production on its small farms to do so without addressing imports, and NAFTA had eliminated the possibility of controlling imports through tariff measures. He asked Mr Hobbs what trade or other measures he considered most critical for making such transitions and increasing small farms' productivity, and also asked Mr De La Torre Ugarte to describe how the stock mechanism could be used to keep international prices above dumping levels.

Rajendra Kumar from India recalled that India is predominantly an agricultural economy, but development is not measured in terms of agriculture. He said that subsidies may be necessary in developing countries to promote agriculture, and a challenge will be to motivate farmers' children and educated people to get into farming. He thought price fluctuations could be controlled locally, but there should be a global system to ensure availability of stocks. He concluded that agriculture should indeed be discussed outside the WTO, in an independent global forum for agriculture.

Marcos Rochinski, General Secretary, Fetrat (Federação Nacional dos Trabalhadores e Trabalhadoras na Agricultura Familiar), Brazil, emphasized the importance of combating hunger with concrete public policies and with political will. Brazil provided a concrete example this: for decades people thought Northeast Brazil could not fight hunger because there was no productive capacity. Now the positive results of Brazilian public policy could be seen, because it had provided opportunities for small-scale farmers to get involved



in marketing their goods. He stressed that food security needs to be built with market protection for small-scale farmers. For a developing country to protect its small-scale farmers, it must also have mechanisms to reduce external dependency, especially on big businesses.



The role of the multilateral trading system in contributing to the global economic recovery and the future of global trade: A world business perspective

Moderator

Mr Stefano Bertasi, Director, Department of Policy and Business Practices, ICC

Speakers

Mr R.V. Kanoria, Chair, ICC Commission on Trade and Investment Policy; Chairman and Managing Director, Kanoria Chemicals & Industries Ltd

Mr Geoffrey Gamble, Vice-Chair, ICC Commission on Trade and Investment Policy; Director of International Government Affairs, the DuPont Company

Mr Knut Sørlie, Member, ICC Commission on Trade and Investment Policy; Assistant Director, International Affairs and Trade Policy, Confederation of Norwegian Enterprise (NHO)

Mr Cliff Sosnow, Member, ICC Commission on Trade and Investment Policy; Partner, Practice Group Leader, International Trade and Investment Group, Blake, Cassels & Graydon, LLP

Organized by

International Chamber of Commerce (ICC)

Report written by

Mr Stefano Bertasi, Director, Department of Policy and Business Practices, ICC

Wednesday, 15 September 2010
12.30-14.00

Abstract

The objective of this session was to present complementary business perspectives on the role of the multilateral trading system in the recovery from the global economic recession, and in shaping the future of global trade.

The session addressed the following issues:

- The continuing threat of protectionism in the face of persistently high unemployment, particularly in developed economies;
- the impact of a successful conclusion of the Doha Round on the global economy;
- the role of trade and investment in creating opportunities for developing countries; and
- the contribution of the WTO and the rules-based multilateral trading system to dealing with the global economic imbalances and political and economic power shifts taking place in the world that are shaping the future of global trade.



1. Presentations by the panellists

(a) *Geoffrey Gamble, Vice-Chair, ICC Commission on Trade and Investment Policy; Director of International Government Affairs, the DuPont Company, United States*

The relation between jobs and trade was a key theme in the current United States mid-term election campaign. The United States economy was hit very hard by the global recession and unemployment was at an all-time high. There were underlying structural weaknesses in the United States economy, such as growing income inequality, decreasing consumer purchasing power and weaker commercial demand. Cyclical protectionist measures had been taken by WTO members in response to the crisis, but there were also more structural tendencies towards beggar-thy-neighbour policies. Rising unemployment was a growing concern in both industrialized and developing countries. Mr Gamble urged businesses and governments not to waiver in their resolve to complete the Doha Round quickly. Regarding international trade in chemicals, he believed it would benefit from a sectoral agreement to reduce tariffs to zero. Selective tariff increases and other measures taken since the crisis should be undone, and the multilateral trading system had a key role to play in this respect. Trade was one of the most effective means to promote economic and social progress, and multilateral trade liberalization in particular was the optimal way to achieve this.

(b) *R.V. Kanoria, Chair, ICC Commission on Trade and Investment Policy; Chairman and Managing Director, Kanoria Chemicals & Industries Ltd, India*

Since 1991, the Indian economy had undergone a fundamental transformation driven by necessity rather than resolve. This transformation implied considerable changes in domestic policies, and the Doha Development Agenda was part of this evolution. Mr Kanoria cited a number of statistics to illustrate the speed and scale of India's economic growth during the last twenty years. In 1991 India had 276,000 cars in circulation, compared to 3.5 million today. In 1998 India had 1 million mobile phones compared to 394 million today, and 10 million new ones were being added every month. Gross domestic product (GDP) was growing at a rate of 8.5 per cent, and the share of international trade in India's economy had grown to 40 per cent. However, 65 per cent of the population was engaged in the agricultural sector, where prospects for economic and social progress were poor. The services sector did not create enough jobs relative to the number of job market entrants and these jobs tended to be for the well-educated. India's experience tended to show that technological progress had a greater incidence on employment than on trade, and India had the advantage of being able to rely on its huge domestic market. However, further economic and social progress depended on the success of additional domestic policy reforms.

(c) *Knut Sørli, Member, ICC Commission on Trade and Investment Policy; and Assistant Director, International Affairs and Trade Policy, NHO – Confederation of Norwegian Enterprise, Norway*

Norway is a small country accounting for only 1 per cent of world trade and 0.1 per cent of the world's population, but it depends on an open global trading system. It will be necessary to conclude the Doha Round before its real impacts can be measured. The negotiations have been complicated due to the quantity and complexity of the issues, the

large number of WTO members, and the absence of clear champions in the negotiations. G20 statements on the Doha Round have so far proven ineffective. However, the G20 should keep this on its agenda. The low level of support for trade liberalization in US public opinion is one of the explanations for this relatively defensive US position. The US, and several other countries, has fallen into the mercantilist trap of believing that exports are good and imports are bad, rather than looking at the benefits of integrated global value chains. The conclusion of the Doha Development Agenda would provide a useful and fiscally responsible stimulus package that could contribute to resolving the jobs and debt crisis. The Doha Round is necessary to rebalance world trade in several respects, such as eliminating distortions in agricultural trade and creating opportunities for least-developed countries. One of the strengths of the multilateral trading system is its legitimacy and its ability to lock in progress made as a result of unilateral liberalization.

(d) Cliff Sosnow, Member, ICC Commission on Trade and Investment Policy; Partner, Practice Group Leader, International Trade and Investment Group, Blake, Cassels & Graydon LLP, Canada

The multilateral trading system, under the aegis of the World Trade Organization, has provided a body of law to regulate international trade and, to a certain degree, the power shifts occurring among trading nations. One of these power shifts is the flat current growth in industrialized countries compared to growth in large emerging markets despite the global economic recession. One of the WTO's important roles is to ensure that member governments do not resort to impermissible measures, thereby having a positive modulating effect on the world economy. Nonetheless, there are areas in which the WTO cannot act, such as the China currency issue. In other areas, such as government procurement, the WTO has a plurilateral agreement in place, which means that voluntary disciplines under this agreement regarding transparency and non-discrimination can only apply to members – especially emerging economies – if they join the agreement. Another development to consider has been the explosion of antidumping cases levelled by large emerging markets against other developing countries, and their trade-distorting impact on South-South trade. Completing the Doha Round and thereby deepening WTO disciplines would allow more effective issue coverage.

2. Questions and comments by the audience

Some of the main points raised in the questions/comments following the presentations included the following:

Internal reforms to accompany trade liberalization are a necessity, but these require a domestic consensus that is sometimes difficult to find. In some countries, WTO accession has been used successfully as a catalyst for domestic reforms. In other countries, globalization and trade liberalization have been perceived as negative factors influencing domestic policy, and trade has tended to be seen as a threat rather than an opportunity.

For many countries, industrialized and developing, agriculture has been seen mainly as a defensive issue. There has also been an important political dimension to the agricultural negotiations due to territorial representation in most countries, despite the fact that agricultural exports have tended to account for only a small share of total exports. However, agriculture has not been the only stumbling block in the negotiations.



Foreign direct investment is clearly a key element of cross-border exchanges. It is complementary to and often much larger than trade and plays a significant role in economic and social development. An indirect way to help increase cross-border investment flows is to reduce trade barriers.

Regarding the potential link between the liberalization of trade in financial services and the financial crisis, it was felt that the WTO could only be one element of a multilateral governance structure in a global economy. The financial crisis is closely linked to a lack of effective national regulation. There is a need for more effective governance of the global economy, not only on trade matters, but also in other areas outside the WTO's remit, such as currencies. It was pointed out that exchange-rate fluctuations can often completely eliminate the benefit of lower tariffs.

One member of the audience felt it was contradictory to argue for a quick conclusion of the Doha Round and at the same time to suggest a sectoral zero-for-zero agreement on tariffs on chemicals. At the same time, it was pointed out that trade in chemicals is highly integrated worldwide, and that in many cases, such an agreement would have the benefit of reducing the nuisance value of existing tariffs.

3. Conclusions and way forward

Mr Bertasi, who moderated the panel, said that the session had presented a diverse range of business perspectives on the role of the multilateral trading system in the global economic recovery and that this, in turn, had elicited a rich variety of questions from the audience.

Global production chains – Transformation of international trade in the 21st century: The need for predictable and impartial rules of origin

Moderator

Ms Gayatri Kanth, Acting Deputy Executive Director, Agency for International Trade Information and Cooperation (AITIC)

Speakers

H.E. Dr Anthony Mothae Maruping, Ambassador and Permanent Representative of Lesotho to the WTO

Mr Paulo Estivallet de Mesquita, Deputy Permanent Representative, Permanent Mission of Brazil to the WTO

Mr Andreas Julin, Counsellor, Permanent Delegation of the European Union to the International Organizations in Geneva

Dr Octavia Cerchez, Counsellor, Permanent Mission of Romania to the WTO

Mr Richard Newfarmer, Special Representative of the World Bank to the WTO and UN in Geneva

Organized by

Agency for International Trade Information and Cooperation (AITIC)

Report written by

Ms Gayatri Kanth, Acting Deputy Executive Director, Agency for International Trade Information and Cooperation (AITIC)

Wednesday, 15 September 2010
14.00-16.00

Abstract

This session focused on the rationale for the harmonization of rules of origin across all countries, and how the WTO and its major players can strengthen production chains in the multilateral trading system. For least-developed and developing countries to benefit from global production chains, there is an urgent need for harmonized rules of origin to provide greater certainty that international trade will be conducted in an orderly fashion.

The session also highlighted that rules of origin – a neglected area in the global trade negotiations – would not only help all members, but would also cement the rules-based trading system by providing a predictable playing field for least-developed countries (LDCs) and developing countries (DCs). Similarly, the discussion also drew emphasis to how the administration of uniform, impartial and predictable rules of origin in the multilateral trading system would further reinforce the emerging trends in global production during the 21st century.

Ms Kanth, in her opening statement, spoke about the need for a harmonized system of rules of origin for the least-developed and developing countries. Ambassador Maruping, representing the LDCs, highlighted the challenges LDCs were currently facing on account of the absence of harmonized non-preferential rules of origin. Mr Mesquita spoke about the dynamics of the rules of origin consultations and the issues that were impeding progress, and what needs to be done. Mr Julin and Dr Cerchez enumerated the European Commission's views on the issue and the progress which the European Union (EU) had made in accelerating the completion of work in the Committee of Rules of Origin. Finally, Mr Newfarmer threw light on the difficulties faced by the exporters and the private sector, and the impact that the absence of any progress in the negotiations on non-preferential rules of origin would have on the market.



1. Presentations by the panellists

(a) *Gayatri Kanth, Acting Deputy Executive Director, Agency for International Trade Information and Cooperation (AITIC)*

Since 1953, when the International Chamber of Commerce persuaded its members to follow uniform rules for “nationality of goods”, attempts have been made to bring predictability and impartiality in rules of origin. Between 1953 and 1995, there were several developments, such as the 1971 Waiver to the General Agreement on Tariffs and Trade (GATT), the underlying goal of which was to have consistent rules of origin in various Generalized System of Preference (GSP) schemes. Although it did not materialize, the 1970 Organisation for Economic Co-operation and Development (OECD) Declaration spelt out that rules of origin are countries’ own prerogative on a unilateral basis. The 1979 Enabling Clause on differentiated and more favourable treatment was used to justify differentiated rules of origin and, ultimately, the outcome of the Uruguay Round.

The significance of the Uruguay Round outcome on rules of origin is that it required WTO members to ensure that their rules of origin are transparent, have no restricting effects on international trade, and are applied to non-preferential items in a consistent, uniform, impartial and reasonable manner. In effect, rules of origin should not be used for pursuing trade objectives in any manner. More importantly, the Round mandated that members should complete the work for establishing harmonized rules of origin among all WTO members by July 1998.

Several deadlines have been missed in this area, which causes escalating material difficulties for exporters across the world. The current agreement merely stipulates what members cannot do. However, the rules of origin provisions leave members to decide at their own discretion what they can do within those bounds.

(b) *Anthony Mothae Maruping, Ambassador and Permanent Representative of Lesotho to the WTO*

Ambassador Maruping represented the LDCs and spoke about the preferential rules of origin, and related issues, such as the importance of duty-free and quota-free market access, transfer of technology as stated in paragraph 66.2 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and the preference erosion. He said that progress was not being made in these areas, and described the current state of play.

Under the Hong Kong Ministerial declaration the emphasis was on ensuring that preferential rules of origin applied to LDC imports are transparent, simple, and contribute to facilitating market access. He said that some of the preferential rules of origin arise through countries, such as the United States, Japan, Australia, Canada and the EU countries, providing market access to LDCs under certain specific schemes. China grants favourable rules of origin to certain countries with which it has relations. India also provides preferential rules of origin for certain goods. The LDCs prefer the value-added percentage approach, however: the present system of changing values due to inflation and regional factors was difficult to determine. It is therefore important that the rules of origin should be transparent and simple, and should facilitate market access to imports from poor countries. Compliance costs should be minimized in order to increase LDCs’ export capacity and to facilitate technology transfer. He concluded by admitting that, although advanced economies were making efforts, there was still much to be done.

(c) Paulo Estivallet de Mesquita, Deputy Permanent Representative, Permanent Mission of Brazil to the WTO

Mr Mesquita pointed out the interdependence between rules of origin and other WTO agreements, such as those on government procurement, anti-dumping, sanitary and phytosanitary, etc. He felt that the lack of harmonized rules of origin enabled the larger countries, which have the capacity, to benefit more than the small countries. He suggested that there should be a trade policy remedy to the issue of tariff-rate quotas. He pointed out that there was resistance against harmonization on the part of countries which were major users of trade remedies. Some quarters were also not pushing for harmonization of non-preferential rules of origin, as the logical extension would be to then start the work on harmonizing the preferential rules of origin.

(d) Andreas Julin, Counsellor, Permanent Delegation of the European Union to the International Organizations in Geneva

Mr Julin described the steps taken by the EU in reducing the gaps in its rules of origin. The rules of origin *per se* do not serve a purpose: rather they are a tool to achieve trade policy objectives. He then gave an overview of the reforms carried out by the EU to its rules of origin in general, and specifically in the GSP. It was believed that the old rules of origin did not contribute to the development goals of the GSP, as they did not correspond to global production models; to new manufacturing and processing technologies; or to actual market conditions. Therefore the proposed reforms are based on three integral pillars: to design appropriate rules for determining acquisition of origins with the guiding principle of simplification; creating more efficient procedures; and finally creating a secure environment for monitoring and verification. Implementation of the new GSP rules of origin would take place on 1 January 2011 for the rules for determining origin, and on 1 January 2017, with the possibility of a transitional period until 1 January 2020, for the procedures.

The harmonization of non-preferential rules of origin has still not been completed after extended deadlines, and this puts in doubt the credibility of the WTO as a trade body to deliver on an issue which is very important to global trade.

(e) Octavia Cerchez, Counsellor, Permanent Mission of Romania to the WTO

Dr Cerchez highlighted that, in the globalized world, rules of origin have become an important factor in determining the tariffs to be imposed on specific goods, and in establishing whether quantitative and other trade-restrictive measures may be applied to imported goods. The manner in which these rules are formulated and applied may have an enormous impact on the flow of trade and investment. The complexity of the origin regimes implies increasing difficulty in their administration, and therefore harmonizing them also becomes difficult. She said that, currently, there were no harmonized rules of origin for non-preferential products, and there were increased numbers of preferential arrangements between different WTO members. The EU applies both preferential and non-preferential rules of origin, and is the main preferences-granting region, with about 40 different preferential arrangements in place.

The negotiations to simplify and/or harmonize the rules of origin can be viewed both as the result of, as well as a major challenge to, the growing integration of the goods, services and intellectual property markets. The result of negotiations should provide



overall consistency in origin-determination and contribute both to trade facilitation, and to the establishment of rules of origin which are administrable in a consistent, uniform, impartial and reasonable manner. She concluded that establishing predictable and common multilateral rules of origin is an urgent issue.

(f) Richard Newfarmer, Special Representative of the World Bank to the WTO and UN in Geneva

Mr Newfarmer presented an analysis of the importance of rules of origin as a trade policy issue. The World Bank has concentrated on providing analyses of rules of origin and their impact on trade, advocacy and technical assistance. Rules of origin are an essential element of global trade both on a non-preferential basis to harmonize the application of origin status, and in preferential trade agreements (PTAs) to prevent trade deflection. However, rules of origin can be, and often are, designed in a way that restricts trade. Rules of origin are a key element determining not only the magnitude of the economic benefits of PTAs, but also who profits from them. He noted that the products which remain to be discussed in the Harmonization Work Programme were mainly agricultural products and textiles and clothing, and the LDCs would benefit the most. Under the non-preferential rules of origin, the three main criteria which can be used to identify substantial transformation were: change of tariff classification; a value-added requirement; and a specific manufacturing process.

He concluded that the burden of complying with rules of origin falls particularly heavily upon small and medium-sized enterprises (SMEs) and firms in low-income countries. Complex and restrictive rules of origin discriminate against small low-income countries, where the scope for local sourcing is limited. Therefore, simple, consistent and predictable rules of origin are more likely to foster regional integration through the growth of cross-country production networks.

2. Questions and comments by the audience

An interactive debate followed the panel discussions. One of the participants wanted to know if there was still a need for harmonization of the rules of origin. The issue of rules of origin has gained importance because of the changes in production, and above all because of the fact that preferences are concentrated in small countries. The panellists responded that, in the case of non-preferential rules of origin, it has been seen that there are several examples where countries had a protectionist intent, for example in textiles, meat, etc. For planning purposes, it is not easy if different countries have different rules of origin, and therefore harmonization is essential. The discussion emphasized that administration of uniform, impartial and predictable rules of origin in the multilateral trading system would further reinforce the emerging trends in global production during the 21st century.

Doing it differently: Reshaping the global economy

Abstract

This session explored the factors that influence women's role in domestic and international economies, and sought to identify steps that could contribute to enhancing their access to economic opportunities. The four women speakers represented diverse views ranging from human rights perspectives, the private and public sectors and the WTO Secretariat. There was broad agreement that the multilateral system rules do not, by themselves, lead to gender inequities nor do they lead to gender-neutral outcomes. The real impact of trade and trade policies on women comes through decisions taken at the national level regarding investment, resource allocation, legal enabling environments and policies.

Moderator

Ms Deborah Berlinck, Journalist, O Globo

Speakers

Dame Billie Miller, former Deputy Prime Minister and Minister of Foreign Affairs and Foreign Trade of Barbados

Ms Navanethem Pillay, High Commissioner for Human Rights, Office of the United Nations High Commissioner for Human Rights (OHCHR)

Ms Nonkululeko Nyembezi-Heit, CEO ArcelorMittal, South Africa

Ms Valentine Rugwabiza Sendanyoye, WTO Deputy Director-General

Organized by

WTO Gender Network

Report written by

Ms Lee Ann Jackson

Thursday, 16 September 2010
10.00-12.00



1. Presentations by the panellists

Panellists began by commenting on the factors that constrain the ability of women to participate fully as economic agents in the trading system.

(a) *Navanethem Pillay, High Commissioner for Human Rights, Office of the United Nations High Commissioner for Human Rights (OHCHR)*

In her opening remarks, Ms Pillay stressed that women and men are affected differently by trade policies. To level the playing field, human rights law can provide guidance. Specifically, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides the legal basis to promote and protect the rights of women in all spheres, including the economic field. Ms Pillay argued that, in the case of essential elements of welfare – such as food, healthcare, and education – the international community and states cannot and should not leave the concerns of human welfare solely to market forces.

(b) *Nonkululeko Nyembezi-Heit, CEO ArcelorMittal, South Africa*

Ms Nyembezi-Heit stressed that, in the business context, women are different from men in non-trivial ways. As a group, women are less aggressive and more consensus-seeking, less competitive and more collaborative, less power-obsessed and more group-oriented. For this reason, women excel at transformational management and exhibit different leadership behaviours. These behaviours are becoming more important for success in today's corporations, particularly in an economy that is increasingly driven by knowledge.

(c) *Billie Miller, former Deputy Prime Minister and Minister of Foreign Affairs and Foreign Trade of Barbados*

Dame Billie Miller described the policies that contributed to socio-economic transformation in Barbados. In order to build human capital, Barbados implemented policies that ensure that access to healthcare and education is universal, mandatory and free at every point of delivery, from primary, secondary and tertiary levels. These policies have contributed to rapid declines in infant and maternal mortality and morbidity, increased life expectancy and widened access to education for women. Dame Billie Miller highlighted that, in Barbados, one priority for action is to address the needs of boys as they adjust to socio-economic changes and the evolution of the economic roles of women in the economy.

(d) *Valentine Rugwabiza Sendanyoye, WTO Deputy Director-General*

Ms Rugwabiza noted that, while efforts to open trade can contribute to economic empowerment and increased living standards, trade cannot achieve these outcomes in isolation. The impact of trade opening is not the same for women and men due to differences in access to opportunities. The multilateral trade rules should not be an excuse for inaction on the gender front at the domestic level. The rules provide adequate policy space for WTO members to adopt policies that create enabling conditions to ensure equal access to trade opportunities for women.

Panellist discussions

In the moderated discussion, panellists commented on specific factors that constrain the ability of women to participate fully as economic agents in the trading system. Women's work is often concentrated in the informal sector, where women are often exposed to low wages, long hours and uncertain tenure. Lack of access to resources constrains women's ability to enter the market economy. Inadequate safety nets and support for child care limit women's flexibility in terms of time allocation in economic activities as well as domestic responsibilities within the household. Without adequate education and training women are less able to participate and compete in the economy. Management practices that fail to recognize the diverse needs of men and women may lead to women being marginalized in the workplace.

Solutions to these issues can take many forms, and approaches will vary depending on domestic conditions. A change at the national level in terms of policies and resource allocation will have the highest potential for making a positive impact. Rules and regulations targeted at changing outcomes for women can be useful and data collection should be improved to support enhanced evaluation. From the private-sector perspective, management systems that encourage diverse teams lead to better outcomes. In addition there was a consensus that there was scope for multilateral efforts to play a role, particularly in terms of raising awareness.

2. Questions and comments by the audience

Ms Nyembezi-Heit was asked to comment on the preferential treatment approach of addressing the needs of marginalized groups in societies. In response, she noted that quota systems can enhance participation of marginalized groups. However, preferential treatment approaches need to be based on clear goals and on a defined time-frame within which those milestones are to be achieved. In addition, decision-makers need to be bold enough to abandon the process when it does not work. In the end, any system of affirmative action based on preference is ultimately discriminatory to other groups, and Ms Nyembezi-Heit stressed the need to be thoughtful when adopting these approaches.

Picking up on a comment regarding different work styles, Ms Nyembezi-Heit stressed the need for the private sector to redesign the old management models to suit the participation of women, and noted that leadership will only change when there is a critical mass of women in the workforce. She argued that the type of change that can be brought about by restructuring the old model is actually beneficial to businesses themselves.

A discussion regarding potential lessons that could be drawn from regional experiences, including gender requirements in technical assistance projects, touched on two themes – whether lessons learned in one country context can be transposed to other national settings, and the value of including the gender dimension in social investment programmes. Ms Rugwabiza emphasized that there is a need to recognize context specificity, since no single experience is fully transposable to a different context. At the same time, while being mindful of the different contexts and the forces in play within those contexts, it is possible to draw some lessons from successful examples. Ms Nyembezi-Heit highlighted that, typically, social investment agendas emphasize poverty alleviation. Given that women make up the majority of the poor, social investment is an area where the issues of investment and women naturally intersect. The private sector can begin to channel



more funding to women and women-related projects. In South Africa for instance, large companies do have gender dimensions to their social investment strategies.

The discussion next moved to the issue of whether multilateral trade negotiations in agriculture could incorporate a gender component. An audience member noted that removing agriculture distortions could benefit women more than men. In Pakistan for instance, 80 per cent of labour in the livestock sector consists of women, and if distortions in the dairy sector were to be removed, millions of women and households would be lifted out of poverty. Stressing that this dimension is not highlighted in the Doha Development Agenda (DDA), she called for more research on the impacts of the Doha round of negotiations on women. Ms Rugwabiza responded that, ultimately, WTO members are in a position to provide information on these topics and to ensure that their negotiating positions encompass these concerns. Members are the best placed to influence these outcomes. With respect to distortions, and the implications in terms of business opportunities, conclusion of the DDA will be helpful in achieving development goals in many countries. A successful conclusion of the Doha round would mean the removal and reduction of agricultural distortions, as well as the reduction of tariff peaks and tariff escalations, which are major impediments to economic development in developing countries.

3. Conclusions and way forward

In conclusion each speaker was invited to comment on what steps could be taken to enhance gender equality and to empower women take advantage of economic opportunities. Ms Rugwabiza concluded by saying that the best way in which the multilateral trading system can make contributions to both men and women, as well as to the achievement of the Millennium Development Goals (MDGs), is through the successful conclusion of the Doha round.

Ms Pillay could see that WTO members were reluctant to include human rights, equality and issues of participation in the MDG debate because of the fear that this would hamper economic growth. However, she asserted that human rights are a precondition for economic development. The right to food and health, for instance, ensures that a population is fully equipped and positioned to develop entrepreneurship capacities and ensure participation in economic markets. For Ms Pillay, a human-rights-based approach was essential.

Dame Billie Miller hoped that there would be a better appreciation of the need to bring men along in the process of empowering women and to ensure that the gender gap does not widen. She also highlighted the need to recognize women's choices regarding how and where they work.

Ms Nyembezi-Heit contended that the business community has been relegated to observer status in the debates concerning women and development. She emphasized the importance of including the private sector in decision-making and implementation processes related to development strategies. In her view, the private sector could contribute to development in ways that go beyond social investment.

Africa's benefits and challenges to regional and international trade

Moderator

Dr Cyrus Rustomjee, Director, Economic Affairs Division, Commonwealth Secretariat

Speakers

H.E. Dr Anthony M. Maruping, Permanent Representative of Lesotho to the WTO

Ms Aileen Kwa, Coordinator, Trade for Development Programme, South Centre

Dr Nichodemus Rudaheeranwa, Economic Adviser, Commonwealth Secretariat

Organized by

The Commonwealth Secretariat

Report written by

The Commonwealth Secretariat

Thursday, 16 September 2010
09.00-11.00

Abstract

The session aimed at increasing understanding of the ways in which Africa could secure greater benefits from international trade. The discussion focused on impediments to Africa's trade growth and measures for overcoming them and enhancing the benefits from international trade, including through engagement with emerging developing countries. Increased support was identified as one of the critical components that would enable Africa to address trade growth challenges such as transport, energy, standards and quality management, with a view to increasing the productivity, quality, volume and value of its export trade. Furthermore, adequate policy space would enable Africa to bolster its industrial development, increasing the diversification of its export trade from primary products into high-value-adding activities.



1. Presentations by the panellists

(a) *Cyrus Rustomjee, Director, Economic Affairs Division, Commonwealth Secretariat*

Dr Rustomjee, who moderated the session, welcomed participants and informed them about the Commonwealth, which is an association of 54 independent states with one third of the world's population and a fifth of global trade. The Commonwealth attaches high priority to supporting its members' integration into the global economy by helping them increase the competitiveness and resilience of their economies, and take advantage of growth-enhancing opportunities from international trade.

The majority of developing-country Commonwealth members, however, face significant and unique challenges, including small domestic markets, high transport and transit costs, low productivity levels, high concentration of exports, and difficulties in attracting foreign investment, all of which render them less competitive in global markets. For example, Africa's trade performance has been relatively weak despite enormous domestic efforts and policy reforms undertaken over the last three decades. Weak trade performance has been attributed to a number of factors, including limited access to global markets and supply-side constraints. He noted that for Africa to realize the full benefits of international trade will require an approach that simultaneously focuses both on national development strategies and improvements in the international trade regime.

The extent to which Africa is benefiting from international trade and ways in which it might secure more benefits need to be understood more fully. A critical review of the factors shaping Africa's trade prospects would therefore be helpful, with a view to identifying support and measures that would help Africa face its challenges and enhance its benefits from international trade. In this context, the Commonwealth Secretariat organized this session under the auspices of the WTO Public Forum 2010 to enable such discussion.

(a) *Anthony Mothae Maruping, Permanent Representative of Lesotho to the WTO*

Dr Maruping provided a brief profile of African countries and the challenges faced in achieving their trade growth and development goals. He observed that 33 of the 49 least-developed countries (LDCs) are in Africa; many of these are landlocked and resource-rich post-conflict countries, while others are small states – hence the significance in regional economic groupings to enhance the size of their domestic markets. Africa's export trade has been growing, though mostly as raw materials and natural resources. Services trade has also grown. Most of the current investment flows into Africa are mainly in extraction activities, and the challenge is for Africa to sustain and increase productive and beneficial investment.

The potential for Africa's trade relations with other developing countries to contribute to Africa's growth is tremendous, as some African countries are members of the G33 and there have been increased duty-free and quota-free (DFQF) market-access opportunities granted from both developed and developing countries, particularly India and China. However, Africa's ability to exploit these trading opportunities is hampered by other hurdles, including non-tariff barriers, rules of origin, etc., preventing such opportunities from translating into meaningful benefits. Dr Maruping argued for a strategy to translate these opportunities into meaningful benefits, for example through greater diversification

and strengthening of value chains to ensure greater linkages with the rest of the economy. Furthermore, the potential for trade in tropical products through vertical linkages is high, but tapping it requires greater capacity to ensure that Africa competes (produces at low cost but high quality and adequate quantities), complies with set rules and standards, and connects to international markets and global supply chains.

Specific measures to enable African countries to exploit and benefit from trading opportunities include enhanced productive capacities; greater investment and transfer of technologies; and more research and development for innovation. Conducive environments for foreign direct investment (FDI) and domestic resource mobilization, sound legal and stable macroeconomic frameworks are all critical to enhancing Africa's trade growth. Infrastructure development is fundamental to this process, including working on transport corridors across Africa, energy generation, telecommunications, connectivity and ensuring functional institutions and resolving conflicts. Trade facilitation in Africa is particularly critical for landlocked countries, and a broader view should be taken to include all aspects of facilitating trade. He noted the critical role that development assistance, such as the aid for trade initiative, can play in this process. Observing that the problem is not foreign aid *per se*, but the way it is used, Dr Maruping argued for enhanced African ownership of the development assistance. Paris Principles on aid effectiveness should be honoured to enable Africans to take the lead and control their development process.

(b) Nichodemus Rudaheranwa, Economic Adviser, Commonwealth Secretariat

Dr Rudaheranwa's presentation expanded on issues raised in previous presentations with detailed information and greater focus on Africa's engagement with emerging developing countries. Briefly, Africa's trade performance has generally improved since the 1990s after stagnation in 1980s, but its share in global trade remains small (about 3 per cent of the global merchandise trade) with a highly concentrated trade structure. A significant share of Africa's export trade comprises primary commodities largely destined to industrial country markets of the European Union and North America, but also increasingly to developing countries like China, India and to intraregional trade. Given the nature of what is produced and exported, improvements in Africa's trade performance in recent years has been attributed partly to high prices and high import demand, especially from emerging countries.

One must look beyond this trade growth and focus on which countries have been beneficial to it, which sectors have been growing and its impact on the economy in terms of employment generation, incomes and poverty reduction. FDI in Africa is predominantly resource-seeking, reinforcing the commodity-dependent export profile and tending to be enclave-like, resulting in capital-intensive investments – particularly in extraction sectors – which do not have strong linkages to the domestic economy. The high concentration of Africa's export trade and FDI in just a few sectors suggests that only a handful of countries and sectors are beneficiaries of the recent trade growth.

Africa's increased engagement with emerging economies provides more opportunities to transform their production and trade structures. First, there is potential for increasing and diversifying the sources of development financing available, unlike traditional sources which attach conditions. Second, it provides Africa an opportunity to transform its trade structure through greater export diversification and increased volumes. Third, it should complement rather than substitute the economic relations with its traditional partners.



However, there are challenges associated with Africa's engagement with emerging developing economies. First, the engagements have mainly been at government level, with less private sector participation. Second and more importantly, there has been no articulated and coherent regional strategy for harnessing and managing the partnerships with emerging developing countries. Third, Africa is considered largely as the main source of natural resources needed to support and sustain the economic growth of developed and emerging developing countries and, as noted above, the engagement is often concentrated in a few countries particularly where they have strategic interests. Finally, African countries do not have adequate capacity to individually engage emerging developing economies.

Strategies for improving Africa's trade growth include the removal of the remaining market-access impediments, including tariff peaks, tariff escalation and non-tariff barriers. It is critical to increase investment in trade-supportive infrastructure (including energy, transport, communication), and also trade-facilitating institutions (including standards and quality management) to enable Africa to produce exports in the quantities, value and quality required in the market. However, increased support is critical both from traditional partners and emerging developing countries that have shown an active interest in the development of physical infrastructure. The Aid for Trade initiative offers a good mechanism to provide such support. Furthermore, African countries could maximize their engagement with emerging developing economies by adopting coherent regional strategies, particularly where cooperation involves the development of regional infrastructure.

(c) Ms Aileen Kwa, Coordinator, Trade for Development Programme, South Centre

Ms Kwa focused on how policy reforms, including trade policy, have contributed to poverty-reducing efforts in Africa. Based on South Centre's experience and recent study reports, Ms Kwa observed that Africa's annual per capita income, which grew at 1.6 per cent in the 1960s and 70s, consistent with the current growth rate in developing countries, on average stagnated at 0.7 per cent in the 1980s and 90s, but slightly improved after 2000 largely due to the commodity boom. Specifically, poverty levels in Africa have been high over the last 30 years, at 74 per cent and 73 per cent in 1981 and 2005 respectively, despite policy reforms undertaken over that period. When translated into absolute numbers, however, the number of people living on less than US\$ 2 per day increased from 295 million in 1981 to about 556 million in 2005.

She attributed Africa's poor performance partly to structural adjustment policies that emphasized more liberal policy regimes through tariff reduction, market-opening, reduced support to productive sectors like agriculture and public investment. In the agriculture sector, evidence shows that a number of African countries are increasingly dependent on food imports. There were high and frequent import surges with an average of 30 per cent of tariff lines every year between 2004 and 2007 for many African countries. She gave some specific examples in agriculture and manufacturing, where imports surges intensified following the liberal trade regime in Africa. More and more African countries are becoming net food importers, which increases food insecurity. Given that agriculture remains the major employing sector in Africa, greater and careful consideration is needed to adjust tariff and trade policy to support growth of domestic production.

Policy reforms in Africa had anticipated trade growth and increased export diversification, including into value-adding manufacturing activities. However, Ms Kwa argued that

the liberal trade regime involving tariff cuts in 1980s might have contributed to de-industrialization in Africa, with a loss of up to a third of employment in Senegal and significant reduction or closure of industrial activities in Côte d'Ivoire, Kenya, Sierra Leone, and Tanzania, to mention but a few. The lack of increased manufacture value-added (MVA) raises concerns about the sustainability of Africa's economic growth. She noted that these challenges are not likely to improve with the anticipated economic partnership agreements (EPAs) between Africa and European countries, in which the EU is seeking tariff elimination on 80 per cent of all tariff lines, which goes beyond WTO requirements and is above what the emerging countries are prepared to do. This will increase food import surges beyond the already critical situation, lead to further stagnation in industrialization processes as countries will not be able to safeguard these sectors from increased competition from EU imports.

2. Questions and comments by the audience

Participants argued for systems that enhance the economic linkages and connect farmers to markets with greater emphasis on regional markets, while mobilizing and organizing producers – particularly smallholder farmers – to enable more efficient support, input distribution, and access to credit and information on market conditions and opportunities, for increased volume, quality and value of exports.

Participants observed that African countries are very active at all levels but their economic status has not changed, and they wanted to know what African countries are not doing right – and more importantly what needs to be done for them to maximize growth and international trade benefits. One cause of the current poor growth in some African countries is lack of linkages between the producing and exporting sectors and the rest of the economy (i.e. oil and minerals). Even in those cases, better management of revenue and proceeds from these sectors could make a difference if directed to support value-addition production processes. Ms Kwa illustrated these issues by focusing on EPAs and the EU's Common Agricultural Policy, and observed that the EU countries have safeguard measures including subsidies while, unlike the EU, African subregions have common external tariffs (CETs) across the board. Observing that comparative advantage is dynamic and can be created, the need for policy space to enable African governments to support their producers is critical.

Participants raised the challenges faced by African countries in tapping into the opportunities from trade in services, particularly Mode 4. Experience elsewhere has shown that well thought-out policies and strategies for tapping into opportunities due to trade in services lead to increased remittances to support and finance development. There are more opportunities for African countries in this sector, but the challenge remains of how to exploit them.

3. Conclusions and way forward

Clearly, adequate support is critical to enable Africa to increase its capacity to trade by addressing both market access and supply-side impediments with a view to increasing the productivity, quality, volume and value of their export trade. Specifically, more resources are needed, including in current initiatives such as Aid for Trade, to enable African countries



to deal with such trade impediments. Making trade preferences more operational and effective would certainly require addressing non-tariff measures, including simplifying the rules of origin and reviewing the list of product exclusions. Regional approaches for infrastructure development such as transport, energy, standards and quality management would be more cost effective and beneficial both to intra- and extra-regional trade in Africa. In addition, bilateral trade deals, such as EPAs and multilateral trade engagements, should provide for adequate policy space to enable Africa to support their industrial development, otherwise Africa will remain an exporter of primary products with little or no value added.



Regionalism's role in integrating the Pacific into the global trading system

Moderator

Mr Raul Torres, Counsellor, Development Division, WTO

Speakers

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

H.E. Mr Sergio Marchi, Ambassador, Senior Fellow, International Centre for Trade and Sustainable Development (ICTSD)

Mr Keith Wilson, Senior International Trade Law Counsellor, Institute for International Trade (IIT), University of Adelaide

Organized by

Institute for International Trade (IIT)

Report written by

Keith Wilson, Senior International Trade Law Counsellor, Institute for International Trade, University of Adelaide, Australia

Thursday, 16 September 2010
14.15-16.15

Abstract

Following decisions taken by Pacific Islands Forum Leaders in August 2009, PACER Plus (Pacific Agreement on Closer Economic Relations) negotiations have begun, aiming to deepen economic cooperation between the 14 developing Pacific Island countries (PICs) and Australia and New Zealand through a comprehensive, reciprocal regional trade agreement. PACER Plus builds on previous agreements within the Pacific region (SPARTECA – the South Pacific Regional Trade and Economic Cooperation Agreement, PICTA – Pacific Island Countries Trade Agreement, etc). The session discussed the aims of PACER Plus to assist the long-term economic development of the PICs through closer integration with two neighbouring developed countries, as well as implications for their integration into the global economy, and reinforcing WTO disciplines with potential value-added. The session included expert speakers and participants from the Pacific Islands Forum Secretariat, the International Centre for Trade and Sustainable Development (ICTSD), the Institute for International Trade (IIT) at the University of Adelaide, and H.E. Mr Tim Yeend, Ambassador and Permanent Representative of Australia to the WTO. Hosted by IIT, the session was moderated by Mr Raul Torres, Counsellor in WTO's Development Division, and recent Visiting Fellow at IIT.



1. Presentations by the panellists

Historical perspectives on Pacific regionalism include: SPARTECA, under which exports from the Pacific islands have duty-free, quota-free access to Australian and New Zealand markets; the Melanesian Spearhead Group (MSG) sub-regional free trade agreement; and PICTA, operational as a goods-only agreement between the developing Pacific island countries since 2007. Ongoing efforts to achieve greater trade and integration and enhance and stimulate sustainable economic growth and development are consistent with the Pacific Plan endorsed by Pacific Islands Forum Leaders in October 2005.

Further steps towards the creation of a single regional market include current negotiations to extend PICTA to trade in services and labour mobility, and recent developments on PACER Plus. Since Forum Leaders took the decision in Cairns in August 2009 to commence PACER Plus negotiations, there have been two meetings of Forum Trade Ministers, including to set priority issues (initially rules of origin, trade facilitation, development assistance, and regional labour mobility – to which were added, in April of this year, shipping, aviation, telecommunications and water infrastructure). The PACER Plus negotiations are expected to take several years to complete and implement, with no set deadline for their conclusion.

(a) *Tim Yeend, Ambassador, Permanent Representative of Australia to the WTO*

Ambassador Yeend focused on a number of parallel and complementary issues: the PACER Plus regional negotiations, and Australia's Aid for Trade efforts in the Pacific, as well as support for the multilateral trading system. He emphasized that building resilient economies, sustainable growth and prosperity in the Pacific islands can best be achieved through engagement with the international trading system. At the same time, the degree to which trade liberalization can deliver real development benefits relies also on support and implementation of strong, effective domestic reforms (addressing supply-side constraints, adjustment costs, macroeconomic, regulatory and governance policies, and institutional arrangements).

There is an acknowledged need for flexibility, to recognize the differences between countries in the Pacific and their levels of development. Australia is keenly aware of the capacity constraints facing small, developing island countries, and is funding capacity-building activities and trade negotiation training for regional officials from all 14 of the PICs, delivered by IIT, as well as independent national research studies for each Forum island country on its individual needs and trade priorities under a potential future PACER Plus agreement. Australia and New Zealand are also funding the recently established Office of the Chief Trade Adviser (OCTA), based in Vanuatu, to independently advise and assist the PICs in the PACER Plus negotiations.

Consistent with this approach to PACER Plus, Australia's broader Aid for Trade commitment is providing significant funding for the Pacific, including as a proportion of its total Aid for Trade flows in 2009-10. This is aimed at improving the "behind the border" capacity of the PICs to engage in multilateral and regional trading systems and initiatives, and to benefit from global trade. These programmes focus on areas including: upgrading economic infrastructure in trade-enabling sectors (transport, energy, telecommunications); building Pacific workforce skills to enhance regional labour supply, productivity and mobility (through support for regional and bilateral education and training initiatives, and the

regional multi-campus Australia Pacific Technical College – APTC); strengthening private sector capacity and reducing business costs; supporting sustainable market opportunities and trade facilitation, including to improve regulatory compliance (customs, quarantine, standards, conformance) and increase market access for value-added Pacific agricultural and horticultural products; and strengthening natural resource management.

Commitment to a successful conclusion of the Doha Round is Australia's trade policy priority, backed by support and technical assistance for Pacific countries and developing-country WTO members to engage effectively with the multilateral trading system. A successful Doha Development Agenda (DDA) and Aid for Trade initiatives also have the potential to realize several Millennium Development Goal (MDG)-8 targets.

(b) Raul Torres, Counsellor, Development Division, WTO, and a Visiting Fellow at IIT in 2010, and Keith Wilson, Senior International Trade Law Counsellor, IIT, University of Adelaide

Mr Torres and Mr Wilson outlined the Institute's activities, including those relating to capacity building for the Pacific island countries in preparing for PACER Plus. Mr Wilson noted the two distinct but mutually reinforcing aspects of the topic for the session, one being the role of regionalism, and the other the integration of the Pacific into the global trading system. Support for effective and workable regionalism may have a relatively more important role to play for small Pacific island countries, marked by serious capacity constraints, and economic and social vulnerability. At the same time, while there are a variety of "levels" of trading arrangements and "recipes" for integration in today's world, none of the various recipes for growth and development turns away from integration, and the need to reduce the negative impacts of the two great disintegrators – distance (remoteness) and border barriers (protection).

There are also considerable differences between the Pacific island countries themselves. Some are relatively large and resource-rich, such as Papua New Guinea. But most, including several micro-states, have few economic endowments, and overwhelming reliance on imported food, fuel and manufactured goods, foreign aid, subsistence agriculture, fisheries and, increasingly in several cases, tourism and related services. There is scope for services liberalization to encourage greater competition and efficiencies in the PICs in sectors such as education, transport and tourism. Regional case studies, such as in the air services and telecommunication sectors in Vanuatu, support this approach.

The regional cooperation and trade-related capacity building (TRCB) dimensions of a PACER Plus agreement would reinforce mutual long-term interests, going beyond economic and trade dimensions to security and development issues, environmental and educational concerns. The reduction of barriers to trade aims to create a more integrated and robust regional Pacific economy, making it easier for the private sector to do business, export, import, invest and contribute to local economies. The "Plus" in PACER Plus will become the focus for a broad and comprehensive agreement, which should not focus too narrowly on tariffs and rules of origin, but much more on interconnectivity, communications, information, harmonization and simplification of regulatory procedures, and research into each individual PIC's comparative advantage. In that context, there needs to be time for the PICs to develop their negotiating positions to suit their particular needs and interests. Flexibility will be required in relation to sensitive areas, as well as sequencing and timing issues.



(c) *Sergio Marchi, Ambassador, Senior Fellow, International Centre for Trade and Sustainable Development (ICTSD)*

The aim of PACER Plus is “to create jobs, boost economic growth, and raise living standards”. Ambassador Marchi focused on the realities of the central question, “How is this mission to be accomplished?” He addressed several core substantive and procedural issues: the need for national consultations and broad dialogue; clearly defined and realistic capacity building and development assistance; the inclusion of good practices on labour mobility as part of regional trade negotiations; the importance of a “positive environmental agenda”, including in the face of the threats of the climate-change dimension for several of the PICs; an “economy-wide” perspective on services, balancing the right to regulate with the benefits of integration into dynamic global supply chains; and fair and effective trade dispute settlement mechanisms.

Ambassador Marchi began his presentation by underscoring the strengths of multilateralism based on clear, predictable international trade rules for the benefit of “the 3 Cs” – companies, countries and citizens. His analysis of regional approaches for a successful PACER Plus agreement emphasized the crucial role of several other “Cs”, including confidence (to avoid “situations where a bad process trumps the best potential substance”), credibility (in negotiation expectations, “equality” and enforcement), commitment and cooperation (on labour mobility), capacity building and coordination (on the environment), competitiveness (in services) and compliance.

2. Questions and comments by the audience

Panel discussions included contributions from Ms Manleen Dugal of the Pacific Islands Forum Secretariat office in Geneva, as well as issues raised by participants from the African, Caribbean and Pacific Group of States (ACP) Secretariat, Asian Development Bank (ADB) and a number of developing country and civil society representatives and non-governmental organizations (NGOs), including the Pacific Network on Globalisation (PANG).

Questions concerned: coherence with multilateral disciplines for small and vulnerable economies (SVEs) and the problems of scarce human resources in “sea-locked countries”; to deal with concurrent multilateral and regional negotiations; the coverage of services, investment and other chapters under PACER Plus; and revenue implications for the PICs. The importance of engagement with all constituencies was stressed, including involvement of states and non-state actors (NSAs).

On relationships with multilateral developments, a recent policy brief prepared by IIT addresses “How Trade Initiatives are Helping to Achieve the MDGs”. The conclusion of the Doha Round will be important for least-developed countries not necessarily in producing dramatic liberalization, but to restrain protectionism, and create greater security of market access in developed country markets. MDG-8 contributes to further development of an open, rules-based, non-discriminatory trading and financial system with a commitment to good governance and poverty reduction, including a commitment to addressing the special needs of least-developed countries and small island developing states.

Clearly, there remain challenges – political, economic, and developmental in terms of infrastructure and technical assistance needs – to build trade-related capacity, manage

adjustment and domestic reform processes, and increase understanding by informing and consulting with local community groups, the private sector and the general public.

Politically, Fiji's participation in PACER Plus is subject to a decision to keep it informed through the OCTA, and referral to a Ministerial Contact Group. Decisions have also been taken regarding an annual meeting with NSAs, to bring affected interests together and address a perceived lack of trust.

Economically, some of the PICs fear the risk of being swamped by Australian and New Zealand goods and services and of losing substantial revenues from customs tariffs. Studies have suggested significant increases in regional merchandise trade volumes of up to 20-30 per cent as a cumulative effect of several free trade agreements (FTAs) involving the PICs (for example, PICTA, PACER, and other economic partnership agreements (EPAs)). Revenue loss estimates in a number of studies have varied greatly, with some predicting significant impacts for some PICs, while for others the impact is less.

For development, a focused economic development chapter will be an important element for the PICs, as well as ongoing development assistance programmes. PACER Plus negotiations are in the early stages, and have yet to consider the shape of potential services and investment chapters. Some of the biggest gains could be in labour market liberalization, particularly if unskilled labour is included, and this is an area where many of the PICs have a major interest.

3. Conclusions and way forward

In concluding, with improvements in the quality of information available, the quality of discussions, both in the negotiations themselves and in consultations with other international and regional actors, will benefit from being tested by "sharp and accurate" analysis, not selective inputs. Data remains incomplete, but forthcoming studies are based on a better range of data, and evidence from comparable island countries, both in the region and elsewhere. These demonstrate welfare gains and multiplier effects on gross domestic product (GDP) growth resulting from lower tariffs, with revenue offsets over time from consumption-based taxes. A senior World Bank economist (Luthria, 2009) acknowledges the difficulties and failed experiences of trying to build up a series of very small markets, yet firmly reinforces the benefits of regionalism for SVEs in reducing "frictions" created by economic barriers, and when small markets become closely linked economically to their nearest larger markets.



Abstract

Much recent writing on preferential trade agreements has focused on the qualitative dimensions of competing rule-making architectures. The session organized by the World Trade Institute at the University of Bern aimed to share and critically discuss recent and ongoing empirical research carried out under the Swiss National Centre of Competence in Research (NCCR)-Trade Regulation project anchored at the WTI (see www.nccr-trade.org/). In particular, the session explored the trade effects of preferential liberalization, comparing the effects observed in goods trade with those in services and the forces that distinguish both the magnitude and nature of observed causalities. The session also ascertained whether the greater depth of liberalization achieved in some preferential trade agreements (PTAs), by lessening transaction costs and facilitating supply-chain linkages, may have contributed to a speedier recovery in world trade activity – particularly trade recovery proceeding along regional lines within regional production networks – or whether alternatively it magnified the contraction in trade observed in the wake of the financial crisis.

Much ado about what? Do preferential agreements create trade?

Moderator

Mr Pierre Sauvé, Deputy Managing Director, World Trade Institute, University of Bern, Switzerland

Speakers

Mr Anirudh Shingal, Senior Research fellow, World Trade Institute, University of Bern

Mr Michael Gasiorok, Unit Director, Centre for the Analysis of Regional Integration at Sussex (CARIS), University of Sussex

Mr Javier Lopez-Gonzales, Research Affiliate, Centre for the Analysis of Regional Integration at Sussex (CARIS), University of Sussex

Discussant

Mr Bernard Hoekman, Director, Trade Department, The World Bank, Washington, D.C.

Organized by

World Trade Institute (WTI), University of Bern

Report written by

Pierre Sauvé, Session Chair and Deputy Managing Director and Director of Studies, World Trade Institute, University of Bern

Friday, 17 September 2010
09.00-11.00

1. Presentations by the panellists

(a) *Javier Lopez-Gonzales, Research Affiliate, Centre for the Analysis of Regional Integration at Sussex (CARIS), University of Sussex*

Mr Lopez Gonzalez, a Research Associate at the Centre for the Analysis of Regional Integration at Sussex (CARIS), presented a paper co-authored with Peter Holmes from the University of Sussex on "The Nature and Evolution of Vertical Specialisation (VS): What is the role of preferential Trade Agreements?". He noted that the degree of aggregate vertical specialization (VS) seems to depend on the levels of development of a country. Countries with lower per capita gross domestic product (GDP) increasingly import intermediates, but evidence suggests that over time they develop capacity and begin producing and exporting their own intermediates. This suggests that there is certain dynamism in the participation in value chains where there is evidence that countries may be climbing up the value chain. He went on to note that preliminary investigations appeared to identify a correlation between VS and productivity which, combined with the above trends, suggests that there might be reason for policy to focus on promoting developing-country participation in international value chain activity.

Addressing the question of intra- and inter-regional VS, Mr Lopez-Gonzalez suggested that there was evidence supporting the view that partners engaged in preferential trade agreements show higher degrees of regional value chain activity. However, the rise of China as a supplier of intermediates to all regions suggests that there may be other factors driving VS. This, in turn, raises several important questions: is geography (proximity) driving these trends?; what is the role of technology and factor endowment differences?; what is the role of deep integration in this process? Further econometric investigation foreseen under the NCCR-Trade Regulation project will aim to tease out these issues by comparing intra-and inter-regional flows.

(b) *Michael Gasiorek, Unit Director, Centre for the Analysis of Regional Integration at Sussex (CARIS), University of Sussex*

The presentation on vertical specialization and its determinants was followed by an address by Mr Gasiorek from CARIS, who, in a paper co-authored with Sarah Ollerenshaw from Sussex, investigated the trade impacts of the recent economic and financial crisis. He noted that several hypotheses had been put forward to explain the severity of the trade contraction observed in the wake of the crisis. The key reasons typically cited are: a decline in demand; difficulties in accessing credit; a rise in protectionism; as well as vertical specialization which magnifies the effect of any decline in demand. The paper focuses particular attention on the role of demand and credit on bilateral trade between countries. In particular, the paper probes whether there is any evidence that being a member of a preferential trading agreement (PTA), and/or whether a country is a high-income country, may mitigate or exacerbate the observed trade effects.

Using a gravity model with monthly trade and industrial production data, the authors sought answers to three questions: (i) is there any evidence that trade is higher or lower on average between PTA members?; (ii) what evidence is there for the impact of the crisis on the change in trade and was this different for PTA members?; and (iii) what might explain the peak and trough months for trade for each country?



The results suggest that changes in aggregate demand did impact negatively on trade, with a 10 per cent decline in demand leading to a 4 per cent decline in trade. The research shows that the rise in credit risk appears to have had an even bigger impact on trade, reducing trade by up to 12 per cent on average, and up to 20 per cent for higher-income PTA partners. These results suggest a greater impact of credit risk on trade than has been assumed to date in the policy debate. They also suggest that more work needs to be done to understand why PTA members may have seen a bigger decline, which may in turn be linked to vertical (supply chain) specialization.

(c) Anirudh Shingal, Senior Research fellow, World Trade Institute, University of Berne

The session's third presentation was made by Mr Shingal, a Senior Research Fellow at the World Trade Institute, University of Bern. Mr Shingal's presentation sought answers to three distinct research questions using a gravity model against a sample of 53 trading partners engaged in PTAs over the 1999-2003 period: (i) how effective are preferential trade agreements in fostering services trade?; (ii) what is the effect on services trade of a PTA delineated by type (goods vs. services) and form (North-North vs. North-South, symmetric vs. asymmetric)?; and (iii) is there an incremental trade effect from a services accord if a "goods only" agreement is already in place? Presenting his empirical results, Mr Shingal said preferential services agreements had an average net trade-creating effect of 11.6 per cent. Moreover, both goods trade and goods agreements could be seen as having a positive impact on services trade (a 10 per cent increase in bilateral goods exports raises bilateral services exports by 1.7 per cent on average). As might be expected intuitively, given the greater scope that exists in services for remote supply over electronic networks, the impact of distance on trade intensity is generally less important for services trade than for goods trade.

Services trade between countries may be driven as much by differences in factor endowments as by increasing returns to scale. North-North agreements report both a positive and statistically significant trade effect ranging between 10.5 to 11.3 per cent). And North-South services accords have the largest *positive* trade effect, at 16.8 per cent. Further results of note are that trade alliances between the North and the South can be less than perfectly reciprocal yet still be trade-creating: asymmetric North-South accords had a trade effect ranging from 13.9 to 16.5 per cent. Finally, the results of this work suggest that it may be more prudent to negotiate goods and services agreements in tandem rather than sequentially. Indeed, in the sample study, "goods only" agreements do not report a statistically significant services trade effect. However, when paired with services agreements, the services trade effect of each set of agreements is enhanced, thereby providing evidence of (once more intuitively assumed) complementarities between goods and services trade.

2. Questions and comments by the audience

The panel, which provoked a lively and animated debate among participants, benefited from comments by Bernard Hoekman, Director of the Trade Department at the World Bank. On the issue of vertical specialization, Mr Hoekman suggested the desirability of focusing greater analytical attention on technology differences and teasing out the effects of geographical proximity (an issue that is earmarked for further research under the NCCR-Trade project). He further suggested that use be made of foreign direct investment (FDI)

data alongside trade flows so as to enhance the analysis. On the latter issue, Mr Lopez-Gonzalez noted that data availability issues and the difficulty in differentiating between vertical and horizontal FDI meant that embedding FDI into the analysis would need to be done with caution. The actual role of tariffs – and whether they were truly binding – was also noted, as was the need to further research on differences in the processes of integration across regions (South-East Asia, EU and North American Free Trade Agreement (NAFTA)). Many participants were interested in better understanding the relevance of the work on VS in relation to inter-regional trade flows. The case of Mexico was also noted as one example of a country that espoused most-favoured nation (MFN) liberalization to import lower-cost intermediates from China to use in value-chain activity destined for the United States market.

The discussion of Mr Gasiorek's presentation emphasized the novelty of the research findings with respect to trade credit, which stand out relative to the standard post-crisis narrative. Also noted was the question of whether the credit risk variable used (LIBOR-OIS – London Interbank Offered Rate-overnight indexed swap rate) accurately measured access to credit, and the extent to which it may be acting as a dummy picking up on other effects. In his comments, Mr Hoekman suggested the relevance of getting more information on how different countries may be reliant on trade credit, as well as on how firms relied on trade credit and the extent to which this could depend on the type of goods exported.

3. Conclusions and way forward

The session on PTAs in services highlighted the desirability of replicating the analysis at the sectoral level depending upon data availability, and to see how the distance variable and the impact of goods trade varied across sectors and regions. Emphasis was also put on the need to update the study so as to measure the effects of the large number of PTAs concluded since 2003, the vast majority of which featured comprehensive services provisions. One suggestion that was made was to focus attention solely on those PTAs that have actually been implemented to see if the trends depicted in the research held.



Abstract

In the absence of an imminent agreement on globally binding emission targets in the wake of Copenhagen, nations will rely increasingly on nationally determined climate policies. As these policies vary in stringency, governments are likely to face political pressures to “level the playing field”, particularly in energy-intensive industries open to international competition. This pressure has already resulted in support for specific industries in a number of nations and could lead to the introduction of climate-related subsidies and tariffs in some nations. Such competitiveness-linked policies can distort trade and have the potential to cause conflict with the WTO rulebook on subsidies and new tariffs. Consequently, climate-related tariffs and subsidies may pose challenges to the world trading system.

While the WTO has extensive experience in addressing such disputes, this experience typically concerns issues involving narrow economic sectors, or a narrow range of policies. Trade and climate conflicts would be different. Climate policies are widely viewed as national imperatives, and any WTO dispute-resolution decisions on trade and climate would engage a broad set of politically influential actors. Unless governments find political accommodation for the relationship between trade-related policies and climate policies, this could pose risks for the WTO, forcing nations to choose between respecting WTO rules, on one hand, and maintaining political support for climate policies, on the other. As world trade in goods, services, food, technology and energy will be decisive to global climate adaptation and mitigation, it is vital that governments do not allow climate-related trade conflicts to undermine support for the rules-based system.

The goal of this session was to shed light on the interface between three issues – climate change, trade, and competitiveness – and to find where this interface fits within the WTO's framework and responsibilities. The discussion focused on the implications that climate-change mitigation policy might have for the multilateral trading system.

Climate change, trade and competitiveness: Issues for the WTO

Moderator

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

Speakers

Mr Peter Wooders, Senior Economist, International Institute for Sustainable Development

Mr Aaron Cosbey, Associate and Senior Climate Change and Trade Advisor, International Institute for Sustainable Development

Professor Gabrielle Marceau, Counsellor, Legal Affairs Division, World Trade Organization

Ms Sheila Page, Senior Research Associate, Overseas Development Institute

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

Organized by

Graduate Institute of International and Development Studies, Geneva

Report written by

Dr Theresa Carpenter, Executive Director, Centre for Trade and Economic Integration at the Graduate Institute for International and Development Studies, and Ms Christine Barthelemy, MIS Candidate in International Economics

Friday, 17 September 2010
11.15-13.15



1. Presentations by the panellists

(a) *Gabrielle Marceau, Counsellor, Legal Affairs Division, World Trade Organization*

Prof. Marceau began the session by commenting on climate change mitigation policy in the context of WTO rules, emphasizing that climate change is first and foremost an environmental issue, and as such should be handled by the environmental fora. (Professor Marceau drew on the paper *The interface between the trade and climate change regimes: Scoping the issue* by Patrick Low, Gabrielle Marceau and Julia Reinaud, prepared for the conference "Climate Change, Trade and Competitiveness: Issues for the WTO", at the WTO headquarters on 16-18 June 2010. The conference was organized by CTEI as part of its TAIT programme.) The proper handling of these issues requires technological developments or consumption and emission reductions, rather than changes in the rules or legal nature of WTO agreements. Only when environmental organizations have found consensus will the trade body adapt accordingly.

Nevertheless, the WTO is necessarily involved, although there has been resistance to these issues, specifically in the Trade and Environment committee. The principal question from a legal perspective on a national level is: If WTO members adopt a national measure in compliance with international standards, it is presumed to be WTO-consistent?

Prof. Marceau then addressed the issue of standards, and the need for international harmonization, or at least for proper handling of different national standards. Furthermore, the WTO's potential to adapt to a Copenhagen- or Mexico-like multilateral agreement is questioned. The legal matter persists: if such an agreement were settled and if states comply with these standards, would it be presumed to be compatible with WTO provisions? After all, the WTO does not exist in clinical isolation but is part of public international law. The issue of international versus national standards is the first and most important legal interface between the environment and trade dimensions. However, three additional questions define, from a rules perspective, the interface between climate change and trade.

The first issue concerns market access: Legally speaking, can member states condition market access positively (or negatively) based on climate-change considerations? More specifically, can members give more (or less) preference to other members according to their level of compliance with importing-country standards and regulations? This question stems from the issue of restricting market access under the exceptions outlined in General Agreement on Tariffs and Trade (GATT) Article XX. However, as climate-change measures will target producers and not products, market access restrictions in the context of climate change will involve a debate over the legality of process and production methods (PPMs), which brings the debate back to the importance of the distinction between market restrictions *per se* and the underlying reason for such restriction.

Another issue relates to subsidies. According to the Subsidies and Countervailing Measures (SCM) Agreement, there must be a financial contribution, or "support" given to exporters in order to constitute a subsidy. Could carbon allowances or green subsidies be considered a "contribution" or "support" under the meaning of the WTO agreements? If so, then to what extent will the exceptions under GATT Article XX be able to excuse subsidies for the sake of climate consciousness?



The last set of issues relates to rules of origin within regional trade agreements, and whether a WTO member could use rules of origin to condition market access on climate-change considerations? There is no discipline on the use of rules of origin within Article XXIV. Would the use of rules of origin in this way be abusive, or is a potential source of flexibility?

(b) Peter Wooders, Senior Economist, International Institute for Sustainable Development

Mr Wooders addressed more quantitative analyses of the interactions between trade policy and the environment, and he and Mr Cosbey detailed the key points in their CTEI working paper on the economic aspects – including competitiveness and leakage effects – of climate-linked tariffs and subsidies. He asked: Can taxes and subsidies mitigate the impact of unilateral climate policies? And if so, can they do it cost-effectively? He also addressed the real economic impact of these regulations.

Overall, such taxes and subsidies would create considerable costs for the global economy, and in some sectors could be used to promote industrial policy, disguised as environmental protection, although there is no evidence that this has yet happened.

Economic analysis of tariffs and subsidies had revealed uncertainty about the effectiveness of climate-linked tariffs and subsidies. More empirical evidence was needed. The CTEI paper (“Climate-linked tariffs and subsidies: Economics aspects (competitiveness & leakage)” – a background paper written by Wooders and Cosbey for the conference “Climate Change, Trade and Competitiveness: Issues for the WTO”) examines the effects of two categories of policy: border carbon adjustments (BCAs) and free allowances.

Empirical modelling suggests that climate-related BCAs tend to insulate within-jurisdiction competitiveness, but at a large welfare cost to the remainder of the domestic economy and to international firms. Moreover, there are also indirect effects, such as environmental leakage from fossil fuel price channels. Overall, the results point only to the potential effectiveness of BCAs, with substantial costs attached.

Regarding free allowances, a major question surrounding their effectiveness lies in their opportunity costs. That is, funds used for free allowances are necessarily taken away from other environmental programmes, such as investment in green technology. Additionally, their long-term impact is unknown, and their overall effectiveness depends on assumptions relating to how firms would use these allowances in the long run. As a result, it is difficult to evaluate their impact on welfare.

One lesson for policy-makers is that uncertainty is not a legitimate reason for either inaction or overcompensation. For example, the European Union (EU) and the United States are conducting economic impact assessments of various policy outlets. Moreover, several research institutions are performing sector-specific in-depth analyses that are developing useful insights into the issue.

Overall, both BCAs and free allowances would create considerable costs for the global economy, and in some sectors could be used to promote industrial policy rather than environmental protection. For the time being, they should be restricted to sectors not in clear need of protection so as to minimize obscurities.

(c) Aaron Cosbey, Associate and Senior Climate Change and Trade Advisor, International Institute for Sustainable Development

Mr Cosbey focused on the issue of whether “pollution havens” may result from varying climate-linked policies. There is reportedly evidence of such havens, but there is not enough history to truly analyse the issue, as states did not seriously engage in climate-change policy and research until recently. Current empirical evidence is not robust, and many early experiments considered policy mechanisms as exogenous, and not linked to current investment decisions. Later studies have endogenized policy parameters, but statistical evidence is still lacking.

One certainty is that pollution havens will have an impact on competitiveness. Recent research shows that, in some industries, there is loss of market share, diversion of investment, and relocation of firms to states with less stringent policies. This gives policy-makers concern for standardization, or at least accountability, in certain sectors.

Finally, it is useful to study past multilateral efforts at border measures, and learn from their lessons. The key difference between past and current efforts is in the scale of the project and the context in which it seeks to make a change. The Montreal Protocol, for example, is not contextually comparable, as protection of the ozone spans a much narrower area of the economy than climate change. Moreover, the project scale is exponentially larger today than in 1987, when the Protocol came into force. It is worth noting that the Montreal Protocol did not establish border measures, as these are PPM issues and an administrative nightmare. The Protocol's system of indirect and direct taxes also differs greatly from the current debate. Those involved in the climate-change effort should take into account comparable schemes and policy methods in other member states, specifically those of exporting countries.

(d) Sheila Page, Senior Research Associate, Overseas Development Institute

Ms Page explained that, as the climate-change and trade regimes have evolved differently, it is difficult to find a cohesive way to blend the two. The trade community has been wary, as many climate-linked policies could simply be masked forms of protectionism. There are, however, key debates mirrored in the climate-change sector, including market access restrictions based on compliance – or lack thereof – with climate regimes. This debate highlights the larger question of development, and special and differential treatment for developing countries. Until now, climate-change provisions have not been very good at integrating the Global South.

A common thread between the trade and environment regimes seems to be that it is the developing countries that are most in need of stronger regimes, and that are also the most vulnerable to the success or failure of multilateral negotiations. The Copenhagen conference represents a step in the right direction; however there were still problems of process, substance, and procedure in this effort, and the debate on climate change is still significantly behind that on multilateral trade.

(e) Ronald Steenblik, Senior Trade Policy Analyst, Organization for Economic Co-operation and Development (OECD)

The final speaker discussed the implementation of climate-linked subsidies, and the establishment of international standards. Countries are clearly becoming more serious about climate-linked subsidies on, for example, fossil fuels. However, until now there has



been inadequate discussion over what constitutes a “good” subsidy for green technology. This inadequacy is mainly because green technology markets were, for a long time, *perceived* as relatively small, with few incentives for growing investments. In reality, many of these markets, such as the wind turbine market, are growing rapidly, even surpassing the global market for aircraft.

Mr Steenblik said that international standards for the regulation and implementation of climate-linked trade policies spark considerable debate in the trade forum, as it reopens the discussion on PPMs. By establishing first national, then international standards based on production methods, are policymakers *de facto* (or even *de jure*) regulating producers? This question arises in many WTO-related debates, as it is – politically speaking – unclear how far trade policy should extend. It differs greatly from debates in the past, as the basis for discriminating among goods in environmental sectors will be strictly contingent upon economic models and data. As an example, determining the greenhouse gas emissions from a biofuel at the border, taking into account emissions from its production chain, will be very complicated.

2. Questions and comments by the audience

A participant from the Graduate Institute asked why, if two products were not the same according to consumer preferences, Article XX would need to be evoked? Could Article III not be used to justify different taxing of goods that are differently produced?

Prof. Marceau agreed it might be possible in, for example, wealthy northern markets for consumers to consider that carbon-intensive goods are different. However, the legal test of likeness was whether goods compete, and it may not be easy to obtain evidence of a difference if two goods differ only in their carbon content. Ms Page stressed that when two products differ only in their carbon content, this would need to be certified, which leads to questions about the legitimacy of the certification.

Prof. Marceau posed a question based on sector-specific actions. If country A, for example, implements climate-friendly forest regulations while country B regulates its steel exporters to a similar degree of effectiveness; can importing country B impose border adjustments on exporting country A in a sector they do not regulate?

Mr Wooders insisted that by relying on a national approach nothing would ultimately be achieved; however, steel and cement are very important sectors, and unless agreements were made in specific sectors, there would be no progress.

Ms Page suggested that this question recalled long-standing principal exporter/importer issues: why not just say “developing countries must reduce by X per cent”? In such a case, the issue should be addressed by a more qualified organization, in the absence of which, the Panels or the Appellate Body would deal with it.

Mr Peter Kleen, a trade policy consultant from Sweden, asked for clarification on why the Appellate Body cannot decide: was this to avoid an excess of cases, or for fear of a “wrong decision”? The moderator explained that the issue relates to the legitimacy of the multilateral trading system: if the WTO was seen to be “adjudicating” non-WTO law, this could give rise to a WTO legitimacy crisis.

The discussion between the panellists and chair was lively, and several more questions were received from the audience.

3. Conclusions and way forward

The session concluded by stressing that the WTO Appellate Body was not necessarily the best place for pronouncements on the WTO-consistency or otherwise of national legislation to mitigate climate change, as this could result in a political overload of the WTO Dispute Settlement System, which could endanger the multilateral trading system.



Abstract

This session focused on the relationship of biofuel interventions to trade, WTO disciplines, and the WTO as an organization. The session examined the following questions:

- With regard to subsidies: How are subsidies to the three key biofuel producers (Brazil, the United States and the European Union) being notified to the WTO? Can biofuel subsidies be considered agricultural subsidies, therefore falling under the Agreement on Agriculture's domestic support pillar? How does the OECD's Producer Support Estimate approach biofuel support? How can open questions on notification be clarified in order to allow greater transparency on levels of subsidies?
- With regard to sustainability standards: What trade issues are raised by the incorporation of lifecycle analyses in sustainability standards? Do these issues differ as a result of their effect on decisions of whether to import certain types of biofuels, whether to count certain biofuels towards fulfilling a government mandate, or whether to grant subsidies to blenders using these biofuels?

Biofuel subsidies and standards: WTO considerations

Moderator

Dr Stefan Tangermann, University
of Gottingen, International Food &
Agricultural Trade Policy Council (IPC)
Member

Speakers

Dr Tim Josling, Stanford University,
IPC Member

Mr Ronald Steenblik, Organisation for
Economic Co-operation and Development
(OECD)

Dr Harsha Vardhana Singh, WTO

Organized by

International Food & Agricultural Trade
Policy Council (IPC)

Report written by

Jennifer Brant

Friday, 17 September 2010
14.15-16.15

1. Presentations by the panellists

(a) *Tim Josling, Stanford University, IPC Member*

Conflict over biofuel subsidies is likely to emerge in the coming years, as production and trade in biofuels increase and governments continue to intervene in the sector. Biofuel subsidies can provide downstream benefits to agricultural producers, whereas agricultural subsidies can provide upstream benefits to the biofuel industry. Information about biofuel interventions tends to be fragmented and difficult to interpret. While the Global Subsidies Initiative (GSI) has demonstrated that calculations are possible, such information is scattered and incomplete. Greater transparency is required not only for biofuel subsidies, but for the entire energy sector.

Deficiencies exist in WTO notifications under both the Subsidies and Countervailing Measures (SCM) Agreement and the Agreement on Agriculture. The SCM Agreement requires that WTO members notify their subsidies in enough detail to enable other members to calculate the trade impacts of such support (Article 25). Although the United States and the European Union (EU) have notified their biofuel subsidies to the WTO under this agreement, there are major discrepancies between the figures notified and the GSI estimates of US and EU annual biofuel subsidies.

Under the Agreement on Agriculture, members are required to notify agricultural subsidies, classifying them into different boxes of support and calculating their total trade-distorting support (Aggregate Measure of Support, or AMS). Gaps in members' notifications of biofuel subsidies under the Agreement on Agriculture undermine efforts to analyse the impact of these policies. Different factors contribute to such notification gaps, including the classification of biodiesel as an industrial rather than agricultural product, and the issue of "leakage" of support provided to biofuel producers and blenders. The result is a lack of clarity as to what types of subsidies must be notified under the Agreement on Agriculture.

Several approaches to improving transparency are proposed in a recent IPC paper on biofuels and WTO rules by Dr Josling, together with J. Earley and D. Blandford. This paper is available at <http://www.agritrade.org/BiofuelSubsidiesUSEUBrazil.html>.

(b) *Ronald Steenblik, OECD*

Governments initially provided support for the biofuel sector to decrease reliance on fossil fuel imports and to promote rural development, rather than to combat climate change. The belief that biofuels burn more cleanly and can therefore contribute to the reduction of greenhouse gas emissions is a relatively recent rationale. Although biofuels were at first perceived to be carbon-neutral, upon closer examination it became apparent that this assessment ignored inputs for the processing of the crops and the biofuel production.

During the past decade, more countries have embraced biofuels, in part to offset the escalating cost of oil. Governments have enacted various policies, including excise tax exemptions, mandates, subsidies, and tariffs, providing a wide range of support for the sector. By the mid-2000s, scientists began to understand that while biofuels (the end-product) may be the same, the carbon-intensity of the processes and energy needed to grow and process different feedstocks is not. For example, some facilities use coal



to process corn into biofuel. Scientists became concerned that certain feedstocks and production methods could actually increase greenhouse gas emissions.

The concept of the “carbon debt” was developed as a way to more fully consider the impact of biofuels. Scientists began estimating the amount of time that it would take to repay carbon removed from the earth to make feedstock for biofuel, via beneficial use of the relevant biofuel. Estimates ranged as high as 100 years. Sustainability standards were developed to address this problem. Under this approach, production methods including the greenhouse gas emissions resulting from each method would play a part in determining which alternative fuels should count as true “biofuels” that reduce greenhouse gas emissions. Standards would be established to provide incentives for use of such biofuels.

A number of groups, including the Roundtable on Sustainable Biofuels, promoted the use of sustainability standards. And some countries have enacted sustainability standards for biofuels. While these standards do not *de jure* restrict imports, they do affect trade in that they determine eligibility for subsidies and mandates in importing countries. Some standards address land use or other social issues, although the measurement of indirect land-use change in response to biofuel incentives has been the subject of particular controversy. The value of low-carbon fuel standards, currently under consideration in several jurisdictions, is also disputed.

Because of their impact on trade and, potentially, discrimination among biofuels based on process and production methods, sustainability standards may be vulnerable to challenge at the WTO. More analysis of the applicability of WTO rules to this type of government intervention is warranted.

(c) *Harsha Vardhana Singh, WTO*

Economic analysis is separate from the legal obligations that apply to different types of measures. In terms of the application of the WTO agreements to biofuel interventions, economic analysis of government interventions is only the starting point. Ultimately the programmes and policies must be judged against the legal requirements in the disciplines, which focus on transparency and good governance, but also on non-discrimination, most-favoured nation obligations, committee discussions, etc. Economic and legal analyses are necessarily different. The existing WTO agreements, plus the relevant jurisprudence, constitute a toolbox that can be applied to address various types of government interventions, including those related to the biofuel sector.

The Agreement on Agriculture and the SCM Agreement (the “umbrella” agreement applicable to subsidies for all types of goods) set forth different approaches to subsidies. The Agreement on Agriculture describes “green box” subsidies including, for instance, support related to research and development. Trade-distorting subsidies are notified and quantified under this Agreement using the aggregate measure of support (AMS). Agricultural subsidies are also subject to the SCM Agreement, which sets out a very different approach for analysing subsidies, identifying, for instance, “prohibited subsidies” based on specific criteria. In the WTO context, therefore, there are different sets of disciplines that govern subsidies, including those for biofuels. All subsidies, however, have to be notified under the WTO’s Subsidies and Countervailing Measures Agreement.

Several types of measures have been discussed, many of which are being addressed in the Doha negotiations, including a system of disciplines that will change the nature

of these measures, as perceived under notification systems and also in terms of their legality under WTO rules. From both an economic and WTO legal perspective, successful conclusion of the Doha Round is extremely important.

With regard to biofuel subsidies and standards, there are certainly some issues that are less than clear. For instance, do blending requirements fit the definitions of “subsidy” under the SCM Agreement and the Agreement on Agriculture? This is not clear and will depend largely on the nature of the market. If there is no local content requirement, it is not clear how the benefit from biofuel support may be distributed to input suppliers.

In addition, the quantification of support is not entirely straightforward. It is important to recognize that the GSI figures for biofuel support are higher than those notified to the WTO at least in part because they include things that are not required to be included in AMS under the provisions of the Agreement on Agriculture, or that are not required to be notified under the SCM Agreement. This does not necessarily mean that members are not reporting programmes or are otherwise hiding support. Rather, the basic framework for analysis is different.

This said, incomplete notifications are an issue. Members’ fulfilment of this obligation at times leaves a lot to be desired, and the Secretariat recognizes that this is a problem, and has been working on it. The WTO Secretariat has likewise kept itself informed to help address similar issues, including biofuel support.

2. Questions and comments by the audience

(1) European Association of Sugar Traders: Concerning the classification of biofuels in the Harmonized System (HS), why should biodiesel be classified as an agricultural product? Also, how should second- and third-generation biofuels be classified?

TJ: Biodiesel should be an agricultural product because it is made from agricultural inputs. Even though it is connected to agriculture, biodiesel was defined under the HS system as part of a group of unspecified products of a similar, industrial nature. It should be removed and considered an agricultural product. This would make analysing its effects on agricultural markets easier.

ST: A major implication of such reclassification would mean that biodiesel subsidies would have to be included in AMS classification. This could remove some of the “space” in the AMS classifications from other product support.

TJ: Until there are product-specific limits for the AMS, which are under discussion in the Doha talks, the space between AMS limits and actual spending are huge, and biodiesel subsidies could likely fit. For the EU, Dr Josling projected that this would probably work for at least another 15 years. The United States also has some flexibility.

RS: The World Customs Organization (WCO) recently created a new line for biodiesel, although biodiesel would still not come under WTO agriculture disciplines. Responding to Dr Josling’s comment, he queried whether by subsidizing the creation of something that is industrial but which uses agricultural inputs (i.e. subsidizing the industrial product) the agricultural input is also subsidized.



(2) Rolf Moehler (IPC Member): Could the WTO set up a working group to look at climate change or other issues? Why does the WTO tend to wait for agreement among members then start working on an important issue, rather than starting as soon as the problem is on the horizon?

HVS: The WTO Secretariat – with UNEP – recently produced a substantive report on certain climate-change issues, and has been following the climate change discussions. Climate change cannot be looked at only from a trade perspective. The WTO cannot act alone on this issue, but should await the climate fora's assessment of the most appropriate ways of dealing with the issue and then see what trade measures would be involved and how they might relate to WTO disciplines and capacity. For instance, were the climate fora to say that border measures are a good way to deal with climate change, the WTO could assess what this means in terms of WTO disciplines and trade effects. It would be inappropriate for the WTO, a purely trade body, to be the organization coming up with recommendations as to the best way to address greenhouse gas emissions.

3. Conclusions and way forward

There is a potential for conflict – including WTO disputes – in the coming years as the production of and trade in biofuels is expected to grow significantly during the coming decade, and governments continue to intervene to support the sector. Despite the growing importance of biofuels, it is unclear how WTO agreements apply to government interventions in this sector. A successful Doha Round would greatly impact government interventions to support the biofuels sector, as the agreement under discussion would impose new disciplines on the use of tariffs, standards and non-tariff barriers (NTBs), and other measures relevant to the biofuels sector.

There is a lack of scientific consensus regarding the nature and application of sustainability standards for biofuels. Because such standards impact trade and could be considered to discriminate among like end-products (biofuels), they may be vulnerable to challenge at the WTO.

The discussion touched on both the economic and the WTO legal analyses of various biofuel interventions, including analysis of biofuels interventions and of members' obligations in connection with such policies in the context of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and the Agreement on Agriculture and the Agreement on Technical Barriers to Trade ("TBT Agreement").

Even though economists may agree that any subsidy impacts production and/or trade, that subsidy must fit the definition of "subsidy" in order to be deemed prohibited or actionable under the SCM Agreement. Whether this is the case in relation to biofuel subsidies is not entirely clear.

Dr Tangermann concluded the session by observing that there was much work to be done in terms of both economic and WTO legal analysis of biofuel interventions.

Achieving the Millennium Development Goals in Africa: Should services linkages be expanded?

Moderator

Ms Valentine Rugwabiza Sendanyoye,
WTO Deputy Director-General

Speakers

H.E. Mr Darlington Mwape, Ambassador,
Permanent Representative of Zambia to
the WTO

Mr Jonathan Mitchell, Programme Leader,
Overseas Development Institute

Mr Kalman Kalotay, Investment Issues
Section, UNCTAD

Mr Fabrice Leclercq, Senior Trade
Promotion Advisor, ITC (was unable to
participate due to flight delay)

Commentators

Mr Abdoulaye Sanoko, Third Counsellor,
Permanent Mission of Mali to the WTO

Mr Abul Barkat, Chair, Department of
Economics, University of Dhaka

Mr Dale Honeck, Counsellor, Trade in
Services Division, WTO

Organized by

Trade in Services Division, WTO

Report written by

Mr Dale Honeck, Counsellor, Trade in
Services Division, WTO

Friday, 17 September 2010
16.30-18.30

Abstract

At a time of heightened concern over Africa's ability to achieve the Millennium Development Goals (MDGs), as well as increased pressure on donor finances, the objective of this session was to highlight the importance of infrastructural services in achieving the MDGs, and to examine how access to these services can be accelerated, including possibly increased roles for the WTO.

The session focused on the linkages between infrastructure development, including telecommunications, transport and financial services, and achieving the MDGs in Africa. The speakers agreed that the MDGs could not be reached without giving more attention to strengthening the services sector. The liberalization process should be considered carefully, including opportunities for enhanced regional cooperation.



1. Presentations by the panellists

(a) *Darlington Mwape, Ambassador, Permanent Representative of Zambia to the WTO*

Ambassador Mwape addressed the perception that services were not very important in the development of LDCs such as Zambia. In fact, services trade made a major contribution to gross domestic product (GDP). Liberalization of services trade is vital to offset the constraints of being a small market with limited resources. The 2009 United Nations Development Programme (UNDP) report on Zambia concluded that increased trade is required to support all the MDGs. The challenges are the supply-side service constraints, such as transportation, storage, and communications. A recent UN report also stated that increased access to energy was important to achieving all MDGs.

In response, Zambia has redressed competitive telecommunication barriers, through measures such as privatizing Zamtel. Consequently, both international and local call charges were reduced by 50 per cent or more. Among the lessons learned was that not only liberalization and privatization, but also regulatory reform, were necessary. Regulatory reform must precede liberalization, otherwise there will not be sufficient competition or an adequate regulatory framework.

Regarding energy, in Zambia less than 2 per cent of the rural population, and only about 22 per cent nationally, have access to electricity. The consequence is deforestation, while irrigation, telecommunications, and healthcare are also inhibited. The mining expansion has led to power shortages. Only about one-third of Zambia's hydroelectric potential has been realized, and investment in two new large hydroelectric plants is a government preoccupation, supported by Chinese government investment. Zambia also encourages private investment in smaller power plants. Regarding transport, the road network is essential in landlocked Zambia, and is being addressed with Aid for Trade facilities. Transport remains the single most important obstacle to trade for Zambia.

In concluding, Ambassador Mwape recalled the UNDP conclusion that increased trade is important for achieving the MDGs. Second, productive sectors, such as agriculture, cannot flourish without a developed services sector, including finance, transport and communication. Third, openness is not a panacea for improved access; improved regulation and competition are also needed. Fourth, the sequencing of reforms is important. Finally, he called for engagement at the international level to promote best practices, and to create innovative financing.

(b) *Jonathan Mitchell, Programme Leader, Overseas Development Institute (ODI)*

Mr Mitchell posited that tourism is actually a development issue. He noted that although about 40 per cent of excursions have a developing-country destination, only 2 per cent are to LDCs. Nonetheless, tourism is one of the biggest LDC exports, although there is currently no consensus on tourism's development aspects, and little convincing analysis.

The essential question is: who benefits from tourism and how much? The approach used in ODI is based on value chain analysis (VCA) and computer modelling to trace tourism spending. The results showed that one third to half of the tourism package is spent reaching the destination, and is not obviously pro-poor. Hotels in developing countries

are less pro-poor where wages are low, but food and beverage spending can be very significant. For example, the livelihood of about 1,000 fishermen in Ethiopia depends on conference tourism.

Out-of-pocket spending is a small percentage of the tourism package, but is very pro-poor. Through the development of supply chains, pro-poor benefits can be extended over much wider areas. Taxation and park fees can also be important factors. Overall, ODI found that up to 25 per cent of in-country tourist spending can be pro-poor, which compares favourably with many agricultural exports. Factors such as education and access to finance enhance pro-poor tourism linkages, while the worst effects result from corruption, government inefficiency and conflict.

What has been learned? First, we need to take a broad view of tourism, and actually measure the impacts. Tourism can be pro-poor, but is not inherently so. It is also important to look at tourism in connection with agriculture and other sectors. Any kind of tourism can be pro-poor, not simply small-scale eco-lodges. To reduce poverty at scale, it is necessary to look at tourism from an economy-wide perspective. Infrastructure, such as energy (for example, for hotel operation) and suitable roads, is very important. Finally, simple, practical steps can have significant impacts. For example, the installation of an automated teller machine (ATM) may benefit the poor by facilitating increased out-of-pocket tourism spending.

(c) Kalman Kalotay, Investment Issues Section, United Nations Conference on Trade and Development (UNCTAD)

Mr Kalotay presented the 2008 World Investment Report, focusing on energy, telecommunications, transportation, and water. Infrastructure services are the backbone of a prosperous economy, and there is a very strong link between their development and attainment of the MDGs. Foreign companies play an important role in infrastructure investment in Africa, while domestic private investment is very weak.

LDCs had less than 1 per cent of world infrastructure FDI stocks in 2006, and less than 5 per cent of world FDI inflows. The largest share of FDI is in communications, while there is virtually none in water supply services. UNCTAD found four reasons why LDCs were marginalized: multinationals want high returns; they perceive high risks in LDCs; small local markets are a disincentive; and there is competition from other investment destinations. The emergence of new investors, for example from India and China, brings hope: they have shown interest in ports and telecommunications, sometimes including LDCs, although there is often a link to extractive industries.

Policy challenges include the importance of creating a strong, transparent and accountable institutional and regulatory framework, and the sequencing of reforms. Increasing FDI in infrastructure actually means a greater government role. There is need to increase official development assistance as well as capacity development, including for negotiations with multinational corporations. It is important to find risk-mitigation measures for FDI in LDCs, and to increase regional cooperation in infrastructure development.



Statements by the commentators

(a) Abul Barkat, Chair, Department of Economics, University of Dhaka

In general, Africa lags behind in achieving the MDGs. Services linkages should be increased, but there is no specific target in the MDGs for increasing them, especially for infrastructural services. Studies show that access to electricity is strongly linked to the shift out of poverty, yet infrastructure financing remains very low, especially for energy generation.

Most services linkages should be addressed regionally, as most LDCs' domestic markets are small. The MDG steering committee estimates about US\$ 50 billion per year is required to resolve critical bottlenecks in Africa, with about one-half needed for energy generation. Some FDI can be attracted, but external public financing is also required for roads, water and power generation. Consequently, development assistance must be doubled, and public-private partnerships and other new financing approaches are necessary. The WTO can play a dynamic role in raising awareness of potential roles for Aid for Trade with respect to infrastructure.

(b) Abdoulaye Sanoko, Third Counsellor, Permanent Mission of Mali to the WTO

Mr Sanoko noted that Mali also has an enormous infrastructure problem. In Africa, much liberalization has already occurred, including under the World Bank and IMF, but what are the benefits? The politics of investment are very complex, and a number of African governments have fully opened many services sectors without attracting investors.

With respect to regional approaches, there are many obstacles to integration, including those relating to the creation of economic partnership agreements (EPAs). Negotiations are typically based on rules set by the General Agreement on Tariffs and Trade (GATT). Problems include coherence and governance. Regarding structural adjustment programmes in Mali, infrastructural services, including the telephone company and the railroad, were sold under conditions favourable to investors, but not necessarily with regard to achieving the MDGs. Tourism is not being neglected, but is instead a major sectoral priority. Achieving the MDGs requires a holistic approach, as the MDGs are interlinked, with MDG-8 being particularly important.

(c) Dale Honeck, Counsellor, Trade in Services Division, WTO

Mr Honeck highlighted Forum participants' awareness of the importance of infrastructure and FDI, and of the need to create FDI-conducive conditions. His interest is in tourism's potential for poverty alleviation. Increased infrastructure is required in order to double or triple tourism for LDCs in Africa, since the linkage between poverty alleviation and infrastructure availability is apparently even stronger than the potential for poverty alleviation through tourism.

He asked whether infrastructure should be given more attention in the Doha Development Agenda (DDA) negotiations and, if so, how? Observing that nearly all African LDCs are striving to attract FDI, and that many services markets are open but not bound under GATS, he asked whether it might be possible to make partial GATS commitments that indicated policy priorities, such as encouraging joint venture and training. This could increase predictability for investors, while retaining policy flexibility for governments.

2. Questions and comments by the audience

Before opening the floor, Ms Rugwabiza highlighted the importance of both regulation and liberalization in services, especially the need for proper sequencing, and the value of regional integration. Although the gap to be filled is still large, infrastructure is the African Development Bank's first priority, and things are slowly moving in the right direction. She also emphasized the role of the state and public funding which, together with the predictability of the rule of law, would always have long-term returns. Regarding tourism exports and poverty reduction, the quality and reliability of the infrastructure is crucial.

Regarding the EPAs, an EU representative noted that the joint rules were set at Cotonou, and not under the GATT. He asked why neither the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), nor the Southern African Customs Union (SACU) had yet set a common services protocol.

One participant emphasized the importance of regional integration. For example, regarding electricity, Congo has enough capacity for all Africa. Solar energy is also not being sufficiently exploited. Regarding infrastructure investment, he asked why FDI in Latin America had declined in recent years in favour of Africa. He also noted that tourism is one of the sectors with the highest levels of GATS commitments, which is unfortunately not sufficiently exploited.

Mr Diouf, Agence Africaine pour le Commerce et le Développement, noted that, as a consequence of structural adjustment programmes, most African countries had privatized state firms as private monopolies without liberalizing. Second, while LDCs are not expected to make commitments in the WTO negotiations, they are engaged in liberalization under the EPAs. Such considerations, and the need to expand services linkages to achieve the MDGs, highlighted the need for coherence in LDCs' application of rules and procedures for different trade negotiations.

Ms Page was struck that most donors under Aid for Trade mentioned traditional sectors, such as agriculture and manufactures, rather than services, such as communications, finance and tourism, and asked whether services are included in Aid for Trade programmes, but simply not mentioned, or whether prejudices against services are still in effect. She asked Mr Mitchell if there was evidence that a regional approach has worked in tourism.

Ambassador Mwape was not sure of the reasons regarding the services protocols, but quoted the North-South Corridor for roads, the Southern African Power Pool for energy, and the Zambezi River Authority for water resources, as examples showing that the countries concerned are nonetheless cooperating. The perception about services explained the Ministerial Decision stating that LDCs are not expected to make commitments. Most of the time the DDA negotiations have focused on agriculture and merchandise trade, and services have simply been "tagging along". That prejudice now needs to be addressed.

Mr Kalotay said Latin American countries made the policy mistake of quickly opening infrastructure to foreign investors without regulating first. Efforts to subsequently implement regulations led to conflicts with investors, resulting in the decline in FDI.

Mr Barkat said that almost all poor people in the world need energy, whether for cooking, lighting or other uses. He found that electricity is not "light"; it is "enlightenment".



Mr Mitchell pointed out that Cape Verde migrated out of LDC status due to tourism, following government policy to embrace tourism and establish a regulatory framework. Regarding regional integration in tourism, there was not much information. Establishing cross-border game parks in Africa, and the apparently negative consequences for UK tourism of not implementing the Schengen visa, could be examples. Concerning donor prejudices against tourism, hopefully this was changing, and donors would follow African countries' changes in attitudes.

Mr Sanoko, speaking personally, stated that the imposition of unfair rules, as had occurred under the structural adjustment programmes, was apparently continuing. The EPAs appeared to go beyond the requirements of the WTO; formally they were voluntary, but even that was disputable. The Washington Consensus had helped lead to the current crisis. LDCs did not want charity, but the opportunity to borrow money to finance the infrastructure essential for development.

Mr Honeck stressed the importance of Ambassador Mwape's statement that, to date, services have been merely "tagging along" in the WTO negotiations. Hopefully, this session would help change the situation.

3. Conclusions and way forward

What came across clearly from the session was that achievement of the MDGs is not possible without investments in key services infrastructure. The session highlighted the need to properly sequence trade liberalization and regulatory reforms to ensure that trade-opening results in real commercial opportunities. A third point is the value of regional integration in attracting the right investments, and the need to maintain high levels of commitment from the public and private sectors and international agencies in funding infrastructure investment.

The role of trade in fostering a recovery that is supportive of employment

Moderator

Mr Jonathan Lynn, World Trade Correspondent, Chief Correspondent, Geneva, Reuters

Speakers

Mr Michael Plummer, Head, Development Division, Trade and Agriculture Directorate, OECD

Mr Peter H. Chase, Senior European Representative, United States Chamber of Commerce

Ms Esther Busser, Deputy Director, Geneva Office, International Trade Union Confederation (ITUC)

Organized by

Organisation for Economic Co-operation and Development (OECD)

Report written by

Ms Jennifer Bisping, Senior Public Affairs Manager, OECD

Friday, 17 September 2010
16.30-18.30

Abstract

International trade is an essential source of growth, development and, ultimately, well-being. Open economies achieve higher levels of economic growth, contribute to net job creation, help to raise real wages, and ensure lower prices and a wider choice of products and services. An increase in the share of trade in gross domestic product of one percentage point raises income levels by between 1 per cent and 3 per cent.

Keeping markets open and world trade flowing during the recovery phase is crucial. While world leaders have shown resolve in meeting these objectives, fears of protectionism, due to unprecedented levels of unemployment, persist. A genuine trade deal that provides for new market opportunities on the basis of comparative advantage, and that would support growth and the creation of decent employment in both industrialized and developing countries, is urgently needed.

What is the role of trade in job creation and as a driver of development, and how can we ensure that political leaders do not view protectionism as an answer to concerns about unemployment? How can governments soften the burden on workers who have been displaced due to trade-induced structural change, and facilitate their integration into competitive industries?



1. Presentations by the panellists

(a) *Jonathan Lynn, World Trade Correspondent, Chief Correspondent, Geneva, Reuters*

Moderator Mr Lynn introduced the topic of the panel by pointing out that the disciplined multilateral trade system of the WTO which was set up after the war arose from protectionist efforts before the war by countries who wanted to defend jobs. He said that most people would agree today on the economic benefits of trade. Both developing and emerging economies, as well as developed countries, have benefited from trade opening. He cited OECD figures to demonstrate that there is a huge benefit to being able to have things made elsewhere, bring them in and use them for your own manufacturing. However, many people are also suspicious of the motives of companies sourcing such components overseas, he said. The notion of that "great sucking sound" of jobs disappearing over the border, he said was part of the political debate in the United States. Today's debate about trade seems to be just as poisonous, and has stalled the efforts to open up trade further.

(b) *Michael Plummer, Head, Development Division, Trade and Agriculture Directorate, OECD*

Mr Plummer said that there is a two-step process when it comes to trade and employment: how trade affects growth; and how trade-induced growth affects employment. He said that there is general agreement that trade is good for growth, but the relationship between trade and employment is more nuanced, and we know that there will be both winners and losers.

Mr Plummer said that, in this global economy, it is very difficult to discern what imports and exports are, because exports tend to have a large import component. On the question of whether off-shoring is good for jobs, he said it depends on whose perspective we look at: while the labour-intensive country would benefit, it may be a problem for the country doing the off-shoring. He added that, in an indirect sense, off-shoring increases productivity, which can have a positive effect on jobs. In addition, the positive effect of the value chain process, which is really driving globalization today, is that it is bringing least-developed countries (LDCs) into the global trading system. The production systems are "fragmenting" trade to such a degree that some of the LDCs are able to participate.

While there are a lot of potential benefits both on the exporting and on the importing side, there are also a lot of problems locally regarding how to deal with this. Mr Plummer added that, in the United States, there is evidence that trade has to some extent led to increasing inequality, although this is mainly due to technological change. The bottom line is that the vulnerable who are affected by structural adjustment who need to be reintegrated into the economy with intelligent, well-designed policies.

(c) *Peter H. Chase, Senior European Representative, United States Chamber of Commerce*

Mr Chase said that the United States Chamber of Commerce is very much pro-trade in terms of both exports and imports of all products. He said that the Obama administration is very much focused on growth through exports, but in his opinion that is only half the equation as imports also create growth. He said that, although from overseas the

United States debate about trade might seem “poisonous”, the debate has been equally acrimonious in the past. He added that “the debate was wrong then and is wrong now”.

Remarking that he had worked with former democratic Senator Bill Bradley – who had been one of the “GATT Wise Men” whose 1986 report led to the Uruguay Round – Mr Chase recalled that, even then, that report had rightly argued that growth itself leads to dislocations. Even if a country does not trade at all, you can have problems (e.g. the United States textile industry moving to the South even before imports were an issue) caused by technological change, innovation, immigration, and change in demographics. He said that trade is a factor in creating growth; growth means change and change means someone will face dislocation. While it is easier to blame foreigners who do not vote, politicians who focus only on trade as the source of the problem make a public policy mistake if they divert attention from the real issue of helping people adapt to change.

(d) Esther Busser, Deputy Director, Geneva Office, International Trade Union Confederation (ITUC)

Ms Busser said that the ITUC looks after the interests of both developed and developing country members, which is reflected in its positions in bilateral and multilateral trade negotiations. She said there is no clear answer to the question of whether developing countries should be opening up, and that this very much depends on their stage of development. If they open up industries too early, they risk eliminating industries that are not yet competitive. It is important that countries have the possibility to offer certain protection until those industries are mature, particularly in LDCs. She said that the trade negotiations do not seem to be taking into account these concerns. She added that, of course, not every industry has to be protected; it depends on industrial development, diversification and income levels.

On the issue of moving jobs to poorer countries, Ms Busser said the question for developed countries is what those jobs are replaced with, and whether workers end up with better-quality and higher-paid jobs through an adjustment process with social security benefits, etc., or whether, on the contrary, they end up being unemployed, underemployed or employed on worse wages and conditions. The other side of the equation, she said, is to look at what constitutes those new jobs in developing countries. Often those jobs are not decent jobs, and workers are exploited, facing unsafe working conditions, low wages and extremely long working hours. In those jobs, collective bargaining and trade unions in general are non-existent, contracts are short-term, and workers can be dismissed without notice.

She further stressed that the current globalization process had led to growing inequalities with a very unequal distribution of the benefits of growth.

2. Questions and comments by the audience

In the discussion, Mr Lynn pointed out that, in developing countries, some people say that the focus is to get a job that pays for basic needs first before you can move towards the standards that we all agree we should have.

Mr Plummer questioned whether countries actually get benefits from protectionism. While he said it is true that some countries that had rapid growth in the 19th century, had



protective structures, he stressed that growth did not come from protection, but rather from factors such as productivity growth in services, etc. He added that in countries (e.g. in Latin America in the 1950s) with protection, mostly capital-intensive sectors benefited, which led to the worst income distribution in the world. This did not improve until they started to liberalize. He agreed with Ms Busser that emerging markets need to liberalize in an intelligent way in order to have more job creation than job destruction. But often this proves to be inefficient, expensive and a huge drain on the economy.

Mr Plummer added that, in a globalized economy, economies need to be flexible in order to adjust to globalization. If they are not flexible it will be much more difficult to re-employ labour that is displaced through competition. In the same vein, Mr Chase noted that countries maintaining undervalued currencies for too long in order to boost their competitiveness – which can be seen as another form of protectionism – often find that they will go through painful adjustment.

One person from the audience asked how acceptable subsidies and manipulating currencies are in the global trading system. Mr Chase said that the reason that the WTO was established was to get away from things such as subsidies. Manipulating currencies is bad for the trading system, and a good policy-maker would ask himself: “Is this good for my country or am I addicted to exports in a way that is going to create more problems later?” Mr Plummer said in his personal view, it is important to remember that no international currency system exists today. It was understandable why East Asian countries, after the Asian crisis, built up reserves, partly for competitiveness but also as a cushion against problems in the future. Bringing some sanity to the international currency markets is going to be important in the future, he said.

Mr Lynn said that it had always struck him as unfair to “hit on” the Germans and Chinese, who work hard, save money, and do not spend much – precisely the things we should be doing in our private lives. Mr Plummer said that you have a trade balance that is reflected by macroeconomic conditions. If you had net national savings you would be exporting to the rest of the world, which means you have a surplus. If you have net negative national savings you are importing capital. The problem is that we do not know what is leading to what.

One comment was made from the floor about the fact there is so little internal trade between African countries. If you build infrastructure for internal markets in Africa, it was said, you will encourage agriculture because you are starting to develop a secondary processing industry, which is usually located near where the ultimate markets are. Ms Busser said that one of the problems is that the enormous emphasis given to export-led growth, but not much emphasis has been given to what happens domestically and how you develop a domestic economy.

The issue of corporate social responsibility was raised. While Ms Busser welcomed initiatives to improve the conditions for workers, she said those voluntary initiatives cannot substitute for the responsibility of governments to enforce legislation. The money that is currently spent on corporate social responsibility (CSR) and verification schemes would be better spent on improved labour inspection, and having unions on the work floor is the best way to ensure good working conditions and wages. Mr Chase agreed that it is important to have good labour laws. Noting the United States experience, he said unions can play an important role in addressing imbalances in power structures, but need to be careful that they too do not become a factor that hinders change.

3. Conclusions and way forward

Mr Lynn closed the session by saying that participants came to the conclusion set out at the start of the session that trade is good for growth, but that the relationship between trade and employment is more complex, and that many labour issues are not necessarily best dealt with through trade policy.



III. Coherence between the WTO and other areas of global governance



Sustainable Energy Use and Trade

Moderator

Ms Vesile Kulaçoğlu, Director, WTO Trade and Environment Division

Speakers

Professor Mark Maslin, Director, Environment Institute, University College London (UCL)

Mr Richard Bradley, Head, Energy Efficiency and Environment Division, International Energy Agency (IEA)

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

Mr Timothy Richards, Chairman, Rules of Trade Study, World Energy Council (WEC)

Mr Lawrence Herman, Director, Rules of Trade Study, WEC

Organized by

Trade and Environment Division – WTO and World Energy Council (WEC)

Report written by

WTO – Trade and Environment Division

Wednesday, 15 September 2010
15.00-17.00

Abstract

The objective of this session was to explore the opportunities and challenges involved in moving the global energy system onto a more sustainable path. Policies to improve the sustainable use of energy, including energy efficiency regulations, fossil fuel subsidy reform, or broader structural changes in the energy system, will all have an impact on trade.

The session began with brief presentations on current trends in energy demand, policies to improve the sustainable use of energy, and trade and investment rules for energy. This was followed by a panel discussion, during which panellists all agreed that changes in our energy system are urgently needed. The conclusions were made policies to promote energy efficiency and reduce fossil fuel subsidies, and the current environmental goods and services negotiations at the WTO, will all play an important part in moving us towards more sustainable energy use.



1. Presentations by the panellists

(a) *Mark Maslin, Director, Environment Institute, University College London (UCL)*

Prof. Maslin began the session with a presentation on current trends in energy demand and possible political drivers to encourage more sustainable use of energy in the future. He explained that the two key challenges faced by society in the 21st century, climate change and global poverty, were both intricately linked to energy demand. Responding to climate change would require cutting energy-related carbon emissions, while global poverty alleviation would require rapid development, and growth in energy demand. Addressing both of these challenges would require a shift towards low-carbon energy growth.

Projections of global emissions due to energy use showed continued growth. However, while decoupling these emissions from energy use remains a challenging prospect, Prof. Maslin noted that opportunities lie in the changing structure of energy demand. Most growth in energy demand is expected to come from the developing world, where 85 per cent growth is expected in the next 15 years. Because 40 to 50 per cent of the energy infrastructure required to meet this growing demand has yet to be built, huge optimism and opportunity exists if trade and the trading system can be used to promote low-carbon growth.

Prof. Maslin next presented three political drivers he believed could be key in encouraging low-carbon growth. First, translating emission reduction commitments into national law could increase the credibility and likelihood of governments' transition to a low-carbon economy. As an example, Prof. Maslin explained that the United Kingdom had mandated by law that the government should reduce carbon emissions by 80 per cent by 2050. Second, emission-trading schemes, which are becoming a political reality around the world (from the mandatory European system to the voluntary systems in the United States), could stimulate innovation for low-carbon energies. And third, offsetting will allow for emission reductions beyond energy markets. The international carbon market is already worth US\$ 120 billion and is expected to rise to US\$ 1 trillion by 2020.

(b) *Richard Bradley, Head, Energy Efficiency and Environment Division, International Energy Agency (IEA)*

Next, Mr Bradley, of the International Energy Agency, elaborated on the need to transform the energy sector, presenting some of the key opportunities and challenges that exist. While a large number of climate-change and sustainable development policies are already in place around the world, he noted that they are not enough to slow growth in fossil fuel use. Technological changes associated with unconventional oil and gas will translate into more confirmed reserves. The magnitude of the required change in the energy system is unprecedented, overshadowing even the industrial revolution.

Such a transformation is also complicated by the changing world energy order. Growth of energy demand in Organisation for Economic Co-operation and Development (OECD) countries is quickly being outpaced by growth in non-OECD countries. Between 2007 and 2030, non-OECD countries will account for 93 per cent of growth in energy demand, driven largely by China and India. Taking China as an example of emerging economies, China already has the second-largest economy, is the largest CO₂ emitter, the largest coal and electricity user, the largest coal producer, the second-largest coal importer, the fifth-

largest crude oil producer, the largest hydrogen power producer, and the largest wind power producer. In designing energy solutions, the importance of emerging economies cannot be underestimated.

Mr Bradley stressed that the required transformation of the energy system will have to come through supply-side changes. This would imply changes in capital structures, locations, and technologies, all of which would imply large capital investments and a great amount of research and development. Such a transformation could, however, prove to be easier in developing countries, where the energy capital structure is newer and in some cases already more efficient. Mr Bradley suggested, however, that simple energy efficiency policies for buildings, appliances, lighting, transport, industry and utilities, could buy countries the much-needed time before more costly and challenging supply-side changes could be implemented. Because the required transformation of the energy sector is unprecedented, Mr Bradley concluded that there exists a lack of political willingness to be the first mover. Consequently, the high level of political commitment in the UK, mentioned by Prof. Maslin, can be seen as extraordinary.

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

Mr Steenblik presented some of the key findings to come out of the joint IEA, OECD, World Bank, and Organization of the Petroleum Exporting Countries (OPEC) report on energy subsidies, submitted to the Toronto G20 Summit in June 2010. He pointed out the political significance of the G20 leaders' agreement to reform fossil fuel subsidies, given that seven of the G20 countries were among the top ten fossil fuel subsidizing nations.

Total fossil fuel consumption subsidies were found to amount to US\$ 557 billion in 2008. Phasing out these subsidies would result in a 10 per cent reduction in global greenhouse gas emissions. However, Mr Steenblik noted that subsidy reforms would need to be accompanied by broader structural reforms to support the poorest in society, who are mostly receiving targeted fossil fuel subsidies. To conclude, Mr Steenblik noted that better-quality information on subsidies and their economic and environmental impacts is important to better inform the debate on subsidy reform. As already recognized by the G20, transparency is essential to build support for reform.

(d) Timothy Richards, Chairman, Rules of Trade Study, World Energy Council (WEC) and Lawrence Herman, Director, Rules of Trade Study, WEC

The final presentation, by Mr Richards and Mr Herman, of the World Energy Council (WEC), took place via videolink. They presented the results of a September 2009 report, produced by a WEC Task Force, on the applicability and relevance of the WTO to the global energy sector, looking particularly at the twin challenges of climate change and global development. The report covered five areas: tariff eliminations; border measures associated with greenhouse gas restrictions; promotion of energy-related investments; energy services trade; and the elimination of trade barriers on environmental goods and services.

The work of the Task Force was based on the fundamental idea that eliminating trade barriers was important in addressing climate change and promoting sustainable development. Reducing restrictions at the border would lower the costs of clean-energy technologies, increase the speed of their deployment, increase economics of scale, and



ultimately increase the competitiveness of the entire sector. A recent Peterson Institute study showed that eliminating tariffs for environmental goods would increase global gross domestic product (GDP) by about USD 5 billion. In cases where tariffs on environmental goods were significant, the additional cost was found to harm projects where developers were trying to bring the cost down and improve the competitiveness of renewable energy and other clean energy.

2. Questions and comments by the audience

The presentations were followed by a lively debate amongst panellists on energy-efficiency policies and subsidies, their impact on energy choice, and the importance of the Doha Round of negotiations on environmental goods and services in promoting sustainable energy use and tackling climate change.

In response to comments from the audience that the US is less energy-efficient than Europe, Mr Bradley noted that both pricing policies and energy-efficiency policies are necessary to effectively influence energy demand, especially in light of market failures. While it was true that the US economy is built on cheap oil, it is actually a leader in energy-efficiency policy, particularly for appliances. Mr Bradley believed energy efficiency to be a powerful tool, mainly because it is constantly evolving, dependent on income, prices and technology. Energy efficiency was, in a way, a renewable resource. He explained how energy-efficiency policies and energy prices had resulted in a 60 per cent drop in energy demand in the US since the 1970s. Setting a carbon price alone was not enough: because of market failures, there is a need for regulating devices, such as building codes and energy-performance standards. Mr Steenblik commented that, while imports of energy-efficient products can be more costly, the savings in energy use often outweigh this extra cost.

The discussion next shifted onto the impact of energy-efficiency policies, or subsidies to promote renewable energies, on energy demand. Whether such policies are regulated at the domestic or international level, all speakers all confirmed that they would impact energy markets. Examples of policies discussed included the European Union's 20-20-20 goal (requiring a 20 per cent cut in greenhouse gas emissions, a 20 per cent increase in energy efficiency, and a 20 per cent renewable mix in the electricity supply – all by 2020), emission-reduction pledges made under the Copenhagen Accord, and the G20 commitment to reform energy subsidies. The panellists explained that such policies would guide energy investment and purchase decisions. As a result, energy markets should already be adapting.

It was noted that the actual impact of policies to improve the sustainable use of energy would largely depend on how quickly such policies were introduced. If price-adjustment policies were introduced overnight, consumers would immediately cut their energy consumption. However, if prices were adjusted gradually over time, this would allow consumers time to adjust their behaviour (e.g. by seeking more efficient appliances and modes of transportation).

3. Conclusions and way forward

The session was concluded with a discussion on the importance of the Doha negotiations on environmental goods and services in promoting sustainable energy use. It was agreed by all panellists that the more accessible and cost-effective technologies are, the easier it will be for countries to adopt them. Recognizing the substantial changes that will be needed in the capital structure to transform the energy sector and respond to the urgency of climate change and poverty reduction, it was highlighted that clean-energy technologies will need to move across borders as quickly and efficiently as possible. The role of the WTO negotiations on environmental goods and services in improving access to these technologies was found to be undeniably beneficial.



Abstract

The introduction of intellectual property (IP) rules into the global trade regime – through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – was a major outcome of the Uruguay Round, reflecting the perceived economic interests and thus the negotiating strategies of the major developed economies at that time. TRIPS fuelled active debate and analysis among economists and trade lawyers about the proper role of IP standards within the trade law system. Three subsequent developments have shaped the operational and policy contexts of TRIPS: 1) technological change and diffuse production chains have enhanced the practical significance of IP in trade, creating a complex “value-added” pattern in international trade, and giving rise to a distinct trade in knowledge or IP rights; 2) policy-makers recognize strategic interests in knowledge assets and take practical steps to advance IP-related interests in trade and other negotiations – a phenomenon originating in the developed world but now on the agenda for developing economies – on such issues as genetic resources and geographical indications (GIs); and 3) economic theory now seeks to address the knowledge dimension of growth, so that knowledge, technological change and human capital are factored in as “endogenous” or intrinsic to growth models, and no longer confined to an “exogenous” theoretical black box. The session explored these IP-related aspects of trade, and considered the possibilities for using the tools of economic theory to shed light on what it means, in today’s economy, to situate standards on IP protection within the multilateral trading system. Two contrasting and topical issues – GIs and genetic resources – were used to illustrate how economic analysis may illuminate contemporary questions about IP and trade.

From trade-related aspects of intellectual property (IP), to IP-related aspects of trade? Locating the trade-related aspects of intellectual property rights agreement in today’s global trade system

Moderator:

Ms Jayashree Watal, Counsellor,
Intellectual Property Division, WTO

Opening remarks:

Mr Antony Taubman, Director, Intellectual
Property Division, WTO

Speakers:

Professor Keith Maskus, Department of
Economics, University of Colorado

Dr Carsten Fink, Chief Economist, WIPO

Professor Timothy Josling, Senior Fellow,
Freeman Spogli Institute for International
Studies, Stanford University

Dr Dwijen Rangnekar, Senior Research
Fellow, Centre for the Study of
Globalisation and Regionalisation,
University of Warwick

Ms Daniela Benavente, Graduate Institute
of International and Development Studies,
Geneva

Professor Fan Cui, Associate Professor,
University of International Business and
Economics, Beijing

Mr Pedro Roffe, Senior Fellow, ICTSD

Organized by:

Intellectual Property Division, WTO

Report written by:

Mr Antony Taubman, Director, Intellectual
Property Division, WTO

Wednesday 15 September 2010
16.15-18.15



1. Presentations by the panellists

(a) *Keith Maskus, Department of Economics, University of Colorado*

Prof. Maskus observed that, when TRIPS was concluded, research on international economics of IP was limited to some speculative papers, but empirical research had since deepened. The linkage between trade and IP was a two-way street – IP is trade related, but IP also affects patterns of trade and investment. A remarkable growth in the technology and branding content of international trade had extended to the commodities and services exported by developing economies – including, most recently, those based on technologies originating in the developing world, and not merely the trend towards developing country exports of technology-rich products. The emerging trade patterns include not only complex, vertically integrated supply chains, but other models as well. Foreign direct investment (FDI) and licensing decisions were particularly concerned with how to trade technology and knowledge.

Multinationals found that IP was a key part of deploying technical assets around the world, and IP considerations were important in concluding secure information transfers and contracts. Strategic decisions were opened up by IP tools, such as release times and entry into specific markets, and price discrimination. This use of IP can be either pro-consumer and supportive of competition, or the reverse. Globalization has highlighted policy differences across countries: even after TRIPS, significant diversity remained in national policy settings, with impact on trade and investment.

There now exist a number of theoretical models, in contrast to several years ago. The product cycle model in trade and foreign investment has been long established. The widely held “traditional view” was that the global North innovated, and the global South imitated with technology transfer; IP slowed the imitation process, giving Northern innovators time to benefit from a monopoly. A newer theoretical view saw these processes not as exogenous, but considered the role of IP in supporting markets for technology transfer, reducing transaction costs, strengthening bargaining and enabling complex production models, building links between international firms and their subsidiaries in accelerating technology transfer. The “newest” view considered reverse technology transfer: through technology spill-over, companies in the South learned how to innovate and were now becoming sources of new products in global markets.

It was clear that markets for knowledge were developing as perhaps the most mobile factor of production. This facilitated the emergence of IP brokering services, markets that enabled developing countries to access available technologies. These markets are highly sensitive to IP. Analysts studied links between trade liberalization and IP protection; but no firm conclusions were possible at this stage. Parallel trade is also a key issue: this is a complex matter, and the impacts of different arrangements depend on how competitive the distribution sector is in international trade. Trade flows were clearly affected by TRIPS-based reforms, with an increase in trade in sophisticated goods.

In sum, it appeared that TRIPS had established a reasonable level of common standards that still allowed for necessary policy differentiation at the national level.



(b) Carsten Fink, Chief Economist, World Intellectual Property Organization

Dr Fink demonstrated the use of statistics on the use of global IP systems and identified questions and methodological issues for future work. Empirical reviews showed that IP is indeed trade-related. In 2008-9 there was a fall in global trade intensity, and this is reflected in global patterns in trademark applications for 2009: non-resident filings were far more affected by the economic crisis than resident filings. This is consistent with trading activity in general, as firms responded to the crisis by putting more emphasis on home markets. Trademark filings were an indicator for the entry of an economy into recession, showing that firms were less willing to launch new products. Measuring licensing transactions is difficult: most transactions leave no trace. However, balance of payment figures include royalties and licence fees, which have risen dramatically in recent years, due to both the globalization of entertainment industries and the rise in technology-licensing markets, improved by information and communication technologies which reduce information asymmetries in these markets. This increased activity has occurred more in the fast growing developing economies than in least-developed countries, due both to the relative size of economies and their different absorption capacities.

Current studies showed clear linkages between trade and IP, but empirical studies on FDI and IP were less clear and further work is needed. Analysis was continuing on knowledge spill-overs to domestic economies from FDI. A further trend was the fragmentation of research and development processes across different countries, but further research was needed on this. The area of licensing was clearer, since IP enabled licences, but it was not clear whether licensing behaviour affected technology transfer or was more concerned with transfer pricing. Another question was how to assess the economic impact of counterfeit and pirated trade: more research is needed on the welfare impact of trade in infringing goods.

A key methodological problem was causality. Randomized experiments to assess the impact of different IP policy settings on a national economy were not possible. One approach is to apply indices of IP protection to economic data from a cross-section of countries. TRIPS had led to changes to IP laws in many countries, leading to some possibilities for analysing variations in order to assess the impact of particular IP choices.

(c) Timothy Josling, Senior Fellow, Freeman Spogli Institute for International Studies, Stanford University

Prof. Josling outlined the policy role and general form of protection of GIs, and reviewed the dynamics of protection of GIs internationally and in Europe, focusing on the interplay between findings of generic status and GI protection. Reviewing national and regional approaches, he distinguished between claims for GI protection, and bargaining over the status of terms, against the empirical finding that a given term had become generic in actual use – and whether terms should become generic or generic terms could be restored to protected GI status. Some laws prohibited protected GIs from becoming generic. Generics were also recognized in certain national laws. He suggested that one approach to resolving the current issues would be to determine the list of recognized generic terms rather than a list of protected GIs.

(d) Dwijen Rangnekar, Senior Research Fellow, Centre for the Study of Globalisation and Regionalisation, University of Warwick

Dr Rangnekar called for a broader approach to analysing GIs than was available in the general analysis of IP economics. A wider range of social science disciplines was coming to bear, such as legal and international relations fields, with concerns that law was fragmenting, and norms would move from one forum to another, with a loss of coherence. TRIPS gave rise to a new form of IP right, the GI. The South now demanded stronger IP protection in this domain. Other non-traditional IP forums had taken up GI protection norms in a positive perspective, leading to public expectations from GI protection and complications for international law. The field of GIs related to cultural products that had different moral economies in the view of the communities that originated them, with implications for branding in global markets with origin-of-goods marks, based on locally determined production standards. Such marks are a channel of information, ameliorating information asymmetry between buyer and seller. In global markets, cultural differences between producer and consumer created a need for marks. Short direct-supply chains did not justify the effort of creating a GI. The GI had a role in indigenous development based on local resources and a local cultural code which the GI could protect; its value depended on strengthening local cultural integrity, but this was challenging in a globalizing market for commodities, such as tea and rice, for which market power is consolidated at the retail end.

(e) Daniela Benavente, Graduate Institute of International and Development Studies, Geneva

Dr Benavente demonstrated how economic theory of club goods, and theory of information, coupled with insights from the economics of information, defined a coherent, mainstream theoretical framework for the study of GIs. This model allowed insights into quality and reputation (the positive network effect of increases in club membership would lead to increased quality, followed by congestion as numbers increased, leading to a decrease in quality); membership and terroir delimitation (maximizing club profits implied a higher level of membership and lower quality than maximizing firm profits); state subsidization (if a GI good has a low market price, there is either insufficient state investment or dilution of the GI due to oversupply and cheap membership); competition (decentralized firms' decisions on output under perfect competition can be similar to centralized club decisions in a cartel context); terroir delimitation (terroirs larger under state-driven than firm-driven processes); and the welfare analysis of "clawback" to GI protection of generic terms.

(f) Fan Cui, Associate Professor, University of International Business and Economics, Beijing

On genetic resources, Prof. Fan queried whether TRIPS was pro-development, and called for a careful debate, given that TRIPS standards were more interesting to developed countries. The right of cross-retaliation in WTO dispute settlement, however, changed this picture in an interesting way. He reviewed the economic literature of genetic-resource markets. The largest exporters of animals and plants were generally developing countries; however, this was not covered by TRIPS. The markets for products derived from genetic resources are potentially in the range of US\$ 500-800 billion; the benefit of genetic enhancement was considerable (for example, a 52 per cent rate of return for wheat breeding programmes in developing countries, global welfare increases for genetic improvements in major crops, and indirect benefits such as improvement of farmers' health); the costs and benefits of ex situ conservation of genetic resources was a positive



balance (the marginal costs of adding new accessions to the ex situ gene banks were low, although estimation of benefits may not be feasible). Overall, final product markets were huge, and genetic enhancement was highly valued. The value of ex situ conservation was less clear, but still likely to be of significant net benefit. For in situ genetic resources, searching costs were high, less frequently used, and their benefits were uncertain. Prior information would improve feasibility of market-based conservation. Sufficient benefits were not reaching developing countries and indigenous peoples; market incentives were not big enough. Extending TRIPS to the field of genetic resources and traditional knowledge may make a more balanced framework. The minimum standard (e.g. disclosure requirements) for the protection of genetic resources and traditional knowledge must be cautiously decided, and unreasonably high standards for other IP rights (IPRs) may need adjustment. IPR protection was important, but trade liberalization and facilitation may matter more for development and growth. TRIPS could apply wider coverage, lower standards, with fair competition and free trade in technology: maybe another GATT (technology) or a GATK (knowledge) or a GATI (ideas)?

(g) Pedro Roffe, Senior Fellow, ICTSD

In concluding, Mr Roffe noted that the economic role of IP was not clear in the early stages of the multilateral system; this question was not completely settled during the TRIPS negotiations. Key developing countries, such as India, had taken the view that the “trade-related aspects” of IP were its anticompetitive aspects. TRIPS articulates the public policy purposes of the IP system, and the need for a balanced approach. An important trade issue, which is neutral in TRIPS, is that of parallel trade or exhaustion. There is evidence that more IP spurs innovation and competition – some argue that greater IP protection can be linked to stagnant sectors, such as pharmaceutical, textiles, chemicals; declining competitiveness can lead some sectors to close ranks; trade relatedness should not hide the fundamentals. The US Supreme Court described the purpose of patents as not being to create fortunes for their owners, but to promote the progress of science and the useful arts. Is there evidence for benefits from longer copyright terms, non-discrimination between technologies, or the explosion of patent protection in new technological fields? Patents do create markets in patents and the legal infrastructure. IP policy debate is still divisive. The social and economic welfare expectations of the system need to be addressed, and there is no justification for ever-stronger IP protection and draconian penalties for IP violation.

How do the General Agreement on Trade in Services (GATS) rules relate to countries' post-crisis financial regulatory policies?

Moderator

Mr Wamkele Mene, Economic Counsellor, Permanent Mission of South Africa to the WTO

Speakers

Dr Pedro Paez, President of the Technical Commission on New Regional Financial Architecture; member of the UN Commission of Experts on Reforms of the International Monetary and Financial System

Mr Abdel-Hamid Mamdouh, Director of Trade in Services, WTO

Ms Ellen Gould, Research Associate, Canadian Centre for Policy Alternatives

Ms Lori Wallach, Director, Public Citizen's Global Trade Watch

Organized by

Our World Is Not For Sale (OWINFS)

Report written by

Sarah Edelman, Public Citizen's Global Trade Watch division

Wednesday, 15 September 2010
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Abstract

This session explored questions emerging among governments, non-governmental organizations (NGOs) and trade and finance experts about the interaction between financial regulation and WTO financial services rules.

1. Panel introduction

Wamkele Mene, Economic Counsellor, Permanent Mission of South Africa to the WTO

This was the week's most interesting topic: it will occupy our attention for some time to come because of its significance in economic history and the governance of global finance. It is a multidimensional topic, covering globalization of finance via liberalization of capital accounts, the relationship between GATS and other bodies dealing with financial regulation, and how the WTO can respond within its mandate to trade in financial services and the crisis that emerged therein. There have been two significant responses at the WTO: Argentina, Ecuador and India co-sponsored a paper in the General Council seeking analysis of the trade impact of stimulus packages; and Ecuador, India, Argentina and South Africa proposed a paper in the Committee on Trade in Financial Services (CTFS) to examine the same, as well as the interaction between GATS provisions that may be pertinent to regulatory questions. The relevant GATS provisions and prudential carve-out were also noted: the latter is attracting debate amongst trade lawyers about whether it provides countries the ability to protect financial markets when they foresee dangers.

2. Presentations by the panellists

(a) Abdel-Hamid Mamdouh, Director of Trade in Services Division, WTO

The GATS is the first multilateral agreement to establish rules for the progressive liberalization of services trade. It is the international community's response to the transformation of the service sector in modern economies. In the past, various services were mainly government functions performed by public utilities. In modern economies, services became commercial products exchanged in competitive markets.

Under the GATS, liberalization does not mean deregulation. On the contrary, the liberalization process requires a more rigorous approach towards strong regulation. Liberalization has a very specific and precise meaning under the GATS: granting market access and national treatment to foreign services and service suppliers. A full market-access commitment requires a member to refrain from using the six types of limitations specified in Article XVI. A full national-treatment commitment under Article XVII requires a member to treat foreign and national services and service suppliers equally. Members need not take full commitments on either. They specify in their schedule limitations which they wish to maintain. Members also have obligations to allow international payments and transfers for services. However, on capital transfers, the scope of such obligations is very limited, confined only to two situations. The first, in the case of mode 1 (cross-border supply) commitments on the supply of a financial service of which the capital transfer is an essential part, both incoming and outgoing transfers should be allowed. For the



second, with respect to commitments on mode 3 (commercial presence), only incoming capital transfers should be allowed. These obligations are waived in situations of balance of payments problems or an International Monetary Fund (IMF)-requested restriction.

The GATS Annex on Financial Services also contains an important exception provision to accommodate prudential regulations. A member may deviate from its commitments under the GATS and impose measures of any type, as long as this is for prudential reasons (protecting depositors, investors, policy-holders or the stability and integrity of the financial system). This considerable regulatory freedom is qualified only by the requirement that such measures not be used as a means to avoid obligations and commitments under the GATS. This provision has never been invoked in a dispute and therefore no jurisprudence exists. However, it can be argued that it is less stringent than the “necessity test” found in Article XIV (General Exceptions).

The Secretariat background note on financial services (S/C/W/212) discusses the root causes of the financial crisis, which include many factors, such as macroeconomic, monetary, financial and risk management factors, weaknesses in underwriting standards, as well as regulatory and supervision shortcomings. The analyses in the paper, as well as studies by other organizations, clearly conclude that GATS commitments on financial services are not among these causes.

(b) Lori Wallach, Director, Public Citizen's Global Trade Watch division

Financial experts and government officials have begun asking whether WTO rules lock in pre-crisis policies and deregulation philosophies, and/or limit policy space needed for reregulation. For instance, the United Nations (UN) Stiglitz Commission concluded that trade pacts can “restrict a country's ability to revise its financial regulatory regime in not only domestic prudential but crucially capital accounts regulation. Obviously they have to be altered in light of what we've learned in the crisis. In particular, there's concern that existing agreements under the WTO financial services agreement might, were they fully enforced, impede countries from revising their regulatory structures in ways that promote growth stability and equity”.

GATS rules conflate liberalization and deregulation. GATS market access rules *absolutely* ban countries' use of categories of non-discriminatory regulatory tools with respect to committed sectors. This includes policies related to legal form, firms' size, and firewalls. Secretary Geithner wrote a 1990 memo as a junior Treasury staffer describing these threats. The United States scheduled a commitment to reform Glass-Steagall to meet GATS rules. GATS market access rules also forbid bans of risky financial services in committed sectors. The Antigua gambling case explicitly deemed regulatory bans to be GATS-forbidden zero quota quantitative restrictions.

GATS Articles XI, XII and XVI (footnote 8) forbid capital management techniques used by many nations to safeguard against bubbles and surges. Requiring free capital movement may make sense in some sectors, but application to the financial sector can result in countries' loss of control over current and capital accounts. The limited short-term exceptions relate only to balance of payments crises. GATS Article VI poses additional limits on licensing, technical standards and qualifications standards.

Until now, there have been no GATS challenges, because the trend was toward deregulation. Now, a recent European Commission (EC) staff report identified the financial transaction tax as a possible violation of European Union (EU) GATS commitments; think-

tank analyses claim Germany's ban on speculative short-selling violates GATS; Panama has issued GATS threats to anti-tax-haven measures; and more.

The prudential exception does not safeguard countries' regulation from GATS constraints. The second sentence cancels out its usefulness, with expansive limiting language not found in any other WTO exception provisions' anti-abuse clauses, which all contain the same boilerplate. Many other versions of prudential language were proposed during GATS talks that offered better safeguards, and numerous law review articles note the problem and suggest clarification.

Ms Wallach concluded by referring participants to six Public Citizen papers on these issues. She also argued that, post-crisis, the Doha Round should "do no further harm". As a political or policy matter, it is unimaginable that *new* limitations on domestic regulation would be included in the Doha Round (i.e. those being negotiated in the Working Party on Domestic Regulation (WPDR) or the accountancy regulation disciplines). A review of existing GATS language is needed to identify what must be fixed (or at least clarified) to provide countries with the policy space needed to re-regulate.

(c) Pedro Páez, Chair of the Ecuadoran Presidential Technical Commission on New Regional Financial Architecture

Unlike the post-war decades, financial crises are now normal: over the past 35 years, the IMF has identified 267 financial crises. Most relate to neoliberal policies, capital account liberalization, financial deregulation and openness of trade accounts. This type of globalization is based on the transnationalization of finance and financialization of transnational firms. It has no historical precedent: one can find this level of openness and planetary integration, but never at today's intensity. Globalized financial markets largely determine trade and global market prices, which determine conditions of life and production – even for people who produce primarily for the local markets, but are directly impacted by intermediation, arbitrage and substitution effects. It is critical to focus on the crisis' real-life effects in terms of employment, poverty and the extreme vulnerability for segments of the population and for entire countries.

There are various UN interventions that state current WTO rules could be obstacles to financial re-regulation, including policies related to capital transfers and prudential measures. Explicit action should be taken at the WTO to pre-empt future interpretations of key articles in the GATS text (e.g. Articles XVI(2) and XI) that go against the need for economic stability.

As any governmental official could say, when a country is facing a financial crisis, every second counts. This happened in Ecuador, Argentina, Greece, etc. Governments face real limitations in their responses to crises due to WTO, bilateral investment treaties (BIT) and free trade agreement (FTA) commitments. GATS Articles XI and XII preclude limits on capital flows and refer the final word to the IMF. And, under those circumstances, a government cannot openly ask for this type of permission, because it would worsen speculative attacks.

Other dangers include Northern-headquartered banks operating in the South, which can create deeper exposure to the risky "creative accounting" practices that fostered and still foster the global financial crisis. Additional WTO disciplines on accountancy regulation could make it even more difficult to detect such opaqueness.



Instead of contributing to the widening of asymmetric conditions, the WTO and other multilateral institutions should provide new rules for a safer economic environment, like universal bans of short-selling and credit default swaps related to the food and energy markets in order to avoid harm for the world's most vulnerable people.

(d) Ellen Gould, Research Associate, Canadian Centre for Policy Alternatives

The GATS financial services negotiations in general and the domestic regulation negotiations in particular threaten to increase the likelihood of another, more global, financial crisis. Canada is pointed to as a country that escaped the financial crisis largely unscathed with all of its banks intact, yet this was because Canada kept key policy tools – ones that it had to make limitations for in its GATS commitments.

Canada did not fully liberalize its banking sector, and a 2009 IMF study pointed to the lack of external competition as a key reason why Canadian banks survived the crisis intact. Canada took a significant limitation for banking under GATS in order to protect the non-discriminatory Canadian policy that does not allow foreign or domestic institutions to own more than 10 per cent of a Canadian bank. This policy was critical in safeguarding the Canadian banking sector from the financial crisis. Had Canada not listed this policy as a limitation in its GATS schedule, it would have needed to eliminate it. So the GATS does require deregulation where countries make commitments.

On the other hand, in the sectors where Canada did fully liberalize – mortgage insurance and asset-backed commercial paper – Canada saw extreme problems. In 2006, Canada allowed AIG (American International Group, Inc.) and other US firms into the Canadian insurance market to introduce more competition. This liberalization conformed with Canada's GATS commitments. The result was almost instantaneous – looser lending standards. Within a year, more than half of Canadians taking out mortgages leapt into high-risk mortgages.

This sudden spike in risky lending prompted expressions of concern from the Bank of Canada. The Canadian government responded to the problem by increasing lending standards. Had the draft disciplines in the WPDR been adopted, Canada would have been in trouble. Under the “pre-established” provision, one interpretation is that one is not allowed to introduce any new regulation on firms that are already licensed. Another provision – “relevance” – also might have come into play, since avoiding a housing bubble is not “relevant” to consumers of mortgage-lending services.

Ms Gould closed by reflecting back on the larger picture of one of the biggest financial crises in history, and the wake-up call it has provided. Part of the cause of the financial crisis was people not giving enough consideration to the worst-case scenarios. She urged the Secretariat and the chair of WPDR to look at the worst-case scenarios – the potential challenges that could arise, financial crisis – and to ask themselves, do we want to limit the ability to regulate any more?

3. Questions and comments by the audience

Ivano Casello, EU mission to the WTO – The EC paper that Ms Wallach cited does not show that there is a split between the EC and member countries on the financial

transaction tax (FTT) being a possible GATS violation, and the French and German advocacy for such a policy.

Ahmad Mukhtar, Pakistan Mission and Chair of the WPDR – Mr Mukhtar advocated for the need for strong WPDR disciplines, noting that service providers seeking access to a market need some regulatory certainty. He disputed whether the current WDPR text could cause the regulatory limitations referenced.

Myriam Vander Stichele, Center for Research on Multinational Corporations: Would the prudential exception also cover financial measures outside of the definition of “prudential” (provided in the Annex 2 text) that are important to overall social stability, such as banning food commodity derivatives that have led to price spikes and hunger?

Sanya Reid Smith, Third World Network: The Secretariat raises important questions about the prudential exception's reach in its paper S/C/W/72, which casts doubt on whether the United States Glass-Steagall firewall would have been protected under the prudential exception. The same issues raised about GATS are at play under the FTAs and economic partnership agreements (EPAs) under negotiation with over a hundred developing countries.



Abstract

The objective of this session was to scrutinize two sets of climate-mitigation policies that are already in use and consequently could have an impact on trade, namely climate standards and labelling, and the allocation of emission allowances free of charge. In the absence of an international climate-change agreement, these measures are being imposed at a national level to prevent carbon leakage and loss of competitiveness in carbon-intensive industries. Climate standards and labelling are widely used in developed countries and there are concerns that this will impose barriers on imports from developing countries. These concerns, and ways to tackle them, were discussed during the session. As regards the allocation of free emission allowances, the session mainly addressed aspects of WTO law in relation to these instruments.

The session focused on the following issues:

- What does the landscape of climate standards and labels look like?
- What are the opportunities and challenges associated with climate standards for developing countries?
- What are the benefits of involving developing countries in the setting of international climate standards?
- Could free distribution of emission allowances be considered a subsidy in legal terms?
- If judged to be a subsidy, would it be a justified subsidy according to WTO rules?

Beyond border carbon adjustment measures: Standards, labelling and the issue of emission allowances

Moderator

Mr Rafael Benke, Senior Executive Corporate Affairs and Sustainability, Vale International

Speakers

Introductory remarks: Mr Ricardo Meléndez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)

Mr Alexander Kasterine, Senior Adviser in Trade, Biodiversity and Climate Change, International Trade Centre (UNCTAD/WTO)

Ms Anna Sabelström, Legal Adviser and Project Coordinator, Climate Standards, Swedish National Board of Trade

Mr Lucas Saronga, Minister Plenipotentiary, Permanent Mission of Tanzania to the WTO

Dr Luca Rubini, Lecturer in Law, Deputy-Director of the Institute of European Law, Birmingham Law School

Mr Flávio Soares Damico, Minister Counsellor, Permanent Mission of Brazil to the WTO

Organized by

International Centre for Trade and Sustainable Development (ICTSD) and the Swedish National Board of Trade

Report written by

Kristina Olofsson, Senior Adviser at the Swedish National Board of Trade

Wednesday, 15 September 2010
16.15-18.15

1. Presentations by the panellists

(a) *Ricardo Meléndez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)*

The session was opened by Mr Meléndez-Ortiz, who noted that it is easier to talk about climate-mitigation measures in the WTO today than it was a couple of years ago, when the topic was very foreign to the WTO system. In the absence of a global climate agreement, countries try to deal with climate mitigation, carbon leakage and competitiveness concerns by taking action at the national level. Consequently, different tools have been discussed to address these concerns. In particular, there has been an intensive international debate on border carbon adjustments, although such instruments have never been applied in practice. The purpose of this session was to move beyond discussions about border carbon adjustments, and to take a closer look at other types of policy response to climate change – namely the allocation of emission allowances free of charge to carbon-intensive industries, and carbon-footprint standards and labelling. The session moderator, Mr Benke, welcomed the approach taken by the ICTSD and the Swedish National Board of Trade for the session in addressing issues of particular relevance for the private sector and consumers.

(b) *Alexander Kasterine, Senior Adviser in Trade, Biodiversity and Climate Change, International Trade Centre (ITC)*

Mr Kasterine introduced the first part of the session with an overview of existing carbon footprint standards and labelling. As the United Nations Framework Convention on Climate Change (UNFCCC) summit in Copenhagen last year did not produce a multilateral agreement, there is, with some minor exceptions, a general lack of carbon pricing in the world. As a result, companies and consumers have taken action, and at the national level governments and retailers have adopted schemes on carbon accounting. So far, trade, particularly in food, is mainly affected by the different standards used by retailers. Existing schemes have certain similarities – for instance, they are based on life-cycle analyses – but they also have differences, which is a problem for exporters.

Mr Kasterine highlighted several problems for small/medium enterprises in developing countries in relation to climate standards, such as the costs involved in compliance and certification and in complying with the various different schemes used by retailers. There is also a bias in the methodology of carbon accounting set in developed countries that could create disadvantages for them. In particular, the manner of estimating emissions from land-use change (the 1990 baseline) can penalize developing countries, and where a producer does not have access to specific data – which is likely in developing countries – worst-case scenario data will be used.

As the schemes use different methodologies and communicate the carbon footprint differently, it is hard for consumers to interpret the information. A more serious problem, from an efficiency point of view, is that many consumers tend to be free riders, and, consequently, private initiatives are likely to fail to produce a good result as regards climate mitigation.



(c) Anna Sabelström, Legal Adviser and Project Coordinator, Climate Standards, Swedish National Board of Trade

Ms Sabelström agreed that there are many challenges associated with climate standards, but also emphasized that climate-related international standards can contribute to mitigating climate change as they increase trade in climate-friendly goods, contribute to technology transfer and promote good practices. For this to happen, it is important to harmonize the methodology used to measure carbon emissions globally. However, it is crucial that developing countries are actively involved in the setting of international standards to give these standards global relevance and to make them an effective tool to mitigate climate change. Also, standards must be set in an inclusive manner if they are to facilitate trade from developing countries.

Ms Sabelström then gave an overview of the Swedish government's Climate Standards Project launched in 2008. Among the activities within this project are the "pre-seminars" arranged before International Organization for Standardization (ISO) meetings, for the purpose of assisting developing countries to prepare for the meetings. A concrete result of the project is the extensive comments provided by developing countries on the draft carbon-footprint standard ISO 14067. Ms Sabelström concluded that, if correctly designed and set in an inclusive manner, international climate standards could be a complementary approach for the global community in its efforts to mitigate climate change.

(d) Lucas Saronga, Minister Plenipotentiary, Permanent Mission of Tanzania to the WTO

Mr Saronga emphasized that developing countries must participate effectively if international standards are to be of global relevance. However, producers in developing countries also need technical assistance to comply with international or other climate standards. Mr Saronga stressed that developed countries have to share the burden of the compliance costs for climate standards, as these countries are often the final consumers of the products.

(e) Luca Rubini, Lecturer in Law, Deputy-Director of the Institute of European Law, Birmingham Law School

The second part of the session was launched by Dr Rubini, who discussed whether, within a cap-and-trade system, free allocation of emission allowances to industries sensitive to carbon leakage could be considered a subsidy in legal terms. However, such legal assessment cannot be done without considering the underlying policy goals and their economic implications. For instance, a country's attempt to prevent carbon leakage on purely environmental grounds would have different legal implications than if it tried to protect the competitiveness of its heavy industry. Whether a possible subsidy does or does not have an impact on trade is also decisive in the legal assessment.

Dr Rubini pointed out that, in designing a cap-and-trade system, a few problems could prevent market forces from producing the desired result as regards reductions in carbon emissions. The first problem is how to get the price of emissions right, and closely related to this is the issue of the amount of allowances to distribute. The pioneer cap-and-trade system which is available for analysis, the European Union's Emission Trading System (EU-ETS), has experienced substantial difficulties in this field. A second problem occurs when allowances are given for free and the cost of emissions becomes too low, a problem that could be addressed by emission-allowance auctioning. The third problem arises

when caps are not adjusted in response to changes in the economy, as, for instance, during the recent crisis, when production fell. The price of the allowance would determine the opportunity cost of the industry being granted the free allowance, and would thus represent the government revenue foregone, hence its relevance for the legal analysis.

With regard to the legal analysis, Dr Rubini pointed out that, in addition to the WTO Subsidies and Countervailing Measures (SCM) Agreement, the Anti-dumping Agreement and the General Agreement on Trade in Services (GATS) could be relevant when analysing the allocation of free emission allowances. In his presentation, however, he focused on the SCM Agreement. In analysing whether the allocations in question could fall under the legal definition of a subsidy as laid down in the SCM Agreement, Dr Rubini suggested that it would be easy to determine the presence of a “benefit”, and that the crucial issue therefore would be to determine whether a “financial contribution of the government” has taken place in the form of either a) a transfer of funds, b) a government revenue foregone/not collected, or c) a provision of goods or services. Dr Rubini deemed it most likely that the allocation of free emission allowances would be regarded as the provision of a good or service (option c). The second issue that Dr Rubini discussed was a possible justification of the allocations made, assuming they do indeed constitute a subsidy. Dr Rubini argued that, even if the green-light subsidies of the SCM Agreement had not expired, it is debatable whether the allocations in question would have been non-actionable.

The possibility of General Agreement on Tariffs and Trade (GATT) Article XX applying across agreements was discussed. However, even if Article XX is applicable, there is no justification tailored to measures that address competitiveness concerns. Finally, Dr Rubini briefly shared some of his thoughts on hypothetical principles that would be more apt to serve as justifications than the existing ones in WTO law. In a hypothetical revision of WTO law, one such principle would be to include a justification that could encourage the design of efficient cap-and-trade systems.

2. Questions and comments by the audience

During the discussions, various methodological questions regarding carbon accounting were raised. The fairness of the 1990 baseline for land-use change could be questioned but was there a better practice? No speaker could answer this delicate question, but Mr Kasterine observed that the land-use change issue illustrates that standards are awkward instruments for dealing with climate change.

Concerns were also raised about the fairness of imposing climate standards on African producers, as Africa is responsible for a minor share of global carbon emissions. However, fulfilment of climate or sustainability standards has become a market requirement. The benefits for developing countries of participating in international standard-setting were questioned to some extent during the discussion. Ms Sabelström pointed out that a major benefit of participating actively in standard-setting – besides influencing the content of the international standard – is that this can contribute to building quality infrastructure and an effective dialogue between domestic stakeholders.

With regard to Dr Rubini’s presentation, Minister Flavio Soares Damico, from the Brazilian Mission, was of the view that the SCM Agreement is not an *a priori* obstacle to legitimate climate-mitigation measures. However, if measures are implemented in a protectionist

manner they will be challenged by trading partners. Mr Damico rejected the idea of introducing new justifications for exceptions in GATT Article XX, as this would upset the balance of rights and obligations between members, most likely to the detriment of developing countries.

In the following discussion it was argued that it is very unlikely that other members would challenge the distribution of free emission allowances, as many members have a potential interest in using this instrument themselves. Another issue raised was whether the legal analysis would be different if prevention of carbon leakage was the sole purpose of allocating free emission allowances. Dr Rubini confirmed that the legal analysis would be easier for an environmental measure, as environmental concerns, unlike competitiveness concerns, could justify a subsidy. It was also debated whether or not GATT Article XX is available as a defence for subsidies inconsistent with the SCM Agreement. There is legal practice (*China – Periodicals*) suggesting that Article XX could be applicable, but this is far from certain. According to Dr Rubini, the Appellate Body would sooner or later have to give more definitive guidance on this issue. Mr Damico considered it unfortunate that we do not have clear WTO rules for climate measures, as this will prove negative for investments in climate mitigation. The second round of questions and answers concluded the session.

Policy coherence between trade, global food security and poverty reduction goals

Moderator

Mr Peter Gaemelke, Farmer leader, Denmark, and Treasurer of IFAP

Speakers

Dr Josef Schmidhuber, Senior Economist, FAO Liaison Office, Geneva

Mr François Riegert, Permanent Representative of France to the WTO

Mr Flávio S. Damico, Minister Counsellor, Permanent Mission of Brazil to the WTO

Mr Enrique Domínguez Lucero, Agriculture Counsellor, Permanent Mission of Mexico to the WTO

Mr Ravi Bangar, Deputy Permanent Representative to the Permanent Mission of India to the WTO

Organized by

International Federation of Agricultural Producers (IFAP)

Report written by

Mr David King, Secretary General of the International Federation of Agricultural Producers

Thursday, 16 September 2010
11.15-13.15

Abstract

The International Federation of Agricultural Producers (IFAP) hosted this session at the WTO Public Forum which brought together farmer leaders from across the world, representation from the United Nations Food and Agriculture Organization (FAO), and representatives to the World Trade Organization from France, Brazil, Mexico and India.

The aim of the session was to help the WTO to promote coherence at the international level to achieve global food security and sustainable development. The following questions were addressed:

1. What agricultural support systems put farmers in a position to achieve economic, social and environmental sustainability, while maintaining an open trading system?
2. How can the WTO trading system incorporate conventions of United Nations organizations and treaty bodies to achieve food-security and poverty-reduction goals?
3. How can the G8 and G20 summits better contribute to global policy coherence while promoting the growth of a more equitable world trading system?



1. Presentations by the panellists

(a) *Peter Gaemelke, Farm leader, Denmark, and Treasurer of IFAP*

Mr Gaemelke explained that IFAP represents farmers worldwide. It brings together 112 national farmers' organizations from over 80 countries: the majority represents smallholder producers.

For farmers, coherence among the policy decisions taken in the United Nations System and the Bretton Woods System – including the World Trade Organization – as well as in the G8/G20 summits is critical to the world's ability to achieve global food security and sustainable development.

Trade rules are important in achieving global economic development, including increased food security and a reduction in poverty. But food security cannot be achieved if trade rules dominate legal decisions and treaties taken in the United Nations and other global forums. The current balance leaves developing countries in a fragile situation.

(b) *Josef Schmidhuber, Senior Economist, FAO Liaison Office, Geneva*

Dr Schmidhuber asked the question “Is there enough policy space in the WTO Agreement on Agriculture to achieve food security, and is it being used efficiently?”

He noted that there has been a significant change in the market environment, and asked if the WTO was prepared for that. From a situation of low prices, global surpluses and high levels of support and protection to agriculture, the world has moved to a situation of high prices, increased price volatility and global scarcity – and a rise in world hunger.

Dr Schmidhuber said that export restrictions were a particular problem. The recent Russian price embargo drove up world wheat prices by 20 per cent. Food import subsidies are another problem in the new price environment; these act like negative variable levies to try to keep domestic prices constant. Article 12 of the WTO Agreement on Agriculture sets out regulations to deal with this, but they are very weak. There is nothing on the table of the Doha Round to strengthen Article 12.

(c) *François Riegert, Permanent Representative of France to the WTO*

Mr Riegert said that governments are committed to achieving world food security, as witnessed by the declaration of the G8 in Aquila and the declaration of the World Food Summit. There is an international consensus on four actions to achieve this, namely:

- supporting investment in agriculture in developing countries;
- supporting research and development in order to improve agricultural production;
- encouraging land-use governance which is responsible and sustainable, providing a framework in which investments should be made;
- addressing the issue of the volatility of agricultural and primary product markets. When France takes over as Chairman of the G20, it will propose to open a discussion on the functioning of these markets.

Mr Riegert then asked how the WTO was dealing with this food-security agenda. There are several articles in the WTO which could be built upon. These include: Article XXIV and Article XXXVIII on international commodity agreements, Article 12 of the GATT on export restrictions, and Annex 2 of the Agreement on Agriculture on holding food security stocks.

Mr Riegert concluded his remarks by calling for greater coherence among the different institutions involved in the global governance of agriculture. He said that there existed informal forums to manage international crises in other sectors. He asked if there should be an international Agricultural Stability Forum.

(d) Flávio S. Damico, Minister Counsellor, Permanent Mission of Brazil to the WTO

Mr Damico said that domestic consultative procedures were necessary so that "the left hand of government knows what the right hand is doing", for example during a fiscal crisis when financial concerns overrule social concerns.

Mr Damico said that developing countries have ample scope under the Agreement on Agriculture to implement food-security policies; the problem was to constrain the negative impact of developed-country policies. Article 12 needs to be strengthened to better discipline export restrictions.

Concerning the three questions put to the panel, Mr Damico said:

1. Green box mechanisms were the soundest policies, e.g. environmental payments, insurance systems, etc.
2. Most UN resolutions are not binding, but Brazil did introduce a constitutional amendment to include the notion of food security. It is rare that WTO members resort to challenges of such measures.
3. In terms of coherence at the international level, the G8 and G20 summits are valuable for providing the "impulse" for change, the WTO provides the "framework" for it, and the specialized institutions like FAO provide the "technical support".

(e) Enrique Domínguez Lucero, Agriculture Counsellor, Permanent Mission of Mexico to the WTO

Mr Domínguez Lucero first recalled his long association with IFAP as a farmer leader. Mexico joined the WTO at the opening of the Uruguay Round of negotiations in 1986. The resulting Marrakesh Agreement of 1994 caused severe social problems for the 22 per cent of Mexico's population that live in villages of less than 2,000 people, as import duties were reduced. Many people went to the United States and remittances became the second source of income after oil. The only true investment went to the well-established and efficient exporting sector.

Mr Domínguez Lucero said that the WTO Doha Round had to deliver greater food security for the people of Mexico through local production.

(f) *Ravi Bangar, Deputy Permanent Representative to the Permanent Mission of India to the WTO*

Mr Bangar explained what India was trying to achieve under its national development plan. He said that while the Indian economy was growing at an annual rate of 8.8 per cent, growth in agriculture was only 0.2 per cent. Growth needs to be inclusive, and measures are in place to boost agricultural growth to 4 per cent by 2012, creating 46 million jobs, half of which would be for women. India is releasing food stocks to reduce high food prices. Self-sufficiency in cereals is critical for India's 1 billion people.

In the WTO negotiations, Mr Bangar said that India's stand is that the welfare of its 600 million subsistence farmers must be protected.

2. Questions and comments by the audience

The many questions and comments by the audience brought out the following areas of concern:

1. The rise in the level of prices for food and for farm inputs, and increases in price volatility.
2. "Land grabs" in developing countries.
3. The link between national policy objectives and the WTO agenda.

Price volatility

Price volatility for food hurts consumers in all countries, and price volatility for farm inputs such as fertilizer hurts farmers. Is this due to speculation on international commodity markets, to the market power of the few multinational companies in the agri-food sector, or to other factors? Is the French idea of an Agricultural Stability Forum the answer?

Mr Damico (Brazil) thought that the main driver for rising food prices was an increase in effective demand by a growing population with growing incomes. There is a huge bias against agriculture in many developing countries; governments try to keep the prices of agricultural products as low as possible for the benefit of urban consumers.

Mr Bangar (India) recalled, in relation to the idea of an Agricultural Stability Fund, that the experience with international commodity funds in the past was not a happy one.

Dr Schmidhuber (FAO) confirmed the bias against agriculture in national policies and said that over-valued exchange rates are a tax on local agricultural production. Fertilizer prices rose twice as fast as food prices due to a lack of capacity, he said. Fertilizer subsidies just shift fertilizers around to marginal farmers and away from commercial farmers if supplies cannot be expanded.

Mr Domínguez Lucero (Mexico) said that steep rises in input prices make it very difficult for developing countries to achieve food security. More attention should be given to the effects of industrial concentration in the supply and distribution sectors.

Mr Riegert (France) said that the question of market volatility should be approached in a pragmatic way. Futures markets are part of the solution, and they need speculators who are prepared to take the risks. However, as is the case for financial markets, primary commodity markets need regulation.

Land grabs

Is there enough land available to ensure food security? A lot of good agricultural land is being lost through urbanization. Investment in land is important to increase food capacity and keep prices at reasonable levels. However, "land grabs" affect other countries' food security and should be prevented. Are "land grabs" compatible with good governance? Are genetically modified organisms (GMOs) needed to achieve world food security?

Dr Schmidhuber (FAO) said that there is no land shortage in the world. Of the 4.2 billion hectares of cropland in the world, only 1.6 billion hectares are being farmed. To feed 9 billion people in 2050, only 1.65 billion hectares of cropland is needed since 80 per cent of production increases are coming from higher yields. He said that carbon has been accumulating over decades in land, and so one should not bring more land into production than necessary.

Mr Damico (Brazil) said that most of the available agricultural land is in the developing countries. However, land grabs by countries overseas put pressure on the ability of the countries affected to feed their own inhabitants. Countries will have to face the discussion on recombinant DNA in order to meet production targets.

Mr Domínguez Lucero (Mexico) said that Mexico's land reform was too aggressive; land is now being reconsolidated in order to be able to have farms that are competitive.

National agricultural policy objectives and the WTO agenda

The comment was made that when there was a financial crisis, governments took measures that did not conform to WTO rules. Food security concerns are a domestic issue and WTO rules should make space for support programmes that are "home-grown". Food security should be seen as a development objective and, as such, is relevant to the Doha Development Agenda (DDA).

Dr Schmidhuber (FAO) said that the policy space in the WTO Agreement on Agriculture is not constraining for developing countries. The problem is that national governments are not filling that space with increased investment and aid for agriculture so that poor farmers are able to share in the benefits of freer trade.

Mr Bangar (India) said that the focus of his country's national development goals was to reduce poverty in agriculture in the 1960s; today it is to ensure that the agricultural sector gets the investment it needs. Creating rural employment is important in fighting poverty and hunger.

Mr Domínguez Lucero (Mexico) agreed with Mr Bangar. Agricultural development creates wealth and employment and is the key to poverty reduction. You do not help rural areas by importing cheap food.



3. Conclusions and way forward

In his concluding remarks, the Moderator, Mr Gaemelke, said that the session had focused on a lot of key problems but had not come to any firm conclusions. However, a lot of information had been provided on food security concerns; the importance of education; research and technology (including on GMOs); land availability; water; and infrastructure.



Multilateral Environmental Agreements (MEAs) and the WTO

Moderator

Mr Mark Halle, Executive Director, Trade and Investment, IISD-Europe

Speakers

Professor Petros Mavroidis, Columbia Law School and University of Neuchâtel

Ms Marceil Yeater, Chief, Legal Affairs and Trade Policy Support, CITES Secretariat

Mr Benjamin Simmons, Head, Trade, Policy and Planning Unit, Economics and Trade Branch, United Nations Environment Programme

Organized by

Environment and Trade in a World of Interdependence (ENTWINED)

Report written by

Mark Sanctuary and Henrik Horn

Thursday, 16 September 2010
11.15-13.15

Abstract

This session examined the position of multilateral environmental agreements (MEAs) in the WTO legal order and sought to advance current thinking on the issue.

A natural starting point is the WTO law on MEAs. There is no explicit legislation concerning the relationship between MEAs and the WTO, but there is some (albeit meagre) case law to be taken into account. A second relevant angle from which to approach the issue is to examine WTO law dealing with other *inter se* agreements (agreements between a subset of WTO members). For instance, the various WTO agreements set out conditions for preferential trading agreements, mutual recognition agreements, and plurilateral agreements. A fourth form of agreement – sector-specific agreements – has emerged in practice. An examination of the conditions under which such *inter se* agreements are accepted in WTO law could shed light on the appropriate legal treatment of MEAs in the WTO.

The session also took a broader view, and considered the fundamental question of why separate MEAs are concluded, that is, why does the WTO contract not include concerns which come under the aegis of MEAs? The panel reviewed the appropriate role of MEAs in the WTO as seen from each of these perspectives.



1. Presentations by the panellists

(a) *Petros Mavroidis, Columbia Law School and University of Neuchâtel*

The session started with a presentation by Prof. Mavroidis, based on research currently under way with his co-author, Henrik Horn, on the relationship between MEAs and the WTO.

Prof. Mavroidis discussed the interaction between rules of the environmental regime and rules of the trade regime and how these two systems accommodate, and could potentially conflict with, each other. Prof. Mavroidis emphasized the lack of clarity from both a legislative and a judicial point of view regarding the role of MEAs in the WTO. He noted that, on the legislative side, there is still no specific regime on the issue, although the Committee on Trade and Environment has been discussing it – with a fairly positive attitude but no concrete results – since 1996.

On the judicial side however, MEAs have been discussed under the *US-Shrimp* case, where the Appellate Body adopted what seemed a rather “friendly attitude”, and the *EC-Biotech* case, where a WTO panel saw limitations in the role of MEAs that have not been ratified by all WTO members.

Prof. Mavroidis also argued that the GATT Article III compatibility of environmental policies depends on whether the measures are discriminatory, and as such should not be affected by whether the policies are supported by agreements outside the WTO.

(b) *Benjamin Simmons, Head, Trade, Policy and Planning Unit, Economics and Trade Branch, United Nations Environment Programme*

Mr Simmons argued that, without MEAs, the WTO would not be the same today. He agreed with Prof. Mavroidis that one of the important differences between these two bodies of law is that GATT is a negative integration agreement, whereas some MEAs are positive integration agreements. The differing nature of these two types of agreement implies that it would be difficult, though not entirely impossible, for the WTO not to respect undertakings in MEAs.

MEAs hence effectively remedy the weakness of the negative integration mode of the trade regime, addressing negative externalities created by trade. The awareness among WTO members of the role MEAs play is one reason why MEAs have not yet been challenged under the WTO.

(c) *Marceil Yeater, Chief, Legal Affairs and Trade Policy Support, CITES Secretariat*

The third panellist, Ms Yeater, used CITES (Convention on International Trade in Endangered Species) as an example of how an MEA can regulate trade to ensure sustainability of the resources in a legally binding way, and thus guide WTO adjudicators. Conversely, MEAs such as the CITES can benefit from the experiences of the WTO.

There is a close relationship between the CITES and the WTO, and experience to date supports the notion that CITES is GATT-consistent, even though there is a lack of clarity between the two agreements. However there are many features of CITES that dovetail

with the WTO framework. For example, CITES rules are based on scientific evidence, and in this way CITES functions as a relevant international standard-setting body, recognized – and indeed relied upon – by the WTO. CITES has a Dispute Resolution Body, although this has never been used.

(d) Mark Halle, Executive Director, Trade and Investment, IISD-Europe

The moderator, Mr Halle, noted that bodies of law are not static and that the CITES, for example, as well as the WTO, are continually evolving and adapting to the legal space in which they exist. This evolution implies that MEAs and WTO are making room for each other. He also suggested that CITES does not give rise to formal WTO disputes, because it is considered, rightly or wrongly, that CITES regulates negligible trade.

2. Questions and comments by the audience

- It was suggested that complications in the WTO/MEA interface arise from a lack of clarity with regard to key terms e.g. the “multilateral” aspect of MEAs, and the meaning of “specific” as opposed to non-specific trade obligations referred to in paragraph 31.1 of the Doha Declaration.
- With regard to the ability of the CITES to prohibit trade in endangered species taking place through e-commerce, it was emphasized that e-commerce should follow the same rules, given that it is simply another means of doing commerce, and it was also suggested that WTO experience with e-commerce might be useful for CITES.
- A suggestion was put forward that it might be useful to split MEAs into two groups according to whether they are trade-related or not, for the purpose of treating the two groups differently in the WTO context.
- One potential situation that could create conflict between an MEA and the WTO would be the importance from a trade point of view of whether an MEA was universally accepted, or the outcome of controversy, perhaps reflected a majority voting decision.
- The possibility that a process of formation of preferential trade agreements with strong environmental chapters would spearhead an eventual inclusion of such provisions in a future WTO agreement.

It was asked whether references to an MEA should provide guidelines for a WTO adjudicating body on how to interpret GATT Art. XX.

- Would there be a difference, in the eyes of WTO law, between a unilateral environmental policy and a multilateral environmental policy? Should one carry more weight than the other? What sort of outcome should one expect if this issue was evaluated by the Dispute Settlement Body (DSB) of the WTO?

3. Conclusions and way forward

In his conclusions, the moderator noted that little legislative progress has been achieved concerning the relationship between the two bodies of law. Furthermore, the mandate of the Doha round of negotiations in this context is such that any agreement could only represent a step backwards.

The MEA/WTO relationship has, however, been addressed in WTO dispute settlement proceedings. While the Appellate Body (AB) has still not set a clear precedent, it has given MEAs considerable legitimacy. The AB has also managed to find common-sense solutions in cases where the two bodies of law have been contradictory. Hence, while MEAs have their problems, these have not been created by the WTO.

One possible strategy may therefore be to simply leave matters as they are, since there are currently no severe conflicts in this field. It is also possible that the longer-term solution is to seek to disengage, rather than integrate, the two bodies of law. Important questions on this issue remain unresolved, and continuing research in this area will hopefully contribute to a clearer understanding of the potential issues.

Small farmers and global food-security governance: Waiting for coherence

Moderator

Mr Stephen Hale, Head of Office, Deputy Campaign and Advocacy Director, Oxfam International

Speakers

Mr François Riegert, Permanent Representative of France to the WTO

Mr Richard Kozul-Wright, Director, Unit on Economic Cooperation and Integration among Developing Countries, United Nations Conference on Trade and Development (UNCTAD)

Mr Paulo Estivallet de Mesquita, Deputy Permanent Representative, Permanent Mission of Brazil to the WTO

Mr Jeremy Hobbs, Executive Director, Oxfam International

Organized by

Oxfam International

Report written by

Ms Isabel M. Mazzei, Senior Policy Advisor, Oxfam International

Thursday, 16 September 2010
14.15-16.15

Abstract

The food scarcity and price hike of 2007-08 renewed the focus of the international community on food-security issues. However, food insecurity is not something new for billions of people in developing countries. Despite improvements in productivity, hunger and malnutrition remain widespread and the number of food-insecure persons has increased over the years. The food crisis in 2007-08 has brought the issue to the fore and should be used as an opportunity to effectively deal with the scourge of food insecurity.

According to the United Nations Food and Agriculture Organization (FAO), between 1990-92 and 2004-6, the proportion of hungry people in the world had been reduced by only 2 per cent (from 16 to 14 per cent). In absolute terms, this actually represents an increase from 845 million to 873 million people. In 2008 and 2009, for the first time, the proportion of hungry people increased up to 15 per cent, while the absolute figure reached an historic high of more than one billion people. FAO projects a reduction in this number, to 925 million in 2010, which can likely be explained by a good global food supply and lower prices. However, this still represents 13.5 per cent of the global population, and leaves the world dangerously off-track for reaching the Millennium Development Goal (MDG) target to halve hunger by 2015.

The aim of this session was to discuss the benefits of a coherent system of global governance for food security. This governance should be achieved through one common interest: eradicating hunger worldwide.

Despite numerous attempts made by intergovernmental fora to tackle hunger, this fact demonstrates that the right policies have not yet been introduced and that there is a need for radical change. A global food-security governance system appears to be an efficient solution to reduce hunger and malnutrition worldwide.



1. Presentations by the panellists

Panellists participating in this session and representing various interests were Mr François Riegert, Permanent Representative of France to the WTO; Mr Richard Kozul-Wright, Director, Unit on Economic Cooperation and Integration among Developing Countries, UNCTAD; Mr Pablo Estivallet de Mesquita, Deputy Permanent Representative of Brazil to the WTO and Mr Jeremy Hobbs, Executive Director, Oxfam International.

More than ninety participants from different country missions to the WTO, inter-governmental organizations, non-governmental organizations (NGOs), and other institutions took part in the deliberations. The session provided an array of topics for discussion but mainly revolved around the issue of how to tackle food security and eradicate hunger.

2. Conclusions and way forward

In conclusion, the following important points were noted:

- The role small farmers play in the production of food.
- Trends which have impacted food security, such as the incorporation of agriculture into global trading, the use of financial instruments in commodity markets, and the neglect of rural development.
- The need to invest seriously in the agriculture sector.
- Misguided trade policies have undermined small farmers' capacity to produce, and have resulted in poor people in developing countries being extremely vulnerable to food insecurity.
- The need to establish equilibrium between trade policy and food security, especially as export subsidies and lack of market access are two of the main problems for developing countries.
- Strategies to tackle food insecurity should focus on three elements: investment in the agricultural sector; research and development; and coherence and coordination in global governance. A global partnership with strong political leadership is needed to tackle hunger. Thus, the Committee of World Food Security within FAO should be the political pillar of the Global Partnership on Agriculture, Food Security and Nutrition.
- In order to increase development, developing countries need: public investment; better technology; increased policy space; and mobilization of resources which refocus aid for trade on productivity and encourage South-South cooperation to strengthen productivity in agriculture. The best way to tackle hunger is by increasing agricultural productivity.

WTO rules and public health in developing countries: The “Achilles’ heel” or a pillar for development?

Moderator

Mr Kwame Owino, Programme Coordinator, Institute of Economic Affairs, Kenya

Speakers

Ms Miriam W. Oiro Omolo, Trade Programme Officer, Trade Information Programme, Institute of Economic Affairs, Kenya

Mr Atul Kaushik, Director, CUTS Geneva Resource Centre; Adviser – Projects, CUTS International, India

Mr Augusto Makiesse Kinkela, Third Secretary, Permanent Mission of Angola to the UN in Geneva

Organized by

Institute of Economic Affairs, Kenya

Report written by

Ms Miriam W. Oiro Omolo, Trade Programme Officer, Institute of Economic Affairs, Kenya

Thursday, 16 September 2010
16.30-18.30

Abstract

Most developing countries have set their public health development goals in line with the millennium development goals, although achieving these goals has remained elusive for most countries of Sub-Saharan Africa (SSA). These challenges largely arise due to poor policy coordination and implementation. Most SSA countries that face challenges in achieving their public health development goals are also members of the WTO. Development forms the core of the agenda of the current Doha negotiations. This session focused on the WTO trading rules and how they impact on the public health development goals in African countries. The main objectives of the session were:

1. to establish the general public health development goals in Sub-Saharan Africa;
2. to establish the coherence/challenges of the WTO rules with the public health development goals;
3. to provide recommendations on the way forward.

The questions that were to be addressed in the session were:

1. Has the WTO's role contributed to achieving public health goals of developing countries in Africa?
2. What coherences or contradictions are there between WTO and public health development goals in African countries?
3. Have developing countries taken advantage of the opportunities presented by the WTO rules to achieve better public health?



1. Presentations by the panellists

(a) *Miriam Omolo, Trade Programme Officer, Trade Information Programme, Institute of Economic Affairs, Kenya*

Ms Omolo commenced by recounting the story of Achilles from the Greek mythology, where it was foretold that he would die in a battle from an arrow. His mother, Thetis, took him to the river Styx which was supposed to offer powers of invincibility and dipped his body into the water. But as Thetis had held Achilles by the heel, his heel was not washed over by the water. Achilles grew up to be a man of war, and survived many great battles. However, one day an arrow was shot at him in a battle and lodged in his heel. The myth says that Achilles was killed by this arrow. This story can be likened to SSA and its engagement in international trade under the World Trade Organization (WTO). Like Achilles, SSA has to deal with several battles, especially in creating functional health systems that can ensure its citizens receive quality medical care. Some of the challenges arising in achieving proper health systems are directly linked to the WTO rules.

She noted that every government is responsible for the careful management of its citizens' well-being. This means that, for a government, the people's health is a matter of national priority. Health policies should therefore cover both the provision and financing of health services by both private sector and the state. In this way a government will be able to establish health systems that serve the interests of the general public.

African governments have set up health systems in order to provide and improve the health status of their countries. SSA countries have faced several challenges in trying to achieve their health objectives, including: adequate service provision, proper health information systems, lack of access to essential medicines, healthcare human resources and inadequate healthcare financing. There are several WTO agreements which affect public health; the most important one that affects access to essential medicines is the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Millennium Development Goal (MDG) Gap Task Force Report of 2009 shows that the availability of essential selected medicines in developing countries was low – access in the public sector was 38.1 per cent while in the private sector it stood at 63.3 per cent – yet the majority of citizens used public health facilities for their healthcare.

She also outlined the common TRIPS flexibilities available to African countries:

1. Compulsory licensing: when a government allows someone else to produce the patented product or process without the consent of the patent owner.
2. Parallel imports: where products are marketed by the patent owner (or trademark- or copyright-owner, etc.) or with the patent owner's permission in one country and imported into another country without the approval of the patent owner.
3. Limiting the extent of test data protection: the test data submitted by companies can be used to approve subsequent applications for similar products which are normally generic in nature.

Sub-Saharan African countries have not taken much advantage of these flexibilities; Zimbabwe used compulsory licensing in 2002 for the procurement of antiretroviral

medicines. Similarly, Zambia and Mozambique used compulsory licensing in 2004 for production of antiretroviral medicines. No African country has used the test data protection flexibility. The gravity of this matter can be seen in the World Health Assembly of 2001, which noted that “the impact of international trade agreements on access to, or local manufacturing of, essential drugs and on the development of new drugs needs to be further evaluated”. With this background, it would be important to ask if the WTO rules are the “Achilles’ heel” or a pillar for development in the quest for quality healthcare in Africa.

(b) Atul Kaushik, Director, CUTS Geneva Resource Centre; Advisor - Projects, CUTS International, India

Mr Kaushik’s presentation began on the premise that the WTO’s interface with public health begins when trade impacts on public health. He noted that during a joint WTO-World Health Organization (WHO) and World Intellectual Property Organization (WIPO) symposium, the Director-General of WTO, Pascal Lamy, noted that there was a need to work together towards a stronger, broadly based and effective outcome, even though the negotiation process was entirely in the hands of WTO members. Therefore, domestic policy coherence and the correct interpretation of WTO rules in their implementation at the national level were important in determining their effect – particularly the protection of intellectual property rights and the flexibility available to member states to interpret and implement these rules.

Members that have used these flexibilities judiciously in implementing intellectual property rights through national legislation have benefited. India interpreted the criteria of patentability while considering the public health and interest, even though this was not defined in the TRIPS Agreement. This interpretation was meant to limit the patent monopoly, and while many multinational pharmaceutical companies are unsatisfied with that interpretation, the Indian courts accepted it in the public interest. The governments of countries where these multinationals are situated have refrained from bringing the issue to the WTO for interpretation, therefore flexibilities should be honoured. It should be recognized that flexibility to interpret rules does not in itself enable developing countries to effectively use them if the rules are flawed in the first place. This is true, for example, in the case of those developing countries that do not have adequate manufacturing capacities in the pharmaceutical sector. The solution to this problem is found in Paragraph 6 of the TRIPS Agreement, which was an amendment, and provided a mechanism to overcome rules relating to compulsory licensing of patents to ensure availability of affordable medicines to the needy in developing countries that do not yet have adequate manufacturing capacity for pharmaceuticals. In the seven years of availability of this additional flexibility, however, it has been used only once.

On international rule making, the East African Community (EAC) circulated the final draft of the EAC Regional Intellectual Property Policy on the utilization of public health related WTO-TRIPS flexibilities and the approximation of national intellectual property legislation for comments and consultations. It is undergoing national-level consultations to also harmonize it with the Draft EAC Anti-counterfeiting Bill, which will then be subjected to another wide stakeholder consultation process in November before being submitted to the EAC Council of Ministers of Health. This is the time for all stakeholders to input into the consultative process to ensure that the kind of judgment errors that necessitated the amendment of the TRIPS Agreement do not occur at the regional level. The ongoing negotiation for an Anti-Counterfeiting Agreement (ACTA) among ten countries and the European Union (EU) is another case in point, where both domestic and international policy coherence has become an issue. Although an enforcement agreement, the ACTA



text may have implications for public health and, in particular, ease of access to affordable medicines, if enforcement of the entire range of intellectual property rights, including patents, at borders is included in the final text.

(c) Augusto Makiesse Kinkela, Third Secretary, Permanent Mission of Angola to the UN in Geneva

Mr Makiesse highlighted three important points. First, he noted that many African countries did not assess the benefits of joining WTO and how they could use the rules to benefit from trade. Many African countries have attempted to use compulsory licensing in order to access essential medicines, however most investors insist on compliance with the TRIPS Agreement without the flexibilities. Due to pressure from investors, they have to comply with TRIPS without using any flexibilities, as was the case in Ghana. Furthermore, less than ten SSA countries have applied the TRIPS flexibilities. This is because most of these countries do not know how to use these flexibilities, and where they do, they face the problem of being reported to WIPO.

Secondly, technical assistance provided by international institutions has only focused on compliance with the TRIPS Agreement, this should change, however. Technical assistance facilities should also be used to examine how the flexibilities can benefit individual countries based on each country's assessment of needs.

Thirdly, there is limited infrastructural capacity that would encourage research on patents and flexibilities. This can be seen by the amount of resources allocated by African countries to research activities. As a result, SSA countries cannot take advantage of patents in the public domain to explore ways of developing new patents, as Asian countries such as India have done. There should be more investment in research in order to take advantage of such opportunities.

He concluded by noting that most African countries have a wealth of traditional knowledge associated with certain genetic resources that were used to heal different diseases. Traditional knowledge should therefore be used by SSA countries to deal with public health issues such as access to essential medicines.

2. Questions and comments by the audience

A participant from International Press Services (IPS) asked whether the removal of patents from border measures under ACTA would facilitate production of generic drugs and not hinder it. Mr Kaushik responded that the effect of removing patents from border measures under ACTA depended on a number of factors. If a good was in transit, confiscation of generic medicine would have a negative impact, however the availability of affordable medicines was not limited to the ease of shipment, but also depended on a wide array of other enforcement parameters which have been introduced to the ACTA and are TRIPS Plus.

A participant from the Permanent Mission of Brazil to the WTO noted that flexibilities were corroded by strategies such as regional agreements, TRIPS+ agreements and ACTA among others. Furthermore, the domestication of intellectual property laws by most African countries further corroded flexibilities since this was not necessary. This problem could be solved by turning flexibilities into mandatory exceptions and limitations in order

to protect public policy objectives. Mr Kaushik responded to the concerns of making limitations and exceptions mandatory; this implied that the right is removed altogether – i.e. not having the right or having flexibilities that limit rights to the extent that member countries exercise it within their national jurisdiction.

Mr Ranjit from the Permanent Mission of India to the WTO observed that the flexibilities are important because they allow developing countries some policy space to address key issues relating to development. However, the use of these flexibilities has been disheartening given the stigma attached the use of compulsory licensing. This is evidenced by the political outcry of the EU Trade Commissioner when Thailand used compulsory licensing in 2007; the watch list maintained under special 301 in the United States; the transit and patent provisions in ACTA; and the seizure of several shipments of generic drugs in the EU. All these are attempts to circumvent these flexibilities. Furthermore, the implementation of paragraph 6, which was meant to address WTO members with insufficient or no manufacturing capacities in the pharmaceutical industry, took three years to become operational and deliver HIV antiretroviral drugs to Rwanda. This paragraph was used once in seven years. It was intended to be an expeditious solution to the crisis in access to medicine for countries with insufficient or no manufacturing capacity, but experience shows that it has been neither expeditious nor a solution to public health needs. This is an opportunity for all to look at the obstacles to paragraph 6.

3. Conclusions and way forward

The WTO TRIPS Agreement has affected access to essential medicines in SSA countries; this challenge was remedied by amendment of the Agreement (Paragraph 6). However, the use of TRIPS flexibilities as a remedy has been hampered both by countries' inadequate capacity to interpret and undertake research in order to take advantage of the flexibilities, and by covert actions of developed countries, who insist that the TRIPS Agreement be implemented without flexibilities when they invest in developing countries. These factors have contributed to the low utilization of these flexibilities. It is important to ascertain why most SSA countries have not utilized existing flexibilities to their own benefit.



Abstract

Food insecurity and malnutrition have remained persistent challenges in many developing countries, and have been exacerbated by the recent global economic downturn and large swings in international food prices. This session explored the extent to which trade policy-makers and negotiators may be able to use concrete options to mitigate the impacts of short-term disruptions and enhance food security in the long term.

Panellists examined the complex factors that determine food security and discussed to what extent trade policy reforms, domestic policy-making and development aid can encourage investment in developing-country agriculture in order to enhance productivity and ensure that freer trade actually benefits the poor. Panellists commented that protectionism and self-sufficiency policies can be counterproductive to the goal of achieving food security. In the future, food security will continue to be a significant issue on the international agenda since the world will need to produce more food with fewer resources. Complex linkages between food security and other issues, such as the environment and energy, require careful consideration within both multilateral and domestic contexts.

What kind of trade policy framework is needed to support food-security goals?

Moderator

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

Speakers

Dr Prabhu Pingali, Deputy Director, Agricultural Development Division, Bill and Melinda Gates Foundation

Mr Eugenio Diaz-Bonilla, Executive Director for Argentina and Haiti, Inter-American Development Bank

H.E. Mr Roberto Azevedo, Permanent Representative of Brazil to the WTO and other economic organizations in Geneva

Mr Zhang Xiangchen, Deputy Permanent Representative, Permanent Mission of China to the WTO

Organized by

Agriculture and Commodities Division – WTO, International Centre for Trade and Sustainable Development (ICTSD) and Food and Agriculture Organization (FAO)

Report written by

Lee Ann Jackson, Counsellor, WTO

Thursday, 16 September 2010
16.30-18.30

1. Presentations by the panellists

(a) *Eugenio Diaz-Bonilla, Executive Director for Argentina and Haiti, Inter-American Development Bank*

Mr Diaz-Bonilla outlined his thoughts based on a forthcoming research report. He described the complexity of the issue, with trade being only one influence on food security. Trade itself has both direct and indirect impacts, including through influences on economic growth and government revenue. Food security is best considered at the household level, and varies considerably depending upon the circumstances of each household.

One of his main messages was that giving countries special treatment in trade agreements at the level of crops or countries will not address household food security. Instead, adequate policies and investments should be targeted to help the poor and vulnerable directly, rather than to protect and subsidize crops in general. He criticized the argument that developing countries need trade protectionism in agriculture because alternative policies such as investment are “too expensive” – protection is expensive for consumers because it raises prices, and protection can function as a tax which has the highest incidence on the poor. Protection also implies costs not only from a budgetary perspective, but also in terms of the difficulty of administering protection. Furthermore, protection affects the distribution of resources throughout the economy and has potentially negative spillover impacts on the vulnerable in unprotected sectors.

He emphasized that the Agreement on Agriculture rules, as they stand, provide ample flexibilities for developing countries and that even more flexibility will be achieved with the conclusion of the Doha negotiations. On the draft deal in the WTO agriculture negotiations, Mr Diaz-Bonilla said it still leaves developing countries plenty of room to apply the right policies – it does not constrain poorer countries' good policies, but nor does it constrain rich countries' bad policies of subsidies and protection which distort trade and hurt other countries.

Mr Diaz-Bonilla commented that, in the context of the Doha agricultural negotiations, the special safeguard mechanism (SSM) has been proposed as a tool that would allow developing countries to fend off import surges or price falls. He said the debate about whether this hurts other developing countries' exports misses the point. The main outcome of the SSM is increased prices in the protecting country's domestic market, he said. As such, while there are calls for having SSM as a safety net, this mechanism is unlikely to provide a solution for food security. In general, border protection functions as a regressive and mostly privately-collected tax on food: it has a larger negative incidence on poor consumers (who spend a greater percentage of their incomes on food) and is received mainly by bigger agricultural producers that have larger quantities of products to sell.

On the issue of what is a good agriculture policy for food security and poverty reduction, he recounted the different views of the role of agriculture in development. In one sense, agriculture policies are crucial because of the significant share of small-scale farming in gross domestic product (GDP) in low-income countries. Because the majority of the poor work in agriculture, there is a need to consider the multiplier effect that agriculture policies can have on development. On the other hand, in the context of urbanization of the rural poor, the choice of policies for food security and poverty reduction could be quite different.



(b) Prabhu Pingali, Deputy Director, Agricultural Development Division, Bill and Melinda Gates Foundation

Dr Pingali noted that, while food security has recently gained attention, it is a chronic issue. Recognizing this, the Bill and Melinda Gates Foundation has been working on the issue since 2000. He emphasized how smallholder agriculture is heterogeneous, and different types of small-scale farmers are affected differently. The Gates Foundation targets their interventions at three distinct categories of farmers: farmers living on less than 50 cents a day, farmers living on less than one dollar a day, and farmers living on one to two dollars a day.

The population of farmers living on less than one dollar a day typically live in rural, remote areas, where infrastructure is poor. These farmers are not very active in markets, since they produce food for their own consumption and are only net purchasers of food on the margins. Since price transmission is extremely low, trade liberalization does not necessarily reduce consumer prices for this group. Farmers living on less than 50 cents a day typically lack basic physical and human assets. Interventions targeting this group emphasize improving access to land, high-quality seeds and improved technology in order to raise productivity, and ensuring that intellectual property protection is not a constraint.

Farmers slightly above these levels are more active in markets, and need to reduce their transaction costs and improve productivity. Normally farmers in this category are able to adjust their different production in response to new opportunities. There is a lot of growth potential for this group, and thus the effects of trade reform are crucial. For these farmers, investments should focus on reducing transaction costs associated with integrating into the national market.

Dr Pingali stressed the importance of focusing on sustained public investment in agriculture, especially in research and development (R&D). In addition, efforts should emphasize supporting policy environments that provide incentives for smallholder production growth. Finally, Dr Pingali commented that, while agriculture and trade policy are intrinsically connected, there has been limited communication and coordination between the two fields. As a result, the two work in parallel instead of working together. Encouraging the adoption of trade policies that recognize poverty and the way trade can contribute to poverty reduction would contribute to efforts to ensure that agriculture can work as an engine for poverty reduction and food-security improvement.

(c) Roberto Azevedo, Permanent Representative of Brazil to the WTO and other economic organizations in Geneva

Ambassador Azevedo cautioned against falling into the trap of viewing food security simplistically, for example by aiming for self-sufficiency through protection. Food security is not just about food prices, but also relates to improved purchasing power for consumers. Advocating a sophisticated mix of policies, Ambassador Azevedo said closing borders is the shortest route to food insecurity, and that access to markets is a safety net that should not be ignored.

(d) Zhang Xiangchen, Deputy Permanent Representative, Permanent Mission of China to the WTO

Mr Zhang described agriculture as the most distorted sector in trade. China sees food security as a priority and he agreed with other speakers that trade is not the only

determinant. Despite the difficulties China will face in cutting its average agricultural tariffs from 15 per cent to the proposed 11 per cent, China does want the Doha Round of negotiations to end quickly in order to obtain a more stable and less distorted market, he said.

2. Questions and comments by the audience

Members from the audience questioned why biofuels and climate change had not been mentioned in the context of this discussion on food security. Ambassador Azevedo highlighted that the way that the issues of biofuels and food security interact differs according to individual country situations. In some cases domestic biofuel policies do not influence food-security outcomes. Panellists commented that a meaningful discussion of the relationship between climate change and food security requires very disaggregated data.

Replying to one question, Mr Diaz-Bonilla summarized “food security” as availability, access, stability, and adequate utilization. Food self-sufficiency could reduce food security by, for example, limiting the availability of affordable food. He commented that “food sovereignty” is more vaguely defined, but might imply a situation in which countries have policy space to achieve their food-security objectives.

3. Conclusions and way forward

Panellists concluded by noting that the overall impact of agricultural trade and trade policies on food security can vary significantly due to the complex economic linkages and heterogeneity of countries and households. Special and differential treatment for developing countries in trade negotiations defined at the national and/or crop levels may not encourage policies targeting poverty and hunger at the household/individual levels. Adequate policies for food security and poverty alleviation in developing countries go beyond trade issues. Many smallholder farmers remain only weakly integrated into domestic, regional and international markets, participants noted. However, if aid and investment do lead to productivity enhancements, trade policies may have a more significant impact on their food security and livelihoods in the future.



Abstract

The Preamble of the Marrakesh Agreement clearly defines "raising living standards, full employment" and "sustainable development" as the ultimate objectives of the World Trade Organization (WTO). These objectives go beyond the domain of trade *stricto sensu* and define the goals of the WTO as reaching into the field of international human rights law and social standards. However, the linkages between social and human rights standards (SHS) and trade are a sensitive issue. While some argue that trade can and should clearly be an important means to foster social justice, others insist on negative implications, such as economic stagnancy or "western" domination, when linking the two domains. The question of directly integrating social clauses in trade agreements has thus been a polemic issue for decades.

The Geneva Office of the Friedrich-Ebert-Stiftung (FES) and 3D → Trade – Human Rights – Equitable Economy, tackled the issue of "Coherence between WTO and other areas of global governance" by offering a human-rights centred approach to trade agreements. WTO Director-General, Pascal Lamy, in his opening speech of the WTO's Public Forum, defined "social demand" as a force shaping world trade primarily on the national level. The aim of this session was to identify how and to what extent the demand for social justice and human rights standards can have an impact on the international level, i.e. in multilateral and bilateral trade agreements.

Social standards and human rights clauses in trade agreements: Window dressing, hidden protectionism or furthering the cause?

Moderators

Mr Felix Kirchmeier, Senior Program Officer, Friedrich-Ebert-Stiftung (FES)
Geneva

Ms Violette Ruppanner, Director, 3D

Speakers

H.E. Ambassador Eduardo Muñoz Gómez,
Permanent Mission of Colombia to the
WTO

Mr John Clarke, Acting Head, Permanent
Delegation of the European Union to the
WTO

Mr Pradeep S. Mehta, Secretary General,
CUTS International

Ms Claudia Hofmann, Research Associate,
University of Kassel, Germany

Organized by

FES Geneva and 3D → Trade – Human
Rights – Equitable Economy (3D)

Report written by

Ms Hanna Krasmann, Intern, Friedrich-
Ebert-Stiftung – Geneva Office

Friday, 17 September 2010
09.00-11.00

1. Presentations by the panellists

The panellists, Claudia Hofmann, Research Associate at the University of Kassel, Germany, John Clarke, Chargé d'Affaires of the delegation of the European Union (EU), Pradeep S. Mehta, Secretary General of CUTS International and Eduardo Muñoz Gómez, Ambassador of the Permanent Mission of Colombia to the WTO, were invited to shed light on this long-debated topic.

(a) Claudia Hofmann, Research Associate, University of Kassel, Germany

That coherence in international law is not only desirable but an actual obligation of states, was the first point in the panel raised by Ms Hofmann. Of the 153 WTO members, 117 have ratified all eight International Labour Organization (ILO) core conventions, which seek to implement decent work conditions for all. However, only 31 per cent of all regional trade agreements contain this kind of social clause. Ms Hofmann furthermore outlined that, from a legal point of view, it would be possible to integrate social clauses in free trade agreements (FTAs), but states tend to remain reluctant as long as these clauses might hinder competitiveness.

All agreements call for a trade policy based on fair and transparent negotiations and the willingness to offer concessions. Ms Hofmann emphasized that labour chapters would have to be context-sensitive in each agreement, taking into account the capacities of the respective governments. A mechanism of burden sharing should be integrated either in the labour or in the commercial chapter of these agreements.

(b) John Clarke, Acting Head, Permanent Delegation of the European Union to the WTO

The next panellist, Mr Clarke, highlighted the fear of trade partners that drawing linkages between labour standards and trade would result in western protectionism. He also admitted that the respective countries' approaches to human rights would always be reflected in the social chapter of trade agreements. But the UN and the ILO would have to continue to play the main role in promoting human rights and labour standards. Furthermore, there would be two main factors pushing for integration of social clauses in trade agreements: civil society and legal obligations. Mr Clarke mentioned that the EU approach reflects these two pillars: under the pressure of national parliaments and bound by their constitutional treaties, the EU grants importance to SHS in the field of trade.

Illustrating the EU approach to social clauses in trade agreements, Mr Clarke highlighted that economic sanctions could not present a measure to enforce SHS since they often worsen the situation of the poorest segments of society. The EU would thus focus on the Generalized System of Preferences (GSP) and the incentive established in 2008 – the “GSP plus” – which aims to strengthen especially vulnerable countries by granting them duty-free export to the EU on condition that they ratify and effectively implement 27 specified UN international conventions in the broader fields of human rights (see <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/>).

(c) Pradeep S. Mehta, Secretary General, CUTS International

Mr Mehta held a slightly different point of view: a human-rights perspective in the completely different domain of trade would decisively be a bad idea. He highlighted



his opinion with the motto: "A job is better than no job". Social security could thus not be imposed on poor countries but would have to follow its "natural path", being closely associated with processes of economic growth and development.

Mr Mehta illustrated this point with the example of the abolishment of child labour, one of the main aims of labour chapters in trade agreements. Linking trade to SHS would lead to economic sanctions, which would erode the impact of poverty alleviation programmes and thus aggravate the sufferings caused by child labour. In this respect, the outcome of the labour chapter would run contrary to the initial goal and jeopardize social improvements in the long run. Mr Mehta thus made it clear that, without economic growth, there would be no possibility to foster human rights and labour standards in the poorest countries. These standards could only be improved through economic growth that would make state allocations, such as free meals and free education, feasible.

(d) Eduardo Muñoz Gómez, Ambassador, Permanent Mission of Colombia to the WTO

The fourth panellist, Ambassador Muñoz Gómez, strongly emphasized the fact that SHS in trade agreements cannot represent a panacea for ending human-rights violations. The ultimate means to implement social and labour standards would be strong public policies on the national level, thus returning to what Mr Lamy had said in the Public Forum's inaugural speech. Nonetheless, he partly contradicted Mr Mehta's argument that accused western countries of a hidden agenda policy; social clauses in trade agreements have become standard. In recent years, not only industrialized but also developing countries have asked for their integration.

The Colombian government would treat human rights and labour standards with the utmost importance, integrating them, *inter alia*, into trade agreements with the EU, the United States and Canada. Another aspect on which Ambassador Muñoz Gómez focused was the commitment to the environment in these same trade agreements, which would be of highest significance for a country, such as Colombia, with great biodiversity.

2. Questions and comments by the audience

The subsequent discussion with audience and panellists mainly focused on two points: (i) the question of sanctions and enforceability of social clauses in trade agreements; and (ii) the utility, especially for developing countries, of trade agreements imposing "western" social standards.

As the audience raised the question of legitimacy for economic sanctions, illustrated by the case of the USA-Guatemalan conflict in August this year, Ms Hofmann used the opportunity to strengthen her argument in favour of coherence in international law. For enforcement measures, such as economic sanctions, at this point it is not clear which is the competent body to impose those drastic methods. She underlined that, due to the lack of harmonization of standards, two different kinds of jurisprudence – namely that of the WTO and that of the ILO – would make it impossible to come to a clear and fair judgment in these cases. Thus, there is a strong need for institutional linkages between the two systems. Ambassador Muñoz Gómez and Mr Clarke highlighted measures, other than economic sanctions, that prevail in the respective EU/Colombian agreements. These

measures would focus primarily on a cooperative approach including, among others, direct consultation from government to government or expert panels.

The question of utility for developing countries to engage in trade agreements with economically more powerful industrialized countries was illustrated by two examples from the audience: the upcoming FTA between the EU and Colombia, as well as the case of the Economic Partnership Agreements (EPA) between the EU and African, Caribbean and Pacific countries (ACP). Regarding the first agreement, Ambassador Muñoz Gómez was confronted with an impact assessment study elaborated by the European Union. It predicts an increase of mining and horticulture activities which would eventually result in an internal conflict on land between indigenous people and the Colombian government. The Colombian Ambassador stated that raw material extraction in a country as rich in natural resources as Colombia is likely to increase in the future, irrespective of the EU Free Trade Agreement, due to a stronger global demand. The Free Trade Agreement between the EU and Colombia would mainly provide consolidation of already existing rules, e.g. for foreign investment. It would furthermore supply Colombia with certainty regarding the duty-free exports to the European Union from which they already benefit due to the “GSP plus” incentive.

During the discussion about EPA, the EU was confronted with the allegation of a “Hidden Agenda Policy”. The so-called “Non-Executive Clause” which arranges for the suspension of these partnerships in the case of human rights violations on either side, would in reality never be invoked by the developing countries, only by the EU. Mr Clarke countered that the political reasons for this clause might be polemic. But if the goal was to maximize the fostering of “other legitimate goals [than trade,] the possibility of suspending [the economic partnerships] should exist – as a last resort”.

Panellists and audience agreed on the importance of human rights and social standards. However, the linkage to trade will remain somewhat delicate. This fact should not hinder future connections between the domains but, on the contrary, lead to approaches that focus on positive incentives and context sensitivity.



Abstract

This session aimed to investigate the implications of the current trade negotiations at the World Trade Organization (WTO) and in free trade agreements (FTAs) between developed and developing countries on development and the ability to deal with climate change.

The first speaker looked at this in relation to the stronger intellectual property enforcement which is being sought by developed countries in a number of fora, including FTAs.

The second speaker examined other aspects of these FTAs and their likely impact on development, based on the past liberalization experience of developing countries.

The third speaker explained the climate change crisis, the historical responsibility of developed countries for this crisis, the ways in which climate change is an issue of economic development, the funding needed to deal with the crisis and the way in which trade agreement provisions can help or hinder efforts to deal with climate change.

Key issues in trade, development and climate change

Moderator

Ms Sanya Reid Smith, Legal Adviser and Senior Researcher, Third World Network

Speakers

Ms Aileen Kwa, Coordinator, Trade for Development Programme, South Centre

Mr Vicente Paolo Yu, Coordinator, Global Governance for Development Programme, South Centre

Ms Sanya Reid Smith, Legal Advisor and Senior Researcher, Third World Network

Organized by

Third World Network (TWN)

Report written by

Sanya Reid Smith, Legal Advisor and Senior Researcher, Third World Network

Friday, 17 September 2010
09.00-11.00



1. Presentations by the panellists

(a) *Sanya Reid Smith, Legal Advisor and Senior Researcher, Third World Network*

Ms Reid Smith gave the first presentation on the implications of current trends in stronger intellectual property enforcement (such as the "TRIPS+" provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)) and explained what intellectual property is.

Noting that stronger enforcement is only one TRIPS+ aspect, she listed 15 different fora where TRIPS+ enforcement is currently being pushed (see http://www.twinside.org.sg/title2/briefing_papers/No51.pdf). She noted that 25 per cent of the WTO's TRIPS Agreement is already devoted to setting out detailed rules on enforcement.

She then gave an example of the impact of TRIPS+ enforcement on development: the seizure of generic medicines that were in transit in Europe. These medicines were not patented in the source country (India) or the destination countries (e.g. Brazil and Africa), and were only in transit in ports and airports in Europe. Yet they were seized even though TRIPS does not require the checking and seizure of such products in transit. She noted that the European Union (EU) is trying export this law that requires the checking and seizure of exports and goods in transit to about 100 developing countries that it is negotiating free trade and economic partnership agreements with. She explained the three ways in which this makes it more difficult and expensive to obtain legitimate generic versions of technology such as medicines, environmental technology to deal with climate change, seeds for farmers, textbooks, etc.

She then clarified the difference between substandard and counterfeit medicines, as these are commonly confused. She noted that a World Health Organization study found that 18 out of 19 poor quality medicines did not infringe any intellectual property (IP). Therefore strengthening IP enforcement is not an effective way of catching poor quality medicines, and will in fact reduce access to legal, good quality and affordable generic medicines. Since 80 per cent of countries do not have a fully functioning government health agency that checks medicine quality, she said that strengthening these health agencies so they have the capacity to test medicines being sold to them to make sure they have the correct ingredients in the correct quantities would directly address 100 per cent of the poor quality medicine problem.

She noted that WTO negotiators in Geneva had obtained a number of exceptions to IP to ensure access to the more affordable generic versions of medicines. However, this was being undermined by the negotiation of TRIPS+ provisions (including enforcement) in a number of fora.



(b) Aileen Kwa, Coordinator, Trade for Development Programme, South Centre

Ms Kwa continued by explaining other ways in which the provisions in free trade agreements (FTAs) and economic partnership agreements (EPAs) between developed and developing countries can undermine the special and differential treatment that developing countries have obtained at the WTO.

She began by showing that poverty is still widespread in developing countries. She noted that African countries have suffered frequent agricultural import surges (for example chicken imports went from 1 per cent to 31 per cent of domestic consumption in five years) and that this has led to dramatic falls in local production and employment. In manufacturing, she explained that when countries such as Senegal lowered their tariffs, one third of manufacturing jobs were destroyed and deindustrialization occurred.

Despite this experience, the EU was still demanding that 80 per cent of Africa and the Pacific's tariffs be reduced to 0 per cent in the EPA negotiations, while the EU will continue its agricultural subsidies that have caused so many import surges in developing countries. Without infant industry tariff protection (since the EPAs require most manufacturing tariffs to be eliminated), developing countries will not be able to industrialize. She noted that export taxes, which are allowed by the WTO and were used in the past by EU countries to industrialize, are restricted in EPAs. She also highlighted the implications for development of the services liberalization and Singapore issues (competition, investment and government procurement) that the EU was demanding in EPAs.

She concluded that if EPAs are signed, many African and Pacific countries will be locked into continuing as primary commodity exporters. Ms Kwa pointed out that other markets could provide good alternatives to the EU as Sub-Saharan African exports to the rest of Africa were now equal to exports to the EU, and were growing faster than exports to the EU. Furthermore, more than three times more of East Africa's manufactured exports went to other African countries than went to the EU.

(c) Vicente Paolo Yu, Coordinator, Global Governance for Development Programme, South Centre

Mr Yu gave the final presentation on "Equity, environment, development and developing countries: Key issues relating to trade and climate change". This presentation explained the way in which trade agreements, including the EPAs and FTAs highlighted by Ms Kwa, can make it harder to deal with climate change. He began by explaining that a climate change agreement needs to address three aspects:

- the environmental imperative (to prevent the climate from changing to an extent that would have disastrous consequences);
- the developmental imperative (so that developing countries can eradicate poverty and provide jobs, etc.); and
- the equity imperative (the agreement must be based on an equitable sharing of responsibilities and rights towards meeting the environmental imperative, and be based on the understanding of the developing countries' development needs).

Mr Yu outlined the different scenarios for levels of emissions and the corresponding temperature rises they would cause, noting that the temperature rise would be even greater than average in regions such as Africa.

He showed that the effective concentration of greenhouse gases in the atmosphere determines the remaining “carbon budget” and the question becomes how that budget is shared between developed and developing countries.

He pointed out that developed countries had become industrialized by running up a global carbon debt at the expense of developing countries' share of the global atmospheric carbon space for development. (Developed countries have used 279 per cent more than their proportional share of possible emissions.)

Since levels of emissions tend to increase as countries develop, unless this link can be broken (for example through environmentally-friendly technology), the share of the remaining carbon budget allocated to developing countries through the current climate-change negotiations will determine the extent to which they can be industrialized and developed.

He noted that trade provisions which can affect climate-change measures include:

- Punitive tariffs or quantitative measures – to enforce climate action extra-territorially. These include proposed United States domestic legislation and EU member state pronouncements.
- Anti-dumping duties – based on the argument that lack of (or no) climate regulations allow for exports below market price.
- Countervailing measures – based on the argument that lack of or no climate regulations constitute a financial subsidy.
- Technical barriers to trade (TBTs) and product standards – to enforce new climate standards.
- IP – which can be a barrier to affordable and effective technology transfer and dissemination.
- Subsidies – to support production and/or research and development (R&D) on climate change related products.

He observed that there has also been a push at the WTO for developing countries to prematurely lower tariffs on products claimed to be environmentally/climate-friendly. This could reduce the competitiveness of developing countries' climate-related industries.

2. Questions and comments by the audience

In the discussion, the moderator noted that climate change was a serious economic and development issue because if emissions continue at the current rate and there is a 4° C temperature rise, the annual economic costs of climate change in Africa could be equivalent to 10 per cent of their gross domestic product

(GDP) (see <http://new.unep.org/climatechange/LinkClick.aspx?fileticket=-K3E-Ya4pQA%3D&tabid=241&language=en-US>). This would mean that 75 per cent of Nigeria's agricultural area would be threatened by a 1-metre sea rise. Adaptation (such as building dykes and relocating infrastructure – see <ftp://ftp.fao.org/docrep/fao/010/k2595e/k2595e00.pdf>) would cost 5 to 10 per cent of GDP (and failure to adapt could cause losses of up to 14 per cent of GDP). However, Ms Kwa had shown that in FTAs (and in WTO negotiations), developing countries are asked to significantly reduce their tariffs. International Monetary Fund economists note that middle-income countries are only likely to recover 45-60 per cent of lost tariff revenue from other taxation sources and low-income countries are, at best, likely to recover 30 per cent or less of lost tariff revenue from other taxation sources.¹ They note that a value-added tax is not proven to make up for the lost revenue from lowering tariffs. Some developing countries are very dependent on tariffs for their government revenue; for example, Kiribati and Vanuatu raise over 80 per cent of their revenue from tariffs.

Ms Reid Smith also noted that 77 per cent of climate-related technology patents were held by the EU, the United States and Japan, and these countries were asking in their FTAs for TRIPS+ protection that would mean more technology is patented for longer.

A number of questions were raised by the audience, including who will fund the necessary climate-change measures. In response, Mr Yu gave further information about the cost of dealing with climate change: the Manila floods in 2009 due to one typhoon cost about 1 per cent of the Philippines' GDP. The cost of rehabilitating the infrastructure in Manila alone from that one typhoon is estimated at US\$ 50 billion, almost the entire national budget of the Philippines for a year. He noted that this is unaffordable for countries like the Philippines with per-capita income of about US\$ 1,000 per year. Developed countries are offering US\$ 30 billion for 133 developing countries for climate change, and this is not new money; it is aid taken from other projects. In comparison, a recent study has estimated that developing countries need US\$ 500 billion per year just to adapt to climate change. He noted that, since developed countries had the historic responsibility for causing climate change, and the obligation under the UN Framework Convention on Climate Change, they should pay for climate change. Therefore the G77 and China have asked that 1.5 per cent of developed countries' GDP/year be channelled to developing countries to deal with climate change, although even this would not be enough.

In response to a question about the effectiveness of services market access for workers in trade agreements, panellists explained that these agreements do not provide unskilled developing country workers with market access, nor do they provide visas or effective recognition of the qualifications needed to practice in a professional capacity, or the citizenship required in some European countries in order to be able to work.

¹ "Tax Revenue and (or?) Trade Liberalization", Baunsgaard and Keen, June 2005, IMF Working Paper, WP/05/112, <http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf>.

Trade, the environment and 9 billion hungry people: Coordinating the efforts of the WTO and other international organizations to ensure food security and to mitigate the impact of climate change

Moderator

Mr Thaddeus Burns, Senior Counsel,
Intellectual Property and Trade,
General Electric

Speakers

Hon. Professor Ruth Oniang'o, PhD,
Founder, Rural Outreach Program (ROP);
Editor-in-Chief, African Journal of Food,
Agriculture, Nutrition and Development
(AJFAND)

Ms Gretchen Stanton, Senior Counsellor,
Agriculture and Commodities Division,
WTO

Mr Anatole Krattiger, Director, Global
Challenges Division, World Intellectual
Property Organization (WIPO)

Organized by

CropLife International

Report written by

Ms Michelle Orfei, Manager, Intellectual
Property and Trade, CropLife International

Friday, 17 September 2010
11.15-13.15

Abstract

CropLife International assembled a diverse and experienced panel to address the question of whether, and how, the WTO can promote policy coherence with the rules of other inter-governmental bodies, particularly those related to food security, climate change and environmental protection, so that the critical tools of trade and innovation are best utilized in response to these global challenges. Specifically, the panellists addressed:

- the effect environmental agreements have had on food security;
- the interconnectivity of international trade and the protection of the environment; and
- the importance of intergovernmental organization (IGO) coordination and partnerships in a climate-change response.



1. Presentations by the panellists

(a) *Ruth Oniang'o, Founder, Rural Outreach Program (ROP); Editor-in-Chief, African Journal of Food, Agriculture, Nutrition and Development (AJFAND)*

Prof. Oniang'o spoke of the following important items:

Importance of good governance at all levels. Good governance is important at all levels, national and international, to ensure that decisions by policy makers solve the problems that are a priority for people at the grass-root level. It is important that policy makers increase their commitment to finding appropriate strategies, and communicate, as well as coordinate, their strategies with all relevant stakeholders, at all levels, nationally and internationally.

Reliance on scientific information in policy-making. Policy makers should rely more on scientific information in negotiating and forming policies related to food security and environmental protection. In that respect, there is a role for scientists to inform and educate policy makers. There is similar scope for more training and capacity building of national scientists in developing countries.

Creating incentives for young farmer "entrepreneurs" in developing countries. Most small-holding farmers in Africa are women, who are struggling to feed their families and to make ends meet. They are largely left to themselves, with little or no information about farming, and no cooperatives which could provide relevant information or training. It is important to take steps to encourage young men to return to farming and to become "farmer entrepreneurs".

The African continent is well-endowed with natural resources. Formerly a net exporter of food, it has now become a net importer of food aid. For Africa to be able to feed itself, as well as the rest of the world, there has to be political goodwill and a realization at the grass-root level of what globalization means and the opportunities it offers. Education, training, and sharing of experiences is essential to help farmer entrepreneurs conform with international standards (packaging requirements, labelling, etc.) which will allow them to export their products worldwide.

(b) *Gretchen Stanton, Senior Counsellor, Agriculture and Commodities Division, World Trade Organization (WTO)*

Ms Stanton spoke of the importance of trade in the advancement of the protection of the environment.

She stated that it is our political and moral imperative to ensure that people have enough to eat and can access healthy food. Practical and safe solutions need to be found to fulfil that goal. In 40 years, predictions are that the world population will increase by 33 per cent. With changes in temperature and rainfall, today's breadbaskets will find it difficult to sustain current levels of productivity.

Good agricultural production requires a good environment. It is therefore important to ensure that the environment is protected for agriculture. However, as long as millions

of people are starving and driven to slash-and-burn and similar practices, environmental protection will be a losing battle.

The so-called “trade versus environment” debate is a false dichotomy. Trade is one of the tools, not an end goal, which is used to reach objectives such as hunger reduction and environmental protection. For example, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) recognizes the sovereign right of governments to put measures in place to protect human, animal and plant life from certain risks, including any type of food contaminant. SPS measures thus relate directly to protection of the environment and of biodiversity.

Environmental protection and food security are challenges that require close collaboration among officials from various disciplines. Yet these challenges also require a well-coordinated and consistent approach at the national level, before being addressed at the international level.

(c) Anatole Krattiger, Director, Global Challenges Division, World Intellectual Property Organization (WIPO)

Mr Krattiger spoke of the critical nature of IGO coordination and partnerships in addressing global challenges such as climate change.

There are three main goals in the current climate-change negotiations: (i) to accelerate the transfer and diffusion of technologies (adaptation as well as mitigation technologies); (ii) to incentivize the invention and development of new technologies; and (iii) to adapt new technologies to developing countries' needs.

Public goods are not opposed to private goods. Rather, the global supply chain – from the production to the consumption of a technology – involves many elements, both of a “public” and of a “private” nature. For example, the research and development (R&D) of a new technology often has a public-sector component, where R&D undertaken by a university is licensed to private companies for further development and, ultimately, is marketed for profit or for humanitarian use. It is the way these new technologies are made available to the public which is decisive.

Climate change presents an incredible opportunity for the public and private sectors to work together in the development of new technologies. Climate change is a challenge that has the potential to act as a catalyzing force, allowing us to turn a problem into an opportunity. In that respect, intellectual property is one of the tools that ensures access to and transfer of technologies, and provides incentives for the innovation of new technologies.

2. Questions and comments by the audience

A representative of the Namibian government stressed the importance of trade in the global supply chain. The importance of open, non-protectionist trade in ensuring food security was also discussed.

3. Conclusions and way forward

Four points were highlighted in conclusion:

1. The challenges of climate change and food security require better-coordinated policies nationally and internationally.
2. The farming sector plays a key role in contributing to food security and availability. It is important to empower farmers, and to provide incentives to young people to return to farming and become "farmer entrepreneurs".
3. Trade is an important tool that contributes towards protecting biodiversity and to sustaining the production of food to feed 9 billion people in the future.
4. Climate change presents an opportunity for the public and private sectors to work together in the development of new technologies. In that respect, intellectual property is one of the tools that ensures access to and transfer of technologies, and provides incentives for the innovation of new technologies.

Coherence and incoherence of the international trade regime: Who profits from it? Can we change anything? How?

Moderator

Mr Bernard Colas, LL.D., Partner, Colas Moreira Kazandjian Zikovsky

Speakers

Professor Olivier de Schutter, Université de Louvain, United Nations Special Rapporteur on the Right to Food

Professor Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO

Mr Johanne Brodeur, Partner, Brodeur Hotte and Associates

Organized by

International Law Association, Canadian Branch

Report written by

Mr Bernard Colas, Vice-President, International Law Association, Canadian Branch, Partner, Colas Moreira Kazandjian Zikovsky, LLP

Friday, 17 September 2010
14.15-16.15

Abstract

The forces governing world trade are not confined to the WTO. To maintain its pace and its legitimacy and to ensure the opening up of markets, the international trade regime has to find ways to enhance its capacity to take into account human rights and the rights of migrants, labour and environmental law, and the redistribution of benefits.

This session addressed this concern in order to identify and comment on the various practical ways to ensure the coherence of the trade regime with international rules in the above-mentioned areas. The session discussed means to improve the development and linkage of these rules with WTO law and/or to ensure that they are reflected in the rights and obligations of the WTO Agreements, as well as the coordination mechanisms between international institutions and at the state level. The session also evoked the use of impact assessments conducted in certain sectors, for example in the environmental, social and economic areas, as well as possible recourse to judicial and administrative mechanisms.

This session also coincided with the launch of the book *Legal analysis: Improving the coherence of international standards: Recognizing agricultural and food specificity to respect human rights*, published by Carswell and Bruylant and co-written by Mr Brodeur and Mr Colas.



1. Presentations by the panellists

(a) *Olivier de Schutter, Professor, Université de Louvain, United Nations Special Rapporteur on the Right to Food*

The question of coherence is not a fiction. Millions of people are suffering from hunger, and many of them are farmers that have been affected by structural adjustment programmes and the opening of their markets in countries that were not ready for it. Having very little political influence, they have limited influence on trade policies and on trade negotiations and all too often concessions are made that favour the more powerful economic interests or the urban populations, which are the support that governments often depend on for their stability.

It is vital that the compatibility between human rights obligations and commitments under trade regimes be examined prior to the conclusion of these negotiations. This is particularly the case with respect to commitments under the WTO, since the possibility of trade sanctions being imposed on states that do not comply with these commitments, under the Dispute Settlement Understanding (DSU), implies that, if they find themselves obliged to choose between complying with their human rights obligations and their obligations under WTO rules, states will often be tempted to sacrifice the former and prioritize the latter. However, assessing trade agreements' potential impacts on human rights is difficult: human rights require for their realization a certain "policy space", as well as resources. Therefore, a purely legal analysis of the respective texts is insufficient to identify the risk of tension between the two sets of commitments.

Were a state to invoke its human rights obligations in the framework of a dispute arising under the WTO rules, the arbitral panel or the Appellate Body would have to take into account the human rights obligations of the state: that is implied by Article 3.2 of the DSU, as well as by Article 31(3) c) of the Vienna Convention on the Law of Treaties; it has also been affirmed by the Appellate Body in 1996, stating that the WTO rules could not be examined in "clinical isolation" from general international law. However, this safeguard remains insufficient. It does not answer the risk of states being chilled from adopting certain regulations that might be found incompatible with their WTO obligations, where the precise scope of the commitments is unclear and open to interpretation. Moreover, if the panel or Appellate Body rule on human rights issues in order to assess the claim by states that they are not going beyond their human rights obligations by adopting certain measures that are attacked for being incompatible with the WTO disciplines, it may create specific problems.

(b) *Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO, Assistant Professor, University of Geneva*

In international law, all norms are equal – except *jus cogens* and Article 103 of the United Nations Charter. Trade norms are NOT superior to human rights norms, nor to environmental and social norms. But states – for whatever reasons – decided to give to trade norms very powerful mechanisms to settle their disputes relating to trade norms, and they did not create similar enforcement mechanisms to settle human right norms or social norms. So if a state violates a WTO norm, this violation is presented before the WTO and can trigger a very powerful and efficient dispute mechanism. There is no such mechanism for human rights. But this does not mean that human rights norms are legally less important than trade norms. Moreover, this does not mean that states can violate

human rights norms or that they can create conflicts between trade norms and human rights norms.

States are supposed to respect in good faith all their international obligations. They should avoid provoking conflicts between their international commitments. It is important that no conflicts or even contradictions be maintained between the respect of human rights and the respect of WTO obligations. Also, it is possible for states to adopt national policies that reconcile human rights and trade commitments. The WTO currently contains flexibilities that can be invoked by a state to set aside some of its basic WTO obligations in order to give priority to fundamental human rights, as long as such actions do not restrict trade more than is necessary and as long as such states are coherent and consistent.

Ideally, there should be a supreme authority that could help states in operating their actions in multiple treaties and forums so as to ensure that no conflicts are maintained. But no such authority exists. The UN system does not have any “conflict-avoiding mechanism” and no entity can tell a state “you are creating conflicts between these two treaties, change this and that” unless those states agree on the intervention of the International Court of Justice (ICJ). Yet legal systems and treaties do not exist in clinical isolation and some cross-references are possible. For instance, Prof. Marceau believes that the International Labour Organization (ILO) 2008 Social Justice Declaration could be invoked by a WTO state in a dispute concerning the interpretation and application of General Agreement on Tariffs and Trade (GATT) Article XX flexibilities for measures necessary to protect public morals, as an example of international action for the protection of public morals.

The WTO also contains some provisions that attempt to reduce the occurrence of such conflicts between treaties. As an example, there are the provisions of the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements, which confirm that, if a national regulation complies with an existing international standard adopted in another specialized forum, that national regulation – even if it restricts trade – will be presumed WTO-consistent. This is an important deference that the WTO legal system gives to another system in order to avoid conflicts. Another example is the clear statement in the WTO Preamble that trade rules should be adopted coherently with sustainable development. Sustainable development has three main components: trade/economic/development; environmental; and social dimensions. Some of those dimensions are better articulated and have been made operational in the WTO, notably the development and environmental dimensions of sustainable development. This thus reduces the occurrence of conflicts. If human rights and social considerations have not been made operational in the WTO treaty, this does not mean that WTO states are allowed to violate their international social and human rights related commitments and thus create conflicts. It only means that the international legal system is far from being perfect.

(c) Bernard Colas, LL.D., Partner, Colas Moreira Kazandjian Zikovsky, LLP

The importance of conducting environmental, social, trade sustainability and human rights impact assessments of trade negotiations and agreements is increasingly recognized. Human rights, environmental protection and social development are affected by trade agreements, and global challenges such as global warming reinforce call for coherent approach.

Such recognition has been formulated in many international texts, and several WTO countries perform environmental assessments. The *Doha Ministerial Declaration* notes the efforts made by the WTO members to perform national environmental assessments

of trade policies on a voluntary basis and encourages them to share their specialized knowledge in the field. This Declaration was followed by the *Johannesburg Declaration on Sustainable Development* and by other texts, such as the *Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment*. Moreover, countries that conduct impact studies, such as Canada, the United States, the European Union, New Zealand and Denmark, share data on environmental assessments, particularly within the framework of the WTO Trade and Environment Committee.

However, assessments are limited in scope and information is shared on a voluntary basis. In Canada and in the United States, impact assessments are conducted by civil servants, and only deal with the environmental impact in each respective country. Whereas in Europe, impact assessments are conducted by independent experts and cover not only the environmental impact, but also the economic and social impact in Europe and in the other WTO countries. However, there is no obligation to follow or respond to these assessments.

How to explain the contradiction between the recognized importance and the limited use of impact assessments?

There is resistance from those who underline that not only is there no internationally recognized methodology and rigorous parameters – which thus undermines their credibility – but also that impact assessments must be started at an early stage of trade negotiations and repeated several times.

However, supporters argue that impact assessment improves public participation and transparency, takes into account vulnerable groups, enhances coherence and effectiveness of trade agreements and provides means to minimize their negative impacts.

Mr Colas concluded on the responsibility of all governments and the WTO to develop internationally accepted methodology and to regularly conduct and update impact assessments of trade negotiations, particularly in the context of a Doha Round of negotiations that pursues development. Such assessments would be conducted by independent experts through inclusive transparent processes that measure the impact not only on the environment but also on social and economic development and human rights domestically and in other WTO trading partners, and be made public. This would certainly contribute to ensuring that coherence is part of the negotiating process.

(d) Johanne Brodeur, Partner, Brodeur Hotte and Associates

This last presentation addressed other means to improve the coherence of WTO trade agreements with human rights, labour, environmental and food security treaties and particularly those that recognize the specificity of food and agriculture, including farmers' rights.

A first means is to improve and deepen the international cooperation between the WTO and specialized organizations and agencies such as those dealing with biodiversity, phylogenetic resources, and desertification. The work of these specialized bodies should also be concerned with and seek to assess the impact of trade negotiations and measures on their own objectives.

The domestic and regional legal system may also contribute to improving coherence. For instance, it could be possible to challenge before the Economic Community of

West African States Community (ECOWAS) Court of Justice trade measures, policies and treaties that would breach provisions of the Revised Treaty of ECOWAS pertaining notably to economic, social and human rights, such as the right to adequate food. Access to the court is notably open to individuals.

It could also be possible to contest before domestic courts measures and laws – notably those that integrate trade treaties into domestic laws that violate constitutional rights, such as economic, social, civil, political and fundamental human rights. Mr Brodeur described the public interest litigation (PIL) available in India. PIL is an original judicial procedure which allows the Supreme Court to rule on questions of general interest pertaining to fundamental human rights recognized by the Indian population. It may be instituted by individuals or by a group meeting the legal requirements – such as the People’s Union for Civil Liberties who was successful in its PIL instituted in 2001 against the State of India, involving the right to adequate food.

Other means could be described to improve coherence. They imply imagination, perseverance and close cooperation among the actors.

2. Questions and comments by the audience

Comments and questions were made on the hierarchy of norms in international law and on differences of its effectiveness with enforcement mechanisms of different international agreements, as well as on the remedies of countries and people when human rights are being violated. Some examples were evoked – such as the Ghanaian tomato producers, or the Mexican corn farmers who saw their right to food violated as a result of the massive import into Mexico of United States subsidized corn: as a consequence, two million Mexican farmers recently migrated into cities.

Acknowledging the limits of the current international system, participants contributed to the discussion on means to improve coherence. Many possible solutions were examined, such as increasing the use of *ex ante* impact assessments; extending WTO provisions; making reference in WTO agreements to treaties developed in other *fora*; interpreting GATT Article XX a) on public morals to include human rights; clarifying the possibility for WTO members to have non-protectionist domestic policies that allow for appropriate enforcement of human rights obligations; developing a monitoring body in agriculture; following the European Union’s General system of preferences Plus, which relies on the monitoring of core human and labour rights conventions; reducing inconsistency between trade and environmental agreements, notably to ensure carbon emission reduction; and encouraging developing countries to invoke the right to food in trade negotiations – which very few do – as a means to improve their bargaining position.

3. Conclusions and way forward

The question of coherence needs to be seriously addressed at a domestic and international level, and should be part of the Doha Round that pursues Development.



Abstract

This session, comprised of presentations on the state of agriculture in the context of multilateral negotiations and commentary by international farming group leaders on the current environment facing farmers, strove to bring attention to the unique nature of agriculture as a traded commodity.

Through the presentations and questions posed by the audience, the issues of food sovereignty, small shareholder farming and the right to food were examined as part of a larger call for agricultural trade reform at both bilateral and multilateral levels.

It is clear that agriculture is a dynamic and ever-changing industry, faced with global price volatility and environmental events. Farmers worldwide do their best to produce food efficiently for a growing population, while protecting their animals, land and the environment; this while trying to compete with multinational corporations to remain viable. Without recognizing the special nature of agriculture, the future of farmers is put in jeopardy; without farmers there is no food.

Organized by

Jointly organized by:

The Federation of Norwegian Agricultural
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JA Zenchu (Japan)
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Canadian dairy, poultry and egg producers
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Federation
Schweizerischer Bauernverband
(Switzerland)

Report written by

Elizabeth Cork, Assistant Director,
Communications and Policy - Dairy
Farmers of Canada

Friday, 17 September 2010
14.15-16.15

Seeking coherence: How can international agreements influence agriculture and world trade positively for the coming generation in the face of global trends?

Moderator

Mr Robert Carlson, President of the North
Dakota Farmers' Union and Director of
International Relations, National Farmers
Union, United States of America

Speakers

Mr Christian Anton Smedshaug, Senior
Adviser, Norwegian Farmers Union

Mr Niek Koning, Assistant Professor of
the Agricultural Economics and Rural
Policy Group, Wageningen University, The
Netherlands

Mr Djibo Bagna, Chairman, ROPPA
(Réseau des organisations paysannes et
de producteurs de l'Afrique de l'Ouest)

Mr Jacques Bourgeois, Swiss Farmers'
Union – Switzerland

Mr Christian Lacasse, Union des
producteurs agricoles (UPA) – Quebec,
Canada

Mr Marcos Rochinski, FETRAF
(*Federação dos Trabalhadores na
Agricultura Familiar* (Federation of Rural
Workers and Family Farmers)) – Brazil

Mr Pdraig Walshe, Copa-Cogeca
(European Farmers and European Agri-
Cooperatives) – European Union

Mr Hirofumi Kobayashi, JA ZENCHU
(Central Union of Agricultural Co-
operatives) – Japan

Mr Philip Kiriro, Eastern African Farmers'
Federation (EAFF)

1. Presentations by the panellists

Panel 1 – Presentations

(a) Christian Anton Smedshaug, Senior Adviser, Norwegian Farmers Union

There needs to be better coherence between challenges in global society and policy development. The challenges are quite profound; 15 per cent of the global population is hungry (United Nations Food and Agriculture Organization (FAO)), there is limited soil availability, continued climate change and increasing populations, especially in the South, where there is the least food production and climate change is most destructive. We need new food policies.

Historically the North has fed the South, and food policy was shaped in the era of cheap transportation, technology and electricity, increased fertilizer production and a small world market.

There was also a large immigration movement from Europe to North America and the world saw agriculture begin to be overproduced.

In the North, protection against cheap grain imports, as well as the creation of cooperatives and crop insurance, created a culture of being net exporters. In the South, cheap imports created a culture of being net importers, and agriculture production moved towards non-food agriculture.

Current agriculture policy needs to create profit and realistic food prices for all, as well as neutralize environmental and production conditions.

It is unfair to have competition in one trade regime between developed, high-tech countries, and developing, low-tech countries. Tariffs are needed to create balance: one size does not fit all. There is a need for profitable production, tariff protection and market regulation, all to address the issues of food security.

The mandate of the Doha Round of negotiations should be revised to give coherence to current challenges.

(b) Niek Koning, Assistant Professor of the Agricultural Economics and Rural Policy Group, Wageningen University, the Netherlands

Is agricultural trade reform at the WTO liberalization? Is it sustainable?

In the past we saw big technological breakthroughs which created an expansion in agricultural products but also created a downward trend in agriculture prices. The result was little market value and further use of technology to improve profit.

We also saw support of agriculture by governments, resulting in distorted world markets. This created the need for multilateral regulation of agriculture markets, which during the Uruguay Round turned more towards the liberalization of markets.



Issues such as the growing global demand for biomass and the use of biorefinement show how, without control, the markets could discourage innovation in the future, as producers receive unfavourable returns. This type of situation could spread to other markets.

The WTO liberalization of agricultural trade markets has shown that trade policy is formed by past struggles and not future needs. Past protectionism by developed countries in violation of the General Agreement on Tariffs and Trade (GATT) resulted in the Uruguay Round and strove to reduce price supports. There continues to be national protection without controls.

The effect of this is that there is increased price volatility, and a shift to direct payments and import competition which discourage investments in agriculture, especially in the poor countries.

There needs to be better policy which allows for countries to protect their farmers as long as it does not disturb the world markets.

International agriculture trade needs to be stabilized within price bands and the agriculture and energy markets must be coordinated.

A combination of public investment, research in sustainable yields, and the improvement of infrastructure in poor countries are required, but does the political will exist?

(c) Djibo Bagna, Chairman, ROPPA (Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest)

Trade needs to serve development and answer questions on food security, poverty and malnutrition.

Africa has the necessary resources for the rest of the world, and agriculture dominates the economy and therefore cannot be neglected. This remains the reality despite discussions; the 2007/2008 food and economic crises showed the system is still not coherent. The market cannot resolve the situation; theory cannot resolve the system.

Looking at statistics, Africa's share of the market continues to decline. There is a lack of will, and declarations made to help Africa and African agriculture are not sincere: the money never comes. Additionally, the lack of consistency in negotiating agreements stands in the way.

Integration bodies must exist to ensure that multilateral and bilateral agreements are coherent and that the poor are at the table. Poor countries, such as those in West Africa, cannot compete with subsidies and the lack of sustainable political will.

Farmer organizations all realize that negotiations at the WTO and all other global decisions need to take into account all situations, not just those of the developed countries.

Conditions are not uniform; access to credit is not uniform. In West Africa this means local farmers cannot compete in markets overwhelmed by outside products. Agriculture cannot be treated this way; it is the livelihood of so many of the world's people.

Farmer organizations are part of the solution, and can act as intermediates to ensure coherence between agricultural trade and social issues.

Panel 2 – International Farmer Organization Leaders' Roundtable

(d) Jacques Bourgeois, Swiss Farmers' Union – Switzerland

We must face the fact that Doha was launched ten years ago and that the environment has changed. We must look at the emerging challenges of the future.

There is an increased demand for agricultural products based on growing domestic and world populations. The WTO must allow for farmers to meet new challenges by allowing countries to address self-sufficiency, food security and food sovereignty.

"Food sovereignty" as a policy term has been ratified in Swiss Parliament, but must be recognized internationally. Specificity of agriculture must be taken into account; recognizing food products as essential to society and economy. A new trading body must be formed to examine agricultural trade and support the whole value chain.

Agriculture is too important to be auctioned off.

(e) Christian Lacasse, Union des producteurs agricoles (UPA) – Quebec, Canada

The vision of many farmers in Canada is to recognize the specific nature of agriculture and establish food sovereignty for all.

There must be consistency between trade and human rights (i.e. the right to food). The majority of hungry people are rural populations and trade liberalization has exacerbated this problem. Many countries have historically tried to feed their populations through export, which was seen as a failed model that was detrimental to food sovereignty during the 2008 food crisis. Food products are entirely distinct and are a primary need for all people, which must be recognized.

Given the great variation in modes of production and conditions in each country, countries must preserve their "policy space" to develop the food and agriculture policies which will feed their own populations first.

In Canada, this is supply management, which has allowed for the needs of consumers to be met, while ensuring profit for farmers.

A modern tool is needed at the international level to meet the needs of agricultural trade policy: there must be an exception made for agriculture at WTO.

Recognize that there is no food without agriculture.

(f) Marcos Rochinski, FETRAF – Brazil

In Brazil, there is the need for coherence between international trade policy in agriculture and family farming. This can only be achieved through respecting the right of countries to produce their own food sufficiency and foster food security.

Each country has the conditions to produce their own food; this must be strengthened to promote food policies that meet the needs of the poor, and stimulate growth and production for family farmers in rural areas.



Good domestic food and agriculture policies foster consumption and domestic food production, and should favour small farmers over multinational corporations (MNCs).

The WTO must recognize small farmers, and must recognize that MNCs weaken internal markets. WTO must establish a minimum model to regulate MNCs and agricultural markets.

(g) Pdraig Walshe, Copa-Cogeca – European Union

EU farmers are not opposed to trade, but are calling for fair rules on trade. Agriculture is more than economic trade and therefore should not be liberalized, especially not at the expense of rural economies. EU farmers respect the values of the EU public, such as land stewardship, safe and secure food supplies, biodiversity, traceability, animal welfare, etc. They meet domestic policies, while dealing with a rising cost of production, but recognize that opening of borders would mean that competition would not be faced with the same regulations and variables. This has already been seen with a decrease in returns and subsequent decrease in the number of family farms.

EU farmers do not want to see a shift to strictly large corporate farming in the EU. Call for coherence at the WTO to ensure that all farmers can succeed.

(h) Hirofumi Kobayashi, JA ZENCHU – Japan

Japan is a unique territory with a unique climate, producing various agriculture products (i.e. sugar beets and sugar cane) making it an environment with diversified agricultural market.

WTO negotiations must respect the right of all countries to produce food for their own self-sufficiency.

The current WTO rules use export as their main policy.

The Doha round was established to eliminate poverty and promote sustainable agriculture and development. This must be addressed through responsible agriculture trade rules at the WTO.

(i) Philip Kiriro, Eastern African Farmers' Federation (EAFF)

Agriculture is the primary and most important economic activity to Eastern Africa, but has faced many challenges over the past 20 years, including lack of available funding and bad policies, as well as lack of food security.

There is a renewed interest in investment in small-scale agriculture, but this needs to be transformed to have more support and incentives, as well as to heighten productivity.

A lot is being done at national/regional level for market access, but through the WTO there must be market access for small farmers in emerging markets.

There must be protection of regional markets and regional food security by allowing them space to develop.

2. Questions and comments by the audience

How can the issue of food sovereignty as a right and policy term, as well as the realization that a single agricultural system internationally does not benefit small-scale farmers, influence and change the current round of negotiations?

1. What needs to happen at the WTO in order to foster a system that helps small agricultural producers develop and compete (similar to the Brazilian system)?
2. What structural institutional changes can be made to develop African agriculture, as a priority of development?

3. Conclusions and way forward

It was clear from all panellists that the focus of the Doha Round, especially in relation to agriculture trade, must be reconsidered in order to address varying political, environmental, technological and social conditions. The blanket approach to establishing agriculture trade policy simply does not address the needs of the world's farmers or the world's population. The liberalization of agriculture trade markets must be questioned and a focus on coherence must be addressed.



Abstract

With the 10th Conference of the Parties of the Convention on Biological Diversity (CBD) coming up in October this year, coherence between negotiations on genetic resources and traditional knowledge in a number of international fora and processes has gained increased attention in view of its implications for efforts to forge an effective international access and benefit-sharing (ABS) regime. This concerns fora as diverse as the CBD, the WTO, the World Intellectual Property Organization (WIPO), the World Health Organization (WHO) and several free trade agreements (FTAs). Panellists examined tensions and synergies between discussions in these different fora, and how countries were struggling to address them in order to ensure greater coherence and mutual supportiveness.

The (elusive?) quest for coherence in global negotiations and norms: The case of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Convention on Biological Diversity (CBD)

Moderator

Mr Ahmed Abdel Latif, Intellectual Property and Technology Programme Manager, International Centre for Trade and Sustainable Development (ICTSD)

Speakers

Mr Martin Girsberger, Head of Intellectual Property and Sustainable Development Unit, Swiss Federal Institute of Intellectual Property (SFIIP)

Ms Maria Julia Oliva, Senior Adviser on access and benefit sharing, Union for Ethical BioTrade

Dr Dwijen Rangnekar, Senior Research Fellow, Centre for the Study of Globalisation and Regionalisation, University of Warwick

Mr Frederick Abbott, Professor of Law, Florida State University College of Law

Mr Jean-Frédéric Morin, Professor of Political Science, Université Libre de Bruxelles

Organized by

International Centre for Trade and Sustainable Development (ICTSD)

Report written by

Ms Marie Wilke, Dispute Settlement and Legal Issues Junior Programme Officer, ICTSD; and

Ms Marta Wojtczuk, Dispute Settlement and Intellectual Property Intern, ICTSD

Friday, 17 September 2010
16.30-18.30

1. Presentations by the panellists

(a) *Jean-Frédéric Morin, Professor of Political Science, Université Libre de Bruxelles*

Prof. Morin opened the discussion by presenting the empirical research he had recently conducted on the issue of coherence, looking at the participation of a number of Organisation for Economic Co-operation and Development (OECD) countries in various fora involved in ABS relevant deliberations. With more and more institutions being involved, he pointed out that we are moving towards a situation of “regime complex” referring to the “collective of the overlapping regimes”, which consists of the intellectual property, trade, agriculture and biodiversity regimes. While each regime is characterized by its own rules and procedures, they tend to overlap as they influence each other, he said.

In this context, Prof. Morin defines coherence as a degree of integration in policy-making, with two levels: first, the substantive dimension, which is the degree of complementarity between related policies; and second, the procedural dimension, which is the cooperation among domestic actors. He stressed that if “states want to be fully coherent, they need political commitment and institutional capacity”. In this regard, he explained that states are either “chaotic”, showing no coordination between different regimes; “strategic”, taking different positions in the “conflicting” organizations with trade-off considerations; “functional”, establishing clear lines between the subject matters involved; or “systemic”, having the same expert representation in all the different fora, addressing the same issue.

His analysis showed that Switzerland has the most systemic approach, while other states, in particular the United States appear strategic. As his analysis did not focus on the actual content of submissions made, however, this is no indicator for whether states act strategic concerning their negotiation positions, or whether the chaotic appearance results from internal disagreement and authority issues. “In fact, I am not even sure that coherence as such is a wishful outcome”, he later added during the discussion period. It is fair to predict that “states cannot afford to be more chaotic on the issue of ABS” than they already are, he concluded.

(b) *Martin Girsberger, Head of Intellectual Property and Sustainable Development Unit, Swiss Federal Institute of Intellectual Property*

As a representative of a country which has deliberately pursued greater coordination in international negotiations in this area, Mr Girsberger provided an overview of the Swiss position in ABS negotiations both at the WTO and at WIPO. In this context, he presented the Swiss Patent Act, which came into force in 2008, and the way in which it addressed disclosure of source of genetic resources and associated traditional knowledge in patent applications. While he said that Switzerland strongly favoured a resolution of the disclosure issue in WIPO and the WTO, he also presented the pros and cons of having the disclosure requirement addressed in the ABS Protocol: “Considering the timeline, it would be the fastest solution since the negotiations are to be finished in two months”. On the other hand, ABS and CBD are not intellectual property (IP) instruments, and there is a risk of blocking negotiations, he added. Moreover, “if pursuing a global approach, one has to consider that the US is not a member to the CBD, therefore it would be not covered by the Protocol”, he said.



(c) Frederick Abbott, Professor of Law, Florida State University College of Law

Prof. Abbott presented the concrete example of sharing of biological materials with human pathogenic potential as an area where further coordination is required to achieve coherence between the WHO process and the emerging ABS Protocol. He emphasized that sharing of biological materials with human pathogenic potential is necessary from a public health standpoint for the development of vaccines and therapeutic treatments. However, the WHO negotiations on "pandemic influenza preparedness sharing of influenza viruses and access to vaccines and other benefits" where some of the subject matter is addressed "are stalled", while negotiations on the ABS Protocol are intensifying this month. He argued that "countries are negotiating toward [a] potential multilateral legal swamp" as the approaches taken by the two draft instruments are not adequately integrated. WHO is the most logical forum for addressing pathogen-sharing subject matter, yet developing countries may consider their voice is not very well empowered in WHO, and find the CBD/ABS alternative attractive. Countries "should commit the subject of pathogen materials to a single forum and approach it firmly so [as] to bridge differences in the interests of global public health," he emphasized.

(d) Maria Julia Oliva, Senior Adviser on access and benefit sharing, Union for Ethical BioTrade

Ms Oliva provided another example on where coherence needs to be achieved: the case of free trade agreements. She explained that, while originally perceived as a threat to policy space provided under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the ABS objective of the CBD, biodiversity-related intellectual property provisions in FTAs are now seen also as a chance for developing countries. What really has changed, is that the "discussion went from looking at IP and biodiversity as an exclusively defensive interest in the context of FTAs, to looking at it as an opportunity, as a positive interest", Ms Oliva added. This is illustrated, for instance, by the US-Peru and US-Colombia FTAs, which were accompanied by understandings on the protection of biodiversity and traditional knowledge, a recognition of the CBD principles and an exchange of information on patent applications, in particular on prior art, Ms Oliva said.

Likewise, FTAs of developing countries signed with Canada, the European Union (EU) and the European Free Trade Area (EFTA), respectively, likewise underline this development. In particular, the recent EFTA and EU FTAs with Colombia and Peru are examples of FTAs where progressive biodiversity provisions have been included in the main text of the agreements.

However, she also raised the concern that it is not only about "coherence between legal norms but also about what is happening on the ground". "There is a range of mechanisms that have to be put in place to increase mutual supportiveness and when we have a system with all the tools in place, these tools need to be enforced", she concluded.

(e) Dwijen Rangnekar, Senior Research Fellow, Centre for the Study of Globalisation and Regionalisation, University of Warwick

Finally, Dr Rangnekar provided concluding comments mentioning that, despite the fact that the CBD ABS negotiations have been ongoing for over six years now – while the discussion itself was introduced already more than two decades ago – the difficulty of increasing coherence has generated new topics and angles that need to be looked at. It

is interesting to see that despite the time that has elapsed since the discussion started “no single regime has been able to assume exclusive authority on the matter of ABS” he recalled. Likewise, all four presentations showed that “certain regimes were favoured over others by particular actors at a particular point in time”. It is important and interesting to analyse the reasons for these changes. “Along a negotiation process, ideas and concepts change which results in [the] forum shifting strategies, depending on the most promising regime” as “each regime appears to have its own principles and objectives which favour different ideas, which again results in an indirect hierarchy resulting from the strengths of each forum”. The impact and thus desirability of coherence therefore need to be analysed and assessed according to their context, he concluded.

2. Questions and comments by the audience

The role – and continuous inclusion – of the notion of “mutual supportiveness” was raised by Ms Marie Wilke, Dispute Settlement and Legal Issues Junior Programme Officer at ICTSD. In that regard, Ms Oliva said that, although this notion “assumed that everything had the same value”, it is the patent system which should support the CBD objectives and not the other way around. Mr Abdel Latif inquired about the implementation of the disclosure of source requirement since the Swiss Patent Act of 2008 came into force, and whether it had contributed to preventing cases of misappropriation of genetic resources and traditional knowledge. Mr Girsberger indicated that the disclosure of source requirement was only one element among others to address this problem.

3. Conclusions and way forward

As final remark Mr Abdel Latif noted that all panellists seemed to agree that coherence for the sake of coherence was not necessarily desirable, but coherence was often instrumental to achieving the actual objectives which had been at the root cause of the debate, in particular addressing misappropriation of genetic resources and lack of effective benefit-sharing arrangements.



IV. Looking to the future: What post-crisis agenda for the WTO in a shifting-power scenario?



Open and rule-based global markets: The role of government procurement and the Government Procurement Agreement

Moderator

Mr Jonathan Lynn, Reuters World Trade Correspondent, Geneva

Speakers

Introductory remarks: Dr Hubertus Erlen, Chairman, International Relations Committee, BUSINESSEUROPE

Mr Harsha Vardhana Singh, WTO Deputy Director-General

Mr Atsuyuki Oike, Deputy Permanent Representative of Japan to the WTO

Mr John Clarke, Acting Head, Permanent Delegation of the European Union to the WTO

Ms Catherine Minard, Director for International Affairs, MEDEF (Movement des Entreprises en France)

Organized by

BUSINESSEUROPE – The Confederation of European Business BDI – Federation of German Industries

Report written by

Ms Anka Schild, Adviser International Relations, BUSINESSEUROPE

Wednesday, 15 September 2010 – 12.30-14.00

Abstract

The panel highlighted the economic significance of public procurement. According to WTO data, government procurement accounts for between 10 and 15 per cent of gross domestic product (GDP). In member states of the Organisation for Economic Co-operation and Development (OECD), the current figure is 16 per cent of GDP. The panel also discussed the importance of strong and fair competition for public contracts, for consumers, businesses, taxpayers and governments worldwide, as well as the rules that govern the purchases by public authorities. Questions were raised such as: To what extent do the procurement rules of the World Trade Organization truly enable much-needed competition for government contracts? How we can improve the existing set of rules?

Currently, membership of the WTO Agreement on Government Procurement (GPA) is voluntary and there are only 12 members in addition to the European Union (EU). Furthermore, the rules agreed in the GPA and the market access opportunities it provides are subject to many exceptions and derogations. Most panellists therefore agreed that the current rules are too modest both in their scope and depth.

BUSINESSEUROPE called for an expansion of the GPA, to at least include all OECD members and major emerging markets, with comprehensive market access commitments. It also stressed the need for an ambitious revision of the current GPA to increase coverage to sub-national or sub-federal entities and reduce exceptions and sectoral carve-outs.



1. Presentations by the panellists

(a) *Jonathan Lynn, Reuters World Trade Correspondent, Geneva*

Emerging markets are not members of the GPA, although their spending on infrastructure, for example, is enormous (e.g. Brazil announced it will spend USD 150 billion in three years on infrastructure). China is negotiating to become a GPA member. With limited progress on the multilateral front, countries are using their bilateral trade agreements to get better commitments on procurement.

(b) *Hubertus Erlen, Chairman, International Relations Committee, BUSINESSEUROPE*

The importance of competition for government procurement should not be underestimated. Rules such as the GPA encourage open, transparent and non-discriminatory procurement procedures, a condition for free-market economies. Yet many governments worldwide have restrictive practices. The EU procurement markets are open to actors from around the world, but others continue to discriminate against EU companies. All emerging markets should make substantial commitments. China needs to raise its ambitions in its GPA accession by expanding commitments not only to federal level, but also to local level, and should reduce sectoral exceptions.

(c) *John Clarke, Acting Head, Permanent Delegation of the European Union to the WTO*

Open procurement is the best way to ensure that tax-payers' money is well spent, but politics often go the other way and protect high-profile domestic companies and interests. China and other Asian countries still have many sectoral restrictions, such as those in Japan's railway sector. The most recent Chinese offer goes in the right direction, in particular the reduction of the transitory period to five years, an expansion of scope, and more efforts on transparency. However, the EU still awaits the inclusion of provincial and state-owned entities in China's offer.

(d) *Harsha Vardhana Singh, WTO Deputy Director-General*

The GPA is, in fact, a powerful set of rules, although there are some shortcomings. However, we will see GPA rules improve in scope and depth, and its impact will be large given the magnitude of the market that is covered. Many WTO members will be increasingly interested in GPA accession, both to shape these rules and to protect their national interests. The importance of the GPA was revealed when the United States President insisted on respecting international rules when implementing the "Buy America" policy.

(e) *Atsuyuki Oike, Deputy Permanent Representative of Japan to the WTO*

Japan always tried to include government procurement in foreign trade association (FTA) negotiations with Asian partners, but has not been able to achieve much. On China, Japan appreciates the revised offer. However, Japan wants to enjoy the same access to the Chinese market as Chinese companies have to the Japanese procurement market. International rules are very important; the role of governments in shaping domestic procurement rules is also increasing.

(f) *Catherine Minard, Director for International Affairs, MEDEF (Movement des Entreprises en France)*

Some GPA signatory countries are fully using the GPA's flexibilities to restrict access to foreign companies. French companies want the EU to enforce the so-called derogation on positive reciprocity, which was never used in practice. French companies have highlighted the need to require reciprocity in the field of procurement to the European Commission and Parliament.

2. Questions and comments by the audience

- Several questions were raised by the audience, including:
- How can government procurement be used to stimulate indigenous innovation and transfer of technology?
- What are the EU business views on Brazil's procurement market?
- What are panellists' views on the prospects of reaching agreement on the revised GPA in the near future?
- How can governments unilaterally introduce improvements to government procurement systems?

The panellists replied that:

- On China and technology transfer, the Chinese government is pressing very hard for technology transfer and can be too extreme in its policy measures. It is important to keep up the dialogue to resolve different perspectives.
- On Brazil, there is a favourable negotiation climate. European business is looking forward to an ambitious agreement with the Southern Common Market (MERCOSUR).
- On unilateral commitments, panellists mentioned that, unfortunately, those who are not members do not engage in such commitments, although it would help very much in the fight against corruption and would lead to other governance benefits. Developing country partners will continue to enjoy some flexibility. Panellists also commented on the high thresholds, below which procurement does not need to follow international rules, and which can vary according to sectors; flexibility in terms of time-frames; and other issues, such as minorities. A downfall of unilateral commitments is also that only the GPA offers access to United States and EU procurement markets.
- On agreement on a revised GPA, it was mentioned that this negotiation can be completed quickly. More time, however, is required on accession negotiations.



3. Conclusions and way forward

The moderator thanked the panellists and the audience for their time and for the lively debate.



The right to development – a tool to boost coherence between trade, development and human rights?

Moderator

Mr Ayuush Bat-Erdene, Chief, Right to Development Section, Office of the High Commissioner for Human Rights (OHCHR)

Ms Violette Ruppanner, Director, 3D

Speakers

H.E. Mr Md Abdul Hannan, Ambassador, Permanent Representative of the People's Republic of Bangladesh to the United Nations and the WTO

Dr Joëlle Hivonnet, Head of UN Section, Permanent Delegation of the European Union

Professor Dr Nicolaas Schrijver, Faculty of Law, Leiden University

Mr Vicente Paolo Yu, Programme Coordinator, South Centre

Organized by

3D → Trade – Human Rights – Equitable Economy (3D) and Office of the High Commissioner for Human Rights (OHCHR)

Report written by

Ms Ebru Gökçe, Associate Human Rights Officer, Office of the High Commissioner for Human Rights

Wednesday, 15 September 2010
14.00-16.00

Abstract

This session sought to discuss whether and how the right to development (RTD) could be a tool to improve coherence between trade, development and human rights. Panellists elaborated on the normative and legal framework of, and the responsibilities arising from, RTD, and its relevance to the WTO. The session aimed to discuss the following questions: Where does RTD draw its legitimacy from? Why is it relevant in the WTO context? What added value could an RTD approach offer to the multilateral trading system and the Doha Development Round negotiations? How can trade become an enabler to realize RTD? How can an RTD framework foster coherence in policy and practice among the WTO, the UN agencies and international financial institutions? Before opening the panel discussion, Mr Bat-Erdene, Chief, Right to Development Section, Office of the High Commissioner for Human Rights (OHCHR), briefly explained OHCHR's mandate and work on RTD and on human rights and trade. Ms Ruppanner, Director, 3D → Trade, Human Rights and Equitable Economy (3D), then opened the discussion and moderated the panel session.



1. Presentations by the panellists

(a) *Nicolaas Schrijver, Faculty of Law, Leiden University*

The first panellist, Prof. Schrijver, started by defining RTD as a right that “brings together the best of all worlds”. RTD emerged in the 1970s as part of the structural approach to human rights. It builds on the concept of freedom from want and the promotion of development and social progress. RTD gets its legitimacy from the Charter of the United Nations (UN), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). RTD was recognized by the 1986 UN Declaration on the Right to Development. Article 1 of the Declaration defines RTD as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”. RTD was endorsed politically at the World Conference on Human Rights held in 1993 in Vienna, which reaffirmed by consensus that RTD is a universal and inalienable right and an integral part of fundamental human rights. The Millennium Declaration referred to making RTD a reality for everyone. RTD is also specifically mentioned in the mandates of both OHCHR and the Human Rights Council.

RTD contains both an international and a national dimension. At the national level, good governance, transparency, anticorruption measures and human rights culture are necessary for the full implementation of RTD. At the international level, RTD requires an enabling environment conducive to development, social progress and a more equitable trading system. Some of the very basic and essential components of RTD include an adequate standard of living (e.g. sufficient food, adequate housing), the highest attainable standard of health (e.g. access to healthcare and medicines), the right to education and the right to work; and civil and political rights, such as freedom to participate in public life, freedom of expression, freedom of assembly and association, non-discrimination and gender equality. To a certain extent, RTD can be viewed as a cluster right, bringing together civil and political rights on the one hand and economic, social and cultural rights on the other. As such, RTD can serve as a bridge between these two categories of human rights and between individual and collective rights.

Prof. Schrijver then elaborated on the relationship between RTD and the WTO. The WTO Preamble refers to “raising standards of living”, “ensuring full employment” and “sustainable development”, and therefore reflects core RTD elements. There is recognition that trade should be conducted with a view to democratizing economic opportunities for all. There is often reference to what are sometimes called non-trade concerns, such as human rights, development, environment and culture, which are of increasing importance. He concluded that RTD is a broad and normative concept. It is a human right, but also a peoples’ right. It is related to the international law of development, which seeks to promote development opportunities for developing countries in international relations. Non-trade concerns are very relevant to the WTO, as reflected in its Preamble. Therefore, RTD is relevant to the WTO and consequently, the WTO is also very important for the realization of RTD.

(b) Md Abdul Hannan, Ambassador, Permanent Representative of the People's Republic of Bangladesh to the UN and the WTO

Ambassador Hannan stated that the birth of RTD in 1968 shifted the paradigm of international discourse from need, charity and aid towards rights, shared responsibilities and cooperation. The implementation of RTD requires effective development policies at the national level, and equitable economic relations and a favourable economic environment at the international level. He stressed the fact that RTD is both an individual and a collective right. Millennium Development Goal (MDG) 8 is directly linked to RTD and underlines the shared responsibility in the development process, which includes cooperation in capacity building, market access, debt restructuring, intellectual property rights, technology transfer and aid. A Doha Development Agenda failure would represent a "delivery gap" in strengthening the global partnership. Capacity-building, as related to market access and technology transfer, is crucial for development. In this context, international trade is closely linked to the development process and the realization of RTD. There is a need for binding and balanced international trading rules, including flexibilities for developing countries.

(c) Joëlle Hivonnet, Head of UN Section, Permanent Delegation of the European Union

Dr Hivonnet provided views on practical initiatives for moving RTD forward. She stressed that global problems required global solutions. In this context, RTD should be addressed collectively through an operational framework. She outlined the main elements of RTD. First, RTD brings together two sets of human rights: civil and political rights, and economic, social and cultural rights. Second, RTD provides a link between all human rights and development, which requires policy coherence and the involvement of various actors at different levels. Third, states – acting individually and collectively in global and regional partnerships – have the primary responsibility to create a national and international environment favourable to the realization of RTD. Fourth, RTD places the individual at the centre of all policies and regards the individual as an actor of development rather than a mere beneficiary.

RTD should create an enabling and empowering environment for the individual to develop his/her full potential. Given that the interests of poor countries have not been taken into account, two elements are directly relevant to the WTO: enhancing regional integration and trade to boost growth and job creation (the Doha Development Round has an important role to play); and establishing an inclusive global governance architecture. North and South should work together to make RTD operational.

(d) Vicente Paolo Yu, Programme Coordinator, South Centre

Mr Yu addressed the question of what can be done to ensure that trade promotes RTD. RTD is about equity and provides a means by which the international community can address economic relations inequalities between states. Trade has been used as a tool to promote development in some countries, but in others, wrongly-used trade policies have resulted in more poverty and suffering. Trade liberalization can have a negative impact on developing countries, depending on how and when it is implemented: studies carried out by the Food and Agriculture Organization of the United Nations (FAO) gave evidence of import surges from 1980 to 2003 which damaged the agriculture sectors of many developing countries in Africa, Asia and the Caribbean; and, as a result of trade liberalization, the manufacturing sector suffered deindustrialization and loss of



employment and growth at the domestic level in attempting to increase its economic competitiveness.

United Nations Conference on Trade and Development (UNCTAD), United Nations Department of Economic and Social Affairs (DESA) and United Nations Development Programme (UNDP) studies point to four common elements in recent development success stories: trade is only a tool – what is required is developing productive capacities; income must be increased on a broad and equal basis; there is no one-size-fits-all in development processes, and therefore heterodox policies are required; and, finally, the market will not get everything right. Hence the need for state guidance to channel resources to investment in the productive and strategic sectors, which will boost income, lead to further industrialization and diversify the economy. To conclude, Mr Yu stressed the need to integrate policy space and flexibilities into the multilateral trading system, as well as the need for a more coherent approach to global governance, which requires the participation of developing countries. The UN is the right forum for global decision-making.

2. Questions and comments by the audience

One question raised was whether RTD could be used as a non-trade concern in a WTO panel. Prof. Schrijver emphasized that elements of the general objective of sustainable development could be used in WTO litigation. There is a need to mainstream the core elements of RTD in trade, finance and international cooperation. Mr Yu stated that, although there were no explicitly-mentioned exceptions on development, environment and natural resources under the General Agreement on Trade and Tariffs (GATT) Article 20, the WTO Preamble provides a guiding spirit on how the WTO agreements should be interpreted and implemented, and therefore could potentially be used in cases involving development-related actions by WTO members.

On how to accelerate the implementation of RTD, Dr Hivonnet suggested that the MDG framework could accelerate RTD realization. She stressed the importance of aid effectiveness and encouraged states to fulfil their official development assistance (ODA) commitments. Mr Yu highlighted the principles of equity and coherence in global governance in addressing marginalization and inequality.

In response to a question on the collective aspect of RTD, Dr Hivonnet provided the EU perspective, which refers to individual rights that are exercised collectively. States have the primary responsibility to implement RTD as duty bearers. However, states can act collectively within the UN framework or in global governance. Prof. Schrijver highlighted that RTD is an economic as well as a political right. However, he differentiated between the right of peoples and rights of states and distinguished between RTD and international development laws, including special and differential treatment provisions under the WTO; the right to technology transfer under international environmental law; and the right to receive ODA. These are not a dimension of RTD, although they are closely related.

On the question of the lack of operational mechanisms for the implementation of RTD, Ambassador Hannan referred to political considerations as the main cause. Dr Hivonnet stated that it might not be necessary to create a new mechanism. Criteria that will allow progress in RTD implementation to be measured, and a mechanism to assess such progress, are required. Prof. Schrijver referred to the 2010 joint report on

the right to development¹ by the UN Secretary-General and the High Commissioner for Human Rights, and the work on criteria carried out by the high-level task force on the implementation of RTD. He opined that further work on RTD criteria was not necessary. It is important to have a standing body, which would consist not only of states, but also of experts, to monitor RTD implementation.

3. Conclusions and way forward

The session examined some of the key challenges developing countries face today and the relevance of RTD in the multilateral trading system. The RTD framework emphasizes the importance of inclusive and equitable global governance; an enabling environment conducive to equitable and sustainable development; and policy coherence between development needs on one hand and trade and economic policies on the other. The solution to global challenges is to have global institutions that will ensure convergence among different interests. Policy space should be an essential feature of the multilateral trading system. Trade is not the sole determinant for development. However, trade can be a key element for development if it is accompanied by policies to enhance production capacities and economic diversification.

1 A/HRC/15/24 available at: http://ap.ohchr.org/documents/dpage_e.aspx?s=103



Abstract

This session aimed at exploring ways to promote coherence between the work of the WTO and other international organizations which form part of the global governance, in order to jointly promote decent work, mitigate the effects of the financial crisis and achieve the Millennium Development Goals. Some questions that the session addressed were the following:

- Is there space for International Labour Organization (ILO)-WTO dialogue and cooperation on promoting common goals?
- Is the work of the ILO and the WTO in certain fields complementary?
- How could the WTO promote coherence in its work with intergovernmental organizations (IGOs) of the UN system towards achieving the Millennium Development Goals?
- Could the promotion of decent work reinstate support for and assist the proliferation of free trade?
- Will the implementation of the "Decent Work Agenda" raise trade barriers?
- Could the promotion of decent work create fairer trade and better distribute the benefits of globalization?
- How might decent work be included in the multilateral negotiation system of the WTO?
- How can trade negotiations be used as a vehicle for achieving the Millennium Development Goals?

Coherence and crisis: Decent work, the WTO and better world governance

Moderator

Ms Esther Busser, Deputy Director,
Geneva Office, International Trade Union
Confederation (ITUC)

Speakers

Mr James Howard, Director, Economic and
Social Policy Department, International
Trade Union Confederation (ITUC)

Professor Gabrielle Marceau, Counsellor,
Legal Affairs Division, WTO

Mr Robert Kyloh, Senior Economic Advisor,
International Labour Office (ILO)

Mr Stephen Hale, Head of Office, Deputy
Campaign and Advocacy Director, Oxfam
International

Organized by

International Trade Union Confederation
(ITUC)

Report written by

Mr Georgios Altintzis, Policy Assistant,
Economic and Social Policy Department,
ITUC

Thursday, 16 September 2010
09.00-11.00

1. Presentations by the panellists

(a) *James Howard, Director of Economic and Social Policy Department, ITUC*

Mr Howard provided figures on the impact of the crisis on employment: the crisis had caused 34 million more persons to become unemployed, increasing the total number of persons unemployed worldwide to 210 million. On the other hand, the reaction of some governments in setting up fiscal stimulation programmes had created 23 million new jobs. Furthermore, every year 45 million job-seekers were entering the labour market, creating further labour market challenges for the future.

Even before the food crisis, there had been some 1 billion persons living in chronic food insecurity.

In Europe, an atmosphere of collective pessimism was being created due to the governments' decision to prioritize fiscal consolidation and austerity measures. Moreover, the G20's initial commitment to resolve the crisis had ended up becoming complacency that the crisis was over by the time of their June 2010 meeting in Canada. For such reasons the world was risking a double-dip recession, which could be avoided if steps were taken in the right direction.

Such measures included: far-reaching investments towards a low-carbon economy in a process of just transition; the increase of social spending for all, and the establishment of social security systems where they were absent; vocational training and education in order to achieve a better skilled and more productive labour force; regulation of the financial sector with a view to making it serve the real economy, with consideration of Mr Lamy's proposal for a World Financial Organization; the introduction of a financial transaction tax; and a broad reform of global governance.

The WTO could integrate social and environmental standards in trade negotiations, as well as launch discussions on labour and employment issues in its work programme. The WTO could also strengthen its relations with the ILO and mainstream the "Decent Work Agenda" into the WTO agenda.

(b) *Robert Kyloh, Senior Economic Advisor, ILO*

In responding to the questions posed by the Chair, Mr Kyloh suggested that the promotion of decent work could mitigate fears about further trade liberalization, while promoting fairer trade and a better distribution of the benefits of globalization.

The ILO and the International Monetary Fund (IMF) had recently demonstrated in a conference held in Oslo, on the theme "The Challenges of Growth, Employment and Social Cohesion", that it was possible for these two institutions to work more closely together. It might be possible that the WTO could, in a similar way, work more closely with the ILO.

In the background paper for the above-mentioned conference, the ILO had suggested that increasing income inequality and the declining wage share of gross domestic product (GDP) had contributed to global imbalances and the causes of the recent global economic crisis. In the United States in the 1970s, the top 1 per cent of income



earners possessed 9 per cent of the national wealth, whereas today the comparable figure had increased to 24 per cent. There were various other indicators which suggested that decent work deficits had increased in recent decades. For example, employment security had declined significantly for the majority of workers compared with 20 years ago because of the growth in various forms of precarious work and the erosion of the employment relationship. Some of the root causes of these trends included:

- technological change towards skilled labour;
- globalization and trade liberalization; and
- erosion of labour institutions, such as trade unions, minimum wages, and collective bargaining.

It would be unwise to forsake the economic advantages that have been derived from technological change and globalization. Consequently, if we want to reverse the trend towards widening inequality, the focus should be on redeveloping a balanced set of labour-market institutions. If there was a clear commitment to re-establishing strong and relevant labour-market institutions, fears about the consequences of further trade liberalization might be diminished.

The WTO has a legitimate interest in these issues because – as pointed out in previous joint studies by the WTO and the ILO – orthodox trade theory accepts that trade liberalization, and the associated operation of comparative advantage and the division of labour, will contribute to increasing income inequality in industrialized countries. Moreover, recent advances in trade theory have suggested that trade liberalization and technological change can weaken the position of labour relative to capital in countries at all levels of development. This stems from the fact that capital is mobile and trade liberalization makes foreign direct investment more feasible, while labour is essentially a non-mobile factor of production. For this reason, income inequalities have expanded in developing as well as developed countries. The ILO and the WTO could refocus attention on these issues, and further elaborate on the first joint study done by the two institutions a few years ago.

(c) Gabrielle Marceau, Counsellor at the Legal Affairs Division, WTO

The WTO wants to avoid protectionism; at the same time the WTO makes clear that trade opening has to be carried out along with sustainable development. In this way, governments can restrict trade in order to protect the environment, as long as this is not done in a protectionist manner. Speaking in a personal capacity, Prof. Marceau's argument was that sustainability has social components and that there are ways – consistent with the WTO treaty – for states to condition market access negatively or positively with respect to certain fundamental social/labour considerations. The Technical Barriers to Trade (TBT) Agreement allows technical regulations for various reasons, as long as they are based on legitimate objectives (of which sustainable development is one) and as long as they only restrict trade to the extent necessary. Moreover, the Appellate Body has decided that, under the Enabling Clause, trade preferences can be conditioned on development-related considerations, and seems to have indicated that such considerations could be related to the environment and to labour standards. The ILO 2008 Social Justice Declaration also stipulates that governments cannot invoke their comparative advantage to justify violations of fundamental labour/human rights. Possibly this declaration could be invoked in the WTO to support arguments to justify certain labour-related market-access conditions.

On the other hand, the WTO is not the most competent organization to discuss jobs and redistributive justice because there are no WTO rules dictating what states should do with their growth outcomes.

Prof. Marceau argued that governments are strengthening labour institutions, and it is up to them to promote such institutions within the legal framework of the WTO.

(d) Stephen Hale, Deputy and Advocacy Campaigns Director, and Head of the Geneva Office, Oxfam International

Mr Hale argued that the critical question was not how to design trade policy to ensure that it contributed to decent work and other progressive objectives, but how to create a political system that forced global leaders to make the policy changes needed.

It is clear that the lack of overall regulation and weak governance led to the economic crisis, and that the causes of the food and climate crises are also in large part due to weak regulation and imbalances of power. Oxfam's vision is of a future in which global governance and power drive action in each of these crises. Oxfam sees this as the only viable scenario for the future. There is an urgent need for global governance to make sure that action for climate change, jobs, human rights, trade and other aspects of the global system are working coherently for each other. The world needs political leaders who are persuaded or compelled to put this new global governance in place to make the connection possible.

2. Questions and comments by the audience

- ILO Conventions create obligations on states. Declarations are more universal but less binding. Does the WTO "feel" obliged by the ILO Conventions too?
- Who is on the other side of the argument that the WTO should promote decent work?
- Trade is a means, not an end.
- Greed leads to growth. What would be the new emotional drive for decent work?

Replying to the first question Mr Howard said that this is a question of soft law against hard law. A charter for sustainable economic activity would put labour provisions on the same level as financial laws in the IMF and the World Bank (WB). The same applies to environmental issues as well.

Commenting on the statement that trade is a means, not an end, Mr Kyloh agreed that the goal should be the four pillars of sustainable development: social, political and economic development and the protection of the environment. Answering the second question, he replied that those on the other side of the argument are the profit-makers. However, there is a concept of wage efficiency; for example, when an entrepreneur wants a short-term profit by abolishing labour protection, the workers perform less efficiently. Finally, responding to the last question, Mr Kyloh asserted that the enforcement of labour institutions would constrain greed and would bring greater benefit for all.

Providing an answer to the first question Prof. Marceau said that, hierarchically speaking, trade standards are not above human rights, environmental or labour standards. However, they have a better applicability in the dispute settlement mechanism, and there are sanctions foreseen for their violation. Governments could also use public moral, a dynamic term, to limit trade and help judges make new case law. Public morale can be an ILO Declaration or an agreed term, as happens today with the general term “health”, as in “health protection”. The TBT repeats this principle in Articles 2.4 and 2.5: it stipulates that, if a limiting national measure complies with an international standard, then it is compatible with the WTO treaty.

Mr Hale suggested that, in many cases, the primary cause of poor global outcomes was not a conspiracy of vested interests, but the level of inertia in a system with highly distributed power.

3. Conclusions and way forward

In closing the session, Mr Howard explained the importance of different international organizations working together in complementarity in order to achieve efficient and effective global governance and see the world's problems being mitigated or eliminated. In times of crisis, policy coherence becomes more important, as the problems are aggravated and many people need urgent solutions. He thanked all the participants and the audience for attending the session.

The world trading system in the wake of the financial crisis

Moderator

Mr Timothy A. Wise, Director of Policy Research, Global Development and Environment Institute (GDAE), Tufts University

Speakers

Mr Umberto Celli, University of São Paulo, Brazil

Mr Mehdi Shafaeddin, affiliated with University of Neuchatel, formerly with the United Nations Conference on Trade and Development (UNCTAD)

Mr Timothy A. Wise, Director of Policy Research, GDAE, Tufts University

Unable to attend: Andrew Cornford, formerly of UNCTAD

Organized by

Global Development and Environment Institute (GDAE), Tufts University, USA

Report written by

Timothy A. Wise, Director of Policy Research, GDAE, Tufts University

Thursday, 14 September 2010
11.15-13.15

Abstract

In this session, experts examined the extent to which the global financial crisis has impacted on the trade and development prospects of developing countries. Panellists addressed different aspects of the crisis, from financial and environmental services to industrial development to agriculture, and different categories of countries, from least-developed countries (LDCs) to agricultural exporting countries. Panellists explored developing-country policy responses to the crisis and the extent to which such measures are permitted or discouraged under the disciplines of the WTO and other trading arrangements.

LDCs are heavily exposed to external shocks because of their extensive trade with the rest of the world. Yet, they are marginalized in terms of their share in international trade and output. They suffer from structural weaknesses and chronic balance-of-payment and fiscal deficits. They are heavily dependent on commodity exports and external financing. Panellists examined their long-term industrial and development strategies in the wake of the crisis. Panellists also addressed the issue of global financial re-regulation and its relationship to global governance of international trade. Finally, the panel examined the emerging disciplines for agricultural trade liberalization within the Doha negotiations in the wake of the food-price crisis, looking at Mexico's experience under the North American Free Trade Agreement (NAFTA).

Mr Wise chaired the session, presented the background and rationale, and introduced the speakers.



1. Presentations by the panellists

(a) *Umberto Celli, University of São Paulo, Brazil*

Mr Celli's presentation was entitled: "Prospects and challenges for the liberalization of trade in services in the WTO in the wake of the financial crisis and in a post-crisis scenario: the case of financial services and environmental infrastructure services".

A viable service sector is now a prerequisite for economic growth and a key ingredient for sustainable development. In certain countries, such as Brazil, it has been an important tool to help the economy to face the effects from the global financial crisis. Among the services of great importance for sustainable development, financial services and environmental infrastructure services, such as water and sanitation, stand out.

As regards the financial sector, after having emerged in the mid-1990s from decades of economic volatility, Brazil demonstrated resilience to the 2008-2009 global crisis, which erupted shortly after the restructuring of its banking system. The banking system and capital markets alike are subject to stricter rules than in many other jurisdictions, including in developed countries. Under Brazilian regulations, banks must hold assets equalling at least 11 per cent of their lending, although the average level is in practice closer to 18 per cent. When the financial crisis hit the country, the government was immediately able to adopt countermeasures in response, such as the provision of US\$ 50 billion from the BNDES (the Brazilian Development Bank), in order to finance investment and working capital for businesses. The effectiveness of these measures allowed Brazil to surface from the crisis faster than expected and strengthened the confidence of foreign investors. The question remains as to whether – if the country had embarked on a liberalization programme under the General Agreement on Trade in Services (GATS) and/or other free trade agreements (FTAs) – this smooth scenario would have been possible. The framework for financial market liberalization both under the GATS and, even more, under similar provisions in bilateral investment treaties (BITs), could have restricted the ability of the country to carry out its regulatory reform. Certain flexibility and/or policy space for WTO members is crucial not only to reform the financial system but, most importantly, to support socially oriented sectors, such as the environmental infrastructure services sector (water and sanitation).

In general, environmental infrastructure services, such as water and sanitation, have public goods characteristics and are often supplied by the public sector or by innovative public-private arrangements. These services require specialized knowledge, access to technology, capacity-building programmes, and professional qualifications. It is not uncommon in the developing world for populations not to have sufficient purchasing power to ensure a reasonable stream of revenue to firms, state or private, in payment for services rendered. Whether the environmental service supplier is public or private, subsidization schemes may need to be in place to ensure the sustainability of the supplying firm. Government's role as the granter of subsidies is therefore crucial for this sector. As regards WTO rules, for developing countries, the challenge will be to fight to keep the right to subsidize the sector for economic, social or environmental reasons. Developing countries should sustain a "green box" approach for the sector whereby subsidies would be "non-actionable" in the WTO if directly linked to concrete and clearly defined national policy objectives.

(b) Mehdi Shafaeddin, affiliated with University of Neuchatel, formerly with UNCTAD

Mr Shafaeddin's presentation, based on his co-authored South Centre Research Paper, was entitled: "Implications of the recent global economic crisis for the long-run development of LDCs".

The recent economic crisis, unprecedented since the Great Depression, is a wake-up call for least-developed countries to consider their long run development strategies. The recession once more reveals their structural weakness caused by their low level of development, dependence on primary commodities and heavy integration into the world economy. Such integration has been intensified by premature and across-the-board trade liberalization imposed by the international financial institutions, WTO rules and bilateral donors since the early 1980s. It has resulted not only in de-industrialization and specialization based on static comparative advantages, but also in LDCs' further marginalization from the world economy.

As short-term remedial measures are limited, LDCs need policy space to diversify their economies and enhance their productive capacity based on the principle of dynamic comparative advantage. While the need for such policy space has increased during the last couple of decades because of the changes in the global economy, their policy space has, in fact, shrunk. It will shrink further if the Economic Partnership Agreements of the European Union (EU) are finally imposed on them.

In order to avoid further de-industrialization, marginalization and human misery, LDCs need to:

- resist further loss of policy space through WTO rules and particularly economic partnership agreements (EPAs), avoiding sacrificing long-term development for short-term gains derived from financial aids provided by donors and with imposed conditions;
- aim for dynamic and flexible industrial and trade policies requiring changes in WTO rules, as well as a different type of EPA.

Applying such attitudes and strategies will not be easy, but the alternative will involve severe adverse consequences for current and future generations. Furthermore, international financial institutions and bilateral donors should also appreciate the situation, avoiding the imposition of anti-developmental conditions on LDCs.

(c) Timothy A. Wise, Director of Policy Research, GDAE, Tufts University

Mr Wise's presentation was entitled: "Agricultural trade liberalization and food security: Lessons from Mexico under NAFTA", based on his recent paper, *Agricultural Dumping Under NAFTA: Estimating the Costs to Mexican Producers*, summarized in a recent blog post, and part of a new report, "Subsidizing Inequality".

With the opening of the Mexican economy under the North American Free Trade Agreement (NAFTA), Mexican agriculture came under new competitive pressures from United States exports. High US farm subsidies for exported crops, which compete with Mexican products, have prompted charges of US "dumping". Mr Wise assessed the costs of US agricultural policies to Mexican producers by examining the extent to which



the United States exported agricultural products to Mexico at prices below their costs of production, one of the definitions of “dumping” in the WTO.

He estimated “dumping margins” for eight agricultural goods – corn, soybeans, wheat, rice, cotton, beef, pork, and poultry – and concluded that:

1. US exports of the eight supported commodities increased dramatically since the early 1990s, rising by between 159 per cent and 707 per cent.
2. For supported crops, the “dumping margins” – the percentage by which export prices are below production costs – from 1997-2005 ranged from 12 per cent for soybeans to 38 per cent for cotton.
3. Assuming Mexican producer prices were depressed by the same percentage as the dumping margins, below-cost exports cost Mexican producers of corn, soybeans, wheat, cotton and rice an estimated US\$ 9.7 billion from 1997-2005, or just over US\$ 1 billion per year.
4. Meats were exported at below-cost prices because US producers benefited from below-cost soybeans and corn – key components in feed. This cost Mexican livestock producers who did not use imported feed an estimated US\$ 3.2 billion between 1997 and 2005. The largest losses were in beef, at US\$ 1.6 billion, or US\$ 175 million per year.
5. Total losses to Mexican producers are estimated to be US\$ 12.8 billion from 1997-2005 for the eight products (in constant 2000 US dollars). To put these losses in context, the average annual loss of US\$ 1.4 billion is equivalent to 10 per cent of the value of all Mexican agricultural exports to the United States, and greater than the current value of Mexican tomato exports to the United States.
6. Corn showed the highest losses. Average dumping margins of 19 per cent contributed to a 413 per cent increase in US exports and a 66 per cent decline in real producer prices in Mexico from the early 1990s to 2005. The estimated cost to Mexican producers of dumping-level corn prices was US\$ 6.6 billion over the nine-year period, an average of US\$ 99 per hectare per year, or US\$ 38 per ton.
7. The impacts have been dramatic. More than two million producers have left agriculture, and Mexico’s food dependency on US imports has increased.

The implications for global governance of trade are clear. Mexico’s premature opening of its agricultural markets under NAFTA produced devastating employment losses and rising food dependency, while its commitment to so-called neoliberal economic policies resulted in slow growth and anaemic job creation. This contributed to the outflow of migrants to the United States in the one market that was not liberalized under NAFTA – labour. The case highlights the importance of a slow transition toward liberalized trade. Mexico could have imposed tariffs to limit corn imports during the 14 years after NAFTA took effect, in 1994. It chose not to. Now it has no recourse to impose any protective tariffs.

The case illustrates the importance of current developing-country demands at the WTO for an effective Special Product and Special Safeguard Mechanism. It also highlights

the need for improved measures of agricultural dumping based on the exportation of surpluses at prices below production costs. Mr Wise closed by calling for a moratorium on bilateral and regional trade agreements, which tend to be more restrictive than the WTO agreement and less fair to developing countries.

2. Questions and comments by the audience

In a lively question-answer session, audience members questioned and debated how restrictive the EU's negotiating position is on EPAs. Challenged, an EU representative declined to make concrete commitments regarding conditions and provisions in the EPAs. Mr Shafaeddin explained the importance of dynamic comparative advantage, which recognizes the process of development as one of moving from one stage of development to another based on state involvement in the economy.

In response to a question about who, in both the developed and developing world, is really profiting from liberalization, Mr Wise highlighted transnational firms in general, and pointed to transnational livestock firms, on both sides of the US-Mexico border, who have benefited under NAFTA from agriculture, trade, labour, environmental, and immigration policies.

3. Conclusions and way forward

Mr Wise closed the session closed with a call to continue the discussion and debate, and to keep development at the centre of the Doha Development Agenda. He urged people to follow the discussion on the Triple Crisis Blog, for which he and Mr Shafaeddin write.



Abstract

This session explored the potential role of the WTO and the multilateral trading system, post-Doha Round, in fostering innovation as a means of solving major global challenges. These challenges include climate change, food security, energy security, healthcare, and food and product safety. Questions addressed were:

- What issues should the WTO focus on in future so that the trading system is responsive to global supply chains and global models of research and development?
- Can the WTO play a greater role to drive innovative solutions to global challenges?
- Is the WTO in danger of being left behind as members strive to solve new concerns in other fora?

Beyond the Doha Round? Shaping the global trading system to encourage innovation and solve global challenges

Moderator

Mr Stuart Harbinson, Senior Trade Policy
Adviser, Sidley Austin LLP

Speakers

H.E. Mr Roberto Carvalho de Azevedo,
Ambassador, Permanent Representative
of Brazil to the WTO

Mr Thaddeus Burns, Senior Intellectual
Property Counsel, General Electric

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

Mr William A. Reinsch, President, National
Foreign Trade Council, United States

Organized by

National Foreign Trade Council (NFTC)
and Winston & Strawn LLP

Report written by

Mr Stuart Harbinson, Senior Trade Policy
Adviser, Sidley Austin LLP

Thursday, 16 September 2010
14.15-16.15

1. Presentations by the panellists

(a) *Roberto Carvalho de Azevedo, Ambassador, Permanent – Representative of Brazil to the WTO*

Ambassador Azevedo did not think that the Doha Round would result in radical changes to the framework of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Indeed, many developing-country WTO members were still assimilating the impact of the TRIPS Agreement. With respect to patents, the Agreement should provide a balance between rights and obligations: exclusive rights for a period of time, followed by mainstreaming of the technology involved. However there was currently no consensus on whether the right balance had been achieved.

The World Intellectual Property Organization (WIPO) was seen as moving from a “service provider” role to becoming a norm-setting forum. But the structures and culture needed to adapt accordingly and it was not yet clear how this could be achieved.

Outside these two organizations, some countries were trying to address perceived shortcomings of the TRIPS Agreement through negotiations on an Anti-Counterfeiting Trade Agreement (ACTA). It remained to be seen what the content would be and how credible or legitimate this initiative would be from a multilateral perspective.

Innovation was not synonymous with IP rights. Such rights might foster innovation, as was often the case in the pharmaceutical industry. But they could also hamper or chill innovation. For example, it was doubtful whether new methods of management would be discovered in the absence of exclusive rights. Lead times were also important: in some industries being first to market was, in itself, a significant advantage. Overall, it could not be said that one fixed system or methodology (such as the current system of IP rights) was best in all circumstances.

There was no doubt that innovation had a clear role to play in addressing major global challenges such as climate change, energy, healthcare and food. The question was: what kind of system fostered innovation?

(b) *Thaddeus Burns, Senior Intellectual Property Counsel, General Electric*

Mr Burns pointed out that intellectual property was not an end in itself. Rather it should be seen as a societal tool to develop technology, and should be diffused in a way that allowed companies to do business in a sustainable way.

Research and development (R&D) had historically been a closed environment but this had changed radically since the development of the Internet. The TRIPS Agreement had also made a significant difference to companies' willingness and ability to invest in merging markets. It had given certainty and confidence with respect to economies that previously had not had credible patent systems. In general, IP systems in major emerging markets worked well.

As a result, innovation was now characterized by distributiveness. R&D now took place in many places at the same time. For example, General Electric currently had R&D centres in India, China, Brazil and Germany. It was in the technology transfer business: if it did not transfer technology it did not make money.



Supply chains were now global and the world was complex and interrelated, and this also applied to R&D. Previously it had been difficult to get suitable products to emerging markets at an affordable price. There were huge needs in healthcare. Localizing R&D had provided part of the answer. Technology development and diffusion had, for example, resulted in affordable electrocardiogram machines being marketed in India, and ultrasound units being marketed in China.

Beyond Doha, stability was needed rather than major change. One area where work remained to be done was in climate change and environmental goods and services. Continuing reduction of barriers to trade in environmental goods and services would allow for easier diffusion of technology across borders.

(c) Ricardo Meléndez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)

Mr Meléndez-Ortiz said that the ICTSD was exploring the link between innovation, the development process and sustainable development, looking at relevant provisions and proposals in not only the WTO but also regional trade agreements (RTAs), and discussions on climate change and energy. It was noted that several organizations were moving towards innovation strategies (e.g. Organisation for Economic Co-operation and Development (OECD), WIPO, the United Nations Framework Convention on Climate Change (UNFCCC) and the World Health Organization (WHO)).

The role of the private sector was clearly critical for innovation, which was key to solving many current global challenges. It was timely to reflect on how the global trading system can encourage innovation and facilitate the development of robust national innovation systems.

Some equated innovation with higher levels of protection of intellectual property rights. Others saw innovation as a more holistic process. For many developing countries, innovation was inseparable from transfer of technology. WTO discussions in the latter area had made no concrete progress and implementation of Art. 66.2 of the TRIPS Agreement was considered unsatisfactory by least-developed countries.

Some countries focused on IP rights as the way to enhance innovation but others saw compulsory licensing as appropriate. Some went further and wanted to exclude, for example, environmental technology from patentability. The key question was how to ensure a balance between encouraging innovation and providing access to the fruits of innovation. A third approach was needed, one which provided IP protection, but also provided better access to technology. An example of such an approach was facilitating the licensing of clean-energy technology to developing countries.

On how the global trading system might be shaped to encourage innovation, one possibility might be to add innovation to the future WTO agenda, post-Doha, in a way which would bring together and integrate the relevant WTO provisions. A study or report by the WTO Secretariat, possibly in conjunction with other organizations, could be a basis for further reflection and action.

Innovation was a lens through which we should look at problem-solving – and IP protection, if of a balanced nature, could be a tool. In order to solve major global challenges, we need to generate an environment conducive to innovation.

(d) William A. Reinsch, President, National Foreign Trade Council

Mr Reinsch emphasized that the current Doha Round should be completed as the first priority. He did not wish to add to the Round's difficulties by suggesting that new issues should be added at this stage.

Having said this, the world was rapidly changing and the WTO ran a risk of being left behind if it delayed too long before tackling emerging issues. A number of these resulted from the globalization of the supply chain led by multinational companies. Issues like trade facilitation (part of the current Round) and product standards were becoming critical to the efficient movement of goods. Food and product safety meant on the one hand that consumers should have confidence and on the other that companies could be sure of fair and science-based application of standards. It would be useful if the WTO, in cooperation with other relevant organizations, could negotiate common standards wherever possible, perhaps through a "mini round" on food and product safety.

Global research platforms now provided a mechanism to share and transfer knowledge and technology across borders. Enabling these activities to grow required a stable business environment in which companies could be confident that their intellectual property would be protected. Nor should barriers to trade be raised through over-regulation of the Internet, which might inhibit the growing use of "cloud computing".

Bilateral and regional free trade agreements were in many cases a hindrance to globalized trade and did not satisfy the requirements of Art. XXIV of the General Agreement on Tariffs and Trade (GATT). The WTO should pronounce itself on the consistency of such agreements with WTO rules.

As regards climate change, countries were developing their own greenhouse-gas and energy-conservation policies. Some would introduce border measures and this would likely lead to WTO disputes. It made more sense for the WTO to address the question through negotiation rather than to leave it to the Dispute Settlement Body (DSB) and the UNFCCC.

Finally, it would be very helpful if the WTO could wrap up an environmental goods and services agreement as part of the Doha mandate.

2. Questions and comments by the audience

A question was raised in relation to the suitability of using the WTO as a product standard-setting forum. There were many other organizations possessing greater technical expertise. In response, one panellist indicated that standards were increasingly being used as trade barriers. Therefore it was inevitable that the WTO, with its dispute settlement capability, should become involved. Another panellist pointed out that, while standard-setting should in principle be kept out of the WTO, the problem was that the current Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements left room for countries to impose standards higher than international standards. In such situations the WTO could not avoid looking into the matter if there were trade complaints.

Another question concerned the ineffectiveness of discussions in the WTO and other international organizations on transfer of technology. One panellist felt that there was



an inherent tension between IP rights on the one hand and technology transfer on the other. The WTO should give more weight to TRIPS obligations with respect to technology transfer. Another panellist pointed out that governments were not the holders of technology. Rather this was in the hands of private enterprise. Business had an incentive to diffuse technology, but it would only do so in an enabling environment that gave due weight to the rights of the inventor.

The outlook for continuing globalization was questioned given the shift in public opinion in developed countries. Was regional fragmentation now more likely? One panellist agreed that there was a backlash against globalization in some countries following the economic crisis. However globalization was driven by technological progress and this was not reversible. Companies had to compete worldwide.

The possible contribution of the WTO to improved global financial regulation was raised. Was the General Agreement on Trade in Services (GATS) a hindrance in this respect? One panellist felt that other institutions were likely to take the lead in financial regulation. There might be some very long-term convergence of regulation as GATS Mode 1 commitments improved, but the WTO was not at the centre of this issue.

In answer to a question on the efficiency of patent pools, a panellist said that this seemed to vary from sector to sector. Patent pools could be useful where a number of technologies were required to bring a product to market or to implement an international standard. However in other sectors, such as pharmaceuticals, this might be more difficult.

3. Conclusions and way forward

Three points were highlighted in conclusion.

1. There was agreement that the first priority was to conclude the Doha Round. Nothing anyone had said was intended to complicate that already difficult task.
2. The possibility of a future integrated WTO approach to trade and innovation had been raised. This might embrace not only TRIPS but also standards, trade facilitation, technology transfer, GATS, rules of origin, non-tariff barriers and the Information Technology Agreement. The useful suggestion had been made that the WTO Secretariat might initiate a study.
3. As regards the relationship between innovation and global supply chains, another interesting suggestion had been made for a “mini round” of negotiations on food and product safety.

Can the existing multilateral trading system cope with the emerging challenges?

Moderator

Professor Gabrielle Marceau, Counsellor,
Legal Affairs Division, WTO

Speakers

Mr Vital Moreira, Chair of the Committee
on International Trade of the European
Parliament

Mr Benoît Ouattara, MP, Former Minister
of Commerce, Burkina Faso

Senator Luis Alberto Heber, Uruguay

Professor Laurence Boisson-de-
Chazourne, Head of the Department of
Public International Law and International
Organization, University of Geneva

Organized by

Inter-Parliamentary Union and European
Parliament

Report written by

Mr Serguei Tchelnokov, Programme
Manager, Inter-Parliamentary Union

Thursday, 16 September 2010
14.15-16.15

Abstract

When it comes to political decision-making on ways to prevent economic collapse and social recession in the wake of the global financial crisis, members of parliament are confronted with hard choices. They accept that trade is as much a consequence as it is a driving force of the economic rebound, but are increasingly wary of the need to submit to legally enforceable ceilings on farm subsidies and trade tariffs set from outside. In an atmosphere of swelling antipathy to globalization, this adds to public misgivings about the credibility of multilateral institutions, including the WTO.

Parliaments bear their own share of responsibility for ensuring that the multilateral trading system is able to reform itself in response to changing conditions. Their main role, however, is to provide stringent oversight of government policies, commitments and plans, including those with a direct impact on the functioning of the WTO. This session, organized jointly by the Inter-Parliamentary Union and the European Parliament, was designed to consider, from a parliamentary perspective, policy responses to emerging challenges and powerful new pressures on the multilateral trading system. It added a distinct parliamentary dimension to the programme of the WTO Public Forum.



1. Presentations by the panellists

(a) *Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO*

In her introductory remarks, the moderator, Ms Marceau, Counsellor with the Legal Affairs Division of the WTO Secretariat, pointed out that GATT (General Agreement on Tariffs and Trade)-WTO machinery had been in place for some 65 years. It was therefore perfectly understandable for questions to arise about its state of health and the capacity of the multilateral trading system as a whole to cope with new challenges, all the more so in view of the impact of the latest crisis on many countries (some very small, some very big, some too small and some too big). The moderator hoped that the panel, composed of three parliamentarians and one academic, would provide a wide perspective on these questions.

(b) *Vital Moreira, Chairman of the Committee on International Trade, European Parliament*

Trade was not the cause of the biggest economic downturn since the Great Depression but was one of its first casualties. At times of severe economic stress, countries tended to reduce their appetite for trade openness. Fortunately, due to the deterrent effect of WTO rules, trade-restricting measures were used only to a small extent during the latest crisis.

The relatively quick recovery of global trade flows could not, by itself, bring about a solution to such pre-existing challenges to the global trading system as the linkages between trade and development, trade and climate change, trade and the social dimension, trade and food security, etc. The list of challenges also included such issues as the shift in global trade geography, the need to rebuild confidence in the virtues of open trade, and the spread of regional and bilateral trade agreements.

Having provided a brief analysis of these challenges, the panellist concluded that, in order to fulfil the pledge of Doha, the WTO should likewise address questions concerning its decision-making process, mandate and functioning. Having pointed out that the organization's institutional structure required meaningful reform, he recalled that the European Parliament had always been an active advocate of the parliamentary dimension of the WTO. Trade no longer being the exclusive domain of the executive, the Parliamentary Conference on the WTO should obtain consultative powers at the WTO. This would increase the organization's legitimacy, accountability and transparency.

(c) *Benoît Ouattara, MP (Burkina Faso), former Minister of Commerce*

Speaking from the perspective of a former Minister of Trade of a small African country, the panellist said that one of the challenges for the WTO was to find a way of accommodating the interests of smaller countries and giving them a chance to participate in WTO decision-making more effectively. He was convinced that this was feasible, as evidenced by the miraculous outcome of the dossier on cotton. When, a few years earlier, a number of African countries had come to the WTO with their concerns with respect to cotton, nobody could have imagined that this "adventure" would bring the issue right to the top of the WTO agenda. This had been made possible by the organization's multilateral nature, which was very different from the unilateral system of trade practiced in the colonial past.

WTO rules contributed to greater predictability and legitimacy of trade relations. However, more had to be done for the benefit of smaller countries, for which the successful conclusion of the Doha Round was synonymous with the credibility of the entire system. This was especially true for the African countries, because their continent had not been sufficiently present during the Uruguay Round. They were now looking for ways to redress the situation and restore the balance. Regional and bilateral agreements could not replace the global multilateral system, even if regional agreements in Africa played a positive role as part of South-South trade.

The current crisis had only underscored the importance of the WTO as an indispensable part of the world governance architecture. Directly or indirectly, issues such as environment and climate change were also linked with trade. Had the WTO been able to find a solution at the time of the Ministerial Conference in Cancún, the scale of the current crisis might have been less significant. Parliamentarians could not sit at WTO negotiating tables, but they should oversee governments. The panellist agreed with the previous speaker that a gateway should be opened to associate parliamentarians more closely with the WTO.

(d) Luis Alberto Heber (Uruguay)

Some economists believed that developing countries had been affected by the crisis to a lesser degree. According to the panellist, however, everything was relative. In Uruguay, for example, great numbers of people were returning from developed countries owing to adjustment measures taken in the context of the crisis. As a result, unemployment was on the rise in Uruguay as well, in spite of the absence of major economic problems.

Parliamentarians should be looking not at the scope of the current crisis but at how the WTO was bracing itself for future challenges, in particular as regards providing safeguards for the least developed countries. Proliferation of regional trade agreements was one such challenge, linkage to major global issues (such as climate change, energy and food safety) was another. There was also the issue of protectionism, which came in two “flavours” – intelligent and traditional. Protectionism was natural at times of economic difficulty. During World War II, for example, protectionist measures had been particularly widespread. During the latest crisis, however, the WTO had managed to resist the temptation to resort to such measures and kept trade protectionism at bay.

There also existed gray areas of “intelligent protectionism” that needed to be looked at. One such area was government procurement. In the opinion of the panellist, all countries had sinned in that respect, but this did not mean that they should give in to such trends.

(e) Laurence Boisson-de-Chazourne, Professor of International Law, University of Geneva

The panellist said that she was particularly interested in the challenges facing the WTO system from the environmental perspective, including related aspects such as health, food and climate change. There had been scientific discussion about these issues since the early 1970s, but it was only recently that the WTO had started looking at them more seriously, in an attempt to adapt itself to the pressing new situation.

Those challenges were part of a gray area in which the multilateral trading system had to cooperate with international structures covering environmental protection agreements, such as those on biodiversity, climate change and desertification. This had been recently borne out by a WTO report on trade in natural resources.



There should be mutual support between trade and environmental protection agreements and more active cooperation between the respective agencies. Tools relating to other areas, such as maritime law, should also be taken into account. Another example was the Cartagena Protocol on biosafety, which could serve as a source of useful ideas about risk-assessment mechanisms. Sooner or later, the extra step must be taken to adjust WTO rules to long-term environmental considerations. This step would require political will.

2. Questions and comments by the audience

The ensuing discussion was very lively, with an active exchange of questions and answers between the panellists and the audience, and among the members of the audience.

Most delegates identified themselves as members of parliament. It was perhaps for that reason that the question of the parliamentary dimension of the WTO resurfaced during the debate more than once. Some participants insisted that the WTO should integrate members of parliament more closely into its work, especially through direct contacts with negotiators. They felt that parliamentarians were pluralists by definition, and could bring in useful expertise and knowledge. It was considered equally important for members of parliament from different countries to talk to each other. Failure to engage the United States Congress, for example, might lead to nasty surprises at a later stage. Other participants were of the view that "parliamentarization" of the WTO would be the "end of it", if only because of the risk of exporting domestic political problems to the WTO. The prevailing view was that, at a minimum, ministers should listen more closely to the opinions of parliamentarians and non-governmental organizations (NGOs).

Much attention was focused on developing-country expectations of the multilateral trading system in general and the Doha Development Round in particular. In response to the suggestion that the developing countries had in fact gained very little from the Doha Round, it was said that they were already making gains in terms of the improved transparency and fairness of the system. One of the panellists pointed out in this connection that trade was always preferable because it was contractual, whereas aid depended on the goodwill of the donor. This being said, there was a need to democratize the WTO, in particular with a view to safeguarding the benefits of smaller countries, including those already affected by climate change. Despite the promise of the Doha Round, those countries had not seen much improvement. One of the participants asked whether the very idea of trade rounds was not an anachronism.

In response to the question of whether it was possible to make bilateral and regional agreements retroactively compatible with WTO rules, it was said that, out of the more than 400 such agreements registered thus far, the majority did not contradict WTO rules. One panellist pointed out in this regard that the WTO was often perceived as a distant organization, while regional and bilateral agreements were better understood by the population.

A lively exchange of views took place on whether or not a social dimension should be added to the WTO in addition to the emerging environmental one. Resurrection of the social agenda would lead to a purely ideological debate inside the WTO, suggested one participant. In Europe, the social dimension was back anyway, through the Lisbon Treaty,

retorted another. Attention was drawn in this regard to the fact that questions of trade-related skills and resources could well be considered as relating to human development.

3. Conclusions and way forward

Closely linked to the process known as the “Parliamentary Conference on the WTO”, the parliamentary panel organized by the Inter-Parliamentary Union (IPU) and the European Parliament proved to be a valuable addition to the programme of the WTO Public Forum. Not only did it attract parliamentarians from many countries, including some that were relatively remote, it was rich in substance and remarkably interactive in form.



Abstract

The benefits of a robust, rules-based multilateral trading system have been clearly demonstrated during the financial and economic crisis: a severe recession in the real economy and a sharp drop in world trade did not result in closing of borders. It has been widely recognized that this was largely due to proper observation of WTO disciplines as well as timely peer pressure among the members of the Organization.

While effectively administering existing rules is an essential function of the WTO, it does not address new challenges emerging in a fast-changing, globalizing world. WTO members also need to address gaps in the existing rule book that have been exposed by the financial and economic crisis.

Existing disciplines on issues such as government procurement and sectoral subsidies have proved inadequate to effectively address the challenges that economic operators are faced with in an increasingly global marketplace. Many advocate that the WTO should also tackle a range of modern trade policy issues that are truly global in nature, such as trade and climate change.

Trade being a powerful engine of global growth, the WTO membership needs to ensure that multilateral trade rules contribute to a sustainable recovery of the global economy. This calls for increased attention to possible WTO disciplines that can support global efforts to rebalance our economies.

The objective of this session was to explore what steps – beyond traditional market access negotiations – the WTO and governments can take to contribute towards reviving international trade flows, through WTO's rule-making function.

A pathway to recovery – a case for the further development of the multilateral trading system?

Introductory remarks

Lord Brittan, Trade advisor to UK Prime Minister, former Vice-President of the European Commission and Trade Commissioner

Moderator

Mr Lucian Cernat, Chief Economist, DG Trade, European Commission

Speakers

H.E. Mr Ujal Singh Bhatia, former Ambassador of India to the WTO

Mr Robert B. Koopman, Chief Economist, United States International Trade Commission (USITC)

Mr Denis Redonnet, Head of Unit, WTO; DG Trade, European Commission

Organized by

European Commission

Report written by

Ms Marlene Rosemarie Madsen, Economist, Chief Economist Unit, DG Trade, European Commission

Friday, 17 September 2010
09.00-11.00

1. Presentations by the panellists

The session was moderated by Mr Cernat, who initiated it by placing it in a broader content and explaining its rationale. He referred to the question mark in title of the session and set the tone for the debate by referring to Mr Lamy's opening remarks: "We cannot afford to rest on our laurels in the WTO until our rule-book becomes outdated. Nor can we afford to misdiagnose the impasse in current negotiations as being "institutional." There is a need to discuss what is needed to make WTO a strong institution and what should be its role in today's world.

(a) Lord Brittan, Trade advisor to UK Prime Minister, former Vice-President of the European Commission and Trade Commissioner

The panel was introduced by Lord Brittan, who noted that the WTO as an organization shows no signs of slowing down. The WTO has many excellent qualities, and its inclusive nature is its main strength. More countries are queuing to join the WTO, which is a clear indication that despite all the criticisms that may be made, it is still important. Unfortunately the same could not be said for the Doha round of negotiations. Trade is an engine of growth and a strong WTO is essential for economic recovery. The WTO has a powerful dispute settlement system, which is one of the few areas in which the rule of law is substituted into international law. Further opening up markets is an important way for governments to boost growth. Although regional trade agreements (RTAs) are currently proliferating due to the strong desire to remove barriers, these RTAs do not damage the WTO, although they render it more complicated.

Further work is needed both to ensure that developing countries can partake in and benefit from trade, and to understand how small countries can benefit from these agreements. In addition, there is a need to think carefully about the single-undertaking approach. While the consensus approach has huge advantages, it renders reaching agreement difficult. The concept of critical mass could help and make agreements easier to reach. Finally, with regard to the WTO's relation with other international institutions such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD) and feeding into G20; this type of collaboration is likely to be increasingly important in the future.

(b) Ujal Singh Bhatia, former Ambassador of India to the WTO

Mr Singh Bhatia said that the WTO provides rules and regulations governing global trade and had shown its importance during the crisis. A discussion on further development of the multilateral trading system should start by a shared understanding of what we have. Developing countries have shown rapid growth and the crisis had also demonstrated this dichotomy.

The WTO today is different than a decade ago, and therefore some short-term initiatives where consensus is now already possible should be looked into (changes in committee procedures, facilitative mechanism for low threshold disputes, bolder programme for RTAs, integrated database of all tariff measures). For the medium term, it is important to ensure that the work programme is of benefit to all members. A comprehensive work programme of RTAs with the aim of mainstreaming them into the WTO system is essential. Global intellectual property right (IPR) disciplines are necessary to include many new developments in the information and communication technology (ICT) area. Exploring



the remaining Singapore issues or looking into expanded agreement on global electronic commerce, etc., could be addressed by plurilateral agreements. He also raised the issue of equity in the global system. There is a need to address asymmetries in value creation across the world and along the global supply chain, which may help to reduce poverty.

(c) Robert B. Koopman, Chief Economist, USITC

Mr Koopman stated how trade and related policies can spur growth, expand markets, and improve economic efficiency. Trade and gross domestic product (GDP) growth are highly correlated, but there is uncertainty as to how big a role trade can play in stimulating growth. However, economic research shows that protectionism does not result in positive economic growth. Some calculations find that the United States would gain 2 to 5 trillion dollars from tax liberalization. A complete liberalization of trade would bring less than 20 billion dollars to the US economy, however others estimated that it would bring 50 billion dollars. Five hundred billion dollars could result from complete liberalization of agriculture and manufacturing. He highlighted the importance of including other policy areas to understand and realize how these work together and impact on each other.

Low-hanging fruit for the WTO could be to continue with tariff bindings and reductions, and to clarify and communicate to all members the role and impact of trade policy versus other policies, static and dynamic. For instance, the WTO could seek to increase self-monitoring and reporting through the Trade Policy Review Mechanism (TPRM) and ensure that all countries are trying to measure the broad gains from trade and other policy liberalization. Furthermore, it is important to recognize the growing role of and importance of RTAs, and help define best practice.

(d) Denis Redonnet, Head of Unit, WTO; DG Trade, European Commission

Mr Redonnet noted that the "ratchet mechanism"; market opening or at least consolidation; and continued production of rules and disciplines are the three public goods that WTO produces. There is also a non-Doha agenda and established areas include: transparency implementation – the middle pillar of the WTO where the European Union (EU) tries to be increasingly active in day-to-day life of the organization through notifications and TPRM scrutiny; keeping a watchful eye on coherence – bilateral and regional – scrutinizing FTA activity, and at some point start re-multilateralizing them, and contributing to accessions of countries still outside the WTO. New products of the WTO involve policy- and rule-making in regulatory frameworks and in covering new issues that are unchartered in the WTO (energy, trade and climate-change interaction).

2. Questions and comments by the audience

Mr Cernat concurred with the views made by the panellists, who had provided insightful remarks, and opened the floor for questions.

The questions raised included one from a member of the Parliament of the Seychelles, who inquired about the value of accession for small islands. He asked whether there will there be space for the WTO to take into consideration the specificities of small islands. All panellists were positive of the benefits, also for small islands, of joining the WTO. The main benefit of the multilateral system is that everyone is involved; meaning that everyone can benefit from what is agreed and everyone is bound by what is being agreed.

Furthermore small countries have the same votes as large countries. However, it is true that there are specificities /constraints that need to be addressed. Small island states and small landlocked states can find it difficult to see this system – where everything is very much about being able to tag on to economies of scale – as being important for them, for which reason the question of differentiation is important. There are many cases of differentiation in WTO.

There was also a question concerning environmental issues, and what the benefit of multilateral aspect of environmental issues was. One panellist referred to the importance of sequencing. While we cannot foresee the outcomes of the climate-change negotiations, it is still important to prepare for it. One issue could be green subsidies, and how they conflict with the Agreement on Subsidies and Countervailing Measures of the WTO. Should the WTO deliberate on this and come up with a constant solution that could allow this, or should products be discriminated on the basis of their carbon intensity.

One participant raised doubts whether the WTO would be more effective if the single-undertaking principle were weakened. One panellist agreed with the principle that it is not single-undertaking that complicated the conclusion of Doha. On the other hand, there may be sectoral agreements that may be of more interest to some than to others. Here it is legitimate and beneficial to look at possibility of plurilateral agreements.

Another participant raised the point that the Doha round should still be the key goal and asked how we can make a deal for the Doha round. One panellist replied that this is indeed a vast question, which again relates to the question about multilateral versus regional agreements. The overriding priority has to be the Doha round. Alongside this, FTAs should be deep and comprehensive agreements. When the system experiences problems, it is when we have very shallow agreements. The WTO should therefore, in parallel with Doha, measure and evaluate all the different activities, and engage with other forums. This is the way forward in the short term.

3. Conclusions and way forward

Mr Cernat thanked the panellists for their presentations and the audience for their participation. The session aimed at building consensus around how to further develop the multilateral trading system, particularly in the current economic climate. The following key issues were discussed:

- A strong multilateral trading system is key, and the WTO has proved its resilience particularly in its rules being an important restraint for countries considering protectionist reactions to economic crisis.
- Trade remains an important engine for growth.
- There is need to conclude the Doha Round to underpin further strengthening the multilateral trading system.
- More flexibility is called for in future, including on the single undertaking.
- Owing to linkages in global value chains, much liberalization is taking place autonomously. This need not be perceived as negative.



- Countries need to think outside the box and focus on other areas for the WTO.
- A new work programme might be needed on regional trade agreements, better analysing trends, with the overall aim to bring these gains into the multilateral system.
- The WTO needs to enhance its cooperative arrangements with other international institutions such as the OECD and UNCTAD.



The post-crisis agenda for growth in developing and emerging economies: Unlocking the potential of telecommunications

Moderator

Mr Iain MacVay, Partner, Steptoe & Johnson, London

Speakers

Mr Mike Corkerry, Executive Director, EMEA (Europe, the Middle East and Africa) Government Affairs, AT&T

Mr Tilmann Kupfer, Vice President, Trade and International Affairs, BT Group plc

Ms Lee Tuthill, Counsellor, Trade in Services Division, WTO

Mr Wamkele Keabetswe Mene, Economic Counsellor, Permanent Mission of South Africa to the WTO

Organized by

International Chamber of Commerce (ICC)

Report written by

Mr Andrew Wilson, Policy Manager, ICC United Kingdom

Friday, 17 September 2010
09.00-11.00

Abstract

A significant body of research highlights that telecommunications have a significant impact on economic growth and social development. This is often interpreted as being due to the fact that telecommunications (and associated services) help to reduce transaction costs, increase the efficiency of markets, and consequently lead to increased investment levels. Much of the literature on the subject suggests that the biggest effect of telecommunications on growth occurs in the less-developed economies.

In this context, this session hosted by the UK Chapter of the International Chamber of Commerce sought to examine the potential role of information and communication technology (ICT) services in promoting growth in developing and emerging economies following the financial crisis of 2008-2009.



1. Presentations by the panellists

- (a) *Mike Corkerry, Executive Director, EMEA Government Affairs, AT&T, and Tilmann Kupfer, Vice President, Trade and International Affairs, BT Group plc*

Does ICT roll-out promote growth?

Two industry representatives, Mr Kupfer and Mr Corkerry, reviewed a number of studies which suggest that the roll-out of telecommunications – particularly mobile telephony and broadband – may spur recovery and economic development. They cited research estimating, for example, that a 10 per cent increase in household penetration of ICTs can lead to a 0.6-0.7 per cent growth in gross domestic product (GDP) per year on average. Similar figures exist which state that broadband growth can boost GDP by as much as 1.3 per cent.

Mr Kupfer stressed that telecommunications and “network readiness” were recognized as part of the efforts to reach the Millennium Development Goals and that ICTs had an important role to play in integrating developing and developed countries in the world economy.

He added that ICTs have led to another wave of unbundling of production processes and enabled companies to supplement their trade in finished products with trade in tasks – allowing, for example, the emergence of back-office services and call centres, in which developing economies have excelled.

Promoting liberalization

Looking at the factors that can support the roll-out of ICTs, the panellists agreed that the “rule of law” is essential to underpin the policies needed to promote ICT-led growth. They acknowledged that trade disciplines, in turn, are an important tool in supporting effective regulation.

Mr Corkerry stated that the telecommunication rules set out in the General Agreement on Trade in Services (GATS) had catalysed telecommunication liberalization, which had in turn transformed AT&T into a global wholesaler of connectivity for small carriers and multinational corporations. Mr Kupfer added that the WTO rules have assumed even greater importance in an increasingly interdependent world, where, for instance, companies are keen to outsource service provision (through call centres, for example).

The panellists discussed how increasing the level of competition in telecommunication markets had led to a virtuous circle of investment in ICT and related industries, and that WTO commitments were among the critical conditions for new market entry. Following a question from the audience, Ms Tuthill (WTO) noted that other conditions included transparent licensing, competition safeguards, foreign ownership or control, and broad-based liberalization to permit innovation.

Mr Corkerry underlined that updating rules and commitments would further enable ICT development, and that tools to achieve this included trade agreements, regional economic groupings and broadband initiatives around the world.

(b) *Wamkele Keabetswe Mene, Economic Counsellor, Permanent Mission of South Africa to the WTO*

Need for flanking policies

The South African delegate, Mr Mene, stressed that the telecommunication sector is very dynamic, and that the sector has been one of the most resilient during the financial crisis. Following a number of queries from attendees, he added that mobile telephony had led to economic growth in Africa, but that the appropriate support policies and regulation, both for telecommunications and for broader economic activity, also needed to be in place.

Mr Mene argued that the link between telecommunications, development and economic growth is clear and hard to dispute, but that the challenge is the regulatory framework. As an example, he cited South Africa's new Electronic Communications Act, which, he said, puts parts of the WTO Reference Paper into law.

He added that it was also important that the law provided for legal recourse if political or commercial interference in the independent regulator were suspected.

He said that South Africa's GATS telecommunication commitments were made taking into account not only the country's political difficulties, but also their desire to integrate into the global economy. Despite the challenges, he said, the overall results had been positive, most particularly for consumers. He added that South Africa has become an exporter of telecommunications in other developing country markets via foreign direct investment.

3. Conclusions and way forward

Telecommunication liberalization brings clear benefits to countries, but the process of liberalization requires clear forethought to ensure that appropriate policies and regulations are developed to maximize social and economic gains.

The WTO – through both the GATS rules on telecommunications and the reference paper on basic telecommunications – has clearly played a key role in unleashing the potential of ICTs; however, further consideration should be given to the role that the WTO might play in the future in further promoting the roll out of telecommunication services in emerging economies.

ICC has developed a business guide to telecommunication liberalization which draws on a range of case studies from the past two decades. This ICC Guide, "Telecoms liberalization" can be downloaded from: http://www.iccwbo.org/home/statements_rules/statements/2004/LIBERAL-final.pdf



Abstract

The session began with an opening speech by Ms Chikosha, who thanked the United Nations Development Fund for Women (UNIFEM) and the WTO Secretariat for sponsoring this advocacy platform to be a success. The session was moderated by Mr Marlon Zakeyo of the Zimbabwe Advocacy office based in Geneva. The government of Zimbabwe was represented by Mr Chimanikire of the Ministry of Regional Integration and International Cooperation on preparations for the advocacy at member state level.

The analysis of the situation of women in the informal cross-border sector was briefly discussed, and their inclusion in the gender budgeting of Regional Economic Communities was encouraged in an effort to promote greater cross-border trade and economic integration in the Common Market for Eastern and Southern Africa (COMESA) region, as well as to improve the region's competitiveness. The session also discussed from a gender perspective how these trends are then causing and deepening the feminization of poverty in Africa, so that policy-makers and decision-makers can also consider this paradigm and come up with gender-sensitive economic alternatives for sustainable development in Africa. The suggestions were mainly to increase the participation of women in trade negotiation processes, in capacity building and in regional markets. The session also examined the participation of women in the non-agricultural wage sector, which increases their opportunities for higher income generation. However, it was noted with disappointment that most women have remained in the informal, unpaid agricultural/household sector and this has exacerbated women's poverty situation.

Even though today more women are in parliaments in all Southern African countries than ever before, in most countries women remain vastly under-represented in politics, and represent far less than the desired 50:50 women-to-men ratio. This consistent disempowerment of women in tertiary education, employment and politics has forced many women into informal cross-border trade (ICBT) for survival. Nonetheless, Africa in general, and Southern Africa in particular, have seen slow but noticeable changes in attitudes towards integrating and mainstreaming gender issues in national and regional policies and development programmes. In the meantime, the reality of the women of Africa is that they remain a vulnerable, marginalized group that has yet to enjoy equality with their male counterparts with regard to status, and to access to resources and services. Women are still concentrated in rural areas, where facilities and services are scarce.

In Southern Africa, women remain the daily managers and users of natural resources. They are involved in the major decisions that govern these resources and the environment. In politics and decision-making, women are mobilized in large numbers to vote, yet they remain visibly absent in decision-making positions in both the public and private sectors. Women remain concentrated in the feminized professions, such as teaching, nursing, secretarial work, etc., and at best hold middle-management positions. There is no doubt that it is important to understand the factors underlying this gender paralysis in trade development so that appropriate strategies can be designed and implemented.

Campaign for participation and representation of women's issues in trade: Strengthening responses to create wealth and reduce poverty for women in informal cross-border trade in Southern Africa

Moderator

Mr Marlon Zakeyo, Zimbabwe Advocacy Office, Geneva

Speakers

Ms Otilia Chikosha, Executive Director, Regional Export Promotion Trust Zimbabwe

Ms Naome Chimbete, Executive Director, Zimbabwe Women Resource Centre and Network

Ms Tendai Makanza, Research and Information Coordinator, ANSA Secretariat

Ms Kwanele Ona Jirira, Commissioner for Human Rights, Zimbabwe; Lecturer/Researcher, University of Zimbabwe, Institute of Development Studies Department of Agrarian and Labour Studies

Organized by

Regional Export Promotion Trust (REPT) Zimbabwe

Report written by

Ms Otilia Chikosha - Executive Director – Regional Export Promotion Trust

Friday, 17 September 2010
11.15-13.15

1. Presentations by the panellists

(a) *Presentation of a documentary on women's voices in Zimbabwe (case study)*

During the second segment of the meeting, a DVD on the voices of women in the Zimbabwe women's movement was shown, describing their current situation, how much progress they have made and the milestones that need to be achieved. Women discussed the challenges they faced, the importance of empowerment through education, and how rights realization and political and financial empowerment have moved them into positions of decision-making. The DVD featured prominent women such as Naomi Chimbeta (ZWR CN), Emilia Muchawa (ZWALA), Edna Masiwa (WAG), Bertha Jambaya (JPV), Women's Clubs, Hon. Olivia Muchena and Hon. Vice-President Mujuru. These women have made so many milestone contributions to the success of the women's movement today, and the participants applauded their work and urged that there should be no time to rest, but the push for 50:50 representation should be continued in all leadership positions in all sectors of the economy.

2. Questions and comments by the audience

Ms Diaro, Young Women's Christian Association (YWCA), Geneva, said that YWCA is always talking about women working around arts and crafts, especially in the area of intellectual property rights. Ms Diaro called for governments to revise policies, especially as they should be inclusive of women.

A participant from Lesotho suggested that the issues that had been discussed were the same issues in their home country, and they hoped that more inputs would also benefit them. This was also seconded by participants from Uganda and Kenya, who also indicated that 70 per cent of their intraregional trade is cross-border trade between those two countries, and the majority of those involved in this trade are women.

Mr Saurombe, UNISA, appreciated the session and the special aspect, research on regional integration, and wondered to what extent can we move activism to total participation: not only how we can benefit the greater part, but also how we can increase access to credit facilities where women are not given same level of access.

Ms Salamis la, Geneva, mentioned the inclusion of women in trade especially. Africa must look at some best practices from what they are doing in Asia. We are trying to transform our global experience today, by moving women in the informal sector with a more comprehensive approach that supports women entrepreneurs. The main question here was "do you have frameworks like those in Southern Africa?" If not, she invited us to learn from the experience of Asia as a best practice.

Mr Seth Lately, Commonwealth Secretariat Foundation, indicated that he works for the Commonwealth Secretariat's programme on governance and democracy in strengthening the capacity of civil society organizations, such as REPT. However, they had noted during their interventions that culture had been their main challenge. He therefore wanted to know how actual social and cultural norms are being dealt with in South Africa to facilitate



the smooth flow of trade, as this aspect might hinder access for women more than the fact that they can be evaluated/competitive.

Mr Passmore Chimankire, Zimbabwe, added that issues of quality and standards have also affected the work that women bring to external markets.

3. Presentations by the panellists

(b) *Ottilia Chikosha, Executive Director, Regional Export Promotion Trust Zimbabwe*

Informative presentation – Dissemination of UNIFEM ICBT Research Report

The third segment of the session was the presentation by Ms Chikosha on research results. Ms Chikosha discussed a 45-page presentation on the UNIFEM research project for 45 minutes, while the panellists listened with interest. The research clearly pointed out the challenges for women in Southern Africa, which is, however, a mirror image for the whole of Africa as far gender equality and economic empowerment of women is concerned.

4. Questions and comments by the audience

Mr Saurombe, UNISA, thanked the panellists for their insight on the situation and on the challenges that the informal sector is facing in Southern Africa. He suggested that the forum would be pleased to have a feel of what is going on at ground level, and emphasized that more of these sessions must be held, as they are key to influencing policy at national, regional and international levels. However he wondered to what extent REPT (and other women's organizations working with women in cross-border trade (WICBT)) were participating in regional negotiations taking place at both Southern African Development Community (SADC) and COMESA? What was the impact on SADC/COMESA of Free Trade Areas, the harmonization of tariffs and reduction of tariff regimes? Did the traders benefit? Was it a negative or positive impact, or was nothing felt? Did they know what COMESA Customs Union meant? Were they aware of goods to be traded 85 per cent duty free? How is their participation in preparatory inputs being taken on board in protocols?

Ms Tran Thi Thu Hang, Deputy Permanent Representative of SR Vietnam to the WTO, first indicated that she was deeply moved by the long list of challenges that had been tabled as challenges for women in Southern Africa at the border posts. Were women in cross-border trade well aware of their rights as women as far abusive situations or harassment were concerned? What support was there for them? Was there a hotline that could assist in cases of violence? What was the linkage shipping in regulation for border trade?

5. Conclusions and way forward

In conclusion, it was noted that women in Southern Africa are operating in an unsafe environment, and there was a need for governments to respond to the accountability gaps

identified in the baseline studies on women in trade. Based on the mapping of the policy environment, showing the existing opportunities for collaboration with the Economic Commission for Africa, the Regional Economic Communities, African governments, development partners and civil society groups to tackle those accountability gaps, there was also a call for the establishment of hotlines to report issues of sexual harassment. The session concluded by the panellist assuring the Forum of the intention to further engage governments and regional economic communities and funding partners on these and other issues highlighted in the session, and time-frames were established to give feedback during the next WTO Public Forum.



Abstract

This session focused on the effect antidumping regulation has on consumer welfare. The panellists discussed the relationship between trade and competition policy and how producer and consumer interests are often at odds with regard to these policies. On the one hand, as the baseline for this debate, it was mentioned that local producers might lobby for preferential trade laws making use of their political influence and better organization, thus hindering international competition. On the other hand, consumers, who lack the cohesion necessary for group formation and collective action, often face the cost from protectionist trade laws and are left solely with the hopes of stronger competition policy to protect their welfare. The panellists further developed on who has benefited the most from antidumping obligations, whether suppliers or end purchasers.

During this session the panellists mainly addressed the following questions: (i) Do competition and trade policies share a common goal, and if so, why does conflict arise between consumers and producers regarding both policies? (ii) Do consumers benefit from antidumping legislation? and (iii) Should antidumping be replaced with competition policy and should international organizations pursue a common competition legal framework?

At the end of the discussion the speakers examined how to enhance the contribution of competition policy to international trade in order to tackle antidumping regimes' shortcomings in promoting market efficiency and consumer welfare.

Antidumping regime: A view from the competition policy perspective

Moderator

Mr Eduardo Pérez Motta, President,
Federal Competition Commission, Mexico

Speakers

Dr Allan Fels AO, Dean of the Australia
and New Zealand School of Government,
Australia

Dr Bernard Hoekman, Sector Director,
Trade Department, Poverty Reduction and
Economic Management Vice-Presidency,
World Bank

Dr Seung Wha Chang, Professor of Law,
Seoul National University, Republic of
Korea

Organized by

Federal Competition Commission, Mexico
(CFC)

Report written by

Mr Eduardo Pérez Motta, President,
Federal Competition Commission, Mexico

Friday, 17 September 2010
14.15-16.15

1. Presentations by the panellists

First part of the session

In this part of the session panellists discussed the article published in the Duke Journal of Comparative and International Law in 2004.

(a) Seung Wha Chang, Professor of Law at Seoul National University

Dr Chang started by stating that the ideal goal of competition and trade law is to improve consumer welfare. However, problems between these policies arise from the deviation from their original purpose in actual practice. An example of this asymmetry is that export and import cartels are exempted from most national antitrust laws, a situation that creates conflict between both policies. Another example is antidumping duties, which are a clear deviation from the principle of non-discrimination because they restrict the importation of products at a cheaper price and are, nonetheless, allowed under WTO agreements. Nonetheless, there are some antitrade measures that could promote competition, such as vertical restraint activities.

(b) Bernard Hoekman, Sector Director of the Trade Department (PMRT) in the Poverty Reduction and Economic Management Vice-Presidency (PRMVP) in the World Bank

Dr Hoekman began by pointing out that trade policy, in most cases, is inconsistent with competition policy since it implies creating barriers at the countries' borders and reducing competition in domestic markets. However, he stated that, in theory, antidumping is an area where competition and trade policy are supposed to be consistent. The original rationale for antidumping actions was to deal with predation, foreign firms pricing below cost, subsidizing their participation in the foreign market; hence avoiding anticompetitive behaviour. However, the real economic rationale for antidumping policies has had nothing to do with promoting competition, but to promote protectionism.

Dr Hoekman mentioned that an interesting phenomena that should be taken into account, is that during the last 30 years the world has experienced an upswing in terms of market liberalization that has come along with a steady use of antidumping. This measure has led some researchers to believe that antidumping regime has transformed into a safety valve for protection. One question that scholars should come back to is whether antidumping allows more general liberalization to occur?

(c) Alan Fels, Dean of the Australia and New Zealand School of Government

Dr Fels began by mentioning that the Organisation for Economic Co-operation and Development (OECD) Trade and Competition Committees conducted a joint study on antidumping cases that had been successful in OECD countries. The point of the study was to find out if any of these cases would have been successful if the competition law predatory criteria approach had been adopted. The study concluded that in over 95 per cent of the cases, OECD was certain that antidumping cases would have been unsuccessful under competition law. In regard to this research, Dr Fels commented that, in Australia and New Zealand, a decision was made to abolish the dumping regime as part of these countries' trade agreements. Dumping delegations have been dealt with under competition law, and, to date, there had been no successful dumping cases in this region.



As a footnote, Dr Fels added that, in economic theory, most cases that would be called dumping cases should not attract any negative policy: most dumping activities are normal competitive market-expanding behaviour. The economists tend to identify only two possible dumping cases which could harm competition: strategic and predatory dumping. Strategic dumping occurs in vary special circumstances, typically where the dumper has protection in his home market, where there are economies of scale that can be achieved by selling more to foreign markets. Predatory behaviour is a standard competition abuse of dominance conduct. However, dumping law does not consider these issues; it sanctions all dumping actions except this pair of cases where economists have raised concerns.

He mentioned that the amount of dumping cases has been rising particularly because of new users, such as India. In contrast to this situation, there has been relatively less usage of antidumping from traditional users, such as Australia. The latter dumping cases often occur where there have been changes in the country's economic structure, and there exists a relative decline in the manufacturing sector and a sharp decline in the number of sectors that have used antidumping law. Also, with increased globalization, a greater number of firms that depend on the importation of products to supplement their production have adopted a critical attitude towards dumping.

According to Dr Fels, another important issue not to be overlooked is that antidumping law application lacks of transparency; it is not easy to trace the validity of the decisions made in dumping cases – even in the countries with the most transparent approaches – as cases imply huge amounts of confidential information.

Second part of the session

In the second part of the session the panellists discussed the effects of the actual implementation of antidumping regimes on competition law.

(d) Bernard Hoekman

Dr Hoekman commented that important questions to be asked are: What is the coverage of antidumping instruments? To what extent do antidumping actions affect competition? In theory, it is generally accepted that dumping laws have a pervasive effect in competition. However, since dumping laws tend to be targeted actions, empirically, it is difficult to know to what extent dumping laws affect competition overall.

Dr Hoekman spoke about an interesting phenomena taking place. Data collected by the World Bank describes a trend in which developing countries (which happen to be new users of dumping laws) have used antidumping laws more often over the years, whereas traditional users of antidumping (developed countries) have maintained the same level of usage of dumping legislation. The major users of antidumping, such as India, happen to be economies which are less integrated into global supply chains, so there is a traditional incentive to protect a domestic industry that operates primarily on the domestic market.

(e) Alan Fels

Dr Fels pointed out a couple of situations in which antidumping law may have a negative impact on consumer welfare. Antidumping may have a wider unforeseen effect, a so-called silent policemen effect, when companies that would approve lower prices are afraid to do so because an action may be taken against them. He mentioned that scholars have a well-founded scepticism of the policemen effect theory. Also, antidumping law might

promote cartelization of a market if an industry is worried that antidumping actions might be taken against it. Suppliers might coordinate themselves to push prices up to avoid dumping charges, thus affecting consumers.

Dr Fels commented that the actual application of competition law to punish predatory behaviour and abusive dominance is one of the hardest areas of all. As an example, he mentioned that in the United States hardly any abusive dominance cases have been brought by the Federal Trade Commission or the Department of Justice – and probably none for predatory pricing – in a long time. The difficulty of proving that a firm has harmed competition through predatory pricing, and the length of time a predatory pricing case takes, were among several reasons mentioned to support this argument.

(f) Seung Wha Chang

Dr Chang criticized the justification for an antidumping regime to level the playing field between competing manufacturers. Several members of the WTO, in a previous discussion about antidumping, argued that dumping legislation was needed as a way to counteract exporting domestic markets heavily protected by local governments. However, in recent research Dr Chang conducted on antidumping regimes, he found that more often than not companies which benefited from dumping legislation filed against exporters were in fact monopolistic companies. That is, importing countries' market conditions did not justify antidumping actions, since local monopolies were the ones who benefited the most from this legislation.

Third part of the discussion

During the last part of the discussion the panellists discussed whether it was possible and desirable for competition law to substitute antidumping legislation.

(g) Seung Wha Chang

Dr Chang mentioned there have been several attempts to create an international competition law. The first reason to create such a law derived from the diversion in the enforcement of antitrust laws in WTO member countries. However, he believes that in order to introduce an effective international agreement in competition law and policy which could substitute an antidumping regime, certain conditions would have to be met, such as the existence of sound antitrust laws consistent with the international law. He mentioned that, under the WTO, it would be desirable to agree on an international competition law, but went further to describe several failed attempts to achieve such legislation.

(h) Alan Fels

Dr Fels stated that it would be difficult for a country to replace dumping law with competition legislation, since the cooperation of other countries is required. If a country believes that another country is dumping products in their local markets, the affected country would need to investigate the dumpers in their homeland; however, that power does not typically exist.

Another problem that would arise if competition law replaces dumping regimes is the need for a strong competition authority in each country. Many countries have inexperienced competition agencies for which an investigation of predatory behaviour would be very

challenging. Besides, for new agencies the lowest priority would be to investigate national firms to be prosecuted for illegal behaviour in another country. Nevertheless, there has been a very sharp increase in countries that have competition law, so it is more feasible now to talk about competition law as a substitute for dumping law.

(i) Bernard Hoekman

Dr Hoekman stated that, in principle, it would be very good to get rid of antidumping, given the problems it induces, but in practice it would prove difficult, largely because the two instruments are so different in terms of their objectives. Competition law is not a substitute for antidumping since the latter plays a role of being a safety valve, an instrument through which governments can take action against competition from importers. As an example, at present close to half of all antidumping actions are taken against China. China is the most competitive supplier of products today in many markets: this is not a competition policy issue, but rather an issue of how do we manage import competition. He suggested increasing the transparency of antidumping processes in terms of how it is used.

(j) Comments made in the session by the moderator, Mr Pérez Motta

Predatory prices are a case in which there is a clear relationship between competition policy and antidumping regimes. The Mexican Federal Competition Commission recently approved a merger of a technological company under the condition of eliminating antidumping quotas for the next ten years.

However, there still remain challenges when considering the implementation of antidumping regimes on competition law. For example, under Mexican competition law, predatory pricing is analysed under the rule of reason, hence to be sanctioned as an anticompetitive practice, dominance has to be proven and efficiency factors have to be considered – whereas antidumping cases are based on the fact that firm exports are priced lower in other countries' markets.

2. Questions and comments by the audience

The panel answered a variety of questions regarding the role antidumping regimes on local competition; the differences between antidumping and competition law in promoting precompetitive behaviour; and the rationale behind the economic integration procedures in Australia and New Zealand.

Abbreviations

AB	Appellate Body
ABS	access and benefit-sharing
ACP	African, Caribbean and Pacific Group of States
ACTA	Anti-Counterfeiting Trade Agreement
ADB	Asian Development Bank
AITIC	Agency for International Trade Information and Cooperation
AJFAND	African Journal of Food, Agriculture, Nutrition and Development
AMS	aggregate measure of support
APTC	Australia Pacific Technical College
ASEAN	Association of Southeast Asian Nations
ASIL	American Society of International Law
ATM	Automated teller machine
BIT	bilateral investment treaties
CARIS	Centre for the Analysis of Regional Integration at Sussex
CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPA	Closer Economic Partnership Arrangement
CET	common external tariff
CFC	Federal Competition Commission, Mexico
CITES	Convention on International Trade in Endangered Species
COMESA	Common Market for Eastern and Southern Africa
CSO	civil society organizations
CSR	corporate social responsibility
CTFS	Committee on Trade in Financial Services
DDA	Doha Development Agenda
DESA	United Nations Department of Economic and Social Affairs
DFQF	duty-free and quota-free
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAC	East African Community
EAFF	Eastern African Farmers' Federation
EC	European Commission
ECFA	Economic Cooperation Framework Agreement
ECOWAS	Economic Community of West African States Community



EEZ	Exclusive Economic Zone
ENTWINED	Environment and Trade in a World of Interdependence
EPA	economic partnership agreement
ESF	European Services Forum
EU	European Union
EU-ETS	European Union's Emission Trading System
FAO	Food and Agriculture Organization of the United Nations
FDI	foreign direct investment
FES	Friedrich-Ebert-Stiftung
FETRAF	Federação Nacional dos Trabalhadores e Trabalhadoras na Agricultura Familiar
FTA	Foreign Trade Association
FTT	financial transaction tax
G20	<p>The Group of Twenty (G20) within the WTO was established in 2003 for the Agriculture negotiations. Its present membership is: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, and Zimbabwe.</p> <p>The Group of Twenty (G20) Finance Ministers and Central Bank Governors was established in 1999 to bring together systemically important industrialized and developing economies to discuss key issues in the global economy. It also meets at Heads of Government level. Its membership includes: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, United Kingdom, and United States of America.</p>
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
GDAE	Global Development and Environment Institute
GDP	gross domestic product
GI	Geographical indication
GMO	genetically modified organism
GPA	WTO Agreement on Government Procurement
GSI	Global Subsidies Initiative
GSP	Generalized System of Preference
GTA	Global Trade Alert
IATP	Institute for Agriculture and Trade Policy
ICBT	informal cross-border trade
ICC	International Chamber of Commerce
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ICT	information and communication technology
ICTSD	International Centre for Trade and Sustainable Development
IEA	International Energy Agency
IEcLIG	International Economic Law Interest Group
IFAP	International Federation of Agricultural Producers
IGO	intergovernmental organization
IISD	International Institute for Sustainable Development
IIT	Institute for International Trade
ILO	International Labour Office
IMF	International Monetary Fund
IP	intellectual property
IPC	International Food & Agricultural Trade Policy Council
IPR	intellectual property rights
IPS	International Press Services
IPSA	International Political Science Association
IPU	Inter-Parliamentary Union
ISO	International Organization for Standardization
ITC	International Trade Centre
ITUC	International Trade Union Confederation
LATN	Latin American Trade Network
LDC	least-developed country
MDGs	Millennium Development Goals
MEA	multilateral environmental agreement
MEDEF	Movement des Entreprises en France
MERCOSUR	Southern Common Market
MFN	most-favoured nation
MNC	multinational corporation
MSG	Melanesian Spearhead Group
MVA	manufacture value-added
MTS	multilateral trading system
NAFTA	North American Free Trade Agreement
NCCR	National Centre of Competence in Research
NFTC	National Foreign Trade Council
NGO	non-governmental organization
NHO	Confederation of Norwegian Enterprise
NSA	non-state actor
NTB	non-tariff barrier



OCTA	Office of the Chief Trade Adviser
ODA	official development assistance
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPEC	Organization of the Petroleum Exporting Countries
OWINFS	Our World Is Not For Sale
PACER Plus	Pacific Agreement on Closer Economic Relations
PANG	Pacific Network on Globalisation
PIC	Pacific Island country
PICTA	Pacific Island Countries Trade Agreement
PIL	public interest litigation
PTA	preferential trade agreement
REPT	Regional Export Promotion Trust
ROP	Rural Outreach Program
ROPPA	Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest
R&D	research and development
RTA	regional trade agreements
RTD	right to development
SADC	Southern African Development Community
SACU	Southern African Customs Union
SCM	Subsidies and Countervailing Measures
SFIIP	Swiss Federal Institute of Intellectual Property
SME	small and medium-sized enterprises
SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
SPS	sanitary and phytosanitary
SSM	special safeguard mechanism
STE	state trading enterprise
SVE	small and vulnerable economy
TBT	Technical Barriers to Trade
TPRB	Trade Policy Review Body
TRCB	trade-related capacity building
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UCL	University College London
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

UNFCCC	United Nations Framework Convention on Climate Change
UPA	Union des producteurs agricoles
USITC	United States International Trade Commission
VS	vertical specialisation
WB	World Bank
WCO	World Customs Organization
WEC	World Energy Council
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WPDR	Working Party on Domestic Regulation
WTI	World Trade Institute
YWCA	Young Women's Christian Association



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WTO Public Forum 2010

This year's edition of the WTO Public Forum offers an overview of discussions at the 2010 Forum, whose title was "The forces shaping world trade". The Forum provided a unique opportunity for representatives of governments, non-governmental organizations, parliamentarians, academics, members of the business community, trade unions, journalists, lawyers and students alike to participate. Among the subjects for discussion were the shift of power in international politics, the role of the main actors influencing the multilateral trading system and public attitudes towards the WTO. Factors determining world trade and the role of the WTO rules-based multilateral trading system, including the Doha Round, in contributing to the global economic recovery, were examined. The contributors identified how the WTO can promote coherence at the international level to contribute towards improved global governance, and reflected on what the post-crisis agenda for the WTO should be in a shifting-power scenario.

The various sessions held during the Forum triggered a frank and open debate on the multilateral trading system as well as on the challenges and opportunities facing the WTO. The Forum also sought to identify practical and effective ways forward for the multilateral trading system. A chapter is devoted to each of the sessions held during the three-day programme.



WORLD TRADE
ORGANIZATION

World Trade Organization
Centre William Rappard
Rue de Lausanne 154
CH-1211 Geneva 21
Switzerland

Tel. +41 (0)22 739 51 11
Fax: +41 (0)22 731 42 06
email: enquiries@wto.org
Website: www.wto.org

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