



WTO OMC

WTO PUBLIC FORUM 2009

**GLOBAL
PROBLEMS,
GLOBAL
SOLUTIONS:**



**Towards Better
Global Governance**



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ISBN: 978-92-870-3730-5 2009

Also available in French and Spanish:

French title ISBN: 978-92-870-3731-2 2009

Spanish title ISBN: 978-92-870-3732-9 2009

WTO publications can be obtained through major booksellers or:

Direct from WTO Publications

World Trade Organization

154, rue de Lausanne

CH-1211 Geneva 21

Tel: +41 (0)22 739 52 08

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Printed by WTO Secretariat, Switzerland, 2010

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Foreword by the Director-General

The WTO Public Forum has once again provided the perfect opportunity for dialogue among all those involved in the multilateral trading system.

The Forum took place at a critical point in world affairs. In 2009, we witnessed an unprecedented downturn in the global economy. A sharp fall in trade flows and a severe drop in employment rates meant that the threat of protectionism was never far away. As history has taught us, unilateral reactions at times of global crisis can lead to even greater economic problems. As pressure mounted on the international community to come up with solutions, the WTO Public Forum 2009 and its theme, "Global Problems, Global Solutions: Towards Better Global Governance", could not have been more relevant.

By attracting over 1,400 participants, the Forum made an invaluable contribution to the global dialogue on the need for a more sustainable world economic system that caters for the poorest and the weakest and that allows for more widespread prosperity. A very lively discussion took place around four sub-themes, focusing on the impact of the crisis on the poorest countries, the role of the WTO, the challenges confronting the multilateral trading system and the possible way forward. The whole range of views and concerns raised during our three-day event are reproduced in this publication. I hope that you will find these contributions as stimulating as we have.

The interaction within the Public Forum becomes more rewarding every year. The event has firmly established itself as a cornerstone of debate on the world trading system. I sincerely hope that this engagement with all stakeholders in the multilateral trading system will remain open for many years to come.

Pascal Lamy





Acknowledgements

The *WTO Public Forum 2009* publication was prepared under the general direction of Keith Rockwell, Director of the Information and External Relations Division (IERD). María Pérez-Esteve, Counsellor in the IERD, led the project. This publication would not have been possible without the support and contributions of all those who organized sessions during the Public Forum. The IERD is very grateful for their assistance and thanks all the organizers for their reports, which form the basis of this publication.

The IERD also acknowledges the cooperation of staff in the Agriculture and Commodities Division, the Appellate Body Secretariat, the Development Division, the Economic Research and Statistics Division, the Institute for Training and Technical Cooperation Division, the Languages, Documentation and Information Management Division (LDIMD), the Legal Affairs Division and the Rules 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 Serge Marin-Pache of the IERD. Karen Turnbull and Stefania Gallo provided editorial assistance. Special gratitude is also due to the translators in the LDIMD for their hard work.

Introduction

The 2009 Public Forum was held at the WTO headquarters in Geneva from 28 to 30 September. Entitled “Global Problems, Global Solutions: Towards Better Global Governance”, the Forum aimed to stimulate discussions about all aspects of the multilateral trading system at a time of global economic upheaval. The participation of governments, representatives of non-governmental organizations, trade unions, parliamentarians, academics, members of the business community, journalists, lawyers and students ensured a wide-ranging debate that resulted in many new ways of approaching the subjects under discussion.

The Forum was an important opportunity to assess the role of the multilateral trading system in the wake of the financial and economic crisis. Discussions reinforced the view that a rules-based multilateral trading system can make a significant contribution to global economic recovery.

“This publication provides a summary of the various sessions held during the Forum”

This publication provides a summary of the various sessions held during the Forum. Each report has been prepared by the organizer(s) of the panel.

The publication follows the structure of the four sub-themes in this year’s Forum:

- I. Finding global solutions to global problems: The way forward towards better global governance;
- II. The role of the WTO and the Doha Round negotiations in the midst of the current financial crisis;
- III. The impact of the global economic crisis on developing countries, in particular least-developed countries, and the role of trade financing; and
- IV. The main challenges facing the multilateral trading system and reflections on the post-crisis agenda for the WTO.


“The first sub-theme considered the issue of improved global governance as a way of addressing world problems”

Sessions under the first sub-theme considered the issue of improved global governance as a way of addressing world problems. The discussions focused on gauging the scope for greater linkages between trade and other features of global governance. How can the global trade regime and global finance be better coordinated and developed in a 21st century architecture of global economic governance? What is the relationship between multilateral climate-change rules and WTO rules? What trade policies can be put into place to safeguard employment? What role is there for the public-private partnership for development? Is Human Rights Impact Assessment (HRIA) a pertinent tool for informing and improving trade governance? These are just some of the questions raised during the sessions. Participants also stressed the importance of assessing their own role in creating better governance. The business community was particularly active in analysing how business leadership can be developed to promote and strengthen the multilateral trading system.

“The second sub-theme focused on the role of the WTO and the Doha Round of negotiations in the current crisis”

Discussions under the second sub-theme focused on the role of the WTO and the Doha Round of negotiations in the current crisis. The sessions asked whether, at times of crisis, trade remedies represent a legitimate safety valve or a problem in their own right. Discussions touched upon matters such as the General Agreement on Trade in Services, the resolution of trade disputes, and the impact of the Trade-Related Intellectual Property Rights (TRIPS) Agreement in terms of access to medicine. Central to the discussion was the WTO’s ability to create new trading opportunities – especially if the Doha Round of negotiations is concluded – and its responsibility in warding off protectionism. This was examined under the perspective of national governments





and legislators and their autonomy in formulating trade policies within the framework of WTO rules.

“ The third sub-theme focused on development issues, shifting the spotlight to the impact of the crisis on developing countries ”

The third sub-theme focused on development issues, shifting the spotlight to the impact of the crisis on developing countries. The sessions addressed the greater economic interdependence created by globalization, and its role in the spread of both the adverse and positive aspects of global developments. The sessions aimed to stimulate a fresh approach to the design of trade rules that would assist the poorest countries in achieving their long-term development goals. It was noted that the mechanisms that the WTO has in place, such as special and differential treatment and safeguard measures, have shown all too clearly their limitations. Will the conclusion of the Doha Development Agenda help or hinder in increasing the resilience of vulnerable countries during these tumultuous times? The role of trade financing in this context was addressed in a high-level session that included the WTO Director-General Pascal Lamy and H.E. Mr Kim Jong-Hoon, Minister for Trade of the Republic of Korea.

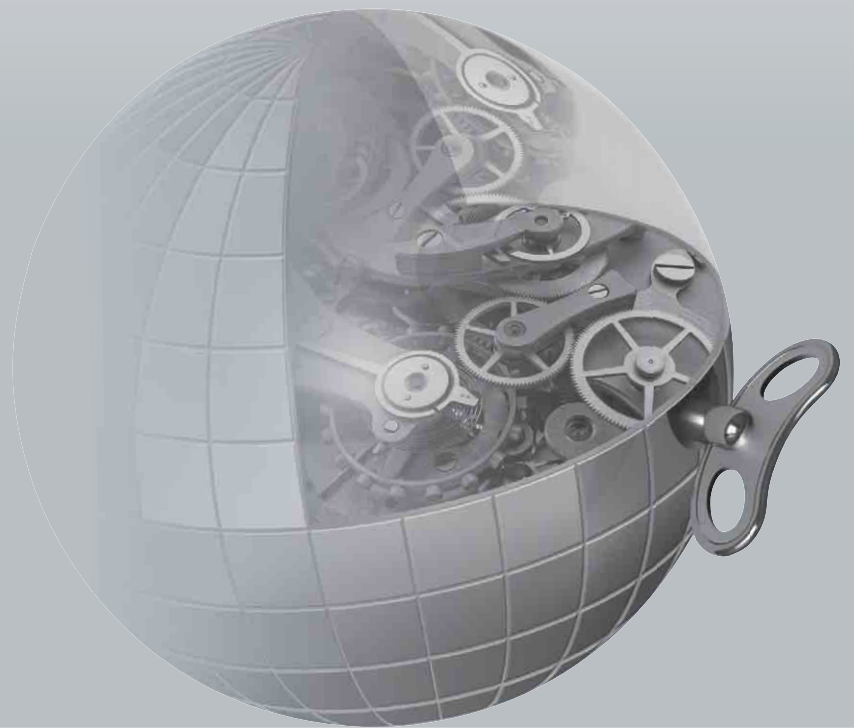
“ The fourth sub-theme generated discussions on the challenges lying ahead and the post-crisis agenda for the WTO ”

The fourth sub-theme generated discussions on the challenges lying ahead and the post-crisis agenda for the WTO. The focus was on pending and emerging issues hindering the effective role of the WTO in global economic governance. Suggestions were made on a number of issues: consensus-building, transparency-enhancing and accountability within the WTO; the need to increase member states' capacity within the dispute settlement process; deeper links with the work of other international organizations; a more streamlined negotiating process; strengthened trade monitoring and surveillance mechanisms; and the rising number of bilateral and regional trade agreements. Questions on future issues to be included in the WTO agenda for the coming years were also addressed: how food security and sustainable agriculture will change the post-crisis agenda of the WTO; how agriculture can be strengthened to meet future food demand and environmental goals; what the content of an agenda on environmental and labour issues would be.

In addressing this wide range of topics, the Forum has once again played its role as a means of assessing both the benefits and deficiencies of today's multilateral trading system. It has allowed the participants to highlight current best practices and to identify ways of moving towards better global governance and an improved multilateral trading system.



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I. Inaugural speech by the Director-General



Ladies and gentlemen,

Welcome to the WTO's Public Forum of 2009!

It is always a pleasure to see the very large crowds that the WTO Public Forum draws. Your presence in such impressive numbers speaks to the relevance of the role and mandate of the WTO. It stands as testimony to the high expectations that you have of the organization, and which the WTO should certainly strive to fulfil.

It also shows that the WTO does not simply preach transparency and openness on Sundays, but also practises them on Mondays! In fact, even on Sundays, as we did several weeks ago in welcoming the public to our premises for the first time. And there is no doubt that the results of yesterday's referendum on the extension of the WTO's headquarters here in Geneva will encourage us to extend our outreach to you even further.

“It is to your needs and aspirations that this organization must cater, and I certainly hope that this Forum will enable the entire WTO-family, members and Secretariat staff alike, to better keep their “fingers on the pulse””

As I have said many times before, it is to your needs and aspirations that this organization must cater, and I certainly hope that this Forum will enable the entire WTO-family, members and Secretariat staff alike, to better keep their “fingers on the pulse” so to speak. In other words, to better gauge your concerns and expectations of how we, in the WTO, can do things better in future.

This year's forum is dedicated to “Better Global Governance”, a theme chosen mainly in light of the current financial, economic, and social crisis that we have been witness to as of last year. There is no doubt that the world has traversed a very “rough patch” in 2008 and earlier this year, with the financial meltdown and its very severe consequences on people across the globe, many of whom have lost their jobs, homes, savings, and, therefore, their entire livelihood. And we are certainly not yet out of the woods in terms of this particular crisis.

World economic growth, as measured by the world's production of goods and services, slowed abruptly in 2008 and the early part of this year. The contraction

in demand led to a slowdown in production, and in international trade. World merchandise trade is projected to fall by a full 10 per cent this year, and foreign direct investment, which fell by 15 per cent in 2008, is projected to drop further.

The WTO has quickly responded to the crisis by cautioning governments against “beggar-thy-neighbour” policies, which have been tried in the past in similar situations, and which have shown their gross inadequacy. It has cautioned against protectionism through a monitoring mechanism of trade restrictions that it enacted in the immediate wake of the financial crisis – a WTO “radar screen”, if you will.

What our radar shows so far is “low-intensity” protectionism; in other words, a large number of measures whose intensity has so far remained constrained. But there should be no complacency. Rising unemployment will continue to usher in the inevitable protectionist pressures.

Ladies and gentlemen, the impulse to “go local” in answer to the financial crisis must be resisted. In fact, I would argue that we should continue “going global”, if I may say so, for the simple reason that many consumers have seen their purchasing power decline, and are in need of cheaper, more competitive goods and services, and not more expensive ones produced behind a national tariff wall.

“International trade helps lower the cost of goods and services to the final consumer”

International trade helps lower the cost of goods and services to the final consumer. And it is for this reason also that it is imperative that we conclude the Doha Round of trade negotiations. In fact, if the entire WTO community of nations were to decide to raise its applied tariff levels all the way up to WTO legal ceilings, this would raise the world's average tariff hurdle to about twice its current level.

In other words, exporters would become 100 per cent worse-off than they are today if the full policy-space that the WTO provides were to be exploited. The Doha Round of trade negotiations would not only open new markets for exporters, but also curtail some of the

existing margin of manoeuvre that could take the world backwards.

This explains why this issue has featured so highly on the G20's agenda since last year, including in Pittsburgh last week. I have used last week's opportunity to report to G20 leaders on the state-of-play of international trade. I explained that political signals of commitment to resisting protectionism and to concluding the Doha Round in 2010 were needed and, indeed, welcome. But that, as long as they do not translate into concrete engagement, declarations would not in and of themselves deliver an outcome. Leaders have agreed that their negotiators should now embark on the work programmes that we have established for the next three months, and that they will then assess our collective ability to achieve our 2010 target. It is now incumbent upon them to "walk the talk".

Let me now turn to trade finance. As you all know, part of the contraction in world trade that we have seen in 2008 and 2009 occurred due to the drying-up of trade finance. Trade finance institutions rolled back their export credits in response to the financial crisis, having seen the number of defaults on trade contracts that had taken place.

The WTO has not sat by in silence in response to the problem. It has mobilized the trade finance community and world leaders, alerting to them to the downward spiral in world trade that this was leading to. Trade finance is now beginning to shore up. It is my hope that we will soon see previous levels of trade finance restored, especially where it is most needed. In other words, for small businesses and least-developed countries.

Ladies and gentlemen, while the financial crisis is a serious preoccupation for us all, we must not forget that it is not the only global problem that awaits action on our part. There are many issues that we need to deal with at the international level, and which merit our utmost attention. I speak here of the climate crisis, of the food crisis, and of global health pandemics.

It is critical that the international community "seal a climate deal" at the Copenhagen Summit at the end of this year. As I have stated many times before, it is only an equitable "global" climate deal that can tackle the climate crisis effectively; a deal that clearly spells out the commitments of each and every player. It is not through the unilateral action of a few that the climate crisis will somehow be halted. We must keep our eye on the ball,

and not lose sight of the magnitude of the problem that we are confronted with. That problem represents no less than our very ability to survive in future.

I was heartened by the results of the recent World Climate Conference that was held here in Geneva, and which has prioritized the development of "climate services" – such as climate research and forecasting services. I hope that WTO members will rise to the challenge set by this Conference, and respond by accelerating market-opening for environmental and climate-related goods and services through the Doha Round. This is a very concrete way in which the trade community can chip in to the construction of a global climate deal; one that we certainly hope to see emerge from the Copenhagen Summit at the end of this year.


Ladies and gentlemen, the food crisis is no less serious than any other crisis. The Food and Agricultural Organization tells us that there are more hungry people today than there have ever been before. This situation cannot be allowed to linger. Trade, and the Doha Round specifically, can be part of the answer – albeit not the entire answer, since much will also depend on accompanying credit, nutrition, and agricultural development policies.

Trade is the transmission belt that allows food to move from the land of the plenty to the land of the few. We must oil that transmission belt, and improve the foundation on which it has been built through the Doha Round. The Round will reduce rich-world subsidies, and would lower tariff walls in developed and developing countries alike, bringing food closer to the poor.

Finally, allow me to say a word or two on global health pandemics, such as the H1N1 virus that we saw this year, or other strains of flu that we saw in previous years. Because of globalization, and our greater interconnectedness today, global pandemics may be more likely than before. It is critical, therefore, that we beef-up international standards, such as the norms that are set by the World Health Organization or the World Organisation for Animal Health, and that we let ourselves be guided by science as much as we can. The WTO encourages, and will continue to encourage, its members to abide by international norms. They not only facilitate trade, but also facilitate the sharing of scientific information and of proper regulatory control.

Many of the topics that I have raised with you just now are on the programme of this year's Public Forum. My





goal – of course – was simply to whet your appetite for some of what is to come!

“It is my hope that you will share your thoughts with us over the course of the next three days”

More seriously, it is my hope that you will share your thoughts with us over the course of the next three days

on each and every topic that I have raised, and more. Let this be a learning experience, and a “rapprochement” for us all.

Thank you for your attention.

A. Plenary opening: Global problems, global solutions: Towards better global governance

Monday, 28 September – 10:30 ~ 12:30

Moderator

Mr Chenggang Rui – Director and Anchor, China Central Television

Speakers

H.E. Mr Thabo Mbeki – former President of South Africa

Ms Gro Harlem Brundtland – Special Envoy on Climate Change, United Nations and former Prime Minister of Norway

Mr Sergio Abreu – Uruguayan Senator and former Foreign Minister

Mr Pascal Lamy – WTO Director-General

Organizer

WTO - Information and External Relations Division



Abstract

The Plenary opening of the 2009 Public Forum focused on identifying a new system of global governance to address present and future common challenges. The discussants recognized that the Doha Round of negotiations and the Copenhagen conventions represent the ultimate tests of global governance, but who is leading the way? The G20 is indeed emerging as a new hub for discussion and decision-making, but it raises issues of accountability, legitimacy and

representativeness which cannot be ignored. What about the United Nations system? Is it an obsolete tool to tackle new challenges, or can it still serve a role in the new global governance structure? And what is the role of other international organizations, like the WTO, the IMF and others?

Panellists in the session tried to answer these questions, identifying the obstacles and outlining a possible system of governance.





1. Presentations by the panellists

The session was moderated by Mr Rui, Director and Anchor of China Central Television. He set the tone for the debate in referencing the presence of Mr Lamy at the G20 Summit held in Pittsburgh just a few days before the Public Forum took place. The Summit represented an opportunity to discuss global governance in relation to the financial and economic crisis. It was noted that the world had managed to globalize its economy and its business, but is lagging behind in globalizing its politics. Too often local politics prevail over international interests. Can politics be truly globalized? In this sense, he noted, the most relevant result of the Pittsburgh Summit was the decision to institutionalize the G20 as a permanent platform to tackle global economic and financial challenges and possibly to move into further areas of discussion. The determination was born from the observation that the G20 is big enough to be representative, and small enough to be efficient. However, a number of questions remain: are some world regions over-represented in the G20? Will the G20 replace the G8? And how will it coordinate with other international organizations? In posing these questions, Mr Rui opened the floor to the panellists for discussion.

(a) Thabo Mbeki, former President of South Africa

Mr Mbeki was the first to intervene. He noted that there had been, for some time, an international agenda to identify global challenges, but the global financial crisis had given it a new perspective. Along with making those challenges more urgent, the crisis has clearly disclosed a need for more sustained and systematic international cooperation. On the basis of this consensus, what is missing at this point is real action. In Mr Mbeki's view, the G20 meeting in Pittsburgh had the merit of identifying important tools to realize global governance, such as the Framework for strong sustainable and balanced growth, together with a peer review mechanism.

“A new global governance system cannot be effective without the comprehensive participation of all countries and without establishing a prominent role for the United Nations within that system.”

He concurred that the G20 is indeed better than the G8, but it is not the G192. In his view, a new global

governance system cannot be effective without the comprehensive participation of all countries and without establishing a prominent role for the United Nations within that system.

(b) Gro Harlem Brundtland, UN Special Envoy on Climate Change and former Prime Minister of Norway

Ms Brundtland explained how the crisis is adding an acute dimension to the problems already burdening the poorest countries. Its impact is likely to be felt on the development patterns of the world economy, as well as on the unfolding climate crisis. The widespread concern in climate negotiations is that the immediate challenges that the economic crisis poses would sidetrack attention from the long-term issues linked to adaptation, such as the use of resources in confronting climate change, safe water, sustainable energy and environment-related issues of development.

Ms Brundtland agreed that the G20 has great possibilities to fill in the gaps, but she also agreed with Mr Mbeki that previous agendas, such as Agenda 21 and the Millennium Development Goals, have shown a clear lack of global governance and systematic commitment in pursuing common causes. Despite the odds, she showed great optimism in a positive result in Copenhagen based on the principles that underscore the finalization of a deal on climate change. She drew the parallel between the Special and Differential Treatment invoked in trade negotiations and the principle of Common but Differentiated Responsibility spelled out in the climate convention. The common message is that all countries are facing common challenges, hence it is in everybody's interests to give an integrated response. She called for more representativeness, more inclusiveness and the involvement of new players: private-public partnerships, NGOs, civil society and business.

On the reform of the UN system, Ms Brundtland's view was that it would be more productive to try and make use of the instruments we already have at our disposal and maximize their potentials, rather than engaging in mere criticism without providing a real way forward.

An element that she regarded as crucial for global governance to be effective is leaders' systemic commitment and coherent attitudes. The general instructions for action given at the G20 are an important first step. It is now leaders' responsibility to follow those instructions with a view to the larger picture.

(c) Sergio Abreu, Uruguayan Senator and former Foreign Minister

Mr Rui had commented that certainly Copenhagen and Doha are both ultimate tests for today's global governance. But, there seemed to be widespread concern about addressing new challenges with old tools. Was the reform of organizations like the UN, the IMF and even the WTO needed to be able to move forward?

In response, Mr Abreu called for clear rules as guarantees of an effective international system. In his view, there can be no global governance without an international agenda. In turn, there can be no international agenda without ownership of that agenda. This means that governments, as well as the private sector and civil society, need to identify themselves with the set agenda. In addition, for the agenda to be effective, it needs strong institutions, guaranteeing universal participation. Finally, no governance is possible without accountable and inclusive leadership.

Mr Abreu pointed to the WTO as the only organization, today, whose structure has not been questioned, whose decisions are based on consensus and whose agenda moves in line with – and sometimes ahead of – world events. The WTO system has proved a viable rule-based model. The Doha Round is indeed meeting numerous difficulties in reaching a conclusion, but these difficulties are the result of external factors that interact with the multilateral trading system: namely, speculations, environmental challenges, the emergence of new actors on the international arena and issues of international security.

Mr Abreu's message for global governance is that leadership and institutions need to be part of the new responsibility to ensure legal certainty for all economies, for all actors and for the international agenda that is generated by the concerns of the whole international community.

(d) Pascal Lamy, Director-General of the WTO

The end of Mr Abreu's intervention opened the panel debate. The first theme of discussion was the possible structure of a new global governance.

Mr Lamy began, recognizing that the WTO's governance was not being questioned because it was able to develop into a consensus-based system that provides for quick adjustments. He also noted with regret that other

organizations did not possess adjustment mechanisms, and were facing a certain degree of resistance in addressing power-sharing issues.

He remarked that moving from the G8 to the G20 had meant not only a change in format, but also a change of agenda. If the G8 was mainly a political forum, the G20 is evolving into a forum to address economic, financial, environmental and social issues. Moreover, representativeness within the G20 has improved, as a number of regional organizations as well as inter-governmental organizations are invited to participate and contribute to the debate. This, in Mr Lamy's view, sets the basis for his idea of a triangle of global governance in the making, where one side would be represented by the G20, which will provide the system with the leadership it needs to function. The expertise, rule-making or rule-enforcing capacity that would form a second side of the triangle would be provided for by the existing international organizations, such as the WTO, the IMF, the World Bank and the WHO. Finally, the triangle would be completed by a reformed United Nations system, acting as a platform for accountability.

On a more realistic note, Mr Lamy recognized that it is impossible to envisage a perfect system of governance that would prevent leaders from making local policy prevail. Although the basis for this system of global governance can be already found in today's structure, there are still areas that generate tensions where there is little convergence.

2. Questions and comments by the audience

Ms Brundtland concurred with the general view of global governance expressed by the WTO Director-General, labelling it as an example of "evolutionary pragmatism". She pointed to the importance of working with the national building blocks that compose the multilateral system. An increased integration of international politics into the national debate would reduce the gap between national and international dialogue. Ms Brundtland also agreed that we need institutions to change as the world changes, but she envisaged these changes as an evolutionary process, where dramatic events, like the present crisis, would help us move forward.

Mr Mbeki, too, commented on the idea of global governance and, resuming the principle of special and differential treatment, he stated that recognition of world's inequalities and imbalances will provide stability



to both the rule-based system invoked by Mr Abreu and the triangle of governance described by Mr Lamy.

The debate moved on to the US-China dispute over tyres. Mr Mbeki was asked for his opinion on the matter. The former South African president expressed his concern that the issue might be brought before the WTO Dispute Settlement mechanism, thus escalating into an unnecessary conflict due to the inherent pressure resulting from the financial crisis and the employment problem.

Mr Rui expressed his view that the US and China have successfully managed to compartmentalize the issue on tyres. After all, the relations between the two countries go deeper and further than just commercial ties.

Turning to the Doha negotiations, Mr Rui asked Mr Lamy whether his view on Doha and its conclusion was as optimistic as it appeared, or whether he too was concerned with the risk of a jobless recovery and the escalation into a more severe situation that would halt the talks. The Director-General expressed his awareness that the forecast recovery was not going to be smooth. On the other hand, he has received positive signals from developing countries that are pushing for a conclusion of Doha. The importance of the multilateral trading system and its strengthening has been made clearer by the crisis. Indeed, for most developing countries, market opening is the only possibility for economic growth.

From Doha to Copenhagen, Ms Brundtland illustrated the progress that has been made since Kyoto in 1997, and reiterated the importance of the post-Kyoto principle of common but differentiated responsibility that brings together emerging and developing countries in the effort to reduce emissions. After all, she explained, today the emissions of the Kyoto countries are 30 per cent of the total and declining, while the pollution rates of emerging economies are on the increase. The strength of the climate convention is that it will be an inclusive deal that will work into the future.

Finally, on values, Ms Brundtland expressed the view that ethics provide an extra dimension of urgency to take up common responsibility to build a common future.

The audience showed major interest in the climate issue and the Doha negotiations. Mr Lamy and Ms Brundtland were asked to elaborate more on how it will be possible to “seal an equitable deal” in Copenhagen. Ms Brundtland reiterated her optimism by underlining that Copenhagen is not a continuation of the Kyoto protocol, but has a wider perspective. However, for the deal to be equitable, it needs to be supported by

those emerging countries – such as China, India, Brazil and others – whose development levels stand further ahead of other developing countries. The idea is to move poorer countries’ development away from the old paths and, in doing so, provide them with green alternatives and resources. Mr Lamy added that an “equitable” agreement will be one that shares the burden of action and implementation in a way that is proportionate with the pollution levels of all countries. In addressing the concerns on the “equitability” of the deal for developing countries, Mr Mbeki, explained that the principle of common but differentiated responsibility is designed precisely to ensure that there is shared responsibility, but that responsibility is differentiated with reference to the degree to which each country is called to commit.

On the Doha Round, Mr Lamy reiterated that at this point, countries in the WTO have reached a fair and equitable deal and, indeed, it is developing countries themselves that are pushing for its conclusion. Ms Brundtland agreed that countries all over the world are seeing the importance of what has been achieved in the WTO negotiations, they know the stakes and they are ready to seal a deal on Doha and Copenhagen to move ahead for a safer and more secure world.

3. Conclusions and way forward

Support for the conclusion of the Doha Round was voiced by all the speakers. Mr Mbeki, in particular, hoped that the Public Forum would contribute to move forward the WTO agenda and, as a snowball effect, spur other institutions to move their agendas forward. Consensus, added Mr Abreu, is the best tool WTO has to achieve its goals. The conclusion of the Doha Round can send a positive message to implement common rules and realize global governance. To make a difference, leaders need to push for a finalization of Doha, while also looking at other fora, such as Copenhagen.

The panellists all shared the view that, too often, country leaders are concerned with national issues and priorities, and fail to address the wider picture that would allow their country to grow in the long term. They agreed that an increased integration of the international agenda into the national agenda would be the only viable solution and that the process can be made easier through the involvement of other actors, such as civil society, NGOs and trade unions, who would operate as vectors to transmit international commitment into the national framework. This is why it becomes important to increase the opportunities of public debate.

In concluding, Mr Rui echoed Mr Lamy’s call to “walk the talk” and added his own call: “Keep walking!”



WTO OMC



II. Finding global solutions to global problems: The way forward towards better global governance

B. The role of business leadership in creating better global governance for world trade

Monday, 28 September 2009 – 12.30 ~ 14.00

Moderator

Professor Jean-Pierre Lehmann – Professor of International Political Economy, IMD, and Founding Director of The Evian Group, Switzerland

Speakers

Mr Ravi Chaudhry – Chairman, Cemex Consulting Group, New Delhi, India

Dr Hisham El Sherif – Chairman, Nile Capital, Egypt

Organized by

The Evian Group at IMD

Report written by

The Evian Group at IMD



Abstract

The main message that emerged from the session was the urgent and fundamental imperative of a global paradigm shift and change of mindsets. This is essential in order to create a fair, inclusive, equitable, robust and sustainable global market economy.

Introduction

Central to the advocacy efforts deployed by The Evian Group – its location on the IMD campus (a leading global business school) in Lausanne, Switzerland, making it all the more relevant – is the challenge of business leadership and responsibility as a key player in the global era, and more specifically in relation to the multilateral trading system. Building on a Responsible Leadership Summit that took place on the IMD campus in February 2009, The Evian Group, in collaboration with the ICC (International Chamber of Commerce), held a one-day roundtable meeting entitled “Strengthening the Global Trade Regime for World Peace & Prosperity”. The event proposed to assess the state of reflection of the business community in relation to the current crisis, and invited panellists – all drawn from the business community – to share their thoughts on the

role of business leadership in promoting and strengthening an open global market economy.

The rhetoric of G8, and more recently G20, meetings notwithstanding, there has been very little progress since 2001 in developing, let alone enhancing, the multilateral trading system. The Doha Round of negotiations, in particular, has been in the doldrums. The responsibility, however, lies not only with governments, but also, by and large, with the business community, as it has failed to provide the kind of support that would be needed to move the trade agenda forward in such a way as to address global problems and identify global solutions to move forward toward better global economic governance. For global economic governance to be improved, support has to be gained from all stakeholders, including the business community. The Evian Group has been highly active in seeking to engage business leadership in this action. Especially important will be to engage more business leaders from the South, hence the predominant position of entrepreneurs from the South on this panel.

1. Presentations by the panellists

(a) Jean-Pierre Lehmann, Chair of the session, Professor of International Political Economy, IMD, and Founding Director, The Evian Group, Lausanne, Switzerland

The Evian Group at IMD acts to generate a spirit of cooperation to enhance globalization. The climate-change agenda is daunting and cannot be divorced from the trade and development agenda. "If we fail on climate change", says Mr Lehmann quoting Nicholas Stern, "we will fail on development – especially as poor countries tend to be the most vulnerable – and if we fail on economic development, we will fail on climate change". Therefore, if the Doha Development Agenda (DDA) fails, climate change, poverty and disease will be difficult to tackle.

To foster sustainability, it is crucial that the trade agenda be equitable, sustainable and robust, and, moreover, inclusive. The young generation must therefore be involved in the decision processes. The Evian Group at IMD constantly incites the young generation to put pressure on the older generations. It also puts a great emphasis on involving young Arabs in particular in the global agenda. The Evian Group is fond of quoting the African proverb (usually attributed to the French writer Antoine de Saint-Exupéry), "we do not inherit the earth from our parents, we borrow it from our children". The role of the older generations is to act as a responsible custodian in the management of the planet, and the role of the younger generations should be to pressure their elders in that direction.

Globalization is an ongoing process which has not been completed *yet*. Trade is not only about the movement of goods and services, but also about the movement of people. Furthermore, demographics being a key issue at the beginning of the 21st century, the cross-border movement of people needs to be urgently and seriously tackled. Shortly, we will be facing a huge demographic expansion¹, in addition to a high unemployment rate specifically affecting the young generation. Achieving freer cross-border movement of people is an important dynamic in creating an equitable, sustainable, robust and inclusive global society.


“The disengagement of the business community in the trade agenda is notably a reason for the failure of the Doha Development Agenda”



The need for the business community to enrol in shaping an open, inclusive, equitable, robust and sustainable global market economy is essential. Indeed, business is at the core of the trading system. A considerable proportion of trade is intra-corporate. Estimates for the current global trade are as follows: one third is intra-corporate; a second third takes place through OEM (original equipment manufacturer) and procurement (for finished or intermediate goods); and the last third relates to "conventional trade". As an example, the portion of the Malaysian trade with the US is roughly 85 per cent intra-corporate. It is therefore extremely paradoxical for business not to engage in the trade agenda process. At The Evian Group's session, there were very few business representatives present, illustrating the absence of business from the public trade policy debate. Furthermore, the communiqué of the G20 Pittsburgh Summit, held in September 2009, gave trade low priority, and did no more than mouth the usual platitudes. The disengagement of the business community in the trade agenda is notably a reason for the failure of the Doha Development Agenda, and is part of the problem addressed during this session.

To address the issue of the role of business leadership in creating better global governance for world trade, the panellists were asked to concentrate on the following five questions:

- a. What is the business case for the multilateral trading system (MTS)?
- b. How can business leadership be developed as a means of promoting the MTS?
- c. What is the short-term impact of the crisis on global business and global trade, and how can it best be mitigated?
- d. What is the possible long-term impact of the crisis on the global business paradigm?
- e. How can the global trade regime and global finance be better coordinated and developed in a 21st century architecture of global economic governance?



(b) Ravi Chaudhry, Chairman, Cemex Consulting Group, New Delhi, India

Mr Chaudhry is an Indian entrepreneur. He provides “Strategic Advisory Services” to CEOs, corporate boards and sovereign states on issues related to sustainable global growth and competitiveness. He is a member of the Evian Brains Trust. As an Indian, he is closely aligned with the current Indian government’s five-year plan (2007-2012) which strongly focuses on inclusive growth.

Mr Chaudhry gave three main reasons for talking about business leadership today. First, at any time in human history, there has always been one dominant group that exercises maximum influence on the lives of the masses. In earlier days, it was the Church, then the state, and today it is the business leadership, whose collective actions tend to have a disproportionately large influence on the lives and the quality of life of billions of people. Second, while state actors and nominees are the *prima facie* decision-makers in the dialogue among nations, it is well known that business leaders, directly or through powerful business-controlled lobbies, virtually direct the stances individual nations take in such negotiations. Third, corporate CEOs effectively control global trade and its terms, direction, quality and alliances – some of which tend to border on cartelization and other unfair practices. The majority may not do so, but the majority of business leaders are allowing the aggressive business minority to get away with such practices.

According to Mr Chaudhry, the lack of business responsibility has led to three tangible results. First, globalization is a phenomenon that has made it possible for corporations to produce where the costs are lowest, to sell where the prices can be highest and to borrow where the financing is easy to get and is cheapest. Success of globalization has been measured by empirical indices, such as high GDP, high FDI, higher foreign trade intensity – each, in turn, leading to higher earnings per share. It is claimed that this helped lift 600 million people out of abject poverty. But another 2 billion are still in abject poverty. It is not often mentioned that globalization also led to a million-odd major shareholders and CEOs amassing wealth several times more than the gross incremental marginal improvement of 600 million people. Tom Freedman’s *The World is Flat* made waves with his thesis that those with money, resources and skills will find themselves empowered by the flattened world. He speaks of flatness of the world for those in business. For the excluded two thirds of the social majority on the

planet, the world continues to be heavily tilted against them – a totally un-flat world.

“The lack of business responsibility has led to “growth without conscience””

The lack of business responsibility has led to “growth without conscience”: an unsustainable growth that is oblivious to what we have done to the environment and an excessive consumption culture disregarding its impact on future generations. The planet Earth can sustainably support a maximum of 430 to 450 ppm of CO₂ in a given volume of air. We are already at 390 ppm and increasing at the rate of 2 ppm per year. If we do nothing, we will face a catastrophic calamity – which is only 20 to 30 years away – that will not distinguish between rich or poor, North or South, race or religion.

In spite of the above factors, the state “regulatory bodies” almost everywhere are in a state of “regulatory capture”. The regulatory agencies have come to be dominated by the industries that are regulated. Therefore, with these growth realities, it is potently clear that it cannot be “business-as-usual” hereafter. The good news is that there are quite a few role models among business leaders in every country and in every industry whose pursuit of profit is not at the cost of damaging the environment, nor adversely impacting the interests of any related or unrelated parties, directly or indirectly.

Mr Chaudhry raised two final questions:

Business CEOs have got away with what they have been doing. Why should they change now?

Corporate CEOs have to be realistic enough to accept that the consumers and shareholders are now more socially conscious than corporations. Business leaders that recalibrate their growth trajectories on the basis of fair and equitable practices in a multilateral system are likely to garner greater consumer support.

The key plank of fairness, from the perspective of two-thirds of the social majority, is to ensure that rules relating to agricultural trade are made more inclusive and devoid of subsidies. If this is not done, the all-inclusive growth in the developing world will remain a mirage. In its wake, extension of global demand from the emerging market growth engines will at best be meagre. There is a danger that it will become negative.

How can business leaders be changed to become more socially responsible?

“Business leaders have to realize that it is in their own interests to be more socially responsible”

Certainly neither by legislation nor by regulation; business leaders have to realize that it is in their own interests to be more socially responsible. They must also persuade their national leaders that this is in the interests of their citizens as well.

Now, business leaders need to take three non-negotiable steps forward: First, sustainable global prosperity – nations’ sustainable prosperity (for both exporting and importing nations) – and therefore corporate profitability, are contingent on a free and unfettered flow of trade. Protectionism, under any guise or any name, never protects. Business leaders will serve their long-term interests best by saying “No” to protection and “Yes” to gradually reducing agricultural subsidies and freeing agricultural trade.

Second, business leaders must commit to gradually reducing their carbon footprint by at least 2.5 per cent every year, so that in 20 years it represents 50 per cent of what it is today.

Third, when a company operates in several countries, it must follow the product quality standards, employment ethos and work-place practices that become a benchmark of excellence in each country where it operates.

As a final comment, Mr Chaudhry called for the fundamental paradigm shift that a company has to undertake to enlarge the emphasis from what it needs to what its nation needs and to what humanity needs. Only then will companies become strong and live long.

(c) Hisham El Sherif, Chairman, Nile Capital, Cairo, Egypt

Mr El Sherif is an Egyptian entrepreneur engaged in the technologies of the 21st century. He goes beyond his pure business responsibilities to improve regional and international governance. He is also deeply involved in the Evian Group Arab Region, an Arab regional coalition of prominent business, government and opinion leaders, aiming to ensure the greater competitiveness of the

Arab region and facilitate its integration in the global economy.

Mr El Sherif challenged the audience with three main points:

1. Are we doing well? Can we do better? Mr El Sherif felt that the world today is worse politically, economically and socially than a few decades ago. According to him, we are facing a huge divide in multiple domains (in the digital, political, economic and social sectors mainly); consequently, we need a strong sense of collaboration. He, too, stressed the urgency of a paradigm shift.

2. Are the institutions we have created working? Are they working for the business community, the consumers, or for themselves? Do people in the streets feel the impact of their action? By 2030, 100 million jobs will need to be created in the Middle East region, which is equivalent to an investment amounting to US\$ 3 trillion. Furthermore, hundreds of thousands of schools and hospitals will need to be built, which amounts to another US\$ 8 trillion.

(1) What is needed to face the challenges the world we will be confronted with a few years from now?

a. Partnerships are the only way out, specifically for the Middle East.

b. There is a need for all actors to be involved: constituencies (workers and consumers), the business community and politicians.

c. Governance needs to be part and parcel of what is taught at school and put in practice locally, regionally and internationally, whether at the business or at the state level.

d. Leadership: what does it mean to have a leader in his position of power for more than 40 years? What is his contribution for his society and fellow citizens? Nowadays, limiting the income of CEOs is being discussed. Why are the number of years spent in power not being challenged?

2. Questions and comments by the audience

There followed a period of questions and comments by the audience, addressing mainly the role of SMEs within



the WTO; involvement of the business community within the WTO; and the enhancement of global governance. The overall conclusions drawn from this discussion are presented in the following section.

3. Conclusions and way forward

The role of SMEs within the WTO

SMEs do not have a voice and are not represented within the WTO framework. Big corporations have taken the lead as representatives of the business community. For example, they financed the WTO ministerial conference in Seattle, which allowed them to participate at the expense of the SMEs. There is a need for a more balanced participation of business representatives. Large corporations are too implicated in policy-making and are given too free a rein.

“There is a need for a more balanced participation of business representatives”

Involvement of the business community within the WTO

One of the reasons why the business community is not more involved in the DDA is because its voice is not being heard within the WTO. The business representatives have clearly set out their needs and given clear statements to the negotiators. The business

community is now waiting for *deliveries*. It is on the side of the negotiators and not of business that there is a lack of results. It is now crucial to enter in the dynamics of an “act and deliver” process. Business leadership should be proactive and provide a strong voice, a real challenge to communicate effectively with the negotiators. There is an urgent need to see business organizations matching the input of other existing organizations (such as the G20 and the WTO).

Global governance enhancement

It is now high time to get rid of existing systems. What is strongly needed in order to improve and enhance global governance in world trade is a common interest for developed and developing countries. How can business contribute to making world trade equitable, for the profit of developed and developing countries? By (a) opening markets for trade in developing countries; (b) through technology transfer; and (c) by investments in developing countries.

Endnotes

1 Between 2010 and 2020, there will be an extra ¼ billion people in the Sub-Saharan countries and an additional ¼ billion people in Central Asia. Overall, there will be nearly a billion more people on the planet in the next decade, over 90 per cent of whom will be born in developing countries.

C. International trade, speculation and agricultural commodity price spikes

Monday, 28 September 2009 – 14.00 ~ 17.00

Moderator

Mr Clem Boonekamp – Director, Agriculture and Commodities Division, WTO

Speakers

Dr Maximo Torero – International Food Policy Research Institute

Dr George Rapsomanikis – Food and Agriculture Organization (FAO)

Professor Scott Irwin – University of Illinois at Urbana-Champaign

Mr Xavier Patry and Mr Bertrand Bosc – Lansing Trade Group International

Discussant

Dr David Nabarro – Coordinator of the UN High-level Task Force on the Global Food Security Crisis

Organized by

WTO – Agriculture and Commodities Division

Report written by

WTO – Agriculture and Commodities Division



Abstract

Price fluctuations are a normal feature of agricultural commodity markets. Nevertheless, the international food price spike in 2007-2008 generated concerns regarding the potential poverty implications of these price changes due to the rapidity of the price increases and the size of the price spike for specific commodities. The complex structural causes of this price spike include demand factors – such as increasing populations, and ethanol and biofuel production – and supply factors – including land and water constraints and seasonality. While these factors are relatively predictable, other short-term economic activities also have direct influence on agricultural markets. In particular, trade policies (such as export bans) and commodity speculation, have been identified as possible contributing factors to price volatility.

Food price inflation is likely to hit the poor the hardest, since the share of food in their total expenditures is much higher than that of wealthier populations. Thus, while food prices have decreased since the spike in 2008, discussions regarding possible institutional mechanisms which could moderate future economic impacts on vulnerable populations have continued. The objective of this session was to provide a forum for discussing the extent to which trade policies and financial speculation contributed to the food price spike in 2008. The session also explored possible policy and institutional innovations to address the needs of vulnerable populations.





1. Presentations by the panellists

(a) Xavier Patry and Bertrand Bosc, Lansing Trade Group International¹

Mr Patry and Mr Bosc provided an analysis of drivers of commodity price and volatility changes, indicating that sustained price moves are typically initiated by an imbalance between supply and demand. The factors that led to these imbalances in 2007-2008 differed for different commodities. For example, for wheat, the rally in food prices in 2007-2008 could be explained by a drop in production in several large producing countries due to lower planted acreage, bad growing conditions and weak harvests. For corn, the fundamentals were slightly different: lower production, mostly in the EU, a record increase in domestic consumption across the world, and continued increase of corn-based ethanol production. For soybeans, the imbalance occurred due to a 20 per cent decline in soybean production from the three major producers (Argentina, Brazil and the US), a 30 per cent increase in imports from China, and a record use of oilseeds for biodiesel production.

“Sustained price moves are typically initiated by an imbalance between supply and demand”

While price movements could be largely explained by the underlying fundamental characteristics of supply and demand, macro-economic variables can also influence price volatility. In 2007-2008 these factors included the weak US dollar, high freight rates and high crude oil prices which affected production and transport costs.

“Commodity stocks can provide a buffer against price volatility by providing a source for commodities in the case of unexpected decreases in production”

Commodity stocks can provide a buffer against price volatility by providing a source for commodities in the case of unexpected decreases in production. The world and US stock-to-use ratio for each of these crops had reached an historical low in 2007, which led to vulnerability to supply-side shocks. Farmers normally respond to high prices by increasing production. Hence, following the high prices of 2007-2008 there was an increase in farmed acreage as well as in investment in farming techniques which resulted in increased production. While these investments contributed to rebuilding of stocks, the stock-to-use ratios remained

low and future reductions in supply could have major consequences on prices.

The speakers from Lansing Trade Group International argued that, due to the nature of the outlook on fundamentals, commodities would continue to attract speculative interest. The 2009 discussions and hearings at the Commodity Futures Trading Commission (CFTC) would influence possible future controls on speculation in the commodity markets. Some possible outcomes from CFTC discussion included:

- stricter control of position limits, as well as tighter control on exemptions for hedge and index funds;
- better control of unfair advantages given to specific participants, through flash orders or dark pools, for instance;
- more difficult access to financing;
- limits on excessive leveraging; and
- increased transparency relating to the positions of the various types of speculators.

These measures, if implemented, could help to narrow the gap between the participation of speculative investors and other participants, such as the merchants, processors and users in commodity markets.

To address potential price volatility in the future, Mr Patry noted that policies should emphasize the stabilization of supply and demand. This could include the elimination of subsidies which encourage the production of the current generation of corn-based biofuels. Some interventions, in the form of targeted subsidies to create incentives to plant food crops, could also be considered.

According to Mr Patry and Mr Bosc, while index funds could not be held directly responsible for the price movements of any specific commodity, their activity probably contributed to the increased volatility observed recently. Preventing participation of funds in these markets would not solve the problems, since the problems were – at least in part – determined by fundamentals. Volatility would likely continue to be an issue in commodities markets, due to the growing uncertainties of supply and demand in the years to come.

(b) Scott Irwin, University of Illinois at Urbana-Champaign

Prof. Irwin took a close look at the economic arguments being used to justify claims that speculative activity led to the food price “bubble”. These arguments had surfaced

in the popular press, with many news articles analysing the role of speculators in the global food crisis. Because many of these arguments failed on either a conceptual or a factual basis, Prof. Irwin concluded that the evidence does not support the claim that speculative activity was a determining factor of the food price “bubble” in 2007-2008.

“Evidence does not support the claim that speculative activity was a determining factor of the food price “bubble” in 2007-2008”

Prof. Irwin highlighted the main aspects of the argument that high food prices represent a price bubble. According to this argument supplies of physical commodities are constrained in the short-run. Unleveraged futures positions of index funds effectively represent new “demand” for physical commodities. If the magnitude of index fund “demand” is large enough relative to physical supply, prices and price volatility could skyrocket. The conclusion of this line of argument is that index fund investment is “too big” for the size of existing commodity futures markets.

Prof. Irwin highlighted several conceptual problems and inconsistent facts with this argument. Conceptually there are problems equating money flows with demand for physical products. Since futures markets are zero-sum games, if long positions of index funds are new “demand”, then the short positions for the same contracts represent new “supply”. With equally informed market participants, there is no limit to the number of futures contracts that can be created at a given price level. Furthermore, there was no evidence that an increase in stored commodities had occurred. Speculation during the relevant period had not been excessive when compared to hedging. Price increases had not occurred in all commodity futures markets included in the popular indexes. Prof. Irwin noted that, while these conceptual problems and inconsistent facts built a reasonably strong case against bubbles in commodity prices, some analysts still perceived this to have been a unique market episode. More evidence on the relationship between index fund trading and commodity futures prices is needed. Based on the examination of existing evidence, Prof. Irwin concluded that early empirical work does not support the idea that a price bubble was caused by speculative activity.

(c) George Rapsomanikis, Food and Agriculture Organization (FAO)

According to Dr Rapsomanikis, international food prices had almost doubled in the last three years, and remained at historically high levels. The FAO food price index rose by 9 per cent in 2006 and by 23 per cent in 2007, and that increase had persisted and accelerated in the first few months of 2008. A proportion of these price increases could be attributed to the depreciation of the US dollar. Expressed in other currencies, the increases were within the range of historical variation, but were still substantial. While almost all agricultural product prices had increased at least in nominal terms, the rate of increase had varied significantly from one commodity to another. In particular, international prices of basic foods, such as cereals, oilseeds or dairy products, increased far more dramatically than the prices of tropical products and raw materials.

“Economic growth, biofuels, monetary policies, speculation and tight agricultural markets were relevant factors in the 2007-2008 food price crisis”

According to Dr Rapsomanikis, economic growth, biofuels, monetary policies, speculation and tight agricultural markets were relevant factors in the 2007-2008 food price crisis. Economic growth led to higher energy prices due to strong demand in China and India. These increases in energy prices, in turn, contributed to increased input costs for agricultural production. Biofuel production affected food markets because some crops are used as biofuel inputs, and biofuel production can induce a shift in land allocation away from food production. The impact of macroeconomic factors, such as changes in money supply, which could affect commodity prices has been under-emphasized in the analyses of the 2007-2008 food price crisis.

With respect to the issue of speculation in food and non-food commodity markets, Dr Rapsomanikis noted that speculation would push futures prices up, which, in turn, would result in spot price increases that do not reflect only the fundamental characteristics underlying supply and demand. On the whole, agricultural markets are smaller and significantly less liquid than energy or metals markets. Although they account for a smaller share of commodity fund investments, the value of these investments as a whole are large compared to the size of each individual commodity market. Agricultural futures markets respond quickly to new information, and in the short run these investment activities could



have an impact on prices, especially when markets were tight. Therefore, Dr Rapsomanikis concluded, large investments may have resulted in temporary price distortions, but had not determined the trend.

FAO's main concern regarding the food price crisis was the extent to which this event deepened poverty levels in vulnerable households. To address the needs of vulnerable populations, Dr Rapsomanikis advocated the creation of targeted safety nets. FAO has been engaged in over 90 countries, helping to boost food production through the supply of improved seeds, fertilizers, and other agricultural inputs and technical assistance. For example, governments in many countries, especially in Eastern and Southern Africa, have been focusing on specific input market-smart support schemes. Smart input subsidy programmes target farmers who would use no inputs, or who would respond to the support by increasing input application substantially. These schemes, which can selectively reduce the cost of fertilizer and seed to smallholders, aim to assure food security at both the household and national levels.

Dr Rapsomanikis also advocated exploring the possibility of maintaining relatively small national strategic food reserves. This type of targeted food release programme would include greater consultation and better coordination between the government and the private sector in terms of market assessment and the provision of information on the availability of food. Policies would ensure that credible information on public import programmes and changes in import tariffs would be available in a timely manner in order to avoid private sector disruptions, and ensure the availability of food. Establishment of clear and transparent rules for the intervention of governments in the market would enhance predictability. A reduction in the size of public food reserves would encourage private sector development. Trade facilitation mechanisms could also play a role in ensuring the execution of trade contracts between countries.

(d) Maximo Torero, International Food Policy Research Institute

Dr Torero described results from two IFPRI research projects examining the food price spike in 2007-2008. First, IFPRI's MIRAGE model showed that export bans and restrictions explained around 30 per cent of the increase of prices in basic cereals, due to the highly concentrated nature of these crop markets. Dr Torero noted that the potential costs of rising protectionism were high, and stressed the importance of concluding the Doha Round.

Secondly, IFPRI's empirical research indicated that speculative activity in the futures market could have contributed to the increasing agricultural commodity prices in recent months, although the evidence was not conclusive. Nevertheless, Dr Torero argued that, as long as transactions by index traders in futures markets motivate transactions by others in the spot market, there would be an impact of speculation in the spot price and on the real economy.

IFPRI research described how food price spikes impact the budget of poor households. Price increases adversely affected purchasing power when a large proportion of income is spent on food, and wages do not increase in response to food price increases. To compensate for these changes in budget, poor households may sell productive assets or withdraw female children from school. The budgetary consequences of this price spike would exacerbate nutritional deficiencies and increase the incidence of poverty.

The financial crisis and potential climate-change impacts are likely to intensify the negative impacts on the poor of the food and fuel crisis. The financial crisis complicated the risks from the food price crisis by reducing public investment in agriculture. The reduction of employment and wages of low-skill workers, as well as the reduction of remittances, further increases the vulnerability of poor smallholders. Global simulations of climate change have shown that climate change could lead to a reduction in global production of food crops, and a resulting increase in prices which have a relatively greater impact on poor households.

Dr Torero proposed a new global institutional arrangement to address future market volatility and speculation. This arrangement would approach the problem in two ways. First, the arrangement would include a minimum physical grain reserve for humanitarian assistance (an emergency reserve of around 300,000 metric tonnes of basic grains – about 5 per cent of the current food aid flows). In addition, this arrangement would include a mechanism to manage risk through the implementation of a virtual reserve, backed up by a financial fund to calm markets under speculative situations. To establish this virtual reserve, a group of participating countries would commit to supplying funds if needed for intervention in grain markets. Determining the size of this fund would require further analysis, as commodity futures markets allow for high levels of leverage. For example, a fund of US\$ 12 to 20 billion might cover 30 to 50 per cent of normal grain trade volume. These resources would be promissory – or virtual – not actual budget expenditures.



(e) David Nabarro, Coordinator of the UN Task Force on the Global Food Security Crisis

Dr Nabarro, acting as a discussant, reflected on the four presentations from his perspective as the Coordinator of the UN's task force on the global food price crisis. He concluded that more research was needed to clarify the effect that speculative activities had on food prices. With respect to understanding the implications on poverty, Dr Nabarro advocated research focused on food security, including differences in urban-rural impacts and nutritional consequences.

With respect to potential interventions to address the socio-economic impacts of the food price crisis, he noted that short-term manipulation of markets was unlikely to address the potential poverty implications of these price increases. Policies that address the fundamentals driving price volatility – such as the rebuilding of national stocks – should be given urgent priority. Regulatory interventions and the establishment of safety nets that would buffer the potential negative impacts of price volatility on the vulnerable poor could be considered. Targeting appropriate regulatory interventions would require identifying which sectors may contribute to promoting resilience in vulnerable populations. The current political environment could provide an opportunity for this issue to gain more attention from world leaders.

2. Questions and comments by the audience

A member of the audience, highlighting the efficient production and distribution in Brazil's biofuel sector, asked the experts from Lansing Trade International for clarification on why they assumed that the current-generation biofuels were not viable. Mr Bosc clarified that this comment had referred to corn-based ethanol, rather than Brazil's sugar-based ethanol production.

With respect to the issue of the role of subsidies and their links with food security, another member of the audience took issue with the conclusion of Lansing Trade International that complete removal of agricultural subsidies might compromise the global stabilization of supply and demand for food. Mr Patry responded that, since the removal of subsidies would likely reduce production, it was important to anticipate this change in global production and consider policies that would help ensure that the production gap is addressed.

In response to a question regarding the best way to adapt the current agriculture trading system, FAO proposed that safety nets would be very effective during recessions. However it could be difficult to scale these approaches up to reach a larger population. Prof. Irwin suggested that countries could use commodity exchanges to hedge in futures markets. This had been tried in the past, but due to the size of the trades implementation was difficult. Mr Bosc noted that efficient and transparent commodity markets should allow all actors, including national governments, to hedge according to their needs, and commented that there is a fine line between hedging and speculation.

3. Conclusions and way forward

In conclusion, each of the speakers was invited to comment on the question of whether additional actions were needed to enhance the functioning of agricultural markets in order to achieve food security in a world with more than one billion hungry people. Dr Torero commented that, currently, agricultural markets were not working efficiently due to price transmission problems, as well as distortions in the areas of biofuels and subsidies. Regulation could address these issues. The two experts from Lansing Trade International added that, since the market functions as a price discovery mechanism, improving market transparency would be a step in the right direction. Dr Rapsomanikis stressed the need to ensure that markets work for the poor by improving investments in goods and institutions that contribute to buffering the capacity of food markets to meet their needs. Prof. Irwin advocated improved access to market information to ensure accurate economic signals. This should be combined with investment in production technologies and education. In the short run, Prof. Irwin stressed the need to remove biofuel subsidies in the Western world. He noted that these subsidies created large distortions and lasting effects, which increased the vulnerability to problems in food markets in the near future. According to Dr Nabarro, necessary actions should include rapid attention to unfair subsidies and the avoidance of diverting cereal crops to ethanol production. Dr Nabarro concluded that global commitment was needed at the highest political level to ensure all have access to adequate food.

Endnotes

1 Lansing Trade Group is a trading company largely focused on the movement of physical commodities. The company trades whole grains, feed ingredients, biofuels, meats, container freight and many other commodities within North America and internationally.

D. Climate-change policies and trade rules: Conflict or coherence?

Tuesday, 29 September 2009 – 09.00 ~ 11.00

Moderator

Mr Marcos Orellana – Director of the Trade and Sustainable Development Program, Center for International Environmental Law (CIEL)

Speakers

Mr Clive George – Senior Research Fellow at the Institute for Development Policy and Management, School of Environment and Development, University of Manchester

Mr Hannes Schloemann – Director, WTI Advisors Ltd. (Oxford/Geneva)

Mr Benjamin Simmons – Legal Officer, Economics and Trade Branch, United Nations Environment Programme (UNEP)

Mr Peter Wooders – Senior Economist for Climate Change, Energy and Trade, International Institute of Sustainable Development (IISD)

Organized by

Center for International Environmental Law (CIEL), and Friends of the Earth Europe (FOEE)

Report written by

Center for International Environmental Law (CIEL), and Friends of the Earth Europe (FOEE)



Abstract

As the climate negotiations progress and the 2009 WTO Ministerial approaches, the nexus between climate-related measures and trade rules becomes even more significant. This presents challenges and opportunities for both the climate and the trade regimes.

With the launch of its publication, *Is World Trade Law a Barrier to Saving Our Climate?* the Center for International Environmental Law

(CIEL) and Friends of the Earth Europe (FOEE) explored the intersection between climate-related measures and international trade rules. Panellists addressed both the relationship between multilateral climate-change rules and WTO rules, as well as the relationship between WTO rules and domestic climate-related measures, including labels and standards, fuel efficiency schemes, green climate subsidies, and border carbon adjustments.

Summary of the main points

The discussion was introduced and moderated by Marcos Orellana, Director of the Trade and Sustainable Development Program at the Center for International Environmental Law (CIEL). The panel discussion was structured in two parts: first, panellists discussed the specific issues covered in the report; and second, panellists addressed two general questions regarding the significance of the trade and climate-change debate for both the United Nations Framework Convention on Climate Change (UNFCCC) and the WTO.

“WTO law provides ample flexibility for measures designed to adopt effective ways to address climate change”

Mr Orellana provided a brief introduction to the report – *Is World Trade Law a Barrier to Saving Our Climate?* – published by CIEL and FOEE. The issues addressed in the report, and discussed in the first part of the panel, are clustered as follows: labelling and standards, including fuel efficiency; green climate subsidies; and border carbon adjustments. The report concludes that WTO law provides ample flexibility for measures designed to adopt effective ways to address climate change. Mr Orellana then asked the panellists to discuss whether they believe world trade law is a barrier to saving our climate, noting that we are often faced with the argument that WTO rules are an obstacle to enforcing climate-change measures.

1. Presentations by the panellists

Labelling and standards – Should consumers receive information about the fuel efficiency of how products are made, that is, the carbon footprint and/or production methods? How does this relate to setting fuel efficiency standards?

(a) Clive George, Senior Research Fellow at the Institute for Development Policy and Management, School of Environment and Development, University of Manchester

Mr George discussed the impact of agricultural trade. He noted that when he was European Trade Commissioner, before the Seattle Ministerial Conference of 1999, WTO Director-General Pascal Lamy implemented sustainability impact assessments of trade agreements, including with respect to agriculture. Mr George

mentioned that agricultural trade, including trade in biofuels, poses a risk of increasing the already high levels of greenhouse gas (GHG) emissions. The best possible solution, he suggested, is labelling, standards and certification schemes, but only if they are augmented by international agreements.

“Agricultural trade, including trade in biofuels, poses a risk of increasing the already high levels of greenhouse gas (GHG) emissions”

Mr George expressed his concern about countries, such as Brazil, that contain many areas of available land which are not used for agriculture or deforestation. Mr George asserted that preventing deforestation is not easy under WTO law, as there need to be international agreements and precise standards that leave no doubt under Article XX of the GATT. If this were achieved, there would be no problem with compatibility under WTO law.

Mr George also mentioned his concerns over international enforcement, as well as the impact of standards on small farmers. He concluded that, under WTO law, labelling, standards and certification schemes can be allowed, but in practice it is unlikely that they will make much of an impact on GHG emissions.

(b) Hannes Schloemann, Director, WTI Advisors Ltd. (Oxford/Geneva)

Mr Schloemann continued the discussion on labelling and standards by discussing the problems raised by their selective nature. He agreed with the conclusion of the CIEL-FOEE study. The problem, he asserted, is that labelling and standards are too selective. Mr Schloemann viewed the role of the WTO as mainly positive.

He mentioned the importance of having labels and standards comply with the Technical Barriers to Trade (TBT) Agreement, noting that problems could arise with Article 3 of the TBT Agreement. Article 3 deals with whether one can discriminate based on the mode of production (a key for climate standards), which can then eventually lead to an analysis under GATT Article XX. According to Mr Schloemann, the main focus should be the need to make sure the idea of non-discrimination is upheld. Both GATT and the TBT Agreement apply at the same time unless there is a conflict, in which case the TBT Agreement wins. The main purpose of the TBT is to push WTO members towards harmonization, which is an





important point that is often overlooked, and is related to Article 5. The TBT, when properly applied, can ensure that standards are applied in a fair and equitable manner.

(c) Peter Wooders, Senior Economist for Climate Change, Energy and Trade, International Institute of Sustainable Development (IISD)

Addressing the question regarding whether we need standards to regulate GHG emissions, Mr Wooders commented that labelling and standards are critical and legitimate for public policy, and are needed to reduce GHGs. He noted that under an Environmental Goods and Services (EGS) agreement, a 0.1 to 0.9 per cent reduction in global GHG emissions is achievable, if the agreement is fully implemented. The standards in question tend to be product standards, so they avoid the difficulties of non-product related Process and Production Method (PPM) standards. However, labelling and standards would reduce GHGs more than an EGS agreement. The TBT Agreement can help by establishing harmonization rules, as standards and regulations would have a bigger impact with more harmonized rules.

“Labelling and standards are critical and legitimate for public policy, and are needed to reduce GHGs”

Green climate subsidies for certain production methods – How do these subsidies fare against WTO rules? Are green subsidies the most accurate response? There are subsidies for renewable energy production and for purchase of energy efficient products.

(d) Benjamin Simmons, Legal Officer, Economics and Trade Branch, United Nations Environment Programme (UNEP)

Mr Simmons responded to the question on how green subsidies fare against WTO rules, asserting that WTO compliance depends on the measures enacted by member states. These issues go beyond WTO compatibility. However, Mr Simmons questioned whether, even if the subsidies are WTO-compatible, they ought to be implemented. He mentioned that UNEP supports green subsidies. For example, there is US\$ 400 billion available in green stimulus packages globally, but there is a broad definition of green. Regarding the question of whether it is WTO-compatible, countries clearly think it is or they would not support these efforts. Regarding

the WTO rules, however, it is not clear whether there is a level playing field with these subsidies.

(e) Peter Wooders, Senior Economist for Climate Change, Energy and Trade, International Institute of Sustainable Development (IISD)

Mr Wooders addressed the question of whether green subsidies are the most suitable response by noting that subsidies began for good reasons, and the same could apply for green subsidies. He asserted that investment support is not the only thing we can do. We can create more enabling environments for clean energy investments. For example, in Egypt, only 0.7 per cent of their energy is wind-generated, despite the very windy conditions. A key barrier to the growth of Egypt's wind energy sector is that natural gas for electricity generation is low-cost as a result of subsidies. Mr Wooders suggested removing distortions before giving out green subsidies. He noted the G20 announcement to remove fossil fuel subsidies. He emphasized the need to quantify the amount and impact of fossil fuel subsidies, and then use that evidence to create reform strategies.

“We can create more enabling environments for clean energy investments”

(f) Clive George, Senior Research Fellow at the Institute for Development Policy and Management, School of Environment and Development, University of Manchester

Mr George discussed the geopolitical considerations that come into play in subsidies. He was not in favour of green subsidies, except in the short term to act as a stimulus. Regarding biofuels, he noted that while Brazilian biofuels are more efficient under most life-cycle analyses, the increased production of cellulosic ethanol is pushing soy and beef production into the Amazon, and producing even more GHGs than it is saving. Mr George mentioned that energy security is still a major concern, which is where geopolitics comes into play and adds to the difficulty of addressing subsidies. Countries think about their energy policies in geopolitical terms.

“Countries think about their energy policies in geopolitical terms”

Border carbon adjustments (BCAs) – What are the issues regarding leakage, competitiveness, comparative advantage, the free-rider problem? How can countries engage and adopt effective measures to minimize climate change?

(g) Peter Wooders, Senior Economist for Climate Change, Energy and Trade, International Institute of Sustainable Development (IISD)

Mr Wooders stressed that there is little doubt that leakage and competitiveness concerns are a problem, although there is no empirical evidence that such issues are occurring. He noted, however, that there is a great deal of uncertainty due to the large number of relevant factors which complicate the analysis. Policy-makers are concerned that competitiveness will lead to job-loss in the short term, as seen in the auto industry in certain locations. Although industry has the ability to protect itself, and can do more to become more competitive, there are still questions of uncertainty. In order to have an effective system, Mr Wooders stated that one would need to have a life-cycle analysis for each product, which would be very expensive. Moreover, he said that, in order to be effective, one also needs the best technologies to be in place. Thus, Mr Wooders concluded that the combination of these two elements of an effective BCA system was less likely to be WTO-compliant.

Posing a question to the audience, Mr Wooders inquired whether it was appropriate to look at BCAs as an instrument of industrial policy. He noted that policy-makers are worried about the short-term job losses, as well as the long-term geographic relocation of industries. He stressed that the trade and environment community was not the place to have a discussion on industry. Although a multilateral solution was preferable over a unilateral one, it was unlikely that a multilateral solution would be decided during the UNFCCC conference in Copenhagen. He asserted that it would be unlikely that a BCA discussion would be held in the WTO, and thus concluded that in researching this question, IISD advocated the possibility of bringing countries together under the G20 or a similar independent initiative. For example, as countries do not want the WTO to establish a forum, the G20 could establish one instead.

(h) Benjamin Simmons, Legal Officer, Economics and Trade Branch, United Nations Environment Programme (UNEP)

Mr Simmons warned of obstructing the UNFCCC negotiations by placing trade issues, such as border carbon adjustments, at the forefront. He also noted the outcome might be hampered by countries using unilateral measures if a multilateral agreement was achieved at COP15. India, for example, proposed to include measures in COP15 to deter countries from utilizing unilateral measures.

(i) Hannes Schloemann, Director, WTI Advisors Ltd. (Oxford/Geneva)

Mr Schloemann commented on whether dispute settlement is an option, and affirmed that it was, but should be used only as “plan B”, as an agreement was a better option. He explained that WTO rules are reasonably well developed, including Article XX on environmental measures, unless an act is over-reaching or discriminatory. One way forward would be not to fear dispute settlement, but to allow time to run its course so as to reach an agreement on a moratorium of trade measures. For example, with regard to a moratorium on border measures, the WTO Dispute Settlement Body could possibly play a role.

Broader questions

The moderator posed the following two questions to the discussants:

- *What does the trade and climate-change debate mean for the climate-change regime and the UNFCCC?*
- *What does the trade and climate-change debate mean for the WTO?*

(j) Clive George, Senior Research Fellow at the Institute for Development Policy and Management, School of Environment and Development, University of Manchester

Mr George addressed the first question, asserting that in regard to COP15 and the follow-up, international environmental law cannot leave any room for doubt in WTO law. The second question, in regard to the WTO, was more difficult to answer. Mr George cited the opening address of the WTO Ministerial, which was “Addressing new challenges with old ideas.” He argued



that the WTO was created in a unipolar world, but as the world is no longer unipolar, the WTO has become an old tool. He asserted that there needs to be a fundamental rethink of the WTO, discussing the possibility of moving the WTO to the IMF.

**(k) Benjamin Simmons, Legal Officer,
Economics and Trade Branch, United
Nations Environment Programme (UNEP)**

Mr Simmons responded that the climate regime would not address trade issues such as fossil fuel subsidies, as there is no flexibility. He affirmed that it would be too much to ask the UNFCCC to address all trade issues. However, should the WTO address these issues? He noted that under today's rules, countries can address trade and climate-change issues on their own. For example, there is a massive amount of under-reporting of subsidies and countervailing measures. He emphasized the huge potential for countries to address climate change through fossil fuel subsidies. However, he commented that if the Doha Round does not conclude, then there would be even more climate-related trade issues to tackle.

“If the Doha Round does not conclude, then there would be even more climate-related trade issues to tackle”

**(l) Hannes Schloemann, Director, WTI
Advisors Ltd. (Oxford/Geneva)**

In responding to the question of whether, if COP15 failed, the WTO would pick up the pieces, Mr Schloemann stressed that the WTO is a small piece of the puzzle of climate change, and if COP15 failed, the WTO would not pick up the pieces. The WTO would be stranded with some of the pieces – such as border carbon adjustments – and dispute settlement could be an option to deal with these. He mentioned that the CDR principle developed under the UNFCCC would be well suited for incorporation into WTO Article XX.

**(m) Peter Wooders, Senior Economist
for Climate Change, Energy and Trade,
International Institute of Sustainable
Development (IISD)**

Regarding the role of the WTO and UNFCCC, Mr Wooders noted that each country set its own goal of

what it can do, and not much could be expected to come out of COP15 which could be of use for the WTO. COP15 had other issues to deal with, including structure, before getting to trade issues. Perhaps the better question to ask was what the WTO can do for the UNFCCC, as the UNFCCC needs all the help it can get. As to the potential role of the WTO, the question was what the WTO could do to advance sustainable development and therefore to advance trade rules. He believed there should be a WTO sustainable-development roadmap. For example, Mr Wooders asserted that negotiations are a key way to make the WTO transparent, and proposed a panel that provides information, modelled on the Intergovernmental Panel on Climate Change, as the basis for WTO negotiations.

“There should be a WTO sustainable-development roadmap”

2. Questions and comments by the audience

This part of the workshop began with a question by Ron Steenblich of OECD. Mr Steenblich asked the panellists whether voluntary standards have an effect on consumers. In responding to the question, Mr George stated that there was some effect, but not a large one. He discussed the possibility of having standards morph into a regulation. Product A for biofuels versus cosmetics might result in two different values from life-cycle assessment, and the cosmetic manufacturer might want the biofuel value.

The discussion continued with a question on whether the code of conduct on border measures outside the WTO was easier, and whether intellectual property rights were a barrier. Mr George responded that Japan, the United States, and the Netherlands had developed through being slow to adopt patents. Addressing the question on intellectual property rights, Mr Schloemann mentioned that global technological development has been driven by pharmaceutical development in the United States, which is hampered by excessive patenting. He pointed out that competitive fear is what is behind the hesitation about certain UNFCCC and WTO terms.

E. Protectionism – What does it mean for foreign direct investments? Implications for global governance

Tuesday, 29 September 2009 – 11.15 ~ 13.15

Moderator

Ms Sharon Leclercq-Spooner – partner, EPPA Partnership SA, and Chair, Trade and External Affairs Committee of the American Chamber of Commerce to the EU

Speakers

Mr Pascal Kerneis – Managing Director, European Services Forum

Mr Sushil Handa – Founder of the group of businesses The Fifth Veda Entrepreneurs

Mr Selig Merber – Counsel, International Trade Regulation, General Electric Company

Mr Ignacio Iruarrizaga Diez – Acting Head of Unit, Trade in Services and Investment, DG Trade, European Commission

Organized by

AmCham EU (American Chamber of Commerce to the European Union)

Report written by

AmCham EU (American Chamber of Commerce to the European Union)



Abstract

A wide range of restrictions and mounting protectionist measures have a paralysing effect on foreign direct investment (FDI). All affect the free flow of goods, services and capital, to the detriment both of potential investors and of local economic growth. The current crisis has seemingly done little to induce countries to relinquish existing restrictions, even though fresh capital and new economic development are urgently needed. Moreover, when faced by increasing tariff and non-tariff barriers (NTBs) businesses become more cautious about engaging in FDI because of the lack of legal certainty and predictability.

This session addressed the following questions:

- What are the current and anticipated protectionist barriers to FDI in various sectors and across different regions or countries?

- What is the business impact of such measures?
- Which global solutions can address these global challenges to ensure sustainable recovery and long-term economic growth?
- What are the implications for global governance?

The discussion demonstrated the need for a more open and better regulatory environment for FDI. Existing governance mechanisms can contribute to achieving this, but all have shortcomings. The principles of non-discrimination and national treatment should be better applied with respect to FDI. Establishing a forum to explore ways to move forward would make sense.





1. Presentations by the panellists

(a) Sharon Leclercq-Spooner, Partner, EPPA Partnership SA, and Chair, Trade and External Affairs Committee of AmCham EU

The session was moderated by Ms Leclercq-Spooner. AmCham EU speaks for American companies doing business in Europe. It focuses on how policy affects business and maintains a continuous dialogue with policy-makers.

As the economic crisis deepened, AmCham EU members became concerned about the prospects for foreign direct investment (FDI), and the dangers of protectionist measures. Figures are alarming, with the latest reports by OECD, UNCTAD and WTO predicting a 30-40 per cent drop in FDI this year alone.

“Investment is vital to create jobs, to build on human knowledge and skills, and to build and spread prosperity”

Investment is vital to create jobs, to build on human knowledge and skills, and to build and spread prosperity. It is in the interests of all to enable investment to happen in the best possible manner. Protectionism is not the answer.

AmCham EU feels that discussion is needed, at WTO level – and indeed all levels of governance – as to how to create a better regulatory environment for investment. An initial AmCham EU paper proposing the creation of a forum at WTO level can be found on the AmCham EU website.

With a view to starting the process of identifying the issues and considering alternative paths forward, this panel brought together representatives from different sectors and parts of the world to present their perspectives on the benefits of FDI, the barriers that companies face, and possible ways to ease those barriers.

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

The European Services Forum (ESF) represents the majority (80 per cent) of exporters and investors in the

service sectors from the 27 EU member states. Data from Eurostat show the importance of the service sector, which makes up the largest share of FDI in the world (about 60-65 per cent). More than EUR 444.1 billion was invested in the service sectors by the EU (outward), representing more than 63.6 per cent of the total EUR 697.5 billion (extra-EU). More than 93 per cent of investments coming into the EU (inward) were in the service sector. This is mostly due to the transparency of regulation as well as the stability and security of the EU.

Private FDI in services is important for developing countries. When comparing the official development assistance (ODA) data with FDI figures in developing countries, one can see that the focus should be given to FDI. In order to ensure sustainable economic development in the long term, developing countries should try to attract more FDI. In addition, experience has shown that foreign service suppliers who invest in a developing country stay there for a long period. This creates transfers of expertise and know-how, which in turn create local jobs, staff vocational training, better quality of services, cheaper services, more choice for consumers, and reduce the cost of doing business for local enterprises in the developing country.

There are, however, numerous barriers to FDI faced by the service sector. For instance, companies may be required to enter the market through a joint venture, or may face limitations on capital ownership, limitations on licences allotted to foreign companies, restrictions on branching, lack of national treatment in many service sectors, and more.

A company CEO, when deciding to invest in a developing country, would use criteria including: the potential market, existing competition, benefits prospects, good governance, state of regulation, FDI incentives, business environment, and importantly, the country risk assessment. There is a large gap between business needs and reality in terms of investment policies. Companies make investment decisions depending on how open the country in question is for investors. In order of priority, a company would rank investment policies (ranging from best to least) thus: a global agreement in the WTO on investment; a regional integration on investment; multilateral or plurilateral agreements; bilateral agreements in the context of a free trade agreement (FTA); and finally, national reform on investment.

(c) Sushil Handa, founder of the group of businesses The FifthVeda Entrepreneurs

Mr Handa, an entrepreneur from India, has over three decades of experience of establishing and managing large global businesses. His group has business interests in many areas, such as pharmaceutical and clinical research and the clean energy sector. His businesses are present in 76 countries. Given the extent of his experience, he started by giving a broader context to the question and addressing the socio-economic factors that influence policy decision-making.

“There is a strong need for an efficient legal system, laws and compliance requirements, foreign currency, ownership, and mobility, which encourage FDI”

As founder of a global company, Mr Handa has experienced many barriers to investment that have prevented his company from moving forward. These include plant and product approvals, regulatory approach, time and costs involved, market and customer perception, and the distribution groups and customer purchase models. The intentions, strategies and practices that surround the investment policies often defeat their purpose. There is a strong need for an efficient legal system, laws and compliance requirements, foreign currency, ownership, and mobility, which encourage FDI.

To reduce barriers to investment, countries should treat all investors (foreign or local) in the same way by providing national treatment to foreign investors. Countries should have common standards for products and plant approvals. Similarly, nations and regulatory agencies should be made accountable in terms of time and costs for plant inspections, parameters to follow, common understanding of issues, and more.

In conclusion, it was recommended that countries should ensure full transparency of their investment policies. Furthermore, the WTO should engage in the process of examining investment policy formulation and processes, and help lead the world to more investment and greater prosperity.

(d) Selig Merber, Counsel, International Trade Regulation, General Electric Company (GE)

Mr Merber presented the view from General Electric, stressing the benefits of FDI to the host and home countries. He explored the legal and regulatory barriers to FDI, the institutional and systemic barriers to FDI, and concluded with possible tools to dismantle these barriers.

GE is a US global company with operations in 100 countries and manufacturing facilities in 40 countries, so has significant experience with FDI. More than 60 per cent of GE's growth is planned to come from developing markets. The conditions that favour FDI in those developing markets are important to GE.

According to a study by Professor Matthew Slaughter of Dartmouth, using US Bureau of Labour statistics, US investment in overseas markets is very complementary to the economic activities of US multinationals in the US. The US companies that invest the most abroad are also those that contribute the most to the US domestic economy.

Companies investing abroad bring global standards in terms of environment, health and safety and employment practices to the host country. When GE invests abroad, it applies the same world-class best practices in all of its international facilities, regardless of local conditions. The local suppliers also have to follow the same standards as the GE in-house facilities. This in turn has a great multiplier effect in proliferating world-class standards.

Global companies face many barriers to FDI. For instance, the home country may impose legal and regulatory barriers to investment, such as taxes on investments abroad, foreign exchange restrictions, and requirements on repatriation of assets or operations. These can greatly hinder FDI. Companies may also face legal and regulatory barriers from host countries, such as pre-establishment barriers (e.g. ownership restrictions and national security review legislation) and post-establishment barriers (e.g. denial of national treatment and requirements for local content). Other barriers include institutional and systemic ones (e.g. the lack of rule of law, transparency and stakeholder participation in rule-making), which also discourage FDI.

The current tools for dismantling the legal and regulatory barriers to FDI need to be more robust. Such tools include international agreements (i.e. GATS, TRIMs),



multilateral instruments, high-quality bilateral investment treaties (BITs), and investment provisions in FTAs. Tools to dismantle the institutional and systemic barriers to FDI include the World Bank's "Doing Business project", the OECD's "conflict of interest toolkit", capacity-building through international organizations, and civil society initiatives on rule of law. Businesses also have an important role to support capability-building, transparency and rule of law at the international level.

To conclude, it was proposed to integrate the rules-based and institutional solutions into a single forum for stakeholders to discuss the issues and improve the climate for FDI. It is important both to restate the international laws to protect FDI, monitor FDI measures, and find common definitions as well as common understandings of barriers, and to involve civil society in order to encourage FDI-friendly policies.

(e) Ignacio Iruarrizaga Diez, Deputy Head of Unit B1 for Trade in Services and Investment at the European Commission's DG for Trade

Mr Iruarrizaga highlighted the importance of FDI for the European Union (EU). The EU is both the largest recipient as well as the largest source of global FDI flows. At least six of the top ten recipients of FDI in the world are EU member states.

The environment for FDI has changed in recent years. Such changes include the increasing number of home-grown multinational companies from developing countries that export FDI in other developing countries and in developed countries. There has also been an explosion of capital and investment from sovereign wealth funds (SWF).

The European Commission considers FDI and investment policies to be of great importance for the EU. The Community combines a policy of openness towards investment with a policy to create an open, stable and secure environment for EU FDI in third countries. This is done in several ways, outlined below.

The Commission negotiates many market access agreements, and is also very active in the negotiation of FTAs covering establishment issues. It is currently negotiating with India, Ukraine, several Mediterranean countries, Andean countries, Central America and Korea, among others, to increase market access opportunities, enhance competitiveness of EU industries and investors, and ensure stability and predictability. These efforts are complemented by investment protection

agreements negotiated by individual member states with third countries.

The Commission also strives to create a better climate for investment through political advocacy activities. It engages in political investment dialogues with third countries, such as the US and Russia, to share and discuss difficulties encountered in each others' markets when engaging in FDI.

In terms of the impact of FDI on global governance, issues such as investment protection, establishment, and corporate social responsibilities, should be tackled simultaneously in several fora to create convergence and openness and to ensure better market access, broader application of corporate social responsibility principles, and clearer investment protection standards.

2. Questions and comments by the audience

The discussion opened with the theme of creating a better approach to investment and the tools to achieve it.

A member of the European Economic and Social Committee representing the UK and the employers group congratulated Mr Merber on his comment that involving civil society in developing countries would increase transparency. However, he felt that a number of points had not been raised, including trade facilitation. He mentioned that India is one of the most difficult countries to import into and export out of. He also reminded the panel of the relevance of intellectual property rights (IPR) and the problems faced in China due to the restrictive rules in place. Finally, he asked Mr Handa if his previous comments suggested that standards in the most developed countries are different from those in other countries, thus suggesting a form of cultural imperialism.

The second comment was from a lecturer at Sciences Po, Paris, also director of the Geneva-based think-tank, Centre of Economic Development. Referring to Mr Kerneis' comments on what the industry expects, he asked why plurilateral agreements had not been discussed in detail, as they would be within the WTO. Finally, a member of the International Institute of Sustainable Development, asked the panel what they thought of the possibility for developing countries, as they develop, to have some sort of space for their industries to grow and become competitive.

Mr Kerneis responded to the question on a plurilateral agreement on investment. He reiterated that they had attempted a mutual agreement on investment in



the OECD framework, with “catastrophic failure”. The Hong Kong Declaration, with Annex C on services, is actually setting the scene for plurilateral agreements on investment and services. The GATS negotiation, as it is in the Doha Round, is already a plurilateral agreement. This will be stuck if the Doha Round is not concluded. In response to the policy space issue for developing countries, he stated that even where there is enough policy space to allow a country to create its own sector before opening up to foreigners, development is still not taking place. If countries use it as an excuse not to welcome foreign direct investors, there will be no development. Perhaps, if there were a good set of regulations, a good independent regulatory authority and a good control of company activity regardless of nationality, some countries would have already started their development.

Mr Merber answered the question on trade facilitation, which he believes to be related to FDI. If you invest in manufacturing facilities, you need to be sure that you are able to supply it efficiently, and that you have predictable and fair customs in place. Trade facilitation is one of the bright spots in the Doha Round negotiations: the parties interested in trade facilitation have continued their discussions and are now well advanced. Regarding IPR, Mr Merber stated that they are closely tied to investment issues. Developing countries trying to force technology transfer can impede investment, since the basic currency of a technological company is its IP. Environmental goods and services have also been suffering from protectionism in the last three to six months, starting with the US “Buy American” provision in their recovery act.

Mr Handa briefly commented on the import and export issue regarding India, reaffirming that everyone aims for the highest possible standards, especially on food and pharmaceuticals.

A member of parliament of Namibia asked a question regarding the financial benefits that developed countries acquire from less developed ones. An academic from New Zealand asked why the discussion on benefits for both host and home countries of advancing through GATS, BITs, etc., had not touched on the current global economic crisis and the relationship between, in particular, the Financial Services Agreement and the issues around the economic crisis. A professor from the Florida Gulf Coast University questioned Mr Merber about IPR and potential application of acceptable standards when related to national security. A professor from the London School of Economics raised the issue

of Mode 4 in services and the movement of labour in relation to Mode 3 as exploiting global wage differentials.

In terms of balancing protectionism, Mr Merber explained the value of IPR in incentivizing innovation and of FDI in bringing new technologies into a country. He stressed the value of world-class competition in development, as it helps local companies to move up the value chain as time goes by. He warned that insulating industry in a vacuum, untested by world-class competition, results in models which are not sustainable, because protection will always be needed. Mr Iruarrizaga agreed, stressing that the answer is not how to protect, but how to open and better regulate. He and Mr Kerneis gave explanations why Mode 4 would lead to more efficient mobilization of human resources, while respect for local law should guard against exploitation. Mr Merber responded to the comment regarding the financial crisis. It was his belief that the failure of regulators to coordinate across borders contributed to the problem, and part of the solution would be to increase coordination.

Mr Kerneis addressed the issue of repatriation of profit. Although he admitted that it is a very important aspect in the service industry, he urged people to look at all the other benefits, including the jobs created in the host country and how the company aids the development of the country. When a service company is establishing itself in a country, it still competes in the local market, so any profit from the first few years will be reinvested in the local market to reinforce the company's position in that country or region.

3. Conclusions and way forward

Business needs transparency, predictability and legal certainty. Reflection is required on how to optimize this so that businesses can go ahead and invest. Establishing a forum to explore ways to move forward would make sense.

It is particularly striking that many protectionist barriers are on environmental products and services at a time when we face a climatic disaster. Rather, priority should be given to enabling and encouraging investment in creating and building the products and services required to meet today's challenges. Local and international interests need to be balanced to ensure real societal progress.

Investment across borders can be expected to increase again. Developing countries stand to win as much, if not more, as developed countries if governance systems enable talent and resources to flourish.

F. Interaction between competition and trade policy

Tuesday, 29 September 2009 – 11.15 ~ 13.15

Moderator

Mr Eduardo Pérez Motta – President, Federal Competition Commission (CFC), Mexico

Speakers

Mr Alden F. Abbott – Associate Director, Federal Trade Commission, Bureau of Competition, United States of America

Mr Philip Collins – Chairman, Office of Fair Trading (OFT), United Kingdom

Mr Bruno Lasserre – President, French Competition Authority, France

Mr Simon Roberts – Chief Economist, The Competition Commission, South Africa

Mr Cesar Costa Alves de Mattos – Commissioner, Council for Economic Defence (CADE)

Organized by

Federal Competition Commission, Mexico (CFC)

Report written by

Federal Competition Commission, Mexico (CFC)



Abstract

The session focused on the complex relationship that exists between trade and competition policies, providing examples about how these policies contribute to economic development. Also, the panellists presented recommendations on how governments can promote greater coherence between trade and competition policies, especially in a time of global economic crisis, when countries are being subjected to strong protectionist pressures. They discussed the specific actions that governments might take to promote positive synergies between trade and competition policies, such as strengthening competition provisions in regional trade agreements; the promotion of a more active international cooperation between competition authorities; the strengthening of domestic competition legislation; as well as the establishment of effective trade and competition policies.

Presentations and discussions covered three specific questions: (i) Should governments seek to strengthen competition provisions in regional trade agreements, or are they better off promoting more active international cooperation between competition authorities while strengthening their domestic competition legislation?; (ii) In times of crisis, how should countries deal with protectionist pressures that will simultaneously demand the establishment of trade barriers as well as “behind the border” barriers in the form of domestic anti-competitive regulation?; and (iii) When putting together pro-competitive market reforms that include both trade liberalization and the strengthening of the domestic competition regime, what kind of sequencing of policy is adequate?

1. Presentations by the panellists

(a) Alden F. Abbott, Associate Director, Federal Trade Commission, Bureau of Competition, United States of America

Mr Abbott mentioned examples of the effects of trade and competition policy coherence. He commented that even though there are traditional differences between the training and the perspectives of trade and competition authorities, trade and competition policies are fully complementary; this means that liberalizing trade and reducing barriers to trade are effective ways to enhance competition. At the same time, the elimination of private barriers to competition, such as private agreements or mergers, is a way to enhance trade once the prevention of any anti-competitive agreements or cartel agreements has promoted successful entry. Specific examples of coherence between competition and trade policy include: (1) the North American Free Trade Agreement (NAFTA), which involves the US, Canada and Mexico, and is an important example of how free trade agreements have enhanced consumers' welfare through regional trade creation and the expansion of investment opportunities; and (2) the Treaty of Rome, a variety of European Union constitutional provisions, other than Articles 81 and 82, which have been interpreted in a way to promote competition. Finally, he said that trade arrangements under the WTO jurisdiction, the GATT and WTO codes, have been primarily seen as pro-competitive.

“Liberalizing trade and reducing barriers to trade are effective ways to enhance competition”

(b) Philip Collins, Chairman, Office of Fair Trading (OFT), United Kingdom

Mr Collins said that he would express his comments from the viewpoint of an independent competition authority and not as a government. He noted that trade policy is dealt with at European Union level and not at the level of the UK government, and emphasized the role of the OFT in the UK as a body committed to making markets work well for consumers from two points of view: as an enforcer against private anti-competitive practices, and as an advocate on the impact that government actions can have on competition in markets. He mentioned that, in the UK, there is no fundamental conflict between competition policy and trade or industrial policies. From

“Competition is crucial in driving growth of all sectors of the economy”

the point of view of the UK's independent competition authority, competition is crucial in driving growth of all sectors of the economy, and this is necessary for a climate conducive to attracting foreign investments, fostering outward investment, and hence stimulating growth and productivity and promoting innovation in the UK. Mr Collins talked about the OFT's recently published report entitled “Government in Markets” which sets out how government influences markets, and its impact on competition.

(c) Bruno Lasserre, President, French Competition Authority, France

Mr Lasserre mentioned that the best proof that convergence between competition and trade policy is advancing is the present meeting. He said that all policy-makers search for the same goal – which is to eliminate both the barriers to market competition and the restraints to freedom of exchange – but that they have different ways of intervening. At the WTO, the fight against obstacles is linked to world trade, while national competition authorities concentrate on the elimination of restraints that reduce or impede free competition on their respective territories. At the same time, it is worth recognizing that one does not function well without the other. He also underlined that both trade and competition policies belong to institutions that are not subject to any political interference because they are independent. The independent status of the French Competition Authority (*Autorité de la concurrence*) has been confirmed by the institutional reform which took effect in April 2009. At the WTO, the Dispute Settlement Body is composed of panels of independent experts where the member states cannot interfere whatsoever.

“All policy-makers search for the same goal – which is to eliminate both the barriers to market competition and the restraints to freedom of exchange – but they have different ways of intervening”

Mr Lasserre recalled that there are two main ways of enhancing the convergence between trade and competition policies. One is the creation of a “competition” chapter within the rules of the WTO, which failed despite some support provided, *inter alia*, by the





European Commission and by France. Another solution is the creation of the International Competition Network (ICN), which currently brings together more than 100 competition authorities from around the world. The ICN, which has led to soft convergence between its members, is extremely successful.

(d) Simon Roberts, Chief Economist, The Competition Commission, South Africa

Mr Roberts mentioned that it is important to understand that the Apartheid government supported big business groups in many ways, such as through subsidies and trade protection, as a result of lobby actions. Under democracy, with a new government in 1994, the competition, industrial and trade policies had, as their common objective, the assurance of a more effective competitive rivalry and the establishment of more effective disciplines for business groups. South Africa pursued greater trade liberalization during the 1990s, and after 1999 adopted a new Competition Act and created independent institutions, such as the Competition Commission, in charge of investigating and prosecuting competition cases and merger evaluations. While trade flows increased very significantly as a result of trade liberalization, the economic development pattern has not changed, partially because it remained mainly focused on intensive capital resources, ignoring the labour-intensive products which had been supported during the Apartheid system. Currently, large business groups, monopolies and oligopolies are able to maintain their position or outstanding privileges despite trade liberalization. The South African experience reveals the importance of having strong competition enforcement and an industrial policy structure that may serve as a complement to trade liberalization.

(e) Cesar Costa Alves de Mattos, Commissioner, Council for Economic Defence (CADE)

Mr Alves de Mattos mentioned that trade and competition policies are clearly covered in the convergence process; however in many countries the attitude of the competition authorities is not always consistent with trade liberalization. Often, competition agencies are focused on competition policy, whereas trade agencies work on antidumping, safeguards and countervailing duties. He also explained the link between competition and trade policy in the Brazilian system. Brazil has three governmental bodies responsible for competition policy: the Secretary of Economic Monitoring of the Finance Ministry (SEAE), the Secretary of Economic Law (SDE)

and the Administrative Council of Economic Defence (CADE). The first two have investigatory responsibilities. Trade policy is basically restricted to SEAE, while, on the other hand, CADE occasionally reaches out to trade authorities. There are some cases in which CADE has made some recommendations to trade policy authorities, but in most cases this procedure is filed and not analysed at all. On rare occasions, CADE has been able to persuade trade policy authorities to eliminate anti-dumping duties which have had a clearly negative impact on consumer welfare. Currently, there is a bill in the Brazilian Congress designed to strengthen the capacity of SEAE and CADE in order to influence trade policy decisions.

“In many countries the attitude of the competition authorities is not always consistent with trade liberalization”

Second part of the session

Mr Pérez Motta emphasized efficiency as a necessary condition for economic growth, and competition as the main tool for income distribution. He mentioned the case of Mexico: the poorest people in Mexico spend more than 30 per cent of their income in highly concentrated sectors, paying prices approximately 40 per cent higher than they would pay if there was more competition. If this could be avoided by strengthening competition, improving purchasing power, and increasing the growth rates of the country, the impact on trade would be huge. He continued the discussion with the following basic questions:

Should governments look to strengthen competition provisions in regional trade agreements, or are they better off promoting more active international cooperation between competition authorities while strengthening their domestic competition legislation?

Mr Abbott mentioned that RTAs and greater international cooperation are complementary activities, not substitutes. For example, the United States has taken part in different trade agreements, and most of them include competition chapters which, however, are not binding. He cited chapter XV of the NAFTA, which calls for notification, consultation, and information exchange on competition law enforcement between the parties. Mr Abbott considers that RTAs can be useful as they stimulate cooperation and encourage governments to modernize their competition laws or

adopt new ones. However he considers that bilateral and regional agreements must be separated when setting the framework to more detailed cooperation and the exchange of information on particular matters.

Mr Collins agreed with the Federal Trade Commission's view that this is not a matter either of RTAs or of cooperation, but rather an issue of both working together. Today there is a better understanding of how the two areas can complement and strengthen each other. As he mentioned in his introductory statement, RTAs are the responsibility of the European Union, not the United Kingdom; however, the UK has benefited from the developments that have taken place in the European Union through the RTAs, which have become increasingly sophisticated. There has been a remarkable international convergence in competition policies, as organizations and instruments have been developed in order to support formal and informal coordination and to promote best practices among agencies, as well as to strengthen domestic legislation.

Mr Lasserre suggested that the success of competition among trade policies and trade liberalization at a regional level requires both (i) the incorporation of rules of competition into RTAs, and (ii) the promotion of cooperation among the national competition authorities in the regions. It is crucial that the regulation of competition reflects the economic reality of markets, which share a lot of common specificities regionally. He presented two examples regarding how regional dimensions could be directed to developing and developed countries: (i) the West African Economic and Monetary Union, where the eight member countries have established competition institutions and rules at the regional level, is an example of regional integration; and (ii) the European Competition Network (ECN) established in 2004, which brings together the European Commission (European Directorate for Competition) and the national competition authorities of the 27 European member states, is a very good example of decentralization of the implementation of European competition law, in a way that guarantees optimal case allocation and case-law consistency. The ECN demonstrates how national competition authorities efficiently participate in the edification of a competition law, as well as in European policy-making at the regional level.

Mr Roberts said that this issue is present in South Africa and other African regions. In southern Africa the need for both a regional competition regime with appropriate institutions and for improved cooperation between competition authorities has been recognized. Major

corporations view the southern African region as one market, and recent cartel cases have exposed collusive conduct across the region, allocating markets between the cartel members. Improved enforcement at a regional level is thus imperative. However, many countries are only now in the process of passing competition laws and establishing institutions.

Mr Alves de Mattos indicated that in MERCOSUR – the South American trade block comprising Brazil, Argentina, Paraguay and Uruguay – there has been a very frustrating attempt to coordinate competition policies. He mentioned that the “Protocolo de Fortaleza” treaty in 1997 was an attempt to harmonize competition policy rules and to create a supranational authority. He also pointed out that, as a consequence of the global crisis, there were also several non market-based measures taken, such as the application of non-automatic licences on imports to Argentina – a measure that is creating trade diversion from the main partner of MERCOSUR, Brazil – principally on products such as footwear, clothing and equipment transportation.

In times of crisis, how should countries deal with protectionist pressures that will simultaneously demand the establishment of trade barriers as well as “behind the border” barriers in the form of domestic anticompetitive regulation?

Mr Collins suggested that all competition agencies have faced challenges over the past two years as a result of the financial crisis. He considered that what continues to be underlined by the crisis is the importance of an independent competition agency and an independent competition regime, as well as the influence of the agency and the regime within the executive and legislative framework prevailing in each country. As he stated earlier, this issue is very important in the UK in terms of ensuring that markets work well for consumers, especially as the UK regime is dealing not only with private restrictions on competition, but also with restrictions imposed by the government. He expressed the belief that competition advocacy, including not only advocacy on specific issues, but also framework advocacy, plays an important role in increasing understanding of the benefits of competition and of the proper functioning of markets.

Mr Abbott mentioned that fortunately the US government has made it clear that they do not believe that providing protection to industries due to the serious recession is a good policy. In fact, he considered that the head of the group of economic advisors discussed this through their economic research and concluded that



the great depression in the US during the early 1930s collapsed the money supply, but that the measures applied worsened the situation in two ways. First, the imposition of high tariffs and the government decision to encourage cooperative activity was quickly emulated elsewhere, such as the price increases by industries in order to maintain salaries for all business workers. Second, the government applied restrictions on output, and there is public economic evidence that concludes that encouraging reduction in competition is not a good policy because this will tend to slow recovery from the recession.

Mr Lasserre recalled that, while governments are responsible for establishing competition law, competition authorities are expected to enforce competition policy, and thus to make sure that the relevant rules of the game are respected even in times of crisis. He took the example of encouraging doping in sports, explaining that drug-taking creates a feeling of being stronger and able to win, but this protection does not last and is just an illusion. In order to have real strength one should not use an artificial method, because once the artificial protection fades, one unfortunately finds oneself weak and unprotected, without being able to face global competition.

Mr Roberts mentioned two points. First that, in the South African government framework, offering effective competition enforcement during the crisis is particularly important to deal with food prices. Second, he recognized the importance of being responsive to matters such as providing work capital, or supporting industries due to the impact of the global financial crisis. He mentioned that there had been a decrease in the number of firms taking over local rivals, but it is important to achieve that not by harming but by tailoring the types of support measures to the needs of those industries.

Mr Alves said that much of what was being discussed was due to the revisionism of the new deal of Roosevelt and its effects, giving rise to many anti-trust papers in view of the new crisis. Brazil has not been as strongly hit as other countries by the crisis, a fact that has not had a major impact on competition policy issues, nor has it caused the private sector to demand protection.

Mr Pérez Motta indicated the relevance of maintaining not only open economies, but also intense and vigorous competition environments during this crisis. A year ago, the Mexican Competition Commission conducted a public consultation about the convenience of opening trade in a unilateral way by reducing import tariffs

and doing a comprehensive review of the custom procedures to simplify trade, ensuring that trade flows were maintained and increased. In fact, Mexico was one of the few countries that, at the beginning of the crisis, decided to further open its market to international trade.

When putting together pro-competitive market reforms that include both trade liberalization and the strengthening of the domestic competition regime, what kind of sequencing of policy is adequate?

Mr Lasserre took the view that, although there is no straightforward answer and sequencing depends on different factors, such as the political and economical context of a country, it may be useful to undertake policies simultaneously. Indeed, one criterion for adhesion to the WTO is the obligation to ensure that candidates have competition institutions and rules. The WTO, through the TPRB, must verify that the competition policies of those states are in effect. In France, competition law was introduced at the same time as the opening-up of state-owned monopolies, which raised the question of the opening of competition in network industries, such as telecommunications, energy, transports, etc. In order to ensure entry of new players in these markets, this reform led to rethinking the articulation of competition and sectoral regulation rules and to the setting up of cooperation mechanisms between the regulatory bodies and the competition authorities. There should be a complementarity between the two types of institutions: the regulatory authority with its expertise in the network industries and the competition authority applying its competition rules horizontally. However, some economic actors' close relationship with the regulatory authorities does not allow regulators to operate in an independent way.

Mr Roberts mentioned that liberalization and the privatization of network industries, where the incoming operator has not changed their position, has not generated competitive outcomes. He commented that there is a need to recognize that, in many countries, the problem is not market opposition and over-simplification. Effective regulation plays a very important role and is needed in the context of telecoms in South Africa. He mentioned that government policies, regulatory frameworks and competition regimes can reinforce each other. In South Africa there is a situation where the main telecom regulators very successfully played off the competition authority in the courts for decades. However, it is very important to clarify the role of these bodies, and establish clearly that one should prevail over the other.



“Government policies, regulatory frameworks and competition regimes can reinforce each other”

Mr Alves indicated that there is an obvious complementarity between each type of policy. If there is a decreasing return on the gains from pro-market reforms, resulting in a more closed economy, perhaps there could be more incentives for competition policy enforcement. For instance, many mergers that would be clear in an open economy situation, may not be clear in a less open economy. The problem is that, in practice, if the competition agency is very active in merger enforcement and tries to avoid too many mergers, it creates a lot of political resistance against the competition authority. This is a political issue. Mr Alves considered that there is a complementarity because a merger can be enforced with more credibility when there is stronger political support. If it is not possible to make those policies coincide in time, the best sequence, not from the economic point of view but from the political point of view, would be trade liberalization, and then more competition policy.

Mr Collins mentioned that the sequencing of liberalization measures and strengthened competition regimes is interesting in the UK context. In the UK liberalization, in terms of former state monopoly markets – particularly telecoms and energy – first came about in the mid 1980s, without a modern competition regime. At that time, there was the assumption that there would be a period of regulation for these sectors which would then move into open, unregulated competition. In fact, the UK only adopted a modern competition regime in 2000. The UK now has a system in which economic regulators of the liberalized sectors have concurrent competition powers with the competition agency. Competition powers are rarely exercised, as economic regulators prefer to use their regulatory tools rather than competition tools. He thinks one of the questions they will face in the UK, is the future role of regulation. Finally, based on his previous comments, he stressed

that there is a big risk if, as a result of the crisis, the benefits of competition and markets are downplayed after a period in which a majority of countries have adopted competition laws. If there is a retreat from strong enforcement of competition law, businesses will be confused as to what is, and what is not, permissible.

“Regulation should not be used as a shield to allow companies to engage in anti-competitive activity”

Mr Abbott mentioned that there had been some discussion on regulated industries and the importance of competition for their natural monopoly. He mentioned the historical American example, when the AT&T monopoly was broken up by decree in 1982. For a decade the company had argued that they were heavily regulated. They were a monopoly because they were not subject to anti-trust law. He thought that it was important, particularly to regulators, to learn to eliminate regulation when it is no longer needed, such as when a monopoly no longer exists. It became clear that regulation should not be used as a shield to allow companies to engage in anti-competitive activity. There is always a risk of capturing the regulator, which is why it is important for regulators to understand that they should design regulations in a manner which minimizes anti-competitive impact and in a manner that does not hurt consumer welfare and interest.

2. Questions and comments by the audience

The panel received a variety of questions regarding the role of competition policy during the financial and economic crisis; the responsibility of governments in designing economic recovery measures; the importance of international cooperation among competition agencies for promoting an understanding across regimes in order to achieve convergence; and related to RTA competition provisions.

G. Promoting global governance by strengthening the rule of law

Tuesday, 29 September 2009 – 14.15 ~ 17.15

Moderator

Mr Paul Blustein – Journalist in Residence, Brookings, Washington, D.C.

Speakers

Mr Gary Hufbauer – Reginald Jones Senior Fellow, Peter G. Peterson Institute for International Economics, Washington, D.C.

Ms Jennifer Hillman, Member of the WTO Appellate Body.

Mr Luiz Felipe Lampreia – Centro Brasileiro de Relações Internacionais, Rio de Janeiro, Brazil, and former Foreign Minister of Brazil.

Mr David Unterhalter – Chairman, Appellate Body

Organized by

WTO Appellate Body Secretariat

Report written by

Mr Alan Yanovich and Mr Claus Zimmermann,
WTO Appellate Body Secretariat



Abstract

This session examined the concept of the rule of law, the WTO's role in promoting the rule of law at the international level, and the potential applicability of the WTO model to other fields of international cooperation. The panel was moderated by Mr Paul Blustein. Mr David Unterhalter described the main characteristics of a system based on the rule of law and how the rule of law operated in the WTO. He submitted that the WTO, as a rules-based system, provided a useful model for other areas of international cooperation, such as climate change and international financial regulation. Ms Jennifer Hillman provided an overview of the operation of the WTO dispute settlement mechanism. She further noted that, in addition to rule-making and adjudication, the WTO plays an important role supervising the proper implementation of the obligations contained

in the WTO agreements. This function, which is performed by the relevant WTO Committees, should not be overlooked and could be strengthened. Mr Luiz Felipe Lampreia expressed concern about the slow progress of the Doha Round of negotiations and the potential impact a failure could have on the other functions of the WTO. He was sceptical about the applicability of a WTO-type dispute settlement mechanism in other areas of international cooperation. Mr Gary Hufbauer praised the WTO dispute settlement mechanism, but also made several proposals for improvement. He said that the WTO system could benefit from more disputes in certain areas that members have so far avoided (in particular, Article XXIV of the GATT 1994) and suggested the creation of a WTO ombudsman who could bring disputes that are of systemic interest.



1. Presentations by the panellists

(a) Paul Blustein, Journalist in Residence at the Brookings Institution

Mr Blustein was the moderator of the panel. After introducing the panellists, he invited them to provide their views on the rule of law and the role of the WTO in promoting global governance.

(b) David Unterhalter, Chairman of the WTO Appellate Body

Mr Unterhalter began his introductory statement by examining what may be understood by the “rule of law” in an international law context. He explained that the concept has several components. The first is that rules of law stand for standards against arbitrariness. In this sense, the rule of law essentially speaks to regularity, clarity, and the uniform application of rules. Having an institution capable of interpreting the rules and ensuring that they are predictably applied is another essential element of the rule of law. This is also true of the rule against vagueness, which is to say that the content of rules must be clear or at least be capable of authoritative determination. As a final component, he noted the compulsory nature of dispute resolution under rules. In summary, Mr Unterhalter submitted that the rule of law means that there are rules that are of clear application, that have a determined content, and that are capable of being accessed by everybody through a process available to all and which allows for their certain application, with consequences for non-compliance. Whereas one could argue about details, every scheme of regulation which complies with the rule of law will have most of these components in various institutional arrangements.

“Time has shown that the WTO certainly has a legitimacy that the GATT system lacked, at least as far as dispute resolution is concerned”

After this general discussion of the rule of law, Mr Unterhalter continued his statement by looking more specifically at the WTO system and examining how it encapsulates or embodies the rule of law. He recalled the remarkable break from the GATT system to the WTO system in terms of dispute settlement. Whereas, previously, disputes were certainly capable of being referred to panels, the GATT system was looser and

would, on most conceptions, not measure up to many of the central tenets of what we commonly understand by the rule of law. Dispute settlement under the GATT was a soft system of engagement that allowed for the resolution of disputes largely by providing a forum for diplomatic answers to legal problems, rather than adjudication under a compulsory process. The major shift to the current WTO dispute settlement system was to make dispute resolution effectively compulsory via the negative consensus rule. He also noted that the creation of the right to appeal panel reports to the Appellate Body, a permanent standing institution, and the introduction of an efficient enforcement mechanism further gave the system attributes that are commonly associated with the rule of law. In sum, dispute settlement became rule-based and subject to compulsory adjudication through the institution of the panels and, ultimately, the Appellate Body. This has created, entirely predictably, a significant body of decision-making resulting from significant efforts to try to determine on a consistent basis how the rules are to be understood and how they are to be applied. At the time the system was put in place, it was not plainly clear what its precise consequences would be, how fully it would be utilized, and with what traction the system would gain ground over the years. Time has shown that the WTO certainly has a legitimacy that the GATT system lacked, at least as far as dispute resolution is concerned. It is widely utilized by the membership, not only to initiate disputes, but also as third parties.

Mr Unterhalter continued by noting that the Appellate Body is occasionally criticized for providing interpretations regarded as too ambitious, or as understanding its mandate too broadly. Others, on the contrary, criticize the Appellate Body for being too cautious, too textually bound, and too inclined towards strict construction and an overly conservative view of its mandate. Faced with these criticisms, the Appellate Body treads a steady and careful path properly indicated by the Agreements and the mandate under which it operates. It is natural in any system of adjudication for people to take different views on the philosophy that is being applied and how the interpretative task is undertaken and applied, but the system retains its legitimacy despite the differences that sometimes arise.

Subsequently, Mr Unterhalter referred more to the broader challenges facing the multilateral trading system. He stated that some of these challenges stem from the fact that the system has become more complex, in particular as an ever greater number of members play a more active role. Under the GATT, a minority of major trading countries effectively determined the agenda and



“Difficulties in concluding the Doha Round were partly a function of the maturing of the system and the participation in the system of many more members”

the outcome of a round, but the world today is multi-polar and countries in different permutations exercise significant influence over the process of negotiation. He concluded that the difficulties in concluding the Doha Round were partly a function of the maturing of the system and the participation in the system of many more members. For Mr Unterhalter, this has led to a system which is, at least at the moment, somewhat asymmetrical, in that there is a highly functional adjudicative system which hears significant numbers of cases and is fully operative, and there is also a legislative function which finds it harder to move forward, as demonstrated by the difficulties concluding the Doha Round. Whether a system like the WTO can continue in such an asymmetrical fashion, and for how long and with what consequences for the integrity of the system as a whole, are crucial questions. Mr Unterhalter said it was important that in a balanced system every part of the system progresses. He did not think that a system will tolerate atrophy. An effective system must ultimately be one which is not a purely adjudicative system based on historically negotiated rules, but must be based on rules that are dynamic and speak to the realities of the moment, with an effective legislative means of going forward. Hence, it was of critical importance that the Doha Round be concluded.

Finally, Mr Unterhalter turned to the question whether the WTO system was transposable into other regulatory areas that are currently on the international agenda. He recalled that there were many areas where efforts of global cooperation were presently being undertaken, such as climate change and financial regulation. According to Mr Unterhalter, it may eventually be necessary to introduce some model of adjudication in these domains, which allows for rights and obligations to be enforced according to the rule of law. Mr Unterhalter concluded that, although any new system need not mimic the system of the WTO, the latter was at least one prominent example of a system that has been shown to work through a system of adjudication that is widely respected and legitimate in the eyes of the membership who use it and who, for the most part, abide by the results of the system.

(c) Jennifer Hillman, Member of the WTO Appellate Body

Ms Hillman's comments focused on how things have played out in practice since the Dispute Settlement Understanding came into effect. She asserted that the WTO dispute settlement system has been heavily utilized by a broad group of WTO members in relation to a wide set of issues and agreements. Ms Hillman gave a statistical overview of the operation of the WTO dispute settlement mechanism. She noted that, there had been 399 requests for consultations, 167 panels had been established, and 127 panel reports had been adopted. This was a major increase compared to dispute settlement under the GATT, which saw 126 panels established and 93 panel reports adopted over the course of 48 years. There had been 28 arbitrations to determine a reasonable period of time for compliance, 29 complaints under Article 21.5 regarding the consistency of measures taken to comply, and 19 arbitrations to determine an appropriate amount for retaliation. As for appeals, a total of 98 reports had been issued by the Appellate Body and adopted by the DSB.

“In 2009, developing countries accounted for over half of the disputes initiated”

Moreover, 40 members have commenced dispute settlement proceedings and 27 members have had their measures challenged. Seventy-eight members have participated as third parties. Unremarkably, 295 of all 399 consultations involved either the United States or the European Communities as complainant or respondent. Other frequent participants in the dispute settlement mechanism include Mexico, Canada, India, Brazil, Argentina, Japan, Korea, Thailand, Chile, and recently China. Developing countries have played a significant role – as complainants in 178 cases and respondents in 164 cases. Ms Hillman stated that new trends could be observed, such as more intra-regional disputes today than in the early years of the system and higher rates of initiation of disputes by developing countries. In 2009, developing countries accounted for over half of the disputes initiated.

Almost half of WTO disputes have involved trade remedies, that is, they had been brought under the *Anti-Dumping Agreement*, the *Agreement on Safeguards* or the *SCM Agreement*. As for the remainder of disputes, 63 cases had been brought under the *Agreement on*

Agriculture, 36 under the *SPS Agreement*, 36 under the *TBT Agreement*, 35 had been import licensing cases, 20 had been brought under the GATS, and a few others had been brought under the *TRIPS Agreement* and the *TRIMs Agreement*.

Ms Hillman suggested that, in order to see if the system is characterized by the rule of law, one could look at the figures indicating the level of compliance produced by the system. According to Ms Hillman, 24 per cent of all consultations finished with a mutually-agreed solution without there being a need for panel proceedings. As for the hard end of disputes – those that go through all possible steps of the dispute settlement system to trade retaliation – she noted that authorization to suspend concessions had been granted in only 15 disputes, a very limited number of cases.

One trend noted by commentators is that the system had become more and more adjudicatory: more arguments concerned purely legal and procedural issues, such as the burden of proof and the standard of review. This indicated that the system had moved increasingly towards a rule of law approach to dispute settlement. Whether the balance currently struck at the WTO was the right one was, of course, always subject to debate. In concluding, Ms Hillman argued that it was indeed crucial to examine the rule of law as it currently works in the WTO and how the lessons learned from WTO experience could be brought to bear on other areas of international policy and rules, such as climate change or the regulation of international flows of capital in light of the financial crisis.

(d) Luiz Felipe Lampreia, Centro Brasileiro de Relações Internacionais, Rio de Janeiro, Brazil, and former Foreign Minister of Brazil

Mr Lampreia began his statement recalling that he had been Brazil's chief negotiator in the concluding stages of the Uruguay Round, when most sensitive issues, including dispute settlement, had been negotiated. He considered the Dispute Settlement Understanding to be a fantastic achievement and noted with satisfaction how frequently the system was used and relied upon. He also thought it remarkable that there are now large numbers of young lawyers, inside Brazil and elsewhere, specializing in WTO law.

Mr Lampreia then turned his attention to the prospects of concluding the current negotiating round. In his view, it is quite improbable that the Doha Round will be

concluded very soon. He explained that the difficulties of the Doha Round are, to a large extent, due to the fact that the idea of a new round was launched only a few years after the WTO had come into being. This may have been over-ambitious because it did not leave enough time to first "digest" the achievements of the Uruguay Round. He believed that there currently is a great temptation for WTO members to use the dispute settlement system to try to force market opportunities. This creates the danger that non-compliance could increase in the future due to tensions in politically difficult areas, notably agriculture.

Finally, Mr Lampreia said he is sceptical that the WTO dispute settlement system can be extrapolated to other fields, such as climate change and financial regulation. While seeing the potential for a large number of disputes in these fields, he also felt that, due to their vastly different nature, the WTO system could not serve as a model for these areas. This is particularly the case with respect to the regulation of international finance, which involves mainly private agents.

(e) Gary Hufbauer, Reginald Jones Senior Fellow, Peter G. Peterson Institute for International Economics

Mr Hufbauer noted that, without the great success of the Dispute Settlement Understanding, the WTO would not enjoy such worldwide esteem and he praised the Appellate Body as "the diamond in the crown" of the dispute settlement system. Despite this success, he considered that improvements could be made to the system. However, before discussing some suggestions for improvement, he commented briefly on the difficulties in concluding the Doha Round. He observed, in this regard, that, if it is always this slow and difficult to change the existing rules, it could lead to a hardening of positions, as negotiators realize that they are not negotiating rules, but "constitutions".

Mr Hufbauer then presented a number of concrete suggestions for improvement of the WTO dispute settlement mechanism. First, he submitted that the exercise of judicial economy leaves too much ambiguity and thus proposed that panels and the Appellate Body provide detailed analysis of all issues raised in a dispute. Second, he suggested that disputes of systemic interest be decided by all seven Appellate Body members and not divisions of three members. Third, panel and Appellate Body reports should be much shorter. According to Mr Hufbauer, if the United States Supreme Court can decide cases in 50 pages, WTO adjudicatory bodies



should be able to do the same. Fourth, he suggested that all dispute settlement proceedings be made available via the Internet. Fifth, he exhorted the Appellate Body to decide disputes in a manner that would frame the picture for policy-makers, especially with respect to future cases. Sixth, he stressed the importance of introducing retroactive sanctions in order to increase the credibility and fairness of the dispute settlement mechanism. In Mr Hufbauer's view, failure to tackle this problem may result in an increase of intractable cases and deliberate non-compliance. A final suggestion is to create a WTO ombudsman whose responsibility would be to initiate cases of systemic interest that would otherwise not be brought due to political filtering by WTO members. He cited Article XXIV of the GATT 1994 as an important example of the type of questions that could no longer be entirely eluded by the membership.

After this series of suggestions for improvement of the dispute settlement system, Mr Hufbauer turned his attention to some future challenges faced by the WTO. He asserted that it is likely that the Appellate Body will have to deal with disputes on trade measures related to climate-change mitigation, such as border tax adjustments and the allocation of emission allowances. According to Mr Hufbauer, the Appellate Body will need to provide clear definitions of the boundaries of such measures, thinking prospectively in order to provide guidance to policy-makers. Commenting on the *US – Shrimp* dispute, he stressed that a future case might require the Appellate Body to clearly define the standard of what is a truly multilateral international agreement. Finally, with respect to the restructuring of the international financial architecture, Mr Hufbauer noted that, in order for the WTO to be in a position to deal with related disputes in this domain, the absence of retroactive sanctions would have to be resolved.

2. Questions and comments by the audience

Mr Blustein first asked the panellists what improvements could be made to the WTO dispute settlement system, and whether it was desirable to pursue further judicialization of the system.

Mr Unterhalter replied that "swift" did not necessarily mean "sure" in the domain of dispute resolution, but he submitted that much could be done, in particular at the panel level, to make WTO dispute resolution quicker. He stressed that a rules-based system has many advantages and that a return to a GATT-like dispute settlement system could have unpredictable consequences. With

respect to creating a WTO ombudsman, and thereby giving prosecution competence to a separate body, he remarked that such a body might indeed be able to address the existing imbalances and the access problem encountered by some developing and least-developed countries, but whether the membership was ready for such a radical change was unclear. He also noted that the current dispute settlement system drew its legitimacy to a large extent from the blend of interests involved in every dispute, and that this situation would not arise if declaratory judgements were allowed. Ms Hillman referred to the idea of creating the position of WTO ombudsman. She submitted that there might indeed be potential issues in international trade, where no member has a sufficient incentive to bring a case, taking into account the total litigation and political costs of doing so. This raises the issue of what to do about such an objective lack of incentive to bring a case: should the issue continue to languish without being addressed or should we indeed pursue it in a different way?

In posing his next question, Mr Blustein noted that some of the panellists expressed scepticism that the WTO dispute settlement mechanism could serve as a model for other fields of international cooperation, such as climate change and financial regulation. Mr Blustein asked whether, in the absence of an international agreement, unilateral action could be a reasonable alternative.

Mr Unterhalter submitted that he was sceptical that unilateral action in the field of financial regulation could be a viable alternative to a multilateral approach, due to the risk of regulatory arbitrage. Mr Hufbauer noted that it was important to distinguish between foreign direct investment, which he believed was not the source of the present crisis, and portfolio investment. He harshly criticized the Basel system of minimum capital requirements as being captured by those that it was supposed to regulate. He also pointed to the problem of regulatory arbitrage.

As his final question, Mr Blustein asked how many more years of stalemate in the legislative function of the WTO the dispute settlement system could endure before being negatively affected itself.

Mr Hufbauer agreed with Mr Lampreia's earlier comment that there was a risk of a "grinding down" of the system as a result of a build-up of cases with a poor compliance record. In Mr Hufbauer's view, plurilateral agreements between a smaller group of members could be a

solution to this dilemma. Mr Unterhalter stated that the failure to conclude the Doha Round in the near future would not lead to the immediate breakdown of the dispute settlement system. However, since an update of the rules is necessary at some point, the system would be at risk if the Doha Round were never to be completed. Ms Hillman added that one should not forget that there is an important third element in addition to the dispute settlement and legislative functions of the WTO, namely, the work of committees. She submitted that improvements could be made to WTO committee work. She gave the example of the SCM Agreement and suggested that more could be done in terms of members' subsidy notifications. Mr Lamprea concurred with Mr Hufbauer that plurilateral agreements could provide a way of making progress without a new multilateral agreement. He said that the WTO was a very dynamic organization, but that further progress needs to be made in the agriculture negotiations, where progress so far has been minimal.

The audience actively engaged in the discussion, commenting on the panellists' statements and posing several questions. These comments and questions addressed, among others, the following points: the definition of the rule of law discussed by the panel as possibly being too formalistic; African countries being used to consensual dispute resolution and therefore feeling less comfortable with the adversarial nature of WTO dispute settlement; concern that further judicialization would increase the cost of WTO dispute settlement, and the need for a more conciliatory approach to dispute settlement; dissatisfaction that WTO members are not complying with certain obligations, and that this has no consequences (for example, notification of subsidies); a proposal to create a separate institution to assist WTO members in collecting facts concerning compliance by other members with their WTO obligations; whether it would make sense economically to have a system in which the cost of non-compliance rose as time went by (for example, after six months of non-compliance, a member would lose its third party rights and after two years of continued non-compliance it would be excluded from bringing a case to the WTO); how to measure compliance and as of when compliance should be determined; whether Brazil should retaliate as authorized in the *US – Upland Cotton* dispute or whether it would be better for Brazil to do nothing; why some of the panellists considered that the WTO dispute settlement mechanism could not serve as a model for the field of climate change; to what extent the WTO could assist the UNFCCC in determining, in advance, which type of border measures might be acceptable under

the WTO agreements; the potential date for concluding the Doha Round; the approaches that the Appellate Body would take with regard to treaty interpretation in disputes relating to measures taken in the context of the financial crisis; and finally, the observation was made that many instances of non-compliance may be due to misunderstandings between lawyers, economists and politicians, in other words, between those negotiating the WTO agreements and those having to conform to them in practice.

Mr Unterhalter first addressed the question of whether the rule of law was applied in an overly formalistic fashion at the WTO. One always has to have in mind, he said, what is achievable within the system. He stressed that the Appellate Body's mandate was relatively narrow and that it had to operate under the existing rules, which could only be changed via negotiations by the membership. He further noted that, in general, developing countries were better off with a rules-based adjudication system and that he was therefore not convinced that these members would benefit from a more consensual dispute settlement mechanism. He stressed that the dispute settlement mechanism needed to be accessible to all members and that a rules-based system was definitely better than a reversion back to the GATT system. With respect to the proposals for building a system with better incentives for compliance, he submitted that it was certainly possible for WTO members to rework the remedies foreseen in the DSU and that cumulating different remedies may be an option, but that he was sceptical with regard to procedural rights being taken away from members. As regards the determination of compliance, Mr Unterhalter noted that a precise understanding of compliance was made difficult by the fact that two models of compliance exist, each measuring different things. He observed that party-based compliance, which looks at party satisfaction with the outcome of a particular dispute, said very little about system compliance. According to Mr Unterhalter, system-based compliance raises fundamental questions that can only be addressed through radical reform, which is certainly outside the remit of the Appellate Body and which would have to be negotiated by the membership as a whole. Mr Unterhalter further stated that the WTO dispute settlement system encouraged settlement among members, but also recognized that there are often irreconcilable differences that need to be adjudicated. With respect to the question on treaty interpretation, he recalled that the Appellate Body always endeavoured to provide a text-based interpretation on the basis of the methods codified in the Vienna Convention on the Law of Treaties.



Ms Hillman explained that, in her statistical overview of the WTO dispute settlement system, she had not given a precise figure on compliance for the simple reason that there was no such official figure. She recalled that, under the current DSU, the three alternative outcomes of a dispute are: bringing the contested measures into compliance; paying compensation; and, as last resort, trade sanctions, but only temporarily, in order to increase the incentive for the losing party to comply. All other alternatives and suggestions for procedural improvements would require changes to the existing rules. As for the suggestion about conciliation, Ms Hillman noted that there is a mandatory 60-day period of consultations prior to the establishment of a panel and that throughout the entire process the parties have recourse to the good offices of the Director-General and other alternative means of dispute resolution.

With respect to the *US – Upland Cotton* dispute, Mr Lampreia replied that this was indeed an exemplary case that clearly demonstrated that United States payments and export credit guarantees to domestic cotton growers are a subsidy. According to Mr Lampreia, retaliation was always a delicate matter and he noted that there had been cases in the past, for instance, the *Brazil – Aircraft* and *Canada – Aircraft* disputes, where both members, despite being authorized to retaliate, had decided not to exercise this right. In the *US – Upland Cotton* dispute, however, Mr Lampreia thought Brazil should proceed with trade sanctions, but he advised against cross-retaliating in the domain of pharmaceuticals. On the climate-change question, Mr Lampreia replied that he recognized that any new system of international regulation must have some sort of dispute settlement mechanism, in particular, if it was developing into a system with mandatory targets. He also admitted that there might be some analogies between the two regimes, but that it was impossible to transpose the whole concept behind the WTO dispute settlement mechanism into the field of climate-change regulation, since the latter contained substantially different, highly complex issues that were partly opposed to the WTO itself. Mr Lampreia recalled that he had served, in 1994, as the Chairman of the WTO Trade and Environment Committee. The issues that the Committee had dealt with at that time included trade in endangered species, dangerous waste and the compatibility of the Montreal Protocol on Substances that Deplete the Ozone Layer with the WTO agreements. He stressed that the current challenges faced by this Committee go well beyond the former conflicts between environmental conventions and the WTO, the most notable examples of which

are the introduction of border taxes on products not complying with certain standards of emission, and their potential abuse for protectionist purposes.

Mr Hufbauer stressed that he was a strong proponent of money awards and extended cross-retaliation and applauded the recent decision in the *US – Upland Cotton* case. He also observed that national legislation in the field of climate change was developing rapidly, citing the United States, the European Communities, and Australia as examples. His advice to the WTO was to not “wait and see”, but to send a delegation to the Copenhagen summit and to make sure that WTO rules were understood properly by negotiators there. As for the conclusion of the Doha Round, Mr Hufbauer said that the earliest possible moment for that would be after the United States mid-term elections in November 2010, which would take us into 2011 or 2012. Mr Hufbauer further suggested that the WTO clearly “name and shame” members that take WTO-inconsistent protectionist measures even before cases are brought.

3. Conclusions and way forward

The multilateral trading system has evolved toward a regime firmly grounded on the rule of law. The WTO agreements provide a set of rules that are applied on a daily basis by millions of trade operators around the world. The WTO's dispute settlement system provides a mechanism for adjudication of any disagreements that may arise as to the proper application of those rules, and establishes the consequences in cases of non-compliance. Certainly, improvements could be made to how the WTO dispute settlement system operates, and WTO members have put forward concrete suggestions towards such improvements. The dispute settlement system also will benefit as the WTO's other functions are strengthened. This includes concluding the Doha Round and improving the surveillance function of WTO committees. As a legal regime that is firmly grounded on the rule of law, some considered that the WTO offers a useful model for other fields of international cooperation where institutional arrangements are less developed, such as climate change and financial regulation. Others, however, were more sceptical about the usefulness of the WTO as a model, given some of its unique characteristics.

“The multilateral trading system has evolved toward a regime firmly grounded on the rule of law”

H. Trade and employment in times of crisis

Tuesday, 29 September 2009 – 16.30 ~ 18.30

Moderator

Ms Esther Busser – Assistant Director, The International Trade Union Confederation (ITUC), Geneva Office

Speakers

Mr Guy Ryder – General Secretary, The International Trade Union Confederation (ITUC)

Ms Mina Mashayekhi – Officer-in-Charge, Division on International Trade in Goods and Services, and Commodities (DITC), United Nations Conference on Trade and Development

Ms Sanya Reid Smith – Third World Network

Mr Ekkehard Ernst – Senior Economist, International Institute for Labour Studies, ILO

Organized by

The International Trade Union Confederation (ITUC)

Report written by

Ms Esther Busser, The International Trade Union Conference (ITUC)



Abstract

The session addressed the impact of the current financial crisis on trade and employment, and analysed the effects on employment. It looked at the different responses that governments have made so far, the policies that were used, and how these responses have impacted on maintaining employment levels and quality, and on dealing with adjustments.

The panel also addressed future challenges regarding the employment outcomes of trade, particularly the aim of decreasing vulnerability to external shocks and crises. Achieving this aim requires the right policy package for development, employment and work quality, with a clear role for regulation, trade and trade policy to play in such a package. It also requires a review of the functioning of the international institutions to provide greater coherence. Questions that were addressed by the panel included the following:

- The crisis has led to reduced demand, reduced trade and reduced employment, but how do these interrelate and affect one another?
- Where did job losses occur, and are export industries particularly affected?
- What have been the responses to the crisis in both developed and developing countries in terms of stimulus packages and recovery, and how has this affected employment?
- What have been the trade policies to safeguard employment that countries have used to respond to the crisis, and what “policy space” do countries need to effectively respond to the crisis?
- What has been the impact of the crisis on wages and working conditions in the export sectors? Has there been any deterioration, and how has this been addressed by governments?





1. Presentations by the panellists

(a) Ekkehard Ernst, Senior Economist, International Institute for Labour Studies, ILO

Mr Ernst addressed the employment impacts of the current crisis, as well as the various country responses. He mentioned some of the underlying imbalances that caused the crisis, including the rising social and income inequalities within countries, and the increased household debt in developed countries. In developing countries the crisis was mainly transmitted through global linkages and the production chains. The interlinking of financial markets also transmitted the crisis from one market to another, resulting in reduced access to credit for trade.

The main responses besides financial rescue packages have been stimulus packages to increase aggregate demand, mainly in developed countries. Other measures have focused, though not sufficiently, on financial regulation. There is also a greater need to address social imbalances.

“So far, the crisis has mainly been a male crisis”

The impacts of the crisis on employment have been negative, and will continue to worsen in the G20 and other countries. So far, the crisis has mainly been a male crisis, hitting manufacturing in particular, but the expectation is that, in the longer term, women will be increasingly affected. Job losses in the service sector have occurred more in real-estate than in financial intermediation jobs.

“But the expectation is that, in the longer term, women will be increasingly affected”

Global labour supply continues to grow, in many cases without safety nets, while at the same time there is no recovery yet. The ILO estimates that the worst-case scenario could result in employment only recovering in six years.

Measures at country level to stabilize the financial sector mainly include bank bailouts and buying-up of toxic assets. Demand measures, such as tax cuts, transfers to

low-income households and green economy spending, labour market policies, the extension of unemployment benefits and work sharing arrangements, have also been implemented on a large scale. These measures have created (or saved) an estimated 7-11 million jobs. Automatic stabilizers have chiefly been used in Europe, accompanied by discretionary spending measures. The analysis of measures shows that measures supporting jobs have been more important in the richer countries, whereas social protection has been more important in developing countries.

The ILO adopted its Global Jobs Pact in June this year, and was mandated by the G20 in London to assess measures on employment related to the crisis. The Global Jobs Pact is constructed around the four decent work pillars: an employment-intensive recovery (through boosting of effective aggregate demand, public employment guarantee schemes, active labour market policies, work-sharing, skills and training); maintaining labour standards (especially freedom of association, termination of employment and standards on health and safety); social protection (income support to avoid a deflationary wage spiral, respect for the negotiated wage rate, and strengthening of collective bargaining); and social dialogue to discuss and implement reforms. All these measures should ensure that the burden of the crisis is not borne unilaterally, and that there is a commitment from both workers and employers to achieve sustainable recovery.

(b) Mina Mashayekhi, Officer-in-Charge, Division on International Trade in Goods and Services, and Commodities (DITC), UNCTAD

“Global supply chains have transmitted the crisis from developed to developing countries”

Ms Mashayekhi stated that the crisis has led to a fall in trade, production, consumption and employment in both developed and developing countries. In particular, global supply chains have transmitted the crisis from developed to developing countries. Developing countries have been impacted by contracting demand in developed countries, which has resulted in reductions in trade, labour mobility and remittances, accompanied by reductions in ODA and FDI. This has resulted in a reduction in GDP in all regions, as well as reduction in employment and increase in poverty, especially in

Sub-Saharan Africa. Impacts have been most severe in countries depending on commodities, remittances and specific service sectors. Financial flows, including portfolio equity and FDI, to developing countries also fell in 2009, with a 25 per cent decline in FDI in 2009 compared to 2008. There has been some recovery and decoupling in countries such as Brazil, India and China, but the recovery will be slow in developing countries. Overall, Sub-Saharan Africa is the most affected.

“The crisis has had an impact on the Millennium Development Goals targets, which will not be met”

The crisis has had an impact on the Millennium Development Goals targets, which will not be met. The unemployment impacts vary from country to country and from sector to sector. Job losses have mainly occurred in finance, automobile, distribution, construction, manufacturing and tourism. Also machinery capital equipment, transport equipment and durable manufactures have been affected. Some countries – Japan, Korea, Malaysia and Germany, for example – are mainly affected by job losses in manufacturing, whereas others see major impacts in tourism. Construction has also been negatively affected both in developed countries and in the Gulf countries, has affected migrant workers in particular. The manufacturing sector in Asia and the construction sector in the US have been most affected. There has been no real decline in employment in education, health and public services, but there is a severe risk that social safety nets may collapse, due to reduced public income. The dependence on remittances has increased with the fall in ODA and FDI. At the same time labour migration has slowed down. Migrants tend to stay in the receiving countries, even when unemployed, but there has been a sharp decline in remittances and there have been bankruptcies of migrant workers. Some government policies have been put in place, such as lump-sum payments for returning migrants.

Although there is a need to resist protectionism and to address the immediate impacts of the crisis, there is also a need to address global imbalances. Ways out of the crisis are the creation of jobs in the green economy, the creation of jobs in organic agriculture and the diversification into new sectors, such as services in developing countries. There is a need for free trade agreements to become more effective, and for the Doha round of negotiations to have a strong development component. Regional agreements can also address

some negative effects of the crisis by building productive capacities and by improving trade, investment and migration linkages.

(c) Ms Sanya Reid Smith, Third World Network

“Financial service liberalization without limitations involves serious risks for financial stability”

Ms Reid Smith focused on financial service liberalization, and liberalization in manufacturing in relation to the crisis. She pointed out that financial service liberalization without limitations involves serious risks for financial stability. Without limitations, a country cannot limit the size of banks, and therefore cannot avoid banks becoming too big to fail, which, as shown by the current crisis, is very risky. Banks should be carefully regulated, and one way to reduce risks is to build in firewalls that prevent banks from engaging in investment banking. However, Art. 16.2 of the GATS prohibits bans on risky activities or on establishing firewalls. For example, there have been calls to ban short-selling, but with commitments under Art. 16.2 of the GATS this is not possible.

Another area of concern is domestic regulation in services. Regulations have to be pre-established when commitments are made, and thus new regulations in light of the financial crisis cannot apply to foreign banks which are already established in countries.

Another area of concern is bilateral trade agreements, such as those from the EU, which establish that new financial services must be allowed. Such agreements also include provisions on the free movement of capital. These same free movements have transmitted the crisis and exacerbated the spread of the crisis.

There is also a push for government procurement negotiations which would open up procurement in areas such as banking, construction and healthcare in developing countries. When using stimulus packages – for example, for construction of hospitals and schools – local demand can be boosted by using local workers and local materials. However, opening them to foreign companies might reduce such local benefits.

One problematic area in bilateral investment treaties is the expropriation protection for investors, involving compensations. Some of the measures taken in



response to the crisis – such as regulations for banks to hold more equity or to limit bonuses – can be interpreted as expropriation. The experiences of Argentina are a good illustration of this.

“The need for tariff flexibility at different stages of development can no longer be ensured with the Doha proposals”

With regard to the Doha negotiations, there is concern about the loss of tariff revenue due to tariff liberalization, which would reduce government revenue and therefore the money available for stimulus, social protection, bailouts, etc. Moreover, tariff liberalization would also impact on industrial policy in developing countries, and thus on their ability to move up the value chain, increase employment, exports and export revenues. Some of the industrial policy instruments – local content requirements, cheap technology and infant industry protection, for example – are no longer allowed under WTO rules. Tariffs therefore become more important for developing industries. However, the need for tariff flexibility at different stages of development can no longer be ensured with the Doha proposals. The anti-concentration clause under negotiation in NAMA further reduces this flexibility, and NAMA proposals would result in production and employment losses in developing countries, as well as in fewer resources for unemployment benefits and training.

Ms Reid Smith concluded by referring to the Stiglitz Commission, which stated that all trade agreements need to be reviewed to make them consistent with financial regulations in order to prevent further crises and to ensure adequate policy space to allow them to resolve the current crisis.

(d) Guy Ryder, General Secretary, The International Trade Union Confederation (ITUC)

Mr Ryder spoke about the role of organized labour in response to the crisis, and the need for the creation of new dynamics and institutions in the global economy.

He referred to the magnitude of the crisis, with trillions of dollars for bailouts to keep financial institutions afloat, but also spoke of the human suffering, the possibility that up to 60 million additional people may become unemployed, and the risk of increased poverty, and

destruction of livelihoods. Inequality and inequity have increased over the past decades, and have increased the unsustainability and vulnerability of the system. He also referred to the absence of political leadership. There is a return to mass unemployment in the context of social protection systems that have been badly weakened or dismantled by governments, and a profound sense of anger and injustice, including on how the burden of the crisis is distributed.

On the other hand he mentioned some changes in policy positions that were quite unthinkable even some months ago, although the collapse of one system of ideologies has not yet given birth to fully fledged alternatives, and the turmoil is likely to continue for some time.

Although recognizing the legitimacy of the G20, which was able to establish its role in a remarkably short time, pragmatism was needed. The main lesson was that the international community was ill-equipped to deal with the crisis. One of the main questions is how the G20 relates to the multilateral institutions.

Regarding the IMF, it has come out of the crisis as the big winner, with the many responsibilities and resources transferred to this organization, which the trade union movement looks on with some suspicion. This requires a new and different IMF, which does not impose the same orthodoxies of the past.

Some of the trade union messages brought to Pittsburgh therefore call for the reform of the IMF. The message is that the crisis is an employment and social crisis, which needs employment and social protection at the heart of its response. He further stressed that now is not the moment to let off fiscal stimulus and expansion policies. Another important question is who should pay for the exit strategies? G20 leaders need to rediscover fiscal justice and progressive fiscal thinking. Leaders might also want to consider a financial transaction tax. Re-regulation of the financial sector is also urgently needed, as well as elimination of tax havens and regulation of the shadow economy. He commented that the financial stability board is very opaque, and it raises serious concerns that the financial sector reform has been given to those who caused the crisis.

There is a need for renewed confidence in the financial sector, but the bonus culture is still there. It is quite likely that the exit from the crisis will be like a revolving door which brings us back to business as usual. The situation would be worse though, since there will be large government deficits. He therefore called for a different



approach that addresses imbalances and inequities. In particular, this would require a new governance system.

Regarding the WTO, trade unions do not favour protectionism, and recognize its dangers, but the conclusion of the Doha Round will not promote recovery. Trade did not collapse because of protectionism but because of reduced aggregate demand. The WTO should also stop repeating the mantra of “let’s finish Doha and avoid protectionism” and should, instead, better analyse the impacts of trade liberalization and look at employment questions and social impacts.

2. Questions and comments by the audience

One participant referred to the 1970s, and the opportunity to get the issues of the democratization of the economy and of economic policy-making back on the agenda. This is also reflected by the questions on the role of the UN and on how decisions are made on global trade.

Another participant raised the question of whether there is a trade-off between an increase in inclusiveness from the G8 to the G20, and at the same time greater responsibilities for the IMF. How would a new order of global governance look?

Another participant asked what the panellists thought of the newly emerging triangle of the G20, the World Bank and IMF, and the UN.

A question was raised on the capability of international trade unionism to address both demographic change and climate change.

Another participant mentioned the 1948 Havana Charter, which established the linkages between trade and employment, but which was rejected. He asked how trade and employment issues can be brought back. He felt that one should not look at how labour markets adapt to trade policies, but at how trade policies adapt to achieve full employment. He also wanted to know if there is a potential conflict between the Global Jobs Pact and the WTO’s national treatment principle. He also raised the issue of the accountability of the G20, and argued that the G20 should be accountable to the UN.

One participant raised the question of whether it is possible to have a discussion on protectionism without discussing path dependency, and also asked how the G20 addresses the twin problem of overcapacity and reduced aggregate demand.

A final intervention criticized the arguments put forward by the third speaker for the need to protect enterprises and the role of tariffs. He argued that empirical data show that more economic freedom in countries results in higher growth rates. He further argued that industrial policy is no longer relevant, and that the problem is that the bottom billion is disconnected from the globalization process.

Responses from panellists

Mr Ernst stressed that the ILO is fully committed to the 1998 Declaration on Fundamental Principles and Rights at Work and is very concerned about the erosion of these rights. He also argued that protectionism is a complex issue, and that trade openness has been beneficial for some, but gives negative results in the short term and poses challenges for the creation of good jobs. Simply opening up is not bringing results.

Ms Reid Smith stressed the need for policy coherence among trade, finance and other ministers – for example, in the area of financial regulation. She further stressed the need to review trade agreements and to have a moratorium on financial regulation. She felt that the Global Jobs Pact is inconsistent with some trade agreements that restrict policy space or regulation. She clarified that she does not promote protectionism, but that countries have to be careful with tariff cuts.

Ms Mashayekhi stressed the need for a new paradigm with a focus on job creation. She said that the issues of aggregate demand and overcapacity need to be addressed and that there is a role for the UN to play. Despite some positive G20 measures, there is a need for deeper changes and more coherence, regulation of markets and a need for policy space.

Mr Ryder restated some of the elements of a new global governance, where rights, a commitment to full and decent employment, social protection systems, public services and the development agenda are essential. He stressed the need for multilateralism and fitting the G20 into the wider multilateral system. He also mentioned the importance of the climate-change agenda for the trade union movement, including focus on a fair transition. Regarding the contradiction between insufficient aggregate demand and overcapacity, he referred to the ILO message on this issue and the need for a wage-led growth, as the debt-driven model is no longer sustainable.

I. Sharing and promoting innovative technology in public private global development partnerships

Tuesday, 29 September 2009 – 16.30 ~ 18.30

Moderator

Mr Grant Aldonas – Principal Managing Director, Split Rock International, Inc., and Senior Associate, Center for Strategic and International Studies, Washington, D.C.

Speakers

Dr Juan Gonzalez Valero – Head, Corporate Responsibility, Syngenta, Basel, Switzerland

Professor Sir Gordon Conway – Chair in International Development, Imperial College, London, UK

Dr John Kilama – President, Global Bioscience Development Institute, Willmington, Delaware

Organized by

CropLife International

Report written by

CropLife International



Abstract

In agriculture, technological advances can play a particularly important role in addressing the agricultural challenges – such as drought or destructive pests – that nations may face. Meeting these challenges sustainably will require new ideas, tools and technologies. The session organized by CropLife International assembled a panel of members from diverse backgrounds, and with substantial on-the-ground experience, to offer their views on innovative solutions to critical global problems. The panellists discussed questions concerning: (1) the increasing importance of public-private partnerships (PPP) for development, (2) how such partnerships stimulate, protect and disseminate innovation, and (3) the case of agricultural innovation as an example of the role of public-private global development partnerships in

stimulating, protecting, and sharing innovation. CropLife's session focused on the potential of PPP to contribute both to agricultural innovation and to economic development in developing countries in ways that benefit both local farmers and customers throughout the world.

The session examined these issues from the viewpoint of two of the Forum's sub-themes: (i) the impact of the global economic crisis on developing countries – and particularly the impact on food security in the least-developed countries, which stand to benefit most from public-private global development partnerships; and (ii) the importance of finding global solutions to global challenges such as the strains on world food production, and the demand for environmentally efficient use of resources.

1. Presentations by the panellists

(a) John Kilama, President, Global Bioscience Development Institute

Dr Kilama described how PPPs are the way forward in promoting and sharing innovation, in particular in the agricultural sector. Excellent research was currently ongoing in national laboratories in developing countries. This provided an opportunity for seed industries to collaborate with those laboratories and bring innovative products to market. Yet appropriate legal frameworks that enable PPPs are critical. Challenges for PPPs in developing countries include the small to non-existent local private sector, the lack of funds to translate research into products, the lack of regulatory capacity, lack of incentives for, and liability of, the private sector that donates technology. Dr Kilama encouraged the creation of suitable legal frameworks to address these challenges. Possible solutions include government-funded liability coverage for humanitarian donations, the adoption of biosafety regulations, the adoption of an intellectual property system, and the creation of an intellectual property rights legal instrument for the poorest of the developing countries.

(b) Juan Gonzalez Valero, Head, Corporate Responsibility, Syngenta International

Dr Gonzalez Valero of Syngenta provided examples of some of the company's partnerships in developing countries. These partnerships were vital in bringing agricultural solutions to every farmer. Yet many farmers in developing countries often have no stake in these technologies, and thus have no incentive to adopt promising new ones. Syngenta's experience with the market introduction of tropical sugar beet demonstrates how the company discovered an excellent business model that aligned the interests of the company with the interests of local farmers in developing countries. Burdensome and overly politicized regulatory frameworks inevitably prevent innovative technologies from being shared. To facilitate partnerships, Dr Gonzalez Valero called for an international regulatory framework that is more supportive of partnerships than the current framework.

“Burdensome and overly politicized regulatory frameworks inevitably prevent innovative technologies from being shared”

(c) Sir Gordon Conway, Chair in International Development, Imperial College, London

Professor Conway provided examples of successful PPPs in the agricultural sector. Recent years have seen the advance of, in particular, multinational companies producing new crop varieties. Those companies are working at the cutting edge of molecular and cellular biology, with unparalleled innovative capacity in this area. There has been a move towards PPPs already at the early stages of agricultural biotechnology. Professor Conway gave rice as an example. Natural rice does not contain beta-carotene, a precursor to vitamin A. Yet vitamin A is crucial for young children in particular, and approximately 1 million children die each year as a result of lack of vitamin A. One of the critical areas is in weaning. In Asia, many mothers feed rice water to their infants in weaning, and as a result, the infants do not get sufficient vitamin A. “Golden Rice” was developed to redress this deficiency.

2. Conclusions and way forward

In conclusion, innovation in the agricultural sector can have significant benefits for developing countries. Public-private development partnerships, in particular, have enormous potential to bring agricultural innovation to local farmers. Yet in order to enable the sharing of such innovation, appropriate regulatory frameworks – that protect innovation and thus allow the values and economic benefits of such innovation to be shared with local communities – have to be put in place.

“Innovation in the agricultural sector can have significant benefits for developing countries. Public-private development partnerships, in particular, have enormous potential to bring agricultural innovation to local farmers”



J. Global problems, global solutions: Towards better global governance in the agro-food chain

Wednesday, 30 September 2009 – 09.00 ~ 11.00

Moderator

Mr Jonathan Lynn – World Trade Correspondent at Reuters News

Speakers

Mr Paulo Gouveia – General Affairs Director, European Farmers and European Agri-Cooperatives (COPA-COGECA)

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

Ms Liz Murphy – Director of the International Meat Trade Association (UK), UECBV

Ms Roxane Feller – Economic Affairs Director, Confederation of Food and Drink Industries of the European Union (CIAA)

Mr Rodrigo Gouveia – Secretary General, European Community of Consumer Cooperatives (Euro Coop)

Mr Heinz Werner – CEO and Managing Director, Heinz Werner GmbH, Wollbach, Germany, and guest lecturer of applied sciences on international management and world trade at German and overseas universities

Organized by

European Liaison Committee for the Agricultural and Agri-Food Trade (CELCAA)/Confederation of Food and Drink Industries of the European Union (CIAA)/European Livestock and Meat Trading Union (UECBV)

Report written by

European Liaison Committee for the Agricultural and Agri-Food Trade (CELCAA)/Confederation of Food and Drink Industries of the European Union (CIAA)/European Livestock and Meat Trading Union (UECBV)



Abstract

The session addressed challenges the food chain would face resulting from long-term and current developments. Issues such as climate change, globalization and urbanization, highly fluctuating energy prices, and the increasing world population all have an impact on the food chain at the global and local level. In this context four topics of paramount importance for food-chain operators have been identified:

- food security and affordability of food;
- food safety and the threat of large-scale sanitary problems;
- climate change and the environmental sustainability of production and consumption;
- access to finance for economic operators.

The discussion aimed at finding responses to these urgent challenges, by mapping global and local solution strategies for food-chain operators.

1. Presentations by the panellists

(a) Heinz Werner, CEO and Managing Director, Heinz Werner GmbH, Wollbach, Germany

By way of introduction, Mr Werner highlighted the dominant role of small and medium-size enterprises both in Europe and worldwide and, against that, the power of the retail giants. He drew attention to retailers' and traders' growing recognition of consumer demand for sustainable, certified or verified products and the response of the food-chain players to the sustainability challenge. His speech, which ably set the scene, touched also upon the need for adequate consumer information in the area of sustainability.

1st challenge: Food security

(b) Paulo Gouveia, General Affairs Director, COPA-COGECA

Mr Gouveia referred to the relevance of agricultural production in the context of providing sufficient nutritious food to feed an increasing population. The primary role of farmers is to produce food. However, non-food production opportunities, especially in times of very low producer prices, are an option that farmers consider. In this particular context the challenge is to produce enough food whilst considering other elements, such as climate change. The need for adequate agricultural policies is therefore of paramount importance especially in times of great price volatility.

(c) Bernd Gruner, Secretary General of CELCAA

Mr Gruner noted that in addition to availability, the affordability of nutritious and safe food is crucial, as high food prices particularly hit those with lower incomes, given that food constitutes a higher share of their expenditure.

The food-price surge, peaking in July 2008, was the result of a combination of long-term trends (population growth), structural changes (change from products of plant origin to products of animal origin in emerging economies) and temporary factors (dwindling reserves of staple crops). As a reaction to the food-price surge, protectionist measures abounded, seeking to secure domestic food supply through export restrictions (export tariff increases, export bans).

Other measures to secure food sovereignty were taken by emerging economies (e.g. China) or countries with unfavourable climatic conditions for agricultural

production (e.g. Saudi Arabia), and there were "land grabs" in some developing countries which were having problems securing affordable food supplies for their citizens (e.g. Sudan, Kenya, Cambodia).

All these measures have the tendency to increase price pressure and exacerbate the food crisis. In Mr Gruner's view, trade is a better way to contribute to global availability of affordable food, as it ensures that agricultural products and food are produced in locations with an absolute and/or a comparative advantage, resulting in an efficient use of scarce natural resources. Therefore, access to raw materials for the food industry has to be ensured to enable economies of scale and result in an efficient use of raw materials and high productivity of production factors.


(d) Roxane Feller, Economic Affairs Director, CIAA

As stated by the G8 ministers, the food crisis is a combined result of under-investment in agriculture and food security, price trends and the financial and economic crisis. None of the food-chain partners alone can realistically be expected to find a solution to this complex problem. It is, however, important to stress that availability of agricultural raw materials is the basic preoccupation of the EU food industry. Therefore, in the current competition for crops and land between food, energy and other industrial uses, a clear priority should be given in public policies to food production. Certainly it is also crucial to enhance agricultural productivity, quality and food affordability to meet the needs of a growing population. In response to these challenges EU food companies invest in the enhancement of agricultural production and rural development in developing countries and support the improvement of nutrition and quality.

(e) Rodrigo Gouveia, Secretary General, Euro Coop

Mr Gouveia defined food security as the availability of quality food products for all, at affordable prices. He stated that the main aim in achieving food security is to ensure a fair redistribution of the income among all partners in the supply chain, thus creating an economically sustainable supply chain. Long-term relations with suppliers are also one of the keys to ensuring food security: by providing a secure economic framework, they enable suppliers to invest in the future. The speaker provided several examples of the work undertaken by European consumer cooperatives in this respect. Finally he mentioned Fair trade as one of the tools to ensure fair and sustainable partnership between retailers and suppliers, thanks to the values





and principles that underlie this trade scheme, which are in line with the cooperative values and principles.

2nd challenge: Food safety

**(f) Paulo Gouveia, General Affairs
Director, COPA-COGECA**

Mr Gouveia outlined the interconnections between food safety and food security and the need to anchor it around a science-based approach, with an appropriate risk analysis and assessment. The high standards followed by EU farmers, the food-chain imbalances and the impact of the economic crisis were also addressed.

**(g) Liz Murphy, Director of the
International Meat Trade Association (UK),
UECBV**

Ms Murphy expressed her fears that, while efforts are being undertaken to reduce monetary import duties, there would be a tendency for some countries to seek other ways to protect their market. She did not criticize the fact that domestic producers are seeking to differentiate their food product from a marketing perspective but emphasized the need to be extremely careful not to blur the lines around food safety.

She noted a problem with assurance schemes if they try to suggest that eating a certain product is less risky to human health than a product that does not have an assurance label. All food marketed must be fit/safe for human consumption and comply with scientifically relevant and risk-based food hygiene standards, which should also be properly enforced. The Codex Alimentarius has an important role to play here to increasingly enable internationally recognized standards. Protection of animals from disease is also important to ensure food security, but these rules must also be scientifically based and here the OIE (World Organisation for Animal Health) has a major role to play.

Apart from prevention of human and animal disease, all other factors should be dealt with by the market. Policy-makers should give more attention to a cost benefit analysis before adding new rules. In politics, adding rules is generally easy, removing them is fiercely resisted for fear that it might appear to the consumer that protection is being reduced. The intelligence of consumers should not be underrated, and one should provide them with relevant information and not be afraid to let them choose. This requires effective dissemination of balanced information from bodies regarded as trustworthy by consumers.

**(h) Roxane Feller, Economic Affairs
Director, CIAA**

According to Ms Feller, the efforts towards a higher level of food safety at EU level have been continuously increasing over the past years. There has been an important development of standards and risk assessment strategies. The general approach has switched from reactive to proactive. It is the food industry's responsibility to ensure the food put on the market is safe. EU food manufacturers are therefore committed to and apply the principles of food safety: responsibility, traceability, transparency, emergency action, prevention and cooperation with public authorities to reduce the risk. Beyond this, there are a range of initiatives which are led or actively supported by the EU food manufacturing sector. Among others, the CIAA set up an incident management system, a network that facilitates a rapid exchange of information between manufacturers and authorities should there be a suspected food safety problem within the production chain.

**(i) Rodrigo Gouveia, Secretary General,
Euro Coop**

Mr Gouveia stated that food safety was still and would continue to be one of the major concerns for consumer cooperatives. He stressed the importance of commonly agreed international standards that provide consumers with a high degree of food safety. He referred to private labelled products as the main tool for retailers to control the safety and quality of the products they supply to consumers. He stated that Euro Coop has some concerns regarding the use of new technologies in food products, and that, for that reason, consumer cooperatives apply the precautionary principle and do not use them in their private labelled products when there is not sufficient evidence of their safety.

3rd challenge: Environmental sustainability

**(j) Paulo Gouveia, General Affairs
Director, COPA-COGECA**

Speaking for the European farmers on the issue of environmental sustainability, Mr Gouveia referred to the activities and objectives of the European Food Sustainable Consumption and Production (SCP) Round Table, a stakeholder-driven initiative at EU level. Climate change is part of the management decisions from farmers, and agriculture as a sector has contributed, is contributing, and will continue to contribute to greenhouse gas (GHG) emission reduction. The specific nature of the biological processes of crop and livestock production leads to a situation where binding targets

are neither adequate nor acceptable for the sector. Agriculture, in this context, is not the problem but part of the solution.

(k) Bernd Gruner, Secretary General of CELCAA

Mr Gruner stated that CELCAA, too, is part of the European Food SCP Round Table. He referred to the three pillars of sustainability, which are the environment, and the social and economic considerations. Traders' concerns are linked to a proliferation of schemes providing information on the environmental performance of agricultural and food products. These led to a fragmentation and segmentation of markets, and thus to increased costs resulting from the separation of the product flow in the supply chain (dedicated transport and storage systems) and reduced economies in scale and scope. Furthermore, a multitude of company-specific or national environmental certification schemes has a tendency to confuse consumers.

Assessment methodologies of environmental performance should be based on sound science and should be harmonized at the international level. Furthermore requirements, procedures and the governance structure of environmental certification schemes should be transparent to ensure the credibility and independence of the schemes. These questions are also linked to an equitable and balanced involvement of each part of the food chain in order to ensure that commitments are taken by those who have to comply with them, and that costs and benefits are shared equitably at all stages in the food supply chain.

There is also a need to clarify what is assessed (CO₂, biodiversity, use of scarce natural resources, water, soil) and how this is best communicated to the consumer in an understandable way. Besides labelling, the need for relevant consumer education and information is important. Mr Gruner noted clear benefits from a science-based and harmonized assessment of international performance, which would result in an increased efficiency in the use of scarce natural resources.

(l) Roxane Feller, Economic Affairs Director, CIAA

Ms Feller supported the other speakers on the importance of climate change and a positive outcome of the Copenhagen Conference in December 2009, and stressed the engagement of the CIAA member companies in the European Food SCP Round Table.

At the same time she put a stronger emphasis on the main aspects of the European food industry's commitment to go beyond legal requirements: sustainable sourcing of raw materials and sustainable manufacturing at company level. Regarding sustainable sourcing practices, EU food industry initiatives apply not only to Europe, where the EU food industry purchases about 70 per cent of agricultural produce, but also seek to support the development of sustainable agriculture worldwide. At the manufacturing level, the food industry concentrates on resource efficiency and waste management, sustainable use of water and energy, reduction of GHG emissions and the environmental impact of packaging along the product life cycle.

(m) Rodrigo Gouveia, Secretary General, Euro Coop

Mr Gouveia outlined the work of consumer cooperatives towards sustainability. He mentioned that Euro Coop is also a member of the European Food Sustainable Consumption and Production Round Table and the European Retail Forum, where Euro Coop aims at working together with other partners of the food chain and the retail sector on issues of sustainability.

He made a specific reference to Euro Coop's project on climate change, which consists of voluntary commitments undertaken by consumer cooperatives in Europe to tackle the challenge of climate change, and gave concrete examples to illustrate it. It is a holistic project covering all areas of the activity of consumer cooperatives as retailers, including energy sourcing and use, product policy, packaging, transport, energy efficiency of buildings and stores, and information and communication to consumer members.

4th challenge: Financial and economic crisis

(n) Paulo Gouveia, General Affairs Director, COPA-COGECA

Mr Gouveia mentioned the problems at the root of this crisis, and how it has come to affect the agricultural sector by increasing volatility in prices and causing a contraction in demand. The complexities of the food-supply chain alongside market imbalances between producers and retailers are at the origin of the difficulties that farmers are currently facing in various sectors. The effect is compounded by the inadequacy of policy measures to address this reality. Other behavioural practices, unfair in nature – such as late payments in commercial transactions – do not contribute to a level playing field along the food-supply chain, and further add to the difficulties faced by the agricultural sector.



(o) Liz Murphy, Director of the International Meat Trade Association (UK), UECBV

Ms Murphy observed that it might be a mistake to be complacent, and take relief in the first signs of recovery one year after the collapse of Lehman Brothers, as a number of issues still need to be addressed. Suppliers have wanted to be paid more quickly, while customers have wanted extended credit terms. Together this has put pressure on the cash flow of importers and exporters, and their policy has been to keep stocks to a minimum. Credit insurance has been reduced or removed, leaving companies increasingly to trade at their own risk. Banks have been reluctant to extend credit and charges have risen for existing business. In the UK, the Government scheme regarding trade credit insurance has not helped British traders of meat. Thus, supplying food from a trader's point of view has become a riskier business all along the chain – particularly for SMEs – and this, in turn, has implications for food security. Positive steps have been taken to assist food businesses, as the EU began to look into the issue of rules on late payments. However, traders still look for any effective government scheme concerning trade credit insurance which could serve as a model. The question arises whether a global/regional institution could offer credit insurance.

(p) Roxane Feller, Economic Affairs Director, CIAA

Ms Feller pointed out the main symptoms and consequences of the crisis in the food sector. Shortage of trade finance has been particularly difficult to deal with, considering the seasonality of supply in the food chain. The food sector has also been the most touched by trade-restrictive measures. Demand, and especially the demand for some high value-added products, has decreased significantly along with a change in consumer behaviour. The EU food industry has, nevertheless, an answer to the crisis: the recommendations of the High Level Group on the Competitiveness of the Agro-Food Industry, which are currently in the implementation phase.

(q) Rodrigo Gouveia, Secretary General, Euro Coop

Mr Gouveia put the blame for the current financial and economic crises on the lack of ethics and values in business. They show the shortcomings of an economic model based solely on the maximization of profits. However, the cooperatives are different. They represent a business model based on values and principles that does not aim at maximizing profits, but at fulfilling the

economic and social needs and aspirations of their members. Therefore, structural changes are needed to implement a different economic model and the cooperative movement can provide a prime example of such.

Regarding the food chain in particular, according to Mr Gouveia, the shortening of the supply chain and the reduction of the gap between producers and consumers are vital to achieve sustainability. This can be achieved by supporting and promoting the cooperative business model and thus integrating values and principles in the food supply chain.

2. Questions and comments by the audience

The broad nature of the subjects presented by the panellists resulted in several quite diverse questions from the audience. The first part of the discussion centred around the competition between food and fuel for agricultural raw materials between food and fuel. Also the similarities between the situations of farmers in different parts of the globe were tackled in the context of price instability and the high cost of agricultural inputs. A question on the EU legislation on genetically modified organisms and the need to ensure sufficient feed for European livestock initiated a lively exchange of views, unveiling the EU stakeholders' preference for science-based and practicable solutions. This led further to a debate on consumer information and choices regarding GM, animal welfare and other ethical aspects. In addition, the audience asked the members of the EU food chain what their position on the international protection of geographical indications was. Finally, a comment was made on the issue of local production and food sovereignty versus international food trade.

3. Conclusions and way forward

The panellists highlighted the need to provide the appropriate financial resources for research and development and innovation in the area of agriculture and food production to ensure global availability of affordable food. Technical solutions based on science should be found and internationally harmonized standards should be implemented globally to address food safety and to assess environmental performance, thereby enabling international trade without constituting additional barriers. However, the social and ethical concerns of consumers have also to be considered. Adequate communication and relevant information should be given to the consumer, enabling him to make an informed choice when buying food.

K. Regulating agricultural markets: A necessity made clear by crises

Wednesday, 30 September 2009 – 09.00 ~ 11.00

Moderator

Mr Alex Danau – *Collectif Stratégies Alimentaires* (Food Strategy Group), Belgium

Speakers

Mr Marcos Rochinski – General Secretary of FETRAF-Sul (Federation of Rural Workers and Family Farmers in South Brazil), Brazil

Mr Ndiogou Fall – President of ROPPA (Network of West African Farmer and Producer Organizations), Senegal (West Africa)

Mr Michel Jacquot – Lawyer, France (Canada)

Mr Olivier De Schutter – The UN Special Rapporteur on the right to food

Mr Jacques Carles – General Delegate of Momagri (Mouvement pour une organisation mondiale de l'agriculture), France

Mr Philip Kiriro – President of the EAFF (Eastern Africa Farmers Federation), Kenya (East Africa)

Ms Estrella Penunia – Secretary General of the AFA (Asian Farmers Association for Sustainable Rural Development), Philippines (East Asia)

Organized by

Collectif Stratégies Alimentaires, Belgium; Canadian Dairy, Poultry & Egg Producers, Canada; ROPPA, West Africa; FETRAF, Brazil; EAFF, Kenya; AsiaDHRRRA (Asian Partnership for the Development of Human Resources in Rural Asia); AFA, Philippines

Report written by

Collectif Stratégies Alimentaires (CSA)



Abstract

The crises (food, financial, economic, environmental) that we are currently experiencing all plead in favour of new governance in agriculture and in the exchange of agri-food products. The need to establish new solutions for trade in the agri-food sector is becoming increasingly clear. This observation, based on the point of view of agricultural producers and researchers from various continents, tends to provide answers to the following questions:

- How should international rules be established in order to develop local and regional agriculture production and food markets, thus reducing the dependence on, and negative impact of, the volatile world markets?
- Is the use of regulatory and security instruments compatible with the directions of the Agreement on Agriculture and the terms and conditions currently being negotiated?

- Wouldn't everyone's food security be better assured through a multilateral governance process that recognizes market power imbalances in the agri-food chain (farmers, agri-business, supermarket distribution, etc.)?

- Shouldn't the regulation of the agricultural and food markets, crucial to ensuring access to food, rest on the establishment of a hierarchy of international treaties and agreements reflecting the primacy of human rights, and in particular the right to food?

The reorientation of the agricultural agenda to a renewed and re-engineered cooperation would give new meaning to multilateralism, more in line with the right to food and food sovereignty. The goal is not to minimize the importance of trade but to create trade rules that are compatible with people's right to food and countries' right to exercise their food sovereignty. In return, countries must increase their coordination of the regulation of international agricultural markets.





1. Presentations by the panellists

(a) Ndiogou Fall, President, Network of West African Farmer and Producer Organizations (ROPPA)

West Africa is facing a critical situation, particularly in the agricultural area. It is suffering from chronic food insecurity, sharp population growth, and a high proportion of poor and starving people.

The current situation is inconsistent with the promises that preceded the signature of the Uruguay Round – that if the market was liberalized, it would create wealth, and social problems and food insecurity would disappear. In fact, the opposite has happened. Food dependency in West Africa has increased, considerably aggravating the impact of the crisis. Indeed, since the region is very open, it has been one of the first victims of the crisis, and food dependency therefore represents a danger for the populations of the region.

The relationship with the WTO is unilateral. No distinction is made between the different situations, nor is any account taken of the capacity of the different regions of the world to integrate into this liberalization and globalization process.

“There appears to be a strong correlation between liberalization, price volatility, and poverty and hunger”

A key aspect in the decline of agriculture is price volatility, and there appears to be a strong correlation between liberalization, price volatility, and poverty and hunger.

We should be implementing the instruments that help to regulate volumes and prices rather than dismantling them. The process of dismantling customs services must be stopped. These services provide necessary protection which can be used to develop agriculture and put an end to food dependency. Without these basic regulatory instruments, there can be no solution to the problems of famine and poverty.

(b) Michel Jacquot, Lawyer, France

Mr Jacquot has extensive experience in agricultural policy and trade negotiations within the European Commission.

The negotiations – including the agricultural negotiations – conducted in the GATT since 1947 have led, in a way, to the establishment of a kind of regulation of trade in agricultural products. However, during the food crisis of 2007-2008, the WTO did nothing. Yet the Agreement on Agriculture, and more specifically Article 16, lays down certain obligations.

There are blatant shortcomings in the WTO provisions as they stand: the crisis illustrates this. The WTO's general philosophy is “to establish a market-oriented agricultural trading system”. What we should be asking ourselves, then, is whether the market really delivers the expected benefits. The answer is no.

Each country should be free to conduct its agricultural policy as it sees fit, in accordance with its interests and whatever requirements (for example, religious) it may have. The WTO has tried to base itself on a single agricultural policy model: and yet the fundamental differences between the countries concerned make this impossible.

“We cannot tolerate that a country should export its problems to the international market”

This freedom goes hand in hand with an essential constraint: we cannot tolerate that a country should export its problems to the international market. For example, a key measure introduced by the EU in response to the milk crisis consisted of increasing the refund on exports of butter and milk powder.

There is no cooperation in the WTO today. All we have is individual commitments by members on exports and imports. And yet a minimum of cooperation is needed if we want to regulate international markets. Agreements by product are not the solution: if we want to regulate international markets, we have to address the issue of managing supply and demand.

(c) Jacques Carle, General Delegate, Mouvement pour une organisation mondiale de l'agriculture (Momagri)

The WTO's objective, reiterated in 2001 at Doha, is to foster growth and contribute to the fight against poverty. And yet the negotiations launched in 2001 have totally disregarded the facts: agricultural prices are extremely volatile owing to the very nature of agriculture.

Consequently, agricultural policies have always tried to protect agriculture from this extreme price volatility. Market liberalization aggravates the destructive aspects of this volatility, and there is a danger that this will continue if the Doha negotiations result in a significant dismantling of regulatory tools.

We cannot liberalize without ensuring close international consultation to deal with the associated crises.

The instruments (economic models and indicators) that serve as a reference for international negotiations are not at all suitable for agriculture. Until recently, the models used by the World Bank, the OECD, etc. – in other words, the standard reference models in the agricultural world – have all concluded that greater, or full, liberalization of trade in agriculture would boost global welfare (by increasing GDP), and the welfare of the poorest countries in particular. In fact, these models are based on industrial models, according to which supply adjusts to demand, which is not the case here!

Momagri therefore set up a team of economists tasked with creating a model of agricultural price movement, and simulating price trends according to the decisions taken. This alternative model – which, incidentally, predicted the recent fall in prices – shows a chaotic curve, reflecting the volatility of prices.

In order to combat this volatility, we need to consider the following:

- The optimum balance between the objectives of food security and economic efficiency. This optimum balance must be defined for each (group of) state(s), and must be the fruit of permanent negotiations.
- The WTO cannot resolve this problem. It has a limited mandate which, historically, results from the work of the 1980s and concerns only international trade.

Consequently, we urgently need to establish ways of conducting international consultations to ensure that, if there is a crisis, decisions can be backed by policy options and anticipatory measures. The alternative model could be used to simulate changes in world agricultural prices and production, and provide a common language for consultations.

(d) Marcos Rochinski, Secretary-General, Federation of Rural Workers and Family Farmers in South Brazil (FETRAF-Sul), Brazil

It is natural that each country should defend its own food security interests. But big business is very much present in all of the negotiations, and rather than defending the interests of their country and its population, they pursue their own interests.

Brazil's domestic production is significant – enough to ensure food self-sufficiency, stability and autonomy. However, the big companies, like Nestlé, are crushing hundreds of small cooperatives and farmers' associations. They are not interested in stabilizing the small farming economy or ensuring food security, they are interested in defending their own commercial interests.

Consequently, we cannot discuss food sovereignty without establishing control mechanisms that lay down the rules for the big international companies.

We can only come up with a model that will guarantee food security for the generations to come if we set up a mechanism to decentralize industrial processes, such as product processing. The strengthening of family farming is incompatible with the big multinational companies.

(e) Olivier De Schutter, United Nations Special Rapporteur on the right to food

What does the right to food mean?

Guaranteeing an increase in the volume produced is not enough to guarantee the right to food. It is access to the food available that poses a problem, and hence the issue of income for the poorest. Yet one of the main arguments we hear for ensuring competition in production throughout the world is that liberalization will bring about an increase in production (in that the most competitive will produce more). However, what counts is not whether we produce more, but who will benefit from what we produce and export. We need to ask ourselves whether the growth in international markets will be accompanied by an increase or a decrease in inequalities.

We need to consider:

- the marked differences in productivity between OECD producers and developing country producers;



- the sharp inequalities within the food chain, with a high concentration of buyers and processors of agricultural raw materials;
- the marked duality of the agricultural sector, in which a small minority of very large-scale farmers have the means to increase their competitiveness and their access to the international market, while a very large number of small producers live off family farming, which provides a livelihood for two billion people.

“Increased specialization by countries in a restricted number of production areas means greater vulnerability”

From these considerations, we can conclude the following:

- Increased specialization by countries in a restricted number of production areas means greater vulnerability, in that it increases their dependence on price trends in international markets. Countries that depend on exports for their income suffer when prices fall, while countries that depend on imports to feed themselves are vulnerable to price increases on the international markets and to the fall in prices on local markets, which hurts the small local farmers.
- The proportion of agricultural production traded internationally is very small (5 to 7 per cent); and yet a country's exports will have a disproportionate impact on its policies by favouring export support, which increases the duality of the agricultural sector, and marginalizes family farming and the small producers that supply the local markets. At the same time, it increases the dependence of producers on the companies that bring together the consumers of the destination country with the producers of the country of origin. The big international companies are earning an increasing share of the value added in comparison to the producers at the beginning of the chain. This creates a paradox: prices are too high for the least affluent consumers but much too low for the farmers.
- The supply management models that aim to stabilize the income of producers and to guarantee, within certain margins, relatively stable prices, cannot function in a liberalized regime, because a country would have to be able to protect itself against the impact of international price volatility.

- This volatility is a disincentive to production, because farmers have to plan their production without knowing the price at which they will be able to sell their harvest - a major handicap for many of the developing country economies.

Mr De Schutter produced a report on the impact of the WTO on the right to food. Its aim was to warn states of the impacts to be taken into account in the trade negotiations, to remind governments of the dangers (mentioned above) linked with pursuing a reform programme targeting increased liberalization of trade. It concluded that:

- The different developing countries have very different interests. Some of them have very fragile economies, and their interests do not necessarily coincide with those of the major emerging powers.
- Democratization, transparency and increased participation in the international negotiations are essential to ensure that the international trade regime truly benefits from the development and respect of the right to food.
- The international discussions are schizophrenic. On the one hand, there is a consensus, following the 2008 crisis, that the capacity of each country to produce for itself needs to be reinforced. At the same time, the current round of international negotiations is pushing for greater liberalization of trade in agriculture. These two approaches are incompatible in the short term. We need to choose between them.

It is essential that the WTO plays the game of international cooperation and works with other actors (within the UN High-Level Group on the world food crisis, or within the new FAO Committee on World Food Security, for example) to ensure a world governance that respects the right to food.

2. Questions and comments by the audience

The WTO has no power to check the veracity of the notifications it receives – policy reports always come from the states, so that the WTO is merely a structure where states negotiate rules, and does not have any power over the actions of its members. The WTO has no regulatory power as such.

- One panellist replied that, in fact, the WTO does have power. The WTO is the only organization where

formal commitments are made, and where there is a dispute settlement system.

“The WTO is a body that facilitates negotiations and settles disputes, and not a crisis management organization”

- Reply from Mr Carle: The WTO is a body that facilitates negotiations and settles disputes, and not a crisis management organization. Dealing with regulation is not the WTO's mission. There has to be an international facilitation body for agriculture.

What kind of regulation of agriculture could be introduced? How can we convince the major trading powers to keep their lobbies out of agriculture?

- Reply by Mr De Schutter:
 - » Strengthen domestic anti-trust legislation to avoid economic domination by certain powerful actors;
 - » limit the negative impact of the trend towards competition between farmers from different countries.
- Another panellist replied:
 - » Every country should be able to introduce whatever agricultural policy it considers suitable;
 - » instruments should be introduced to curb the excesses/shortages that could occur by building up strategic stocks, and there should be international cooperation in disposing of those stocks.

The notion of “developing country” needs to be redefined, specifying the differences between countries.

Only some 15 per cent of trade in African production takes place on the African market. The local market needs to be strengthened in order to develop the processing industry. What are the possibilities for strengthening African integration and developing the African market?

- Reply by Mr Kiriro: Setting up producer organizations (POs) is very costly – we need the means to do so. He stressed, in this connection, the positive role of the agri-agencies, such as the

members of AgriCord, in supporting these efforts. A certain amount of will on the part of governments and international institutions is also needed.

- Reply by Mr Fall: Proper integration assumes that there is a market, otherwise there is nothing to trade. The sharp growth in population represents both a challenge and an opportunity when it comes to developing integration and regional markets in response to the needs of populations. This justifies, *inter alia*, the need for border protection.

- Reply by Mr De Schutter: Regional integration is vital, particularly in Africa. Trade can stimulate production and encourage governments to provide farmers with the necessary public goods. Moreover, regional integration helps to bring together farmers that are not very different, with similar competitiveness levels, so that trade can be beneficial to the different parties. One problem in Africa is that the markets are too small to permit economies of scale. Diversification and development of the secondary and tertiary sectors are necessary to prevent the trade balance from being in deficit. Certain countries have already achieved considerable economies of scale in some parts of the world, so that the countries developing those sectors need to protect their industries before they can be competitive on the international market.

3. Conclusions and way forward

The participants highlighted:

- the failure of the policy of liberalization in reducing poverty and hunger;
- the need to introduce instruments to regulate volume and price in order to limit the harmful effects of price volatility, which means that countries have to be able to protect themselves against international price volatility;
- the need for international cooperation on agricultural policy matters in order to guarantee the right to food;
- the blocking of the necessary regulatory instruments which has resulted from the measures adopted under the WTO Agreement on Agriculture is counterproductive.



L. Human rights impact assessments (HRIA): A pertinent tool for informing and improving trade governance?

Wednesday, 30 September 2009 – 09.00 ~ 11.00

Moderator

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

Speakers

Mr James Harrison – Professor of Law, University of Warwick

Mr John Clarke – Deputy Permanent Representative of the Delegation of the European Commission (EC) to the International Organizations in Geneva

Ms Sanya Reid Smith – Legal Advisor, Third World Network, Geneva

Mr Simon Walker – PhD candidate, Utrecht University

Organized by

3D → Trade – Human Rights – Equitable Economy

Report written by

3D → Trade – Human Rights – Equitable Economy



Abstract

The session addressed how to conceptualize and implement human rights impact assessments (HRIAs) of trade agreements, compared them with other types of assessments, and assessed the potential of HRIAs to inform and shape trade policy and agreements.

Ms Marceau pointed out that while international trade has contributed to economic growth, this has often fallen short of achieving progress in poverty reduction and development. The panel discussed whether HRIAs of trade agreements could help trade contribute to those goals more effectively and consistently. The current confusion and lack of engagement between the human rights and trade law discourse was emphasized, and the potential that HRIAs could

have for bridging this gap was highlighted. The panel also discussed how other types of impact assessment provide lessons for the design and conduct of HRIAs, and prevent poorly constructed or biased studies that could be counterproductive. The need for more methodological work, supported by UN bodies, was underscored. Key benefits, risks and limitations of the tool were also discussed, including a brief comparative examination of the methodology of sustainability impact assessments (SIAs). In conclusion, the link between trade and human rights was re-emphasized and the need for further work to improve understanding on linkages between the WTO and human rights, through HRIAs for example, was underscored.

1. Presentations by the panellists

(a) Gabrielle Marceau, Counsellor at the Office of the WTO Director-General

Ms Marceau gave a brief introduction, saying that, although international trade does offer economic benefits, this has not always translated into poverty reduction and equitable development. She said that the panel would explore the benefits and risks of HRIAs as a practical tool to better understand and manage the linkages between trade and human rights, and would provide a substantive overview of and practical experience with HRIAs, their value, and how to design them for effective use.

(b) James Harrison, Professor of Law, University of Warwick

Previously, the debate mostly focused on how international trade law prevented states from taking sanctions against other states committing human rights violations. Currently, the focus has shifted, with the recognition that international obligations may have potential impacts on states' own populations, potentially leading to violations of the right to health, to food, to housing, etc. However, there is little engagement and no consensus about the precise linkages between these two areas of law. Trade specialists often do not understand the obligations to which human rights give rise, or argue that the nature of the obligations are so vague and unclear that they are not relevant in trade.

Previous experience with economic and environmental SIAs of trade agreements indicates that for an HRIA to be effective, it should:

- use core human rights principles and obligations, as manifested in comprehensive qualitative and quantitative indicators;
- properly take into account complicated causality issues and examine other causes for human rights violations;
- use participatory and interdisciplinary approaches;
- limit findings to impacts of specific provisions of an agreement, identified through scoping studies;
- arrive at concrete conclusions and recommendations that specify who needs to take what action to remedy the identified violations.

When conducted with due regard to these factors, HRIAs are more effective than other approaches in identifying potential trade and human rights conflicts in a more nuanced and defined way. This would ensure that policy-makers confront issues that would not normally be part of their agenda and provide a strong basis for concrete suggestions for alternative strategies more attuned to the needs of the extremely poor and marginalized, thus helping to make conflicts manageable and enhance mutual understanding. However, HRIAs will only render results if they succeed in engaging trade policy decision-makers. Poorly constructed assessments have either no influence or, worse, could be utilized to short-circuit debates about the human rights impacts of trade agreements. Also, the input of relevant UN agencies in undertaking further methodological work is crucial to realize the potential of HRIAs as a powerful tool for guiding the inter-dynamics between trade and human rights.

(c) Sanya Reid Smith, Legal Advisor, Third World Network in Geneva

The HRIA conducted in 2006 by the National Human Rights Commission (NHRC) of Thailand investigated the likely human rights impacts in four areas (agriculture, environment, intellectual property rights (IPRs), and services and investment) of the free trade agreement (FTA) then being negotiated with the US. Besides the methodological challenges described in Professor Harrison's work, the following issues are noteworthy:

- the importance of access to negotiated texts and other binding understandings (footnotes, etc.) incurred during negotiations, but which do not appear in the final text, in order to comply with human rights obligations of transparency and participation;
- the need to assess the above-mentioned understandings before an agreement is finalized, in order to prevent human rights abuses, as withdrawals are difficult and may carry ongoing obligations (e.g. investor protection obligations imported from bilateral investment treaties) that have an impact on human rights.

For example, the effects of stronger IPRs take up to 15 years before they level, as shown by estimations made with the WHO model. Thus, HRIAs need to have a long-term perspective. The NHRC concluded that an eventual agreement would affect many economic, social and cultural rights, instead of furthering Thailand's





development. It recommended that the negotiated text be disclosed to the public and that public hearings with affected populations be held.

Often, negotiating texts for FTAs are based on templates from the developed country, amounting to a yes/no decision from the developing country, with little room for adjustments even if an HRIA indicates possible negative effects. When flanking measures are possible, budgets may be lacking or measures may not have the desired effect. For example, the SIAs carried out under the Euro-Mediterranean Association Agreements found that there would be adverse effects on poverty, hunger, education and health, both in the short and the long term. Mitigating these effects would be costly and technically difficult, and the prevention of adverse effects was not guaranteed. However, (developing) countries can improve their negotiating process, as was done in Thailand after the HRIA. Also, developed countries must refrain from imposing trade obligations that violate human rights in partner countries. HRIAs could be a useful guiding tool to avoid such situations.

(d) John Clarke, Deputy Permanent Representative of the Delegation of the European Commission (EC) to the International Organizations in Geneva

The EC has been legally obliged to carry out SIAs of all its major trade policies and negotiations for the past ten years. SIAs analyse potential impacts within the EU as well as in partner countries, and propose flanking measures to mitigate adverse effects and to amplify the benefits of an agreement. They are undertaken by independent consultants before the start and during the lifetime of a negotiation. The results are factored into the design of the negotiations and often determine their level of ambition. Under the methodology, a number of potential outcomes are selected and tested. Through the course of an SIA, there is a high degree of transparency and stakeholder involvement and consultation. SIAs allow potential negative outcomes of different policy scenarios to be identified.

The EC has not carried out HRIAs specifically, as an appropriate methodology remains to be developed. Also, the EC considers that there is no automatic link between trade agreements and human rights, but that such links depend on the agreement content and how it is implemented. Nevertheless, SIAs do identify possible human rights challenges, notably by looking at issues of decent work, gender equality, food security, access to essential medicines and the right to development.

It is important to integrate SIAs into the negotiating process at an early stage, so that they help design the negotiating mandate, assess the economic, social and environmental consequences of particular policy options, and provide information within a useful time-frame and in a way that can be used by the legislator. SIAs are one among many public processes during negotiations, and policy directives and negotiating mandates are public. Concluded agreements become public, with a 3-9 month period of reflection and consultation.

(e) Simon Walker, PhD candidate, Utrecht University

A key benefit of the HRIA methodology over other approaches is that it offers a rigorous analytical framework of legal norms and standards. However, such a rigorous approach requires more data collection and analysis, which can cause HRIAs to be time-consuming and unwieldy. While an SIA focuses on process and outcome indicators, HRIAs added value is that they also take into account local institutions and accountability mechanisms, which offer the potential to influence the negotiation and implementation of agreements. Experience from the Costa Rican Constitutional Court illustrates the potential relevance of human rights accountability mechanisms in the context of trade negotiations. Also, the human rights framework is comprehensive – it covers civil, political, economic, social and cultural rights, many of which could potentially be affected by a trade agreement. The human rights analysis therefore starts broadly, narrowing down the issues and explaining why specific areas (rights) are excluded. On the other hand, an SIA looks at a predetermined set of indicators, the choice of which is not always clear and which risks excluding some potential social impacts from the outset.

A risk of HRIAs is that they can become politicized. Human rights language is convincing for some and threatening for others. Also, because they are based on clear normative standards, HRIAs are more likely to hold specific actors accountable compared to other means of assessing the impact of trade. In this regard, the relative ambiguity and flexibility of an SIA might provide a more comfortable space for governments, among others.

There is no definitive conclusion on whether benefits outweigh risks, as this will depend on the specific situation. HRIAs are more likely to yield tangible results when they take place in an environment where there is an active and open civil society, an existing system of legal protection of human rights and functioning

institutions that provide legal protection and remedies for human rights violations. Human rights practitioners and academics might be comfortable with the methodologies, while civil society organizations and national human rights institutions might use them as lobbying tool, and governments might be less keen.

2. Questions and comments by the audience

Isolda Agazzi (Alliance Sud) asked which specific rights and trade provisions should HRIAs focus on? Would this make HRIAs easier and shorter? What other HRIAs have been executed so far?

Professor Harrison replied, saying that several resources document HRIA methodologies, such as Mr Walker's book and www.humanrightsimpact.org. Another study was prepared by the Ecumenical Advocacy Alliance (EAA) analysing the impact of the liberalization of the rice market in Ghana, the Philippines and Honduras. The study uses both macro-economic analysis and participatory studies. The HRIA methodology is generally stronger than that of SIAs because it looks at a wide range of impacts instead of at a set of predetermined issues.

Ms Reid-Smith said that a cross-cutting look at trade agreements is necessary. For example, the right to health might be affected by several chapters of an agreement, for example, through agriculture, as lower tariffs lead to loss of tax revenues and lost incomes for farmers competing against imports. Similar effects could come from industrial goods and service liberalization, as, for example, the privatization of water services leading to higher prices. Usually, governments approach negotiations in "silos", with teams on agriculture, IPRs, etc. Although they are more aware nowadays, a comprehensive approach is still lacking.

Mary Footer (University of Nottingham) asked whether cultural rights, specifically the rights related to local and indigenous communities and traditional knowledge, are covered in HRIAs.

Mr Walker said that cultural rights are one of the areas that an HRIA would assess. For example, they can be looked at in terms of non-discrimination as well as under soft law (Declaration on the rights of indigenous peoples).

Paolo Ghisu (ICTSD) asked for examples where SIAs have influenced trade policy.

Mr Clarke replied that as a result of several SIAs, the EC has reduced its ambitions in specific negotiations. For example, it no longer pursues TRIPS-plus provisions. It also has excluded public interest service sectors, such health and water. For instance, in the negotiations with Ghana, the latter requested exclusions in poultry, where the SIA had demonstrated negative effects on the Ghanaian rural population.

Ann Weston (North-South Institute) wondered whether SIAs use gender-disaggregated data when available. If not, does the EC assist countries in producing that data, without which it is difficult to assess impact on gender and to mainstream gender into policy-making in general? She asked whether outcomes and impacts of trade agreements are monitored over time.

Mr Clarke said that including gender equality in SIAs is legally required. Gender-disaggregated data is used where available. The EC is working with the ILO on a programme for developing countries to monitor local labour markets. EC partnership agreements include mechanisms to monitor outcomes over time, usually together with the partner country. However, some countries are reluctant to include any type of monitoring provisions into the agreement.

Sorasak S. Sorakit (WHO), as a former participant in the Thai-USA negotiations, commented that the Thai government's treaty-making process foresaw stakeholder consultations, including civil society and business. Complexities had been underestimated at the outset of the negotiations. Therefore, a mechanism was set up to improve the process. However, the treaty-making mechanism under the new Thai constitution is partly problematic and has led to boundary problems.

Manzoor Ahmad (FAO) questioned whether the EC's trade policy is really concerned with human rights and not with economic and political considerations, considering, for example, the EC's GSP-Plus scheme and the exclusion of food products in specific negotiations.

Mr Clarke replied that the GSP-Plus scheme gives additional incentives to countries when they sign and implement specific human rights obligations. It is not inflexible and is reviewed regularly. The question of how the EC uses trade benefits to enhance human rights could be the subject of another debate.

Olga Lozano (Research & Opportunities) said that, considering that there is a lack of standards for NGOs to conduct impact assessments, she wondered whether



HRIAs could help to improve the accountability and responsibility of NGOs.

Mr Harrison replied that the EAA study is a good example of an HRIA study undertaken by an NGO. Still, there is a need for further guidance from UN agencies. Another example is the Canadian Council for International Cooperation, which has also worked on a series of studies, in particular concerning investments. Despite the methodological shortcomings, he encouraged civil society organizations to engage in HRIAs.

Ms Smith-Reid urged statutory national human rights commissions to also undertake HRIAs.

Materneau Chrispin (OHCHR) asked how to integrate trade-offs into HRIAs. What if a country decides not to enter into an agreement after a negative HRIA and later is forced to do so because its partners go down that path? How could short-term negative impacts be balanced against long-term positive effects?

According to Mr Harrison, human rights violations resulting from a trade agreement cannot be offset by concessions. Governments are obliged to address human rights violations as they occur. HRIAs are part of a broader process to put pressure on governments and other actors to take human rights implications seriously. When an assessment is *ex post*, it is not possible to renegotiate, but domestic policy changes and mitigation measures can be requested. Such *ex post* studies can also be used as a basis for *ex ante* studies in other countries, thus creating further robustness in the methodology.

Ms Reid-Smith said that, ideally, HRIAs are done *ex ante*. However, the content of an agreement is not known at that stage, unless the negotiation is based on templates. A staged process is also feasible. As previously mentioned, many costs will increase over time, while benefits in terms of market access will erode as other countries sign FTAs with the same partners. Countries have withdrawn from FTA negotiations, albeit not necessarily on human rights grounds – as, for example, in the case of the Southern African Customs Union, because of concerns over IPR and access to medicines.

Mr Walker added that HRIAs look at the accountability of governments and other actors. They also assess human rights accountability mechanisms. Environmental impact assessments are better in addressing intergenerational issues.

Tom Godwin (UK Mission) remarked that it is very useful for trade people to have such an opportunity to exchange views on human rights issues. He asked what the legal relationship is between the two regimes.

Mr Harrison replied that human rights bodies call for HRIAs as a way to influence outcomes in trade agreements because they do not have the power to stop them. In reality, the power with regard to the issues discussed lies within the trade law system.

Kevin Koh (OHCHR) asked what the perspective of the WTO is on human rights, and through what channels this expresses itself. What is the linkage between the indicator work undertaken by the OHCHR and the HRIA methodology, and how can fragmentation be avoided?

For Mr Walker, there is a clear link. However, the OHCHR indicator framework has been developed for treaty body reporting and would need to be adapted for assessments of trade agreements.

3. Conclusions and way forward

Ms Marceau concluded that the debate on linkages and the collaboration between the two regimes, although still a work in progress, has come a long way in the past ten years, as witnessed by the issues raised during the session. As an example, in the agriculture negotiations, Mauritius has requested more flexibility to fulfil its human rights obligations, while other WTO members say that agricultural subsidies are a human rights violation because they can lead to loss of livelihood for farmers in developing countries. While human rights are not explicitly mentioned in other areas of the WTO, public morals are: the Singapore Declaration, for example, spells out WTO members' respect for minimum labour standards, stating that comparative advantage cannot be evoked to violate such standards. Human rights law is strongly linked to WTO work, as all WTO member states are also signatories of human rights treaties which oblige them to respect human rights. Despite the current developments and progress in the existing interrelationship between human rights and trade – including, for example, the use of approaches such as HRIAs – there is still much potential for stakeholders to contribute to better cohesion and complementarity between the two.

M. Increasing the transparency of SPS measures

Wednesday, 30 September 2009 – 11.15 ~ 13.15

Moderator

Mr Scott Andersen – Sidley Austin, LLP

Speakers

Ms Marlynn Hopper – Standards and Trade Development Facility

Mr Valentin Zahrt – European Centre for International Political Economy

Dr Tim Josling – Stanford University, IPC Member

Discussants

Dr Alex Thiermann – World Organisation for Animal Health (OIE)

Dr Pedro de Camargo Neto – Former Brazilian Secretary of Agricultural Production and Trade, IPC Member

Ms Gretchen Stanton – Senior Counsellor, Agriculture and Commodities Division, WTO

Organized by

The International Food & Agricultural Trade Policy Council (IPC)

Report written by

Ms Charlotte Hebebrand and Ms Christine St. Pierre –
International Food & Agricultural Trade Policy Council (IPC)



Abstract

Sanitary and phytosanitary (SPS) measures are necessary for the protection of human, animal and plant health, and play an important role in facilitating international trade. Yet businesses and exporting countries also express concern about having insufficient harmonization and advance notice of new measures, and about a perceived lack of transparency in the development and application of some measures. This session explored how such concerns could be addressed.

The session focused on how the existing SPS notification system could be better implemented at the national level; presented a proposal to include more monitoring of SPS measures in the Trade Policy Review Mechanism (TPRM) carried out by the WTO; discussed efforts to aggregate the effects of SPS measures so as to provide an overview of the trade impact of countries' regulations; and reviewed efforts to track the implementation of internationally agreed SPS

standards. The panel included representatives of the WTO, the Standards and Trade Development Facility (STDF), an international standard-setting body and the private sector. Panellists concurred that the SPS Agreement plays a vital role, but that WTO members can go further in their implementation of the Agreement's provisions.

Issues covered included:

- making better use of the SPS notification system;
- the WTO's TPRM and treatment of SPS measures;
- efforts to track adherence to international standards;
- private sector concerns about long delays and insufficiently complete responses to import approval requests.





1. Presentations by the panellists

(a) Scott Andersen, Sidley Austin LLP

Mr Andersen opened the session by stating that more than 10,000 SPS measures have been notified to the SPS Committee since the Agreement's entry into force in 1995. The increased pace of notifications has coincided with ever-decreasing tariffs on food and agriculture products. Given the tension between the rights to apply SPS measures and the temptation to abuse them to satisfy domestic protectionist interests, Mr Andersen said that it is important to evaluate how increased transparency in the application and development of SPS standards could lead to fewer trade barriers, particularly for food and agricultural products from developing country producers.

(b) Marlynn Hopper, Standards and Trade Development Facility (STDF)

Ms Hopper spoke about the ongoing need to improve the functioning of the SPS notification system in developing countries, so as to create an operational and effective framework for managing and coordinating work on SPS measures at the national level. WTO members are already supposed to meet certain transparency requirements under the SPS Agreement, and even in emergency situations, members are required to notify their measures to the SPS Committee immediately. In practice, however, such notifications do not always occur satisfactorily, and developing countries in particular are not able to use the notification mechanism effectively.

“Capacity building should include deeper partnerships between public and private stakeholders to resolve SPS issues and increase the flow of trade”

In an effort to aid developing countries in addressing SPS issues, the WTO Secretariat has implemented a mentoring system, in which 18 countries are participating. While the mentoring system is making some headway, a high-level commitment is needed from all members to overcome institutional rivalries at the domestic level and lack of incentives to notify. At the same time, capacity building should include deeper partnerships between public and private stakeholders to resolve SPS issues and increase the flow of trade.

(c) Valentin Zahrnt, European Centre for International Political Economy (ECIPE)

In his presentation, Mr Zahrnt argued that the WTO's TPRM should more consistently and thoroughly describe how a country arrives at its SPS measures and regulations. Through TPRs, the WTO could show which SPS measures are most often criticized by trading partners. Increasing transparency through TPRs would reduce the dependence on the WTO dispute settlement process to resolve SPS issues.

In order to provide this information, however, the TPRM would have to be transformed to a more mechanized structure, and a number of questions would have to be addressed. Chief among these is whether members would agree to have the WTO Secretariat perform this work, and would willingly improve the quality of their notifications. All measures, not just those that go beyond international standards, would have to be notified in order to have a complete set of information. Beyond these challenges, the information collected would also have to be accessible to the private sector in order to be of any use.

(d) Tim Josling, Stanford University, IPC Member

Dr Josling spoke about efforts under way to construct comprehensive databases of SPS measures and to measure the aggregate impact of SPS standards on market access. The TRade Analysis and INformation System (TRAINS) database maintained by UNCTAD relies on SPS notifications to the WTO, but is not up to date with current measures. He also described an initiative that emerged from UNCTAD's Eminent Persons Group to set up a multi-agency study team (MAST) to coordinate and promote work on collecting information on non-tariff trade measures, and a new database for US import regulations for fresh fruit and vegetables, which incorporates detailed information from APHIS manuals as they are applied in the field. By a simple classification of the types of measures (origin restrictions, treatments, destination restrictions, pre-clearance and systems approaches) analysts have been able to link the SPS regimes with trade impacts. The other two initiatives he referred to were an NTM-impact study financed by the European Commission, which is developing a series of Working Parties on the methodological and analytical underpinnings for an SPS database, together with a series of case studies; and an effort undertaken by the ICTSD in Geneva to explore the possibility of devising a comprehensive

indicator of market access (CIMA) that would combine tariffs, subsidies and other market instruments with the compliance cost of meeting importer regulations.

Dr Josling called for institutional leadership and adequate resources to expand on these efforts, and noted that the databases being developed could be important resources for developing countries. He emphasized that SPS standards are specific and bilateral much of the time, which makes it difficult to organize them into an easily searchable and comprehensive database. In addition, not all SPS measures can be designated by tariff lines, and categories need to be developed to describe these measures. It would also be helpful for databases to indicate how broadly one country's measure is used by other countries. Dr Josling pointed out that the lack of classification of SPS standards is in some ways similar to that faced in the 1980s, when information about the complex of farm support policies in developed countries was descriptive, patchy and opaque. Through the initiative of the OECD and the USDA/ERS (building on earlier work at the FAO) the process of categorization and aggregation of policies was begun. Now, twenty-five years later, quantitative and comparable information on farm support programmes is readily available. Such quantifications are regularly used in models to make estimates of economic and trade implications of domestic support. Though SPS regulations are in some respects more difficult to handle in this way, some form of coherent and comprehensive database for these potential trade barriers is needed.

(e) Pedro de Camargo Neto – Former Brazilian Secretary of Agricultural Production and Trade, IPC Member

Dr de Camargo Neto shed light on another need for transparency, as he spoke about the slow responses to import approval requests for pork from a Brazilian region declared free of foot-and-mouth disease by the World Organisation for Animal Health (OIE), and the resort by trading partners to “political” rather than animal health science. Dr de Camargo Neto argued for guidelines requiring expeditious and comprehensive responses to formal import approval requests. He pointed out that there is more potential for increased market access in SPS than in the Doha Round of negotiations.

Exporting governments must be able to provide evidence of the safety of their products, and, in the realm of animal health issues, these countries must have a strong veterinary authority. At the same time, however, exporters often face lengthy delays in receiving approval,

even when they meet all importing requirements. In the case of Brazil, the government has fully cooperated with all importer requests – meeting with officials time and time again – yet approval still has not been granted for its pork products. This case highlights a potential role for the WTO in helping facilitate more rapid importer recognition of exporter compliance.

(f) Alex Thiermann, President of the Terrestrial Animal Health Code, World Organisation for Animal Health (OIE)

Dr Thiermann spoke of OIE's efforts to move countries towards improved implementation of animal health standards. He pointed to a tool on the OIE website that evaluates veterinary services at the country level, and includes 140 competency areas. In animal health cases, it is not enough for the OIE to recognize a country or region as disease-free; the exporting country must also work to build credibility and trust with the importing country. Communication between countries on SPS issues is essential, and the OIE works to promote both internal and external dialogue outside times of crisis.

Dr Thiermann drew a distinction between countries that do not know how to comply with OIE guidelines, those who know but cannot comply due to capacity restraints, and those who are able to comply but choose not to comply. The first two categories of countries can be assisted with improved information and capacity building, the last cannot. The OIE is a strong advocate for having a sound scientific basis for SPS measures, but the organization does not have a mandate to enforce its guidelines. The OIE does address the most flagrant violations of international standards, but is limited on the enforcement side.

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

Ms Stanton indicated that the notification system could be improved, in particular through more detailed submissions by WTO members, although members may not be motivated to provide greater detail. Ms Stanton also expressed her belief that the information provided by notifications must be managed and conveyed appropriately; currently, many developing countries find it impossible to handle the volume of information they receive related to SPS standards.

She raised a number of questions that notifications should address, including why the standard is in place



and how it fits with international standards. Also, further work is required to put a price tag on standards and link them more directly with trade. The WTO has a role both in identifying problems with SPS measures and in assisting those who recognize problems, but lack the resources to address them.

2. Questions and comments by the audience

The issue of private standards was raised: a participant inquired about efforts under way to complement the compilation of government standards with similar information about private standards. Panellists responded that standards from the private sector are more difficult because they often focus on quality attributes rather than food safety, animal and plant health. The extent to which WTO (SPS and TBT) rules apply to private sector standards is unclear and this legal uncertainty is unlikely to be resolved. There are now efforts by private sector consortia to compile, and even harmonize, private sector standards, but these are still in an early stage.

The discussion also highlighted the lack of a coordinated strategy within some countries on SPS measures. The country may have representatives at CODEX, OIE and WTO meetings, but these delegates are not talking to one another or working together effectively.

A third issue that arose was how to enforce the SPS Agreement in a meaningful way. Since the OIE and other international standard-setting bodies do not have enforcement authority, the import approval process can drag on for several years. Presently, the only recourse available for an exporting country is to bring a case before the WTO dispute settlement body, but this is a very time- and resource-intensive exercise. Moreover,

SPS disputes are not always clarified in a straightforward manner, since they involve more technically and scientifically complex questions than trade disputes over tariffs or domestic support.

3. Conclusions and way forward

The session closed with a number of recommendations on how transparency can be furthered:

The implementation of the SPS notification system needs to be improved at the national level, in particular in developing countries. WTO members should also be encouraged to provide more detailed information on their notifications.

Although importing countries should always have the right to refuse an import approval request if this is scientifically justified, they must provide more timely and substantive responses to such requests. Guidelines could be drafted in the SPS Committee to clearly spell out such requirements.

Trade practitioners would benefit from increased efforts to provide an improved, comprehensive overview of national regulatory processes and SPS measures. Clearer explanation of the reasons for non-adherence to internationally agreed standards is required.

Efforts to determine the trade impact of SPS measures should continue so that the existing piecemeal information can be translated into a comprehensive database that could also be used to monitor improvements in market access and focus attention on remaining problems.

IPC publications on food standards can be accessed at http://www.agritrade.org/policy/food_technology.html

N. Private environmental standards: Opportunities and challenges

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr John Tucker – Chief Executive Officer, Standards Australia

Speakers

Ms Evah Adega Oduor – Kenya Bureau of Standards

Ms Agni Kalfagianni – University of Stuttgart

Mr Simon Bolwig – Risø National Laboratory for Sustainable Energy

Organized by

WTO – Trade and Environment Division

Report written by

WTO – Trade and Environment Division



Abstract

The recent non-coordinated proliferation of private environmental standards poses unique trade-related challenges to the design of global governance in the environmental field. The session addressed both the opportunities that these standards can offer in terms of market access, particularly for small producers in developing countries, and the challenges posed by their implementation – e.g. their diversity, proliferation and criteria; their increasing emergence as *de facto* mandatory standards; and their costs, in particular their conformity assessment and labelling costs. The session also

discussed the potential environmental impact and effectiveness of private environmental standards both in the domestic and the global markets. Concrete examples of such standards were examined, including product carbon footprint schemes, emission labelling, good agricultural practices, good management practices, and energy efficiency standards. Suggestions were also put forth on the need for harmonization of both standards and methodologies as well as the need for governments and international organizations to re-examine their role in this domain.





1. Presentations by the panellists

By way of introduction, the moderator, Mr Tucker (Standards Australia), briefly outlined the complexity in differentiating the various types of standards, and provided a few key definitional elements. While government bodies traditionally adopted regulatory requirements, he pointed out that non-government voluntary standards could also be referenced in legislations, and therefore become *de facto* mandatory. Some general distinctions could however be made between private standards, also called “consensus” standards, and mandatory standards, or technical regulations (pursuant to the terminology used in the WTO Agreement on Technical Barriers to Trade – TBT). On one hand, private standards were commercial and aimed at differentiating products through certification. They were also often based on multi-party broad-based consensus and could be international, regional, or national in nature. Mandatory standards on the other hand – or technical regulations in their TBT terminology – were set by public institutions, and compliance was obligatory.

(a) Evah Adegga Oduor, Kenya Bureau of Standards

In Ms Oduor's view, compliance with private environmental standards developed by private organizations could create trade opportunities, as this could help small producers export their products more easily. However, the proliferation of standards, especially when they were set without proper consultation, increased costs for small suppliers, who often needed to perform an individual conformity assessment procedure for each standard. The duplication of conformity assessment procedures was both expensive and time-consuming. Moreover, private standards could conflict with those set by governments. They could even become *de facto* compulsory since suppliers' non-compliance with them usually meant their exclusion from the market.

Three key recent developments could be outlined in the development of private standard schemes, especially in the food sector. First, the monitoring of product and process characteristics was increasingly done through voluntary management systems. Second, the number of coalitions of firms setting private collective voluntary standards had increased. And third, private standards were increasingly used in the context of global business-to-business practices. Ms Oduor provided a number of

reasons to explain the recent proliferation of private voluntary standards: the increased food safety concerns and related problems of confidence in regulatory agencies; the legal requirements on companies to demonstrate “due diligence”; the growing attention to corporate social responsibility; the globalization of supply chains and a trend towards vertical integration; the expansion of supermarkets both nationally and internationally; and the global expansion of food service companies.

Ms Oduor explained that, in Kenya, there were about 25 private voluntary standards with an environmental or social basis. Private environmental standards provided ways of differentiating products above and beyond quality. Certain standards could bring a price premium, as for instance some ethical private standards. Others only increased the cost of compliance for small producers without necessarily adding a price premium.

She pointed out that African countries in general faced multiple challenges in the field of private voluntary standards, including their proliferation, a lack of inclusiveness of small-scale farmers, the confusion between private and public standards, and high costs. Conformity assessment procedures posed additional costs. First, exporters incurred the costs of redundant testing and certification for each of the destination markets. Second, even if countries relied on internationally harmonized standards, or accepted as equivalent another country's standard, they often did not accept an exporting country's conformity assessment results. She suggested that exporting countries had their own certification process recognized by importing countries in order to avoid extra costs of compliance.

Ms Oduor noted that private standards were increasingly becoming an entry condition for both national and international markets. In some cases, small producers could be excluded from a market or prevented from receiving a price premium if they did not meet certain private standards. There were concerns that these standards could have a negative impact on equity and livelihoods if they were not designed carefully to integrate the views and concerns of small producers. While high investment costs, including physical equipment or buildings, audit and certification costs, record-keeping or managerial skills could pose a real challenge for small-scale producers, these costs could be alleviated by the assistance of down-stream processors and retailers, or through government training and technology transfer.

Working to overcome the challenges in implementing private environmental standards could lead to a wide range of benefits, including improved worker conditions and increased domestic food safety. Opportunities also lay ahead in conformity assessment recognition agreements and the harmonization of voluntary standards on common platforms, such as GlobalGap. There was an opportunity for increased market access as complying producers with certain private standards (such as Fairtrade, Ethical Trading Initiative, Max Havelaar, Rainforest Alliance, etc.) could gain premiums. In moving ahead, one critical question should be kept in mind: how could standards be developed that met the need of large distribution networks while at the same time helping support small producers?

(b) Simon Bolwig, Risø National Laboratory for Sustainable Energy

Mr Bolwig's presentation focused on climate-related private standards, and in particular carbon footprinting schemes. Carbon footprinting involved placing a label on a product, displaying the total amount of greenhouse gas emitted during the life cycle of the product. Life-cycle analysis was a way of engaging all value chain actors. These labels were considered useful because they helped prioritize greenhouse gas reduction efforts along the entire supply chain, compare the footprint of similar products delivered by different supply chains (e.g. from different countries of origin), compare the footprint of similar products with different attributes (e.g. Coke cans versus Coke bottles), and they signalled a company's commitment to climate-change mitigation.

With regard to private schemes and standards, there were about 15 private carbon footprint schemes worldwide already in operation, and over 3,000 footprinted products, mostly by Carbon Labelling Company (UK), owned by the Carbon Trust. So far, the small scale of these schemes meant a low impact on developing country exports. However, there was growing concern as these schemes proliferated without a universally accepted methodology for calculating a product carbon footprint and limited disclosure by private companies. Different schemes often had different criteria and sometimes the rules for calculating the product carbon footprint appeared to be biased against developing countries, as they used less capital-intensive methods. However, there was little evidence of bias against distant producers.

Mr Bolwig noted that many challenges would arise for developing countries as product carbon labelling was

scaled up, namely the high cost of performing life-cycle analyses, the irrelevance of existing life-cycle analysis databases to developing-country conditions, and the lack of influence these countries had in standard-setting.

Another example of carbon-related standards was those focusing on emissions from transport, set by private organic standard-setters. Major private organic standard-setters addressed this issue differently. For instance, Bio-Suisse (Switzerland) had, since the 1970s, an informal ban on certifying organic products imported by air, which was formalized in 1999 (with special provisions for spices). The Soil Association (United Kingdom) was looking at restricting or banning air-freight of organic products, however the proposal was shelved after consultations (Kenya in particular voiced concern). In analysing this issue, there had been no, or only selective, use of scientific work on climate effects of transportation relative to other emission sources.

Organic certification was of interest to farmers and exports because it provided access to a price premium, access to an expanding market, protected revenues and margins during low price cycles, allowed product differentiation, improved image (through CSR), and gave access to technical advice and other resources. However, when such certification occurred through organic contract farming schemes, added benefits came from cheaper (group) certification to standards, increased security of supply for exporters and security of demand for farmers, and increased access to training and inputs.

Recent research on the impact of organic practices and organic contract farming schemes on revenues helped shed some light on the usefulness of these standards. Using three examples of contract farming, where participation was high (ranging from 24 to 73 per cent of products being sold through the schemes), Mr Bolwig showed that participation led to an increase in net revenue from organic crops of between 46 and 75 per cent. Additionally, farmers who simply adopted organic practices (whether in the scheme or not) also saw an increase in revenue of 0 to 30 per cent. Certified organic farming gave benefits to farmers and exporters through tangible and transparent incentives. As of yet however, the full potential of these arrangements was far from realized. He suggested that donor support to certification and training could reduce the exporters' perceived risks in "going organic".



(c) Agni Kalfagianni — University of Stuttgart

Ms Kalfagianni started her presentation by highlighting that the global food industry was facing today a plethora of challenges, including food insecurity, climate change, pollution, water shortages, resource-intensive dietetic shifts, increasing competition for the use of natural resources, and environmental concerns with regard to agriculture. Additionally, the food sector itself was a source of environmental strain, contributing 30 per cent of the EU's greenhouse gas emissions.

At the same time, she noted that capacities and functions in global agrifood governance had shifted. Due to tremendous growth in the size and coverage of retail food corporations, and governments' shift from control to oversight, retail food corporations were in a position today to design and implement private food standards and certification schemes that acquired a *de facto* mandatory nature for all other actors in the supply chain. This raised democratic concerns regarding the attention of retail standards to the environmental well-being of the food system, and the consequences of these standards for the environmental and social sustainability of the food system.

Retailers were under pressure to improve their environmental performance and often did this by applying standards through farm practices schemes, such as Good Agricultural Practices (GAP). Examples of such standards included Tesco's Nature's Choice Scheme, Carrefour's Quality Line Products and GlobalGap. Tesco's Nature's Choice Scheme was an integrated management scheme which set a wide range of standards, including rational use of plant protection products, fertilizers and manures, energy use and recycling requirements. Carrefour's Quality Line Products were the result of an integrated approach to farming, including careful use of water, integrated pest control, respect of animal welfare, absence of chemical treatments after harvest, avoidance of GMO products in animal feed or in plant production. Similarly, at the international level, GlobalGap was the only retail-initiated standard that promoted some environmental considerations, including wildlife conservation plans and energy efficiency.

In addition, Ms Kalfagianni noted that many supermarket chains entered organic retailing and that organic standards were, in fact, more stringent. They included a number of environmental considerations, such as the prohibition of conventional pesticides, artificial fertilizers,

GMOs, ionizing radiation, food additives, antibiotics and growth hormones for animals. Some retail standards also included manufacturing processes and packaging (e.g. recycling programmes) which were part of Good Manufacturing Practices. Also, many supermarkets operated under ISO 14000 standards, although it was estimated by some analysts that these standards were quite low and had limited objectives. And some leading retailers, such as Walmart, Carrefour, and the EU-wide EuroCommerce with the European Retail Round Table, were also adopting energy efficiency initiatives.

However, private voluntary standards were also cause for concern: GAP projects were often small in scale and hence had limited impact; voluntary reporting (in most cases) did not induce major polluters to adopt more environmentally friendly practices; certain critical environmental issues, such as the environmental externalities, the environmental costs of the physical relocation of shops (e.g. at the outskirts of the city) were not covered by the retail standards; the implications of environmental change for human health; and the environmental auditing of retail operations was currently incomplete. The question remained whether retail environmental standards would be high and broad enough so that environmental benefits could be considered significant.

Finally, Ms Kalfagianni pointed out that the adoption of private standards also carried social externalities, particularly in developing countries, including pushing small farmers out of the market in favour of large agribusiness and food processors, due to the high costs of implementation. Already-vulnerable members of the population, including the poorest, landless, and female-headed households, were often hardest hit. The sustainability of the global food system was complex and involved all these different issues. The adoption of stringent standards was desirable, and private initiatives would continue to play a dominant role. However, she recommended that states and inter-governmental organizations resume their responsibility in global food governance and create appropriate public regulatory frameworks in order to foster transformations towards an environmentally and socially sustainable food system.

2. Questions and comments by the audience

Several specific questions were posed. First, Ms Oduor was asked whether more liberal regimes on the movement of persons, or an increase in the number of national certifiers being able to perform conformity



assessment, would have an impact on the high costs of certification. She responded that Kenya already had people trained to perform certification, and that the issue was that the certification was not accepted as equivalent to a certification carried out by a person from the importing country. Capacity and recognition were the main challenges faced by Kenyan exporters.

A comment was then made from the floor that perhaps the Kenyan government should adopt a policy on good agricultural practices that would provide supportive policies at the national level and raise the quality of goods; this would allow producers to meet standards more readily. Additionally it was mentioned that discussions were under way to create a UN forum on sustainability standards which would more systematically deal with the challenges small producers faced. It was also noted that benchmarking was a valuable way to avoid having repeated audits for the same product.

Mr Bolwig was requested to expand on labelling schemes that had intrinsic biases against developing countries. He responded that the exclusion of transportation of workers (e.g. driving a car to work) would create a bias against developing countries. However, the documentation provided by private schemes was often not detailed enough to provide accurate answers on this aspect.

When asked whether an international standard-setting body was needed in order to ensure more inter-governmental responsibility, Ms Kalfagianni responded that the limit of private institutions as compared to public institutions was their lack of accountability. However, she suggested that no new public body was needed; instead existing bodies could be strengthened.

One final question was asked to all panellists on how existing WTO disciplines (such as non-discrimination, necessity, transparency, and the use of international standards) could help address the problems posed by private standards. Ms Oduor responded that, from a developing country's point of view, private standards were a barrier to trade due to their ambiguity and

differences across importing markets. This vagueness needed to be cleared up and a harmonized approach was necessary, perhaps through the ISO. Additionally, new standards needed to have a forum where everyone could bring up the issues, and be a part of the process. Mr Bolwig made the point that certification should be done locally to reduce cost. Additionally, he said that there was a need to lobby in the countries where the standards were being created and that cross-country cooperation would be really useful in this regard. Finally, Ms Kalfagianni observed that environmental issues were going to become more important in food supply chains. The challenge was to enable small farmers (in developed and developing countries) to implement the standards. This could be done by private and public actors with currently successful examples, including GlobalGap and the Marine Stewardship Council. Moreover, while proliferation was a problem, she was of the view that one big standard was not the solution, as it would only increase the strength of large companies. The way forward was rather through an inclusive, transparent and accountable harmonization process.

3. Conclusions and way forward

The meeting highlighted that private environmental standards were a reality, and the opportunities they hold should be embraced. At the same time, the concerns and challenges raised in this panel needed to be addressed in their future development. Dialogue at all levels of the supply chain, benchmarking, innovation and harmonized verification and methodology were just some of the areas where progress could be made.

Additionally, the panel pointed out that private environmental standards could have both positive (such as improvement of food quality or working conditions) and negative social impacts (including on the poorest households). Given the complex nature of these standards, the general view was that all parties involved, including states, intergovernmental organizations, and standard bodies, needed to rethink their roles. Dialogue, communication, and collaboration would help to tease out the different issues discussed in this panel.



WTO OMC



III. The role of the WTO and the Doha Round negotiations in the midst of the current financial crisis

O. International trade in services: WTO commitments and GATS rules in the context of the current financial and economic crisis

Monday, 28 September 2009 – 16.15 ~ 18.15

Moderator

Ambassador Sergio Marchi – Senior Fellow at The International Centre for Trade and Sustainable Development (ICTSD)

Speakers

Ms Maria Ruiz – Import department, Inditex Group

Mr Frank Almeida de Souza – First Secretary, Permanent Mission of Brazil to the WTO

Professor Thierry Coulet – Professor of Economics, University of Lyon, France

Mr Alejandro Jara – WTO Deputy Director-General

Organized by

Foreign Trade Association (FTA)

European Services Forum (ESF)

Report written by

Ms Flavia Bernardini, Trade Advisor, Foreign Trade Association (FTA)

Mr Pascal Kerneis, Secretary General, European Services Forum (ESF)



Abstract

Services account for more than 50 per cent of GDP in over 85 per cent of WTO member countries, and account for more than 20 per cent of global exports. The liberalization of trade in services encourages development, generates export opportunities and attracts foreign investment. Under the current financial and economic crisis, and the resulting tension over protectionism, the commitment of WTO members to trade liberalization must be assured.

The session covered the following aspects:

- The role the WTO plays in the current financial crisis: Boosting trade liberalization is certainly part of the solution. Fighting protectionism, implementing the scheduled commitments and reducing trade barriers in services should be the priorities for WTO members. The heightened value of the Doha Round of negotiations in the current economic downturn needs to be further stressed. Service companies need negotiations to progress as fast as possible.
- Services and the current financial and economic crisis: Services have proved to be

particularly resilient during the economic and financial crisis. How will this impact service negotiations?

- Services and development: What is the interest of developing countries in the service negotiations? What level of commitment is appropriate for developing countries? What are the opportunities?
- Service companies attach utmost importance to WTO commitments and GATS rules in the current economic crisis. The WTO rules provide companies with the legal security for their investments, which is a key factor for the sustainability of their businesses.
- Opportunities for service companies to use WTO commitments as a tool to secure investments and strengthen competitiveness.
- How can private companies based in developed and developing countries contribute effectively to the progress of the negotiations?
- What is the way forward for the service negotiations?

1. Presentations by the panellists

(a) Maria Ruiz, Tempe, Inditex Group

Inditex Group is a leading group in fashion, including various brands. The group originates from Spain, but nowadays its commercial presence covers 73 countries. The company includes many brands, such as Zara, Massimo Dutti, Stradivarius, Uterque and many others. The rapid expansion of the group is attributed not only to its flexibility and to its innovative approach, but also to its ethical standards. Logistics are very important in order to operate in many different countries with eight different distribution chains, one for each of the Inditex brands. All the Inditex shops in the world receive new products on a weekly basis.

In order to operate properly, the company needs to use cross-border supply services (Mode 1); to set up subsidiaries and branches in a very vast number of countries (Mode 3); and it also needs considerable mobility for its employees and external consultants (Mode 4). Moreover, the company needs to have a clear understanding of the commercial policies, including the customs operations and trade defence instruments of each of the countries where it operates. Dealing with different legal and administrative frameworks is one of biggest challenges that Inditex faces daily. Lack of transparency, corruption, bureaucracy and application of different standard procedures are all obstacles to trade.

The progress and efforts in the framework of the World Trade Organization have certainly contributed to allowing Inditex to operate worldwide, but the speaker believed, from experience, that much is still to be done.

Moreover, Ms Ruiz made the point that having to deal with many different bilateral agreements between various countries might be a considerable challenge to retailers, and that internationally agreed standards and rules applicable worldwide are certainly more suitable to a global business such as Inditex.

(b) Frank Almeida de Souza, First Secretary, Embassy of Brazil to the WTO

Mr Almeida de Souza stated that, in the current financial and economic crisis, international trade can play a very important role. Therefore, utmost importance should be attached to the Doha Development Agenda. In the framework of the Doha Round of negotiations, genuine progress has been made as far as services are concerned.

From a developing country perspective, the Brazilian delegate emphasized the different approach of developing countries in the framework of the GATS: developing countries are committed to progressive liberalization, based on the principle of asymmetry. We cannot expect developing countries to undertake the same level of commitment as developed countries do.

Developing countries should not be asked to make a greater effort than developed countries in this area, because they do not necessarily benefit from liberalization.

Contrary to the previous speaker, the representative of Brazil believed that bilateral trade agreements can often pave the way for successful multilateral negotiations. Bilateral agreements could be seen as part of a learning process.

(c) Thierry Coulet, University of Lyon, France

Prof. Coulet focused on the relation between international trade in services and development. According to statistics, developing countries are facing a trade deficit in their service balance, with the exception of travel and labour-intensive services. It is understandable that they do not have a specific interest in opening their markets to foreign services. Nevertheless, Prof. Coulet believed that services are very important for development, and developing countries have a strong interest in opening their service sectors.

Services are a feature of development. They account for two thirds of the GDP in all developed economies, and for almost fifty per cent of the GDP of developing countries, with the exception of certain LDCs. There is a direct relation between services and development.

Why do services represent only 20 per cent of international trade if they represent a big share of the GDP for all countries? One of the reasons is that the commercial presence abroad is not taken into consideration in the balance of payment. If we consider foreign direct investments (FDI) and the fact that services represents 60 per cent of FDI, then we can have a better understanding of the magnitude of Mode 3.

Not all service activities have a positive impact on development, but certainly infrastructure, telecommunication and financial services are vital to modern economies.





In service negotiations, developing countries' interest is an offensive one as far as Mode 4 is concerned. Developing countries also have an interest in opening their markets to Mode 3 services. Prof. Coulet also noted that the services mentioned above may represent key national interests for developing countries. This point should be certainly taken into appropriate consideration in the debate about service liberalization.

(d) Alejandro Jara, Deputy Director-General, WTO Secretariat

The perception of the relevance of service negotiations within developing countries has changed considerably over time. India and other developing countries are now more interested in services than in former times.

“The perception of the relevance of service negotiations within developing countries has changed considerably over time”

Liberalization is often carried out unilaterally, and not as a consequence of a multilateral trade negotiation. This is probably due to two different factors: the first is that liberalization of services is in everyone's interest; the second is that negotiating service liberalization is extremely complicated, due to the impact on domestic regulation. Another complication is linked to the consequences of the sequence established in Hong Kong, which does not favour progress in service negotiations.

“Opening the service market would benefit both the consumers and the private sector, and improve competition”

The service sector has proven to be more resilient than other sectors during the financial and economic crisis. The WTO has not registered protectionist measures on services. Opening the service market would benefit both the consumers and the private sector, and improve competition.

2. Questions and comments by the audience

The questions raised by the audience dealt with a wide range of subjects. It was noted that the connection between IPR and services should be further explored.

One consultant in the audience referred to the presentation of the speaker from Inditex in order to underline the importance of logistics, a sector that is often not taken into appropriate consideration.

Some participants referred to the presentation of Prof. Coulet, presenting their different views on the relation between services and development.

Other participants referred to the presentation of Mr Jara, and further expanded the idea that service negotiations should be carried out by sector in order to progress properly.

Some of the participants focused on the role of the private sector, and raised the point of the involvement of the private sector in developing countries and developed countries.

Others pointed out that small and medium sized enterprises do not always have access to the WTO, and that the organization should make more efforts in order to encourage their participation.

3. Conclusions and way forward

The panellists expressed different views on the level of commitments that should be requested from developing countries, but they agreed that, in principle, opening the service market would benefit both the consumers and the private sector, and improve competition.

The majority of the panellists agreed that services and development are closely related, because services are a feature of any modern economy.

Organizing sector negotiations for services might be a workable way forward for streamlining the negotiations.

The contribution of the private sector from both developing and developed countries is very important for making genuine progress in the negotiations.

Service companies prefer the WTO global schedule of commitments to liberalization through regional or bilateral free trade agreements, and favour multilateral WTO GATS rules that are applied worldwide to all competitors, instead of discriminatory domestic rules or bilateral regimes that give unfair preferential market access to competitors in a global economy.

Service companies support a multilateral WTO dispute settlement system that gives them legal security through fair and transparent interpretation and application of the agreements.

P. Why global trade matters: World business perspectives on the role of the multilateral trading system and the Doha Round in the context of the current economic crisis

Tuesday, 29 September 2009 – 14.15 ~ 16.15

Moderator

Ms Jacqueline Coté – ICC Permanent Representative in Geneva

Speakers

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

Mr Jukka Seppälä – Vice-Chair, ICC Commission on Trade and Investment Policy; and Vice-President, Stakeholder Relations and Trade Policy, Metso Corporation, Finland

Ms Mireille Quirina – Vice-President Corporate Affairs, Du Pont de Nemours International S.A., Switzerland

Mr James Bacchus – Member, ICC Commission on Trade and Investment Policy; and Chairman Global Trade & Investment Practice Group, Greenberg Traurig, LLP., United States

Organized by

International Chamber of Commerce (ICC)

Report written by

International Chamber of Commerce (ICC)



Abstract

The objective of the panel was to present complementary business perspectives on the role of the multilateral trading system and the Doha Development Agenda in the context of the current economic crisis.

The session addressed the role of the WTO and the Doha Round of negotiations in:

- **guarding against protectionism,**
 - **creating new trade opportunities, and**
 - **strengthening the rules-based multilateral trading system,**
- and examined the role of the WTO in resolving trade disputes.**





1. Presentations by the panellists

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

Mr Kanoria said that 2009 marked the 90th anniversary of ICC, whose mission was to promote world peace through world trade. He described the duty of business as delivering quality goods and services at the best possible price, and said that this was made possible in large part by international trade. He explained that business wanted to push the Doha Development Agenda (DDA) of multilateral trade negotiations forward, and added that the “development” component of the DDA was often misunderstood. Liberalizing trade in agriculture was especially difficult because of the political dimension of this issue.

Mr Kanoria said that the public perception of the WTO DDA in India was very negative, whereas, in China, the WTO was seen as a positive influence to advance the domestic economic reform process. Multilateral trade negotiations also required change at the national level, and this is why business and ICC needed to engage at both the national and international levels. He mentioned the lack of a common market within India, and proposed changes to India’s domestic taxation system as an example of change that could come about more easily if there was a commitment to the goal of multilateral trade liberalization.

He added that ICC was firmly committed to a successful WTO DDA result and that he could not conceive of a DDA failure.

(b) Jukka Seppälä, Vice-Chair, ICC Commission on Trade and Investment Policy; and Vice-President, Stakeholder Relations and Trade Policy, Metso Corporation, Finland

Mr Seppälä briefly introduced Metso, a global technology provider to process industries; the world’s largest supplier of forest industry technology/pulp and paper mills; and also the world’s largest supplier of rock-crushing equipment for mining and crushing industries. Metso also had a third leg: energy solutions (e.g. power plants based on use of biofuels, such as wood, and wood residues); as well as metal recycling equipment for use in the handling of car wrecks, for example.

The key issue Mr Seppälä addressed was how the Copenhagen climate-change conference and the environmental legislation and awareness shape trade patterns and flows.

First: what is environmental technology? Must it be a new invention, or can conventional technology count too? All solutions are needed! The OECD has made assessment criteria for environmental businesses according to their effect, and they rightly include both new inventions and the best available technology in conventional industries.

To understand what is meant by improvements in conventional industries, Mr Seppälä gave the car industry as an example: today’s cars consume about half the fuel cars did in the 1950s – this is not considered dramatic, it is considered a sound evolution. However the same evolution applies to many industries: pulp, paper, chemical, mining, energy – big improvements can be made by the use of different small improvements, especially the use of advanced process automation, IT applications in general, and also materials technology.

If we take another example of conventional industry, e.g. China and the pulp and paper industry: China used to have some 8,000 small paper mills, with the oldest ones established several years ago. Metso supplied the first of these to China in 1956. Generally, in the past, these mills did not have even basic environmental protection systems, and were naturally heavy polluters. From the environmental and trade point of view, China made a significant opening of their market in the 1980s by inviting modern technology, and by starting to replace small polluting mills by large-size mills with the best available technology. With this efficient machinery, they also wanted to become internationally competitive as a paper manufacturer – and in fact they are now the world’s number one, having surpassed the US and Japan. The pragmatic approach of China in taking care of both environmental aspects and world trade challenges, is a good example how these two issues can be mastered simultaneously.

Another example of environmental regulations and trade flows: Metso makes equipment for recycling of metal scrap, such as car wrecks. This equipment makes the cars into bales and then at a steel mill other equipment cuts the bales to be fed into the steel-making process. The EU legislation forcing car wrecks to be recycled has been essential in creating a basis for this business. When steel is made of scrap, some 75 per cent of the energy is saved compared to making steel from iron ore.

Legislation similar to the EU's is now in place also in many other countries, such as Japan.

“Environmental technology is already an important part of international business, but the volumes might grow further depending on the conclusion of the Copenhagen climate-change conference as well as on the outcome of the DDA”

One more example: many industrial processes consume a large quantity of hot water. Previously, the hot water was simply discharged at the end of the process. However, heat-recovery systems can collect this energy and reuse it. Metso had delivered to the Finnish pulp and paper industry water heat-recovery systems which save some 800 MW of energy. This equals the energy supply of a good size nuclear power unit.

These examples show that environmental technology is already an important part of international business, but the volumes might grow further depending on the conclusion of the Copenhagen climate-change conference as well as on the outcome of the DDA.

In preparation for the December Copenhagen Conference, companies already had an opportunity to present their business solutions at the Copenhagen World Business Climate Conference in May; a further high-level opportunity was at the UN on 22 September. In December, in Copenhagen, the political leaders will have their say on which environmental business concepts, products and services will be the preferred solutions.

If a clear priority of technologies is agreed upon this will create a growing market and make financing available for this business.

Even if the Copenhagen conference does not establish preferences for technologies, it can, if successful, set a positive atmosphere for the conclusion of the DDA, which is of course essential for all trade, not only the environmental business.

The idea has been presented that, if the DDA can be concluded successfully, a further step should be taken to have all tariffs abolished for environmental products; the basic idea is nice, but would come back to the

definition of environmental products: as had been seen, drawing the line is not easy. If a clear, quick solution can be met, that would be fine, but on the other hand it might be a good option to focus all efforts rather on general tariff reductions.

As a representative of a company based on a large international manufacturing and supply network, Mr Seppälä preferred clear multilateral solutions – trade solutions which allow longstanding favourable business relations and trade flows, based on competitive advantage – such as a comprehensive DDA.

(c) Mireille Quirina, Vice-President Corporate Affairs, Du Pont de Nemours International S.A., Switzerland

Ms Quirina introduced herself, and said she was responsible for Corporate Affairs at DuPont in Europe, the Middle East and Africa. A lawyer by background, she had taken different roles in DuPont throughout her career, and was now in charge of a team dealing with the many fronts on which a diversified global company like DuPont is involved every day. One of these is obviously trade, and Ms Quirina thanked the audience for the opportunity to share some thoughts on the subject.

Most, she hoped, would be familiar with DuPont, but for the sake of clarity she began with a few words about the company which were connected to the panel's theme.

DuPont describes itself as “a twenty-first century science company”. Its strategies, technologies and products are increasingly geared to big global challenges, what they call “megatrends”: increasing food production to ensure that a growing population can have access to adequate nutrition standards, decreasing the current dependence of our global economy on fossil fuels, protecting people and the planet, and finally, growing in emerging markets.

DuPont is a diversified company; its high-tech materials and products are used by customers in virtually every industry sector in every part of the world.

DuPont, as it exists in 2009, is the result of over 207 years of corporate history that began in 1802, when the DuPont family left France for the United States.

Since their first international sales to the Kingdom of Spain in 1805, DuPont have continued to engage in global commerce, and today, have revenues of 30 billion dollars, and export thousands of products across different markets of the world. This explains,



said Ms Quirina, their vital interest in free and fair global trade. This interest is similar to that of many other global corporations headquartered in the US, and therefore she hoped to provide the perspective of the US industry through the eyes of DuPont.

Ms Quirina's company has long supported an ambitious and successful conclusion to the Doha Development Agenda. Historically speaking, there is some fairness to the statement that corporations, acting in their own short-term interests, have been responsible for the creation of many of the subsidies, tariffs, and policies reflected in the current trade regime. However, a growing number of companies, DuPont among them, are taking the view that policies that lock billions of people in poverty are not going to create a global market that is going to be much good to anyone, even over the medium term.

So DuPont believed, and continue to believe, that a successful Doha outcome is an excellent means of changing the current trade regime for the better.

However, they see some obstacles in the implementation of the principles discussed in the Round, of which the main one, to their mind, is the cumbersome process required to get consensus. Ms Quirina would highlight this through the example of agriculture negotiations.

As we all know, an agreement on agriculture is essential to a Doha success. Agriculture negotiations are today only about 8 per cent of the world trade, but they are holding back the other 92 per cent. If this cannot be resolved, the Round will need a new approach.

Agriculture lies close to the heart of our European culture, and we are certainly aware that the US has made substantial unilateral agricultural proposals and concessions. We also know that many developing nations, both large and small, cannot see the logic of making trade concessions just to get Europe and America to a place where they believe they should have been all along.

In looking for a way out of this impasse, Ms Quirina cited the words on agriculture found in the original Doha Declaration of November 2001:

"...we commit ourselves to comprehensive negotiations aimed at substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies, and substantial reductions in trade-distorting domestic support."

In DuPont's view, the key to any real breakthrough is market access. Farmers have to be able to sell their products around the world. We need to find ways to reduce and eliminate barriers to access that are substantial and sustainable. According to Ms Quirina, if this is achieved, the political headwinds propping up the other two agriculture "pillars" – domestic supports and export subsidies – will diminish to an acceptable level.

Ms Quirina ended her example by saying that DuPont support an ambitious outcome for Doha, because they believe that the more equitable multilateral trading system it fosters is the most productive way to achieve freer and fairer trade, which is the best way for business and markets to grow sustainably. Even more importantly, it is a small but essential step in the sustainable and permanent ascent from global poverty for billions of our fellow humans.

But as this agriculture example shows, the process by which necessary consensus has to be achieved is too laborious. Actually, it was once described by Director-General Lamy, at the Cancun Ministerial Conference, as "positively medieval".

The mentioned consensus is a challenge when almost every country, large and small, seems to advocate fair, if not free, trade, but at the same time we see an increasing number of restrictive measures. The Financial Times, in an article the previous week about the role of trade at the G20, referred to a Global Trade Alert spokesperson saying that "Since their commitment last November, repeated in April, not to raise trade barriers in response to the economic crisis, G20 members have implemented over 120 'blatantly discriminatory' measures, one every three days on average".

DuPont think that the WTO is best placed to achieve freer and fairer global trade. Free trade agreements are next, but it is the WTO that can be of immense help in leading the world – both developed and developing – in an orderly process to the new trade realities. Specifically, its dispute resolution system is key to future success, as it is the only world trade system that has demonstrated a realistic workability and offers a more effective decision-making process than the one we have today.

The Doha round of discussions should be brought to an end, but in an ambitious way. Doha should be a solution, rather than an obstacle to the WTO, and DuPont's position is supportive of such an outcome, although the apparent political support has to translate into tangible actions.



(d) James Bacchus, Member, ICC Commission on Trade and Investment Policy; and Chairman Global Trade & Investment Practice Group, Greenberg Traurig, LLP., United States

Why is business speaking up in favour of completing the DDA?

The DDA was worthwhile in and of itself, since it was expected that it could make a significant contribution to global GDP and provide a much-needed shot in the arm to the world economy at a time when it was most needed.

“The DDA was worthwhile in and of itself, since it was expected that it could make a significant contribution to global GDP”

The WTO dispute settlement system had helped restrain protectionism. However, new forms of protectionism were appearing that did not violate the letter of the WTO rules. A successful DDA could help counter this drift, by preventing backsliding and by moving forward.

The DDA could create significant potential gains, even though many key issues for business were not part of the Doha Agenda. Completing the DDA would enable the WTO to move on to these other issues.

It would also show that WTO members were able to resolve issues not through litigation, but through negotiation. Therefore, the best way to strengthen WTO dispute settlement was to strengthen the rest of the WTO. Without a successful DDA, an abundance of new cases might damage the system.

Mr Bacchus said it was urgent to “declare victory on the DDA and pull out”. Pieties were being proclaimed by the G20 but no action was forthcoming. In the meantime, protectionist measures were proliferating.

2. Questions and comments by the audience

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

- What was needed to conclude the Doha Round was political will, not political statements.
- Concern was expressed about the prospect of trade-distorting measures contained in economic crisis stimulus packages creating additional pressures on the WTO dispute settlement system.
- The DDA was seen as the only way to get a global agreement on trade in agriculture that would satisfy developing countries' need for greater market access and find a global solution to the problems created by trade-distorting agricultural subsidies. In the same way, it was felt that only a global agreement in Copenhagen on climate change could avoid trade-distorting climate-change measures in national legislation.
- There was more to the DDA than market access and agriculture, and these other elements of the Round should not be forgotten.
- New protectionist measures born out of the global economic crisis were setting a very bad example, and called for a reinforcement of the WTO's capacity to contain protectionism.
- A key factor in determining the capacity of the DDA to create new trade opportunities would be the result in non-agricultural market access (NAMA), and whether this would lead to cuts in applied tariffs, as well as the extent to which flexibilities would limit such benefits.

3. Conclusions and way forward

Ms Coté, ICC Permanent Representative in Geneva, who moderated the panel, said that broad support was expressed for a successful conclusion to the DDA, if only to enable the WTO to address other issues of concern to business.

Q. To what extent are WTO rules enough to shield from protectionism?

Tuesday, 29 September 2009 – 16.30 ~ 18.30

Moderator

Ms Claudia Orozco – Of Counsel, EU International Trade Practice, DLA Piper UK LLP, Belgium

Speakers

Professor Bernard Hoekman – Senior Director for Trade at the World Bank

Mr Marc Poulain – Expert on Government procurement, DG Trade European Commission

Mr Saugato Datta – Economics Correspondent at The Economist

Organized by

DLA Piper UK LLP

Report written by

DLA Piper UK LLP



Abstract

The session discussed how the economic crisis that accelerated throughout the second semester of 2008 has inevitably resulted in a dilemma between pursuing short-term policies and measures to protect domestic production and employment from external competitors, or remaining open to international competition to stimulate overall economic growth. This dilemma poses a significant challenge to decision-makers and to the multilateral trading system. The WTO (insofar as it brings together policy-makers and regulators, and comprises

a body of law that limits the possibilities of adopting trade-restricting measures) has had a positive contribution in preventing further erosion in the world economy. Nevertheless, in addressing global governance and the response to the current economic crisis, it is necessary to analyse the limits of the WTO.

With these points in mind, the panellists offered their analyses of the extent to which the WTO has helped to contain protectionism.

1. Presentations by the panellists

(a) Bernard Hoekman, Senior Director for Trade at the World Bank

The WTO as a shield against protectionism: an accession perspective

Prof. Hoekman discussed the value of WTO membership, and its importance for applicants negotiating accession. Twenty-nine countries are currently negotiating their accession, and they range from small economies, like Ethiopia or Bhutan, to large economies, such as Russia and Iraq. In the current economic situation, acceding countries would naturally wonder whether WTO membership is worth the complex and costly negotiations that it entails; and whether committing to market openness is the right step to minimize the impact of the crisis on their economies. In addressing these questions, Prof. Hoekman discussed whether membership can, and should, be less onerous for some categories of applicant countries.

“In the current economic situation, acceding countries would naturally wonder whether WTO membership is worth the complex and costly negotiations that it entails”

Prof. Hoekman considered the WTO's role in relation to its rules on non-discrimination, including: the most-favoured-nation (MFN) and national treatment principles; market access policy certainty, which is achieved through tariff bindings, subsidy ceilings, export subsidy disciplines, and specific commitments for services; safeguards, such as contingent protection mechanisms being temporary, transparent and subject to rules/criteria; transparency, including notification requirements and monitoring/surveillance mechanisms; and dispute settlements mechanisms.

Prof. Hoekman then went on to discuss the caveats – the holes and loopholes in the system. First, there may be a lot of “water” in tariffs/commitments. Second, the national treatment principle does not apply to subsidies or public procurement, and there is only patchy coverage of services. Third, investment policies, such as incentives, are largely unconstrained. Fourth, there is a lack of competition policy disciplines. Last, the credibility and effectiveness of the WTO rules are determined by the probability of enforcement.

Prof. Hoekman presented a graph plotting trade-restrictive and trade-liberalizing measures, by country, for the period between September 2008 and June 2009. He assessed the policy responses to date, and explained that, while there has been a lot of action, there has not been a major rise in protectionist measures. Prof. Hoekman discussed how a number of countries have liberalized trade or taken trade facilitation measures. He also stated that much of the rise in anti-dumping and safeguards is in “traditional” products, and that one must wait and see if “new” products come into force, as there are lags in the system. For example, it takes time for a drop in prices and unemployment to feed into dumping/injury. Prof. Hoekman also discussed the extensive fiscal/financial support to key sectors, such as the finance and automotive sectors, mostly by the OECD. According to Prof. Hoekman, there is scope for discrimination as well as political pressure to keep resources at home, including through procurement.

Prof. Hoekman considered the policy implications, and stated that where there are no, or only weak, multilateral disciplines, there is some evidence for more protectionist action, such as policies towards foreign workers, FDI and procurement; sector-specific subsidies, including finance sector bailouts; and the reintroduction of export subsidies by the EC and US for dairy products. He also explained how the EU competition policy and state aid disciplines have risen in importance, and how this could damage the WTO.

Turning to the implications for non-members, Prof. Hoekman argued that they may be able to do a lot of free-riding in that, insofar as the WTO system “works”, non-members gain too. However, there may be discrimination, and nothing prevents this for non-members. More importantly, non-members do not benefit from disciplines on their own policies in times of crisis, which is evidenced by the fact that some non-members have been among the most intensive users of restrictive trade policy during the last 12 months.

Prof. Hoekman also spoke about accession incentives and whether the crisis changed the calculations. He presented and explained three facts: (1) the process takes a long time; (2) accession candidates are held to higher standards than incumbents; and (3) enforcement of WTO rules is patchy.

Prof. Hoekman concluded his presentation by discussing the implications of the crisis responses. He stated that there is an opportunity cost to long accession processes for both sides. However, overall, non-members can free-





ride on the institution's "acquis" [i.e. its existing rights and benefits]. Prof. Hoekman then put forward two proposals for research questions: Do the commitments "stick", i.e. become embedded/robust?; and How important is monitoring and the "committee process" in sustaining cooperation? He also presented a table outlining the GATS commitments and reform dynamics for small Central Asian states.

(b) Marc Poulain, Expert on Government procurement, DG Trade European Commission

Mr Poulain's analysis addressed the value of membership through an assessment of the Agreement on Government Procurement (GPA).

Mr Poulain considered whether the coverage of the GPA results in non-discrimination and meaningful protection of market openness. He then went on to discuss whether the members of the GPA are substantially better off than non-members.

As a basis for the analysis, Mr Poulain gave the following examples: the "Buy American" provision in the US Recovery and Reinvestment Act of 2009; and the "Buy Chinese" policy, which was recently announced by China.

(c) Saugato Datta, Economics Correspondent at The Economist

Mr Datta gave a review of the measures adopted by some members, in order to illustrate the extent to which implementation of WTO-compatible rules and completion of the Doha Round is a sufficient response to the economic slowdown. This review led to the identification of areas that require ambitious negotiations to have a multilateral trading system that is responsive to crisis situations.

Mr Datta opened his presentation by outlining the scope of the problem, namely the spectacular drop in trade in the course of the global economic crisis. He quoted Barry Eichengreen of the University of California at Berkeley, who has shown that the drop in trade volumes mirrors that which happened during the Depression. According to Mr Datta, this was not a crisis that began *with* trade (although some would argue that the failure to address the global imbalances that arose, in part, from trade did contribute to setting the stage for it), but it has certainly been a crisis *in* trade.

Mr Datta went on to state that, despite all the worries about a protectionist backlash similar to the one which followed the passing of the Smoot-Hawley Act, the present crisis has been notable for the lack of such a generalized retreat into protectionism. Nonetheless there has been a plethora of protectionist actions and, according to Mr Datta, these tell us a good deal about the role of the WTO as a defence against protectionism.

Mr Datta then discussed the lessons to be learned from what has happened, and what has not. There have been many instances of countries raising tariffs, even after promising, at fora such as the G20, not to act in a way that would hinder open trade. However, Mr Datta explained that the bulk of what has been done is WTO-legal, in that countries have exploited the gap between their actual tariffs and the existing bounds – the so-called "water" – to raise tariffs *to a limited extent*. According to Mr Datta, this points both to the limitations of the existing provisions under the WTO, and to their benefits, as well as to the basic motivation for completing the Doha negotiations. The limitations come from the fact that so much "water" exists, while the benefits come from the fact that there is, in fact, an upper bound on how far countries can go. It also makes clear the benefit of completing Doha in terms of reducing or eliminating the "water". In Mr Datta's view, what was dismissed by some as mere "insurance" against an unlikely eventuality has proved to be much-needed insurance against something very likely indeed.

Mr Datta also discussed how the crisis has reaffirmed the importance of the dispute resolution mechanism at the WTO. Countries generally do use this when they feel aggrieved, rather than resorting to unilateral action. This has been seen to some degree in the case of the US-China dispute over Chinese tyres. According to Mr Datta, the existence of the mechanism means that countries have a legal way to vent steam and appease domestic constituencies, without resorting to out-and-out protectionism.

The discussion then turned to a consideration of some caveats. Mr Datta stated that the absence of wholesale tariff wars is not, as it might appear at first, a straightforward affirmation of the importance and success of the WTO. First, the fact that so much "water" existed suggests that this crisis has not really tested the multilateral system along the most obvious dimensions. According to Mr Datta, if there had been no, or minimal, "water", and countries had still respected their bounds, this would have been more convincing. However, as things stand, the flexibility provided by the



present limits arguably exceeds the “wriggle” room that countries need. Secondly, and perhaps more importantly, Mr Datta pointed out that there has been a change in the economics of protection, due to the growth of global supply chains. This makes it difficult to put tariffs to their traditional use, which is that of shifting demand away from imports and orienting it toward domestic production. According to Mr Datta, this may be another major reason why we have not seen tariff wars. By way of example, he mentioned the carefully calibrated response of Mexico to the US decision to alter the programme allowing Mexican truckers to operate in the US, which was very clearly motivated by a need to retaliate in a way that did not hurt Mexican industry – a task that the globalization of the supply chain has rendered trickier.

However, Mr Datta put forward his view that the supply chain may also be a reason why we *have* seen a move towards subsidization of failing domestic industries. The crisis has, therefore, exposed the importance of filling gaps in coverage of the multilateral system (and of knowledge gaps in this regard) quite clearly. In this regard, Mr Datta stated that the government procurement system is an obvious gap. He referred to some recent research from the World Bank, which found that restrictions on FDI have grown vastly during the crisis. According to Mr Datta, all this suggests that the traditional focus of the rules-based multilateral trading system may need a bit of reorientation or expansion.

“Concluding Doha is not just a signal that the belief in freer trade survives but, rather, it will lock in the progress that has been made so far, as well as set the stage for more ambition in the future”

Mr Datta then considered another crucially important reason to conclude the Doha Round, which is to enable the next round to be enlarged so as to include things that are currently not part of, or not central to negotiations. While some have argued that Doha should

be abandoned because its agenda is not in keeping with the times, or is not “ambitious enough”, Mr Datta argued that this is not correct, as concluding Doha is not just a signal that the belief in freer trade survives but, rather, it will lock in the progress that has been made so far, as well as set the stage for more ambition in the future.

On a more positive note, Mr Datta concluded by stating that it is quite likely that the same forces which have caused trade to shrink so fast in the downturn will aid its rapid rise when the recovery takes root. This will hopefully provide some impetus to Doha by reaffirming the centrality of trade as a way of spreading economic growth, and linking the various parts of the global economy together.

2. Conclusions and way forward

The session offered a chance to review the opportunities that the WTO can offer in order to serve as a shield against protectionism.

The current global economic crisis has clearly posed a significant challenge to decision-makers and to the multilateral trading system. The WTO has undoubtedly contributed positively so as to prevent further erosion in the world economy. It has done this through its principles, rules and mechanisms which help to contain protectionism. However, it has become necessary to identify the limits of the WTO.

The lessons learned from the protectionist measures and policy responses seen during the current economic crisis point to the conclusion that negotiations are necessary in order to strengthen the multilateral trading system. This will enable it to be more responsive to crisis situations.

R. Can protectionism protect trade? The legislators' perspective

Wednesday, 30 September 2009 – 09.00 ~ 11.00

Moderator

Mr Ram Etwareea – journalist, *Le Temps*

Speakers

Mr Vital Moreira – Chairman of the Committee on International Trade of the European Parliament

Mr Jacques Bourgeois – Member of Parliament (Switzerland), Director of the Swiss Union of Farmers

Mr Shakeel Mohamed – Member of Parliament (Mauritius)

Mr James Bacchus – former Chairman of the WTO Appellate Body, former member of the US Congress

Organized by

Inter-Parliamentary Union and European Parliament

Report written by

Inter-Parliamentary Union and European Parliament



Abstract

As the world becomes mired deeper in the economic crisis and collapsing international trade, parliaments are faced with pressures from various sectors of the economy and the population, demanding protection from economic hardship and social recession. What room for manoeuvre is there for policy-makers to support national producers without awakening the demons of all-out protectionism? What is the responsibility of parliaments in the face of trade-restricting measures taken by other countries that appear to be merely shifting their problems to their neighbours? How to ensure uninterrupted aid-for-trade flows to developing

countries, and in particular the least-developed nations, which bear no responsibility for the current economic crisis but rely heavily on exports to drive their growth? What is the role of the WTO in providing a mechanism to monitor trade and trade-related measures taken in the context of the crisis, and how can legislators make effective use of this mechanism?

The panel examined the role of parliaments in providing – as part of the system of checks and balances – essential scrutiny of government policies in the area of international trade.

1. Presentations by the panellists

In his introductory remarks, the moderator stressed that the world was trying to get back on track after the severe shock caused by the economic and financial crisis, with trade featuring prominently on the recovery agenda. As indicated in a recent WTO report, several countries had already introduced protectionist measures in response to the crisis. These developments are to be seen against the background of the stalled Doha Round negotiations.

(a) James Bacchus, former Chairman of the WTO Appellate Body, former member of the US Congress

A former member of the US Congress, Mr Bacchus began by stating that he was a democrat and a firm supporter of free trade. In his opinion, the best thing that countries could do was to embrace the global trading system. Protectionism was always a case for lost opportunities and inefficient use of capital.

Thanks to the system of WTO rules, with its binding dispute settlement mechanism, world trade worked better now. Countries that did not respect trade rules could face economic penalties, and often did.

There was currently a tacit debate within the WTO about the amount of protectionism one could get away with without openly breaking the rules. That was known as legal protectionism: measures that did not transcend the boundaries of WTO's legal system, but were still, in essence, protectionist. Legal protectionism entailed a risk for the entire system and might become an additional stumbling block for progress in the Doha Round negotiations.

Mr Bacchus expressed concern that signs of protectionism emerging from his own country, the United States, might have a significant negative impact on other countries, which could use them to justify their own "closed door" policies.

Disputes handled within the limits of the WTO system were, by definition, not "trade wars". That was why it was so important to channel trade conflicts through the WTO dispute settlement system, instead of letting them grow dramatically out of control.

For Mr Bacchus, the G20 meeting in Pittsburgh was keeping its promise and the G20 leaders were committed to the goal of bringing the Doha Round to a successful conclusion.

(b) Jacques Bourgeois, MP, Director of the Swiss Union of Farmers, Switzerland

Mr Bourgeois started his presentation by explaining why he always defended agriculture. For him, agriculture could not be compared to services or some other sectors insofar as it concerned the livelihood of communities. He pointed out that his country, Switzerland, had accepted the notion of the multifunctionality of agriculture through a referendum. That notion was now enshrined in the Constitution.

According to the Marrakesh Agreement, each country had the right to support and protect its agriculture. Even though that right was uncontested, Switzerland saw its agriculture exports shrink from day to day. The government therefore had to decide on what kind of regulatory system to put in place. Each country had its own peculiarities and needs. A Swiss farm with 20 hectares of land was clearly different from a typical farm in the United States.

Agriculture had a special and essential role to play in maintaining the sustainability of communities. It also performed a social function: a country without agriculture could not exist. Nonetheless, Switzerland imported more agricultural products per capita than most of its neighbours.

(c) Shakeel Mohamed, MP, Mauritius

Mauritius, Mr Mohamed's homeland, had made a conscious choice in favour of strict respect for trade rules. It did not move away from that choice even at the time of the financial crisis, which had affected developing countries more severely than developed ones.

"We, parliamentarians, have this thing called politics", said Mr Mohamed. Politicians are naturally tempted to apply protectionist measures, especially during election time. However, it was a false and dangerous path to take.

Every time the G20 met, the world held its collective breath because the group's decisions had an impact on the lives of all. For free trade to thrive, an effective global financial system should be put in place. The G20 had started to deal with that matter but the concerns of developing countries were not sufficiently taken into account.

The main victims of the crisis were the citizens of developing countries, such as Mauritius. However, they were not represented in most of those meetings, with





their role having been reduced to that of aid recipients. There was a need for greater inclusiveness. The current system resembled a doctor who prescribed a treatment without ever having seen the patient.

The G20 promised that there would be no protectionism. However, the reality of the situation contradicted those pledges, as those same G20 countries had already embarked on the path of protectionism. If everybody went down this road, the Doha Round, with the promise of free trade, would become a dead letter.

(d) Vital Moreira, Chairman of the Committee on International Trade of the European Parliament

The economic crisis had not been caused by trade, but trade could be part of the solution. Politicians needed to realize that world trade would continue to grow, even if protectionist tendencies often wore a political aspect in times of crisis.

“The economic crisis had not been caused by trade, but trade could be part of the solution”

International trade was more resilient today than it was a few years ago. Multilateral trade rules agreed by the WTO had improved the entire system. The G20 commitment to prevent protectionism, made at the summit in Washington D.C., was very important. So was the commitment to bring the Doha Round to a successful conclusion.

Mr Moreira expressed confidence that the potential of trade to mitigate the effects of the economic crisis would be realized. In the view of the European Parliament, legislators should start questioning their governments about all instances of protectionist policies. The need for stringent parliamentary oversight of government action was crucial.

2. Questions and comments by the audience

The debate proceeded with several interventions from members of parliament and other Forum participants present in the room.

A parliamentarian from Cameroon stated that, from the perspective of developing countries, the session's title was misleading: developing countries on their own were unable to introduce protectionist measures and were mainly bound by the decisions of developed countries. That opinion was echoed by other parliamentarians, who wondered who was actually responsible for the standstill of the Doha Round.

Part of the reply to that question came from one panellist, who suggested that developing countries also needed to make concessions for the negotiations to succeed.

The debate also dealt with the issue of obstacles to trade. Some delegates argued that, due to lack of competitiveness, developing countries were simply obliged to protect their economies. They also evoked the need for more transparency in WTO procedures.

Despite palpable differences of views as to how much free trade the world could actually afford, there was a clear consensus that the Doha Round should be continued. Opinion was divided between proponents of free trade and those who – in the face of the financial crisis – advocated the need for more rigorous regulation. It was emphasized in that regard that the current financial crisis should be seen in its broader global context, together with the consequences of the food and energy crisis and the challenge of climate change. They were all interconnected and all affected trade.

3. Conclusions and way forward

The ongoing crisis has had an adverse effect on both developed and developing countries, but the developing world has been affected to a greater extent. It is hardly a surprise that protectionism has reappeared on national agendas. This poses a threat to international trade and can further complicate the Doha Round talks. The danger is real. Despite their “natural” political instincts, parliamentarians should withstand protectionist pressures.

S. The WTO as a crucial component of the global governance architecture: Past lessons and future challenges

Wednesday, 30 September 2009 – 09.00 ~ 11.00

Moderator

Ms Heidi Ulrich – Independent Trade Analyst

Speakers

Ms Anna Lanoszka – Professor of International Economic Relations, University of Windsor

Mr Pierre Sauvé – Deputy Managing Director, World Trade Institute (WTI)

Mr J.P. Singh – Professor, Georgetown University, Washington DC

Organized by

University of Windsor

Report written by

University of Windsor



Abstract

The fundamental premise of this session was the recognition that the WTO plays a crucial role in the global economic architecture. The panellists focused on identifying and examining the challenges currently impacting the world trading system and, by extension, global economic governance, with the objective of proposing solutions to these challenges.

In terms of the substantive issues that were explored, the session examined the changing role of developing countries in the world trading system, the concept of reciprocity plurilateralism, the principle of single undertaking, and the WTO negotiating process. With respect to reciprocity plurilateralism, one specific question was whether and how free riding needs to be

contained, and whether the distinction between negotiations on market access and on rules was important in approaching this issue. The principle of single undertaking was evaluated, and options were presented for introducing some flexibility to the WTO negotiating process. The ways in which the WTO negotiations have dealt with critiques of the global governance architecture, especially through various forms of democratic accountability, inclusive participation, persuasion and problem solving, were examined in some detail. The position of developing and least-developed countries in the world trading system, and the emergence of the new powerful economies were examined in the context of each of these substantive issues.





1. Presentations by the panellists

(a) Anna Lanoszka, Professor of International Economic Relations, University of Windsor

The World Trade Organization: Changing dynamics in the global political economy

Starting points

1. WTO as a response to the changing geopolitical patterns and new global economic trends – globalization and new technologies euphoria of 1990s
2. WTO as an unfinished project – “an escape into the future” – GATT’s tradition and principles in the world of new agreements and enlarged membership
3. Enter the developing countries – playing a decisive role and taking advantage of their judicial equality under the rules-based WTO

Argument

We do not have to propose radical changes in the attempt to reform the WTO.

Lessons from the GATT era tell us that countries negotiate agreements if and when there is a functional need for such agreements, and when the conditions are right. The right conditions may simply be achieved by providing WTO members with greater flexibility as to what future agreements they want to sign up for, or opt out of. In short, we must consider relaxing the principle of single undertaking and allow interested countries to negotiate sectoral agreements under the WTO framework.

Main points

The WTO’s function of a negotiating forum is not working because of the following:

1. GATT’s tradition of decision-making by consensus became a rule under the WTO – *How to reach a consensus among 153 judicially equal members?*
2. The principle of single undertaking became a *de facto* rule under the WTO – *How to negotiate a new agreement when all issues are connected and the expectation is that no deal can be finalized until all issues are resolved?* The principle of reciprocity is difficult to achieve given the complex nature of

some WTO agreements – *How to negotiate and expect reciprocity when some new agreements have difficult-to-measure implications (for example, TRIPS)?*

“The WTO is only a package of legal trade agreements: it is the process of implementing these agreements and negotiating new ones that brings the WTO to life”

Conclusions

- The WTO is only a package of legal trade agreements: it is the process of implementing these agreements and negotiating new ones that brings the WTO to life.
- The WTO’s function as a negotiating forum is very important, and this is why the negotiating process should not be entirely focused on the Rounds expected to produce another *single-undertaking deal*. Flexibility should be considered for groups of interested countries to pursue plurilateral agreements under the WTO legal framework.

(b) Pierre Sauvé, Deputy Managing Director, World Trade Institute

The WTO and development concerns

Key issues

1. The DDA’s development payoff: never before has the trade-development interface commanded so much attention in policy circles.
2. Yet, what do we mean by development, and what are its links to trade liberalization and trade policy?
3. What metrics should we be using to determine the development-friendliness of negotiated outcomes?
4. Who are the developing countries? Is there analytically meaningful mileage to be had from such an aggregation?

Argument and main points

1. The Uruguay Round was conducted and concluded in an ideological bubble: the end of history and the rise of the Washington Consensus.

2. It proceeded largely without trade-related technical assistance, despite the Round's foray into several new, complex areas of trade regulation.

3. We (were) are all on the same page: one-size-fits-all single undertaking hubris, with core reliance on (ever so slightly) longer implementation periods for developing and least developed countries.

4. The decade and a half since the end of the Uruguay Round – and much of the DDA – has witnessed increasing questioning of the presumed linearity between trade (market openness), growth and development.

5. The crisis of 2008-2009 has witnessed the further prosecution of the Washington Consensus. A genuine and useful debate has opened on policy space and the pros and cons of its preservation.

6. Trade can be a powerful vector of integration and of poverty alleviation, but such effects are highly context-specific (for example, geography, institutions, infrastructure, supply of human capital, FDI, export product mix, import barriers in key markets).

7. The “D” in the middle of the DDA has provided a useful anchor for the latest WTO round, placing a major responsibility on OECD countries in delivering a meaningful outcome and supplying needed aid for trade. Emerging countries can also do much to promote South-South trade and investment by opening their markets to producers from poorer countries.

Special and differential treatment (S&DT)

1. We have discovered that one size does not, indeed, fit all ...

» ... that trade rules in an age of deeper integration entail potentially significant recurring costs (institutions, regulatory regimes and their enforcement) ...

» ... that negotiating, implementation and supply capacities remain severely constrained in many developing countries ...

» ... and that a number of emerging countries can contribute more to ultimate outcomes (with voice come obligations).

2. The S&DT debate is a natural outgrowth of a development round ...

» ... yet, the quest for agreed graduation criteria seems futile.

» There clearly is no such thing as “developing countries”: the DDA has witnessed the emergence of an alphabet soup of country groupings, each pleading for special treatment (LDCs, RAMs, SVEs, NFICs, etc.).

However, how much differentiation is possible? Is it advisable?

Solutions?

1. Should all rules apply to all members, always?

2. Can or should *existing* agreements that have unduly constrained domestic policy space be reopened?

3. Is variable geometry/critical mass decision-making in agenda-setting, rule-making, and market-opening, a credible response?

4. Can an operational link be made between the readiness to commit (and the ability to enforce) and policy bindings?

5. The DDA precedent on trade facilitation is a step in this direction. Could it be generalized to all areas of future rule-making or market-opening?

6. Who would certify that a member is “ready” to commit?


7. Should we develop development impact assessment methodologies with which to vet trade agreements?

Conclusions

• Developing countries now dominate WTO membership, with commensurate gains in voice. They will soon enough also dominate aggregate trade flows, with likely far-reaching implications for trade governance, especially for BRICs and other key emerging-country members – loyalty is likely to rise.

• As key source countries for FDI, we can expect a rising demand for agenda expansion to come from the South (e.g. investment, competition, services).

• One lingering challenge: what to do about a large number of countries that derive very marginal benefits from WTO membership?



(c) J.P. Singh, Professor, Georgetown University, Washington DC

The WTO, global governance, and legitimacy

Starting questions

1. How can we conceive of WTO negotiations in terms of legitimacy and global governance?

Mr Singh's presentation was based on his book, "Negotiation and the Global Information Economy", published by the Cambridge University Press in 2008.

Early in his career, listening to negotiators talk about their work, he came to the conclusion that negotiations are a bunch of strategic posturing, where countries try to maximize their national interests. At some point, national interests would "converge", resulting in a treaty. This did not make sense to him: he saw such posturing as hubris, lack the problem-solving aspect, and he had turned away from strategic posturing towards more radical thinking, such as that of Freire, who talks of the actors in communication, and what happens when they communicate with each other.

This, for him, is the central tension and tragedy of the WTO – an organization that understands the use of strategic instruments, and at the same time allows communication and problem-solving to take place – and yet it can't quite be accounted for.

At any school of international relations, there are very few courses on diplomacy and negotiating: there are many courses on diplomatic relations or politics, but you have to go to law school or business school to learn about negotiating. We don't pay much attention to what happens *during* negotiations: we pay attention to actors' preferences when they come into negotiations, and where these preferences converge.

2. What is the idea of legitimacy?

How does this idea arise from people who communicate with each other? After all, that is what democracy means: representatives who communicate, who – because they represent something – fashion solutions that are then seen as legitimate.

The GATT and the WTO are post-war instruments that arose from a version of the Enlightenment ideology: that we need to moderate our violent passions; that we need moderation, and that trade/exchange was about moderation. All organizations/governments/universities

start out with these ideals, but at some point lose sight of, and have to re-create them.

In the WTO, it is almost a bad word to talk of ideology. Hubris is "trade as moderation" as opposed to "trade as a monster". What these ideologies have to talk about is what the actors do to each other, and also to create a legitimacy for WTO. So what is legitimacy?

- » coercion?
- » self-interest?
- » voluntary due obedience?

Surely not coercion, as you may get due obedience, but it is coerced. TRIPS is a coercive instrument for many people.

Legitimacy is about self-interest, converged, so that we cooperate, and we know what those interests are.

Returning to the original ideology, negotiators hope for voluntary due obedience (for example, the self-regulatory aspects of the WTO): we obey not because we are coerced, but because it makes sense – not necessarily in the national interest, but just because it exists and it makes sense. That is voluntary due obedience, which tells us that legitimacy can be conceptualized in the highest fashion.

3. What is global governance?

Legitimacy gives an opportunity to think about what exactly global governance is. On some levels, global governance is about inter-subjective understandings, i.e. how we understand negotiations. What does it mean to have a dialogue with other countries?

According to David Held and Anthony McGrew, governance is a nexus of systems of rule-making, political coordination and problem-solving which transcend states and societies. A system of rule that is as dependent on intersubjective meanings as on formally sanctioned constitutions and charters, as James N. Rosenau said.

So, governance can't just be tied to member states and what they want. It is also about a cultural understanding that member states have before they come to negotiate – their understanding of what WTO represents to them, of what the negotiation represents to them. *That* is legitimacy, because they have already bought into a bunch of norms about what diplomatic conduct means, before they even get here.



Mr Singh quoted from François de Callières' *On the Manner of Negotiating with Princes* (1716)¹. Callières was talking of interlinkages: when you arrive at the diplomatic moment, you are already linked to each other. If you think of the diplomatic moment as being the moment you arrive, you have a self-interest, and the other side has a self-interest, and you are not really linked, then clearly you have a different understanding of legitimacy. As Callières said, one small discord from the smallest state can then cast an apple of discord among all others. You can think consensus in that sense.

4. Does the WTO system of governance meet conditions of accountability, participation, and persuasion?

Legitimacy means: "Is the system accountable? Is it a system which allows for participation and persuasion?"

- Persuasion is not the same as participation. Lots of participation is not persuasion. Deliberation needs participation. If all are there, it may have been participatory, but not decision-making. Do these three criteria apply to the WTO? Domestic to international: global governance is not solely pertinent to the WTO, but to all international organizations, municipal or national governments.
- Accountability: a check on actions. The WTO has "soft" instruments (e.g. the TPR), as well as chains of accountability. There are two types internal to WTO (formal or informal).
- Who is not represented? Member states? Trans-nationals may not wish to be led by member states.

Mr Singh quoted from Albert O. Hirschman's "Essays on Trespassing", and what he called the "common meal". Just because people are communing, it doesn't mean we get democracy: it depends on what kind of a "meal" it was. Were they communicating? Did they come to participate?

Diplomacy is an elite realm, and diplomats like to work behind closed doors. This is a critique of the WTO. However, it is not a quality of participation. Why do theoretical models continue to see diplomacy as an elite realm? We have to show how participation in the WTO is also accountability to outside. True, the media may negatively affect perceptions or results, but the media may also positively affect opinions, and also exert a positive effect on outcomes.

Persuasion is deliberation: i.e. it is weighing alternatives and coming up with solutions. Interests converging is not the same as persuasion. Developing countries were invited into the "green room" processes and joined the deliberations. There was a deliberative body, so the results attested to the legitimacy of people's interests.

Mr Singh quoted Robert Zoellick, saying that negotiators need to shift from obstinate posturing to working together as strategic problem-solvers. Problem-solving can only happen if you are persuading, if you have accountability in the system, if you are participating effectively in diplomacy. These are tall orders. They bring us back to the meaning of diplomacy: the Italian system, instead of basing diplomacy on power, bases *power* on diplomacy: i.e. power arises from diplomatic interaction, rather than *prior* to diplomatic action.

Conclusion

We have to pay attention to what happens *during* the "common meal". The question is not "What is getting left out?", but "What *happens* during negotiations?" When we do that, then we can try to think about what legitimacy is in global governance, especially for an international organization like the WTO.

2. Questions and comments by the audience

- Multilateral trade rounds prior to the Uruguay Round, which were not negotiated as a single undertaking, were also lengthy. Therefore, what are the reasons for recommending a re-evaluation of the single undertaking? What has changed?
- With respect to concepts of coercion vs. persuasion, what has been the role of the WTO in the growth of emerging economies?
- Has there been a shift in terms of the ability of countries to solve problems?

The session concluded with an engaging debate between the panellists and a number of participants.

Endnotes

¹ "To understand the permanent use of diplomacy, and the necessity for continual negotiations we must think of states of which Europe is composed as being joined together by all kinds of necessary commerce, in such a way that they may be regarded as members of one Republic, and that no considerable change can take place in any one of them without affecting the condition, or disturbing the peace, of all others. The blunder of the smallest of sovereigns may indeed cast an apple of discord among all the greatest powers, because there is no state which does not find it useful to have relations with the lesser states and to seek friends among the different parties of which even the smallest state is composed." – François de Callières, *On the Manner of Negotiating with Princes* (1716)

T. Intellectual property, sustainability and the food system: Trends and new directions

Wednesday, 30 September 2009 – 11.15 ~ 13.15

Moderator

Ms Caroline Dommen – Quaker UN Office

Speakers

Mr Geoff Tansey – Member and Trustee, Food Ethics Council

Mr François Meienberg – Campaign Director, Agriculture, Biodiversity and Intellectual Property, Berne Declaration

Professor Olivier De Schutter – UN Special Rapporteur on the Right to Food

Professor Carlos Correa – Director of the Master Program on Science and Technology Policy and Management of the University of Buenos Aires

Organized by

Quaker United Nations Office, Geneva

Report written by

Quaker United Nations Office, Geneva



Abstract

This purpose of this session was to describe the way in which intellectual property rules impact on the availability and diversity of seeds, as well as on the adaptability of our food system to meet new challenges, such as climate change. Panellists described the way new intellectual

property rules are being extended to seeds, and put forward options for shaping an agriculture and food system that is genetically diverse and responsive to the long-term livelihood needs of people around the world.

1. Presentations by the panellists

(a) Geoff Tansey, Member and Trustee, Food Ethics Council

Mr Tansey provided an overview of the food system, noting that the current trends have been driven by developments in the Organisation for Economic Co-operation and Development (OECD) countries and the type of farming there, i.e. a fossil fuel-based, industrial, intensive approach.

Mr Tansey pointed out three trends, the core one of which is a concentration of economic power, so fewer and fewer players control more and more of the market, leading to oligopolistic forms of competition. The second trend is the different actors' search for more effective means of control of their areas of activity, and the third is the development of global markets. This has led to a situation where the main force driving change is competition between and amongst input suppliers, traders, processors and retailers. The result is a progressive deterioration in the terms of trade for rural people, squeezing out smaller farmers, and replacing detailed local knowledge with broadly adapted varieties and breeds requiring fertilizers, pesticides and other inputs to ensure productivity in more monocultural farming systems.

There has been a progressive withdrawal by governments from research and development aimed at providing a wide range of materials and knowledge to farmers which they can freely adapt, towards a more commercially led proprietary-based approach, which in effect means governments now subsidize the larger firms which have R&D laboratories to build on basic research. As the extension of IP protection makes the exchange of knowledge and materials more difficult, it is also narrowing down research – only those options likely to lead to commercial profitability are seriously pursued.

Whilst science, technology and information had, in the past, been key levers for control, the more important levers in the last few decades have been legal and regulatory. Intellectual property (IP) law in particular has become key, especially since the extension of minimum IP standards into agriculture, and more globally through the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), from the mid-1990s. The importance of IP is linked to the development of biotechnology, and to the fact that IP offers the agro-chemical industry a way to gain control of the base of the food chain.

Mr Tansey concluded his introduction with a comment linked to the overall theme of the WTO Public Forum. The solutions to global problems – whether climate change or growing levels of inequity or global conflicts – may not be global. Global governance structures may need to change to support local, environmentally-grounded, and equity-based solutions to those problems, which might put constraints on global actors. Farming is site-specific, climate-specific, and local ecosystem knowledge-specific.


(b) François Meienberg, Campaign Director, Agriculture, Biodiversity and Intellectual Property, Berne Declaration

Mr Meienberg spoke about new directions in the IP and food systems. He noted the increase in patents on seeds developed by conventional breeding methods. Indeed, conventional breeding is proving better than genetic engineering for improving complex genetic characteristics in plants, and developing traits such as resistance to environmental stress or to pests. Mr Meienberg noted that big seed producers, such as Monsanto or Syngenta, all have above-average levels of applications for patents on new conventionally-bred seeds.

Mr Meienberg described a case currently pending in the Enlarged Board of Appeal (the highest appeal body) of the European Patent Convention (EPC), known as the Broccoli case. A patent awarded for increasing an anticarcinogenic compound in broccoli through conventional breeding methods was challenged in 2003 by Syngenta and Limagrain.¹ The companies said the patent had been granted for an “essentially biological process” – whereas the European Patent Convention provides that such processes are not patentable. This case, due to be decided in 2010, is likely to strongly influence the direction of criteria for plant patentability in Europe, and determine whether conventional plant breeding will be patentable.

Mr Meienberg pointed to the current increasing split between the interests of big seed producers, small seed producers and the rest of the world. Farm associations worldwide say that there should be no patents on conventionally-bred seeds. Most breeders, farm organizations and NGOs² are against existing patent law, on the basis that it does not engender innovation. The fact that breeders and farmers themselves are saying this shows that there is something wrong with the system. He mentioned an opinion from Plantcom, the plant breeders' organization of the Netherlands, saying that the breeders' exemption should be fully





implemented in patent law in order to safeguard innovation. This would be a total change in patent law.

Another trend is that the enforcement of IP rights is getting stronger. There have been several cases in the US of Monsanto suing farmers for alleged patent infringements. Monsanto also claimed it could block imports of genetically-modified soy meal from Argentina into Europe, as Monsanto owns the patent in Europe on soya's genetic resistance to glyphosate. The company lost because the patent was for soya's resistance to glyphosate, and the court said that no-one sprays their soy *meal* with glyphosate, so there is no link. But if the patent had had a link with the use of the product then maybe the company would have been able to stop the import of the food at the European border. This would lead to a very strange situation: due to WTO rules, countries have had to do away with non-tariff barriers: i.e. countries are losing the power to regulate imports and exports. The power to regulate would lie instead with companies, on the grounds that they own the patents over the food.

(c) Carlos Correa, Director of the Master Program on Science and Technology Policy and Management of the University of Buenos Aires

Prof. Correa recalled TRIPS Agreement Article 27.3(b), which says that plants and animals can be exempt from patentability, but which also requires that WTO members protect plant varieties either through a sui generis system or patents, or through a combination of both. A review of Article 27.3(b) was started within the WTO in 1999 but remains unfinished, due mainly to disagreement between developed and developing countries regarding the scope of the review. So uncertainty continues as to what the standard applied in this field will be.

The International Union for the Protection of New Varieties of Plants (UPOV) has become the main model for IP protection of plant varieties. Prior to 1995, few developing countries had ratified UPOV, but a large number have now done so. When the TRIPS Agreement was adopted a lot of work was done by academics, NGOs, and governments to develop sui generis systems for the protection of plant varieties, which were not based on the UPOV model. Yet very few countries have applied non-UPOV systems. Several countries are in a kind of limbo: they may apply plant variety protection but are not members of UPOV. It will be interesting to see what will happen in these countries, and whether UPOV might make entry to its system more flexible.

The ever-increasing number of bilateral or regional trade agreements has implications for IP on plants and in general. Most trade agreements which involve the EU and the US have obliged the developing partner to join UPOV 1991. US bilateral trade agreements, in particular, include an obligation for the partner country to provide protection for plants and/or animals. Thus, these trade agreements may contribute to making plant varieties patentable in many countries. Prof. Correa said that this is not desirable, as patents can block innovation by restricting access to patented material, and existing exceptions under patent law may not be sufficient to allow further research, breeding or commercialization of new varieties. He referred to documents from UPOV and breeders' associations that argue that – unless stronger research exceptions are put into patent law – innovation may be constrained, and we may see a negative impact on agriculture.

Finally, Prof. Correa referred to the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). ITPGRFA is based on the fact that there is strong interdependence between countries in agriculture and genetic resources. The underlying philosophy of ITPGRFA favours sharing resources rather than appropriating and creating exclusive rights over them. ITPGRFA contains two provisions that are relevant to IP. The first is a provision which prohibits signatories from seeking or asserting IP rights over materials obtained from within ITPGRFA's multilateral system. The second is a provision that, if a receiver of a material through the multilateral system improves the material and gets IP rights over this improvement that restrict further access for breeding and research, the receiver must pay compensation to the multilateral system. In other words, IP protection for improvements is not prohibited but compensation must be paid if this happens and restricts further innovation. Prof. Correa expressed his view that this puts the IP system in the right perspective: giving priority to innovation and access to resources, and requiring those who opt to restrict access to resources to pay. He added that ITPGRFA's creation of a pool of resources to serve the public rather than to get exclusive rights seems to be improving countries' capacity to innovate and progress in the agricultural sector.

(d) Olivier De Schutter, UN Special Rapporteur on the Right to Food

Prof. De Schutter presented his 2009 report³ on seed policies and the right to food. He described the two very different ways in which farmers access seeds: (1) the informal, or farmers' seed system, where local

varieties are exchanged and traded among farmers. This is still the dominant system for most farmers in developing countries; and (2) the commercial system in which “improved” varieties which are uniform, stable and certified by governments are being provided to farmers by subsidized schemes, or sold to them. Prof. De Schutter reflected that there is a gradual but very real displacement of informal farmers’ seed systems by commercial seed systems.

This is due, first, to seed certification schemes, which are government-approved lists of seeds that are considered to be reliable. These schemes often cannot include local, traditional varieties as these do not present the qualities of uniformity and stability that make it possible to put them in catalogues. Secondly, in many countries governments support farmers, for instance by providing farmers with inputs through packages that include seeds, fertilizers, pesticides, or access to credit. The seeds provided through these packages are commercial varieties, creating an incentive for farmers to abandon more traditional local varieties. Third, farmers are increasingly using commercial varieties and improving them in local settings, so there is a tendency for these different methods to merge in the breeding practices of farmers.

Prof. De Schutter identified two risks in the move from informal farmers’ seed systems to commercial systems. One risk is that although new, advanced, seeds may have qualities such as improved nutritional values, they can also create problems. For instance, in many circumstances, they lead to less stable incomes over the years because cultivating these uniform seeds reduces resilience against weather-related events or insects or disease, which will destroy full crops. Less uniform seeds are more resilient, and a farmer’s income will not be exposed to shocks on as large a scale. Also, these “improved” varieties are protected by IP rights, and so their use requires farmers to buy seeds from private companies. Given the increased concentration in the seed market, companies can charge high prices for the seeds they supply to farmers. Furthermore, farmers may be made dependent on access to seed varieties which are not local and may not reach them on a regular basis. In many developing countries governments have created schemes to provide farmers with inputs, but these governments have no exit strategy. Prof. De Schutter asked what would happen to those farmers who have become reliant on these new seeds if funding priorities change? Finally, in many cases traditional varieties may be better suited to local environments, where improved varieties would not work as well.

The second risk relates to the loss of biodiversity. Although we have thousands of plants in the world that we can use for food, we cultivate about 150 species, and particularly four or five main ones: wheat, maize, rice, potato and soybean. Most of our efforts go into improving these four or five crops, whilst their genetic diversity is decreasing. But diversity is essential for future food security.

Prof. De Schutter made a number of recommendations:

- Countries need to be better equipped to make the right choices regarding the IP regime they choose, for instance by better information about the potential benefits of TRIPS Article 27.3(b) sui generis options, and the risks of providing high levels of IP protection, for example through acceding to UPOV 1991.
- There should be more use of TRIPS’ and UPOV’s research exemptions, and thought should be given to making it easier to access materials upon which research can be based, for example through clearing houses or open source systems.
- Public money needs to be reinvested in agricultural research to redress the imbalance which IP rights have caused by incentivizing research in directions that benefit rich farmers rather than in areas that would benefit more people, such as tropical maize, sorghum, banana or cassava.

“Farmers should be involved in designing legislation on IP rights in agriculture”

- Protection of farmers’ rights should be improved. Farmers should also be rewarded for their stewardship of genetic resources. ITPGRFA, for instance, says that farmers should have a right to participate in decisions, and Prof. De Schutter said that farmers should be involved in designing legislation on IP rights in agriculture.
- Governments should do more to encourage traditional farmers’ seed systems, and protect them from being marginalized by commercial systems. They could, for instance, amend existing seed regulations to make them more hospitable to traditional farmers’ varieties, or community seed banks (like in India or Mali) and seed fairs, where farmers exchange seeds among themselves rather than depending on commercial systems.



2. Questions and comments by the audience

In the discussions with the audience which followed, the panellists contributed further insights.

Mr Meienberg recalled that the *raison d'être* of IP rights is to promote innovation. So if an IP system for seeds is developed, it must also be ensured that the system really does promote innovation. The Swiss government, for instance, has increased the term of patent protection from 20 to 25 years, but this seems to be an arbitrary length, and not determined on the basis of what is optimum for innovation. Other factors must also be considered, and particularly the relationships between factors: patents on plants and biological processes have an impact on biodiversity, on breeders, on farmers and consumers, for instance. This pleads in favour of a completely different approach to IP protection on seeds. One element that should be borne in mind is that an IP policy on seeds should not be "one-size-fits-all," because the impact on farmers, on biodiversity, is not the same in the Netherlands or in Malawi. There is a lot of flexibility that can be used to this end in TRIPS and – albeit to a lesser extent – in UPOV. IP policy on seeds should respond to the needs of all stakeholders. This is not how TRIPS and UPOV were developed, but it is what should be done in the future.

Prof. Correa pointed out that IP is a *tool* (to promote advances in science and technology) and not an end in itself. He said we need to completely rethink how IP has been applied in food and agriculture, and the extent to which the existing system achieves societal objectives in this field, namely fostering innovation and ensuring access to the products of innovation. The plant variety protection system, particularly the UPOV system, was developed to meet the needs of European seed companies, and it is debatable whether this system responds to the needs of farmers and seed producers in developing countries.

He added that there has been a lot of debate in relation to TRIPS flexibilities for the protection of public health, but there has been very little discussion about flexibilities that should be applied to protect other public interest areas, such as food and agriculture. Some European countries have introduced flexibilities, but in most developing countries the issue has not been considered. There is scope for more exploration of the use of flexibilities.

Mr Tansey noted that the trends identified during the discussion will not lead to a fair and sustainable food system. He cited the International Assessment of Agricultural Knowledge, Science and Technology for Development,⁴ which found that there needs to be a move to more agro-ecological farming. He said that technology cannot solve the problems of hunger and malnutrition, as these are not so much technological, but social and economic problems. He pointed to the need for different legal and institutional frameworks, and incentives for research and innovation. These should view innovation as something that is widely practiced – in farmers' fields, in villages, and in small businesses – not as something controlled by a few corporations and professional scientists. Mr Tansey pointed out how poor regulation and business models damaged the financial system, warning that there are worse dangers from depending on a few mega-firms in the food system. He called for anti-trust, liability and redress regimes that would give those with the privileges IP conveys some of the countervailing responsibilities and checks on their activities.

He called for rejection of patents on plants and animals, for support to countries in developing appropriate sui generis systems, and for consideration of a new revision of UPOV to incorporate farmers' rights and farmers' varieties systems and make it more flexible.

3. Conclusions and way forward

In their conclusions, speakers concurred on the need for IP to be viewed as a tool for innovation, and for IP and research to respond to the needs of small-scale farmers. They called for more use of the flexibilities allowed by the international IP system, and for recognition of the fact that a one-size-fits-all system will neither be appropriate in agriculture, nor encourage long-term resilience to environmental changes.

Endnotes

¹ Patent EP 1069819, *Method for Selective Increase of the Anti-carcinogenic Glucosinolates in Brassica*, <https://register.epoline.org/espacenet/application?number=EP99915886&tab=main>

² Mr Meienberg mentioned an umbrella group of NGOs and large farmers' organizations worldwide who are working together on these issues: www.no-patents-on-seeds.org

³ *Seed policies and the right to food: enhancing agro-biodiversity and encouraging innovation*, <http://daccess-ods.un.org/TMP/7223644.html>

⁴ See *Agriculture at a Crossroads*, 2009, www.agassessment.org

U. The global financial crisis – WTO rules and the role of the state

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr Brendan McGivern – Executive Partner, White & Case LLP, Geneva

Speakers

Mr Jasper Wauters – Associate, White & Case LLP, Geneva

Mr David Hartridge – Senior WTO Counsellor, White & Case LLP, Geneva

Mr Karl Tachelet – Director for Trade and External Relations, European Confederation of Iron and Steel Industries (EUROFER), Brussels

Mr James Bacchus – Partner, Greenberg Traurig LLP, Washington, D.C., and former Chairman of the WTO Appellate Body

Organized by

White & Case LLP

Report written by

White & Case LLP



Abstract

The goal of the session was to examine governments' responses to the economic crisis in light of the relevant WTO rules and the trade-liberalizing objectives of the WTO. The underlying fundamental question addressed in the session concerned the continued relevance and role of the WTO as an institution, and the principles on which the multilateral trading system is based.

The session's panel examined four key issues relating to the way members have responded to the challenges posed by the economic crisis and

the extent to which WTO rules play a role in the choice of policy means available to overcome this crisis. In particular, the four speakers discussed (1) the role of subsidies in fighting the economic crisis in the industrial sector, (2) the question of subsidies to banks and other financial service providers as a means of combating the financial crisis, (3) the specific problems faced by a key economic sector, such as the steel industry, and finally (4) the role of the WTO and WTO disciplines in times of economic crisis. The session was chaired by Brendan McGivern, Executive Partner of the Geneva office of White & Case LLP.





1. Presentations by the panellists

(a) Jasper Wauters, Associate, Geneva office of White & Case LLP

Mr Wauters addressed the question of whether there is a risk that the rescue operations of today become the trade disputes of tomorrow. In particular, he looked at subsidies as a policy tool and compared it with alternative policy tools available to governments.

Mr Wauters argued that subsidies are perhaps a lesser evil compared to protectionist measures such as increased tariffs, technical barriers to trade, or anti-dumping actions. He examined the rather positive approach to subsidies in the GATT, and explained that, even under WTO rules, subsidies are a generally accepted policy mechanism. Subsidies do not, as such, raise a barrier to trade, but instead stimulate trade.

Mr Wauter's main point was that subsidies were thus to be preferred over trade-restrictive policies, such as trade remedies.

(b) David Hartridge, Senior WTO Counsellor, White & Case LLP

Mr Hartridge questioned whether there exist any WTO rules that discipline governments' policy autonomy in respect of rescue operations in the financial service sector. His conclusion was that the General Agreement on Trade in Services (GATS) does not contain any meaningful disciplines on subsidies to service providers. The GATS only provides for a general provision that members are to enter into negotiations with a view to developing the necessary multilateral disciplines.

He explained that the lack of significant progress since the start of these negotiations confirms that there is no real political will to impose meaningful subsidy disciplines on services. This implies that the oft-discussed bank bail-outs of the last year are not covered by GATS disciplines, other than the general non-discrimination requirement, which does not seem to be at issue.

He further pointed to the prudential carve-out for the financial service sector, which proves that nothing in the GATS could prevent a member from taking measures for prudential reasons or to ensure the integrity and stability of their financial system.

Mr Hartridge explained that this carve-out under the Annex on Financial Services could, in any case be

referred to as a justification of the measures taken during the financial crisis, even if meaningful subsidy disciplines had existed in the GATS.

(c) Karl Tachelet, Director for Trade and External Relations of the European Confederation of Iron and Steel Industries (EUROFER)

Mr Tachelet considered whether the economic crisis could lead to renewed "steel wars" and increased resort to trade remedies in the steel sector.

Mr Tachelet presented an overview of recent developments in the steel industry and examined, in particular, the evolution of steel prices in China. He argued that Chinese steel prices have dropped significantly lately, and that it is ever more difficult for steel producers in Europe to compete with China.

According to Mr Tachelet, the reason for the competitive strength of the Chinese steel industry is their government's support for the steel industry through various forms of subsidization. He explained that the European steel industry is already suffering injury as a consequence, and that imminent trade remedy action to offset the unfair trade practices of Chinese exporters is to be expected.

“Trade remedies play an important role in levelling the playing field, and in ensuring that WTO members respect their multilateral obligations”

He expressed the view that trade remedies play an important role in levelling the playing field, and in ensuring that WTO members respect their multilateral obligations.

(d) James Bacchus, Partner, Greenberg Traurig LLP, and former chairman of the WTO Appellate Body

Mr Bacchus examined the impact of the global crisis on the institutional capabilities of the WTO and on members' continued adherence to the basic principles on which the multilateral trading system is based.

Mr Bacchus commented on the specific topics addressed by the first three speakers, and expressed his view that subsidies are costly and potentially trade-distortive. He

agreed with Mr Hartridge that no meaningful disciplines on service subsidies currently exist, but expressed the view that members ought to introduce meaningful disciplines on service subsidies as well, in order to prevent subsidies from distorting the level playing field.

He further agreed with Mr Tachelet on the role played by trade remedies in order to guarantee that members play by the rules and that exporters do not engage in unfair trading practices, such as dumping.

However, he considered that it was perhaps more important to look at the underlying reasons for China's competitive advantage, since it does not result from a natural comparative advantage, and to address these underlying causes.

“It is due to the existence of the WTO rules and its efficiently functioning dispute settlement system that the global crisis had not been made worse by excessive protectionism”

He then concluded by underlining the crucial role of the WTO rules in times of economic crisis. In his view, the crisis has demonstrated why it is important to have such multilateral rules. It is due to the existence of the WTO rules and its efficiently functioning dispute settlement system that the global crisis had not been made worse by excessive protectionism.

2. Questions and comments by the audience

A number of questions from the audience led to further discussion about the need for subsidy disciplines on services in general, and on financial service providers in particular.

Another question concerned the steel industry, and related to the causes of the current problems faced by steel producers in developed countries

The possible impact of the economic crisis on some of the main trade disputes of the moment, such as that between the EC and the United States on aircraft subsidies, was also discussed.

3. Conclusions and way forward

In sum, the session focused on some of the most frequently raised questions about the global financial and economic crisis and how WTO members are reacting to it. It addressed essential questions about the role of the WTO agreements, and the role of the WTO as an institution, in finding global solutions to global problems.



V. How do agreements on trade in services have a role in the financial crisis and the measures to deal with the economic crisis?

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr Offah Obale – Services Programme Officer, South Centre

Speakers

Mr Kavaljit Singh – Director, Public Interest Research Centre

Ms Myriam Vander Stichele – Senior Researcher, Centre for Research on Multinational Corporations

Professor Jane Kelsey – School of Law, University of Auckland

Ms Sanya Reid Smith – Legal Advisor and Senior Researcher, Third World Network

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

Organized by

Centre for Research on Multinational Corporation (SOMO)
and Third World Network (TWN)

Report written by

Centre for Research on Multinational Corporation (SOMO)
and Third World Network (TWN)



Abstract

The main objective of the session was to counterbalance the lack of attention in many fora dealing with the financial and economic crisis, and to examine the role free trade agreements played in liberalizing and deregulating financial services. In order to raise discussions about the past and future roles of the WTO and the Doha Round of negotiations in the current financial crisis, this session examined:

- how the current General Agreement on Trade in Services (GATS), as well as free trade agreements (FTAs) and bilateral investment treaties (BITs) that regulate trade in services, influence the ability of governments to take the necessary measures to deal with the current financial and economic crisis and to avoid similar crises in the future;

- how the proposed and implemented new financial regulations, bailouts and stimulus packages relate to GATS and other trade in services agreements.

The session concluded that there was a major incoherence between the policy space needed to deal with the financial and economic crisis, and apply the lessons learned from the financial crisis on the one hand, and the liberalization of financial services through free trade agreements, GATS and BITs, which cover different deregulating rules, on the other hand. A major rethinking, revision or even abolition of such agreements was called for.

1. Presentations by the panellists

(a) Kavaljit Singh, Director, Public Interest Research Centre

Liberalization and the special functions of financial services and foreign banks in developing countries

Financial services are fundamentally different from other services, such as IT services, education, health or tourism, and therefore the potential costs and benefits of liberalizing trade and investments in financial services will be drastically different. When a bank fails, other banks (which are sound and profitable) will also be hit due to inter-bank lending, and the payment system will also be affected – thereby undermining the entire system. Branches of failing multinational banks can spread the crisis internationally.

Global financial service providers are pursuing free trade agreements in financial services, in GATS and especially in bilateral FTAs which can be more quickly negotiated. Through the “review process” in FTAs, future deeper liberalization commitments and new market access commitments will take place in the future.

There is pressure on India to open up its financial services, particularly banking services, in bilateral and multilateral trade negotiations. The Indian banking system is said not to be efficient, and the best way to increase efficiency is to allow greater presence of foreign banks. Research based on efficiency criteria shows that Indian banks are more efficient than foreign banks, despite the fact that Indian banks have a large presence in rural and remote areas, where transaction size is very small.

Financial inclusion is also an important parameter in India because there are 500 million Indians who lack access to banking services. However, most foreign bank branches are located in urban and metropolitan areas – and even in urban areas they do not serve the urban poor. The share of foreign banks in total agriculture credit in India is less than 1 per cent, and their share of SME credit in total credit is 1.2 per cent. The problem lies with the foreign banks’ business models, as there is no regulatory ban on foreign banks serving the urban poor.

There is a major difference between local and foreign banks. Unlike local banks, foreign banks can pack and leave, for example if their parent bank is in trouble or there is a crisis in a host country.

India was saved from the ongoing financial crisis, because:

- foreign banks have limited presence in the Indian markets and Indian banks have very limited presence abroad;
- there is greater regulation of the banking system, which allowed for 6-8 per cent of economic growth, higher domestic savings, profitable banks and no bailouts.

New FTAs include disciplines on capital controls, even if the World Bank and IMF have changed their position on capital controls after the Asian crisis caused sudden capital flight.

“The ongoing financial crisis calls for fundamental rethinking on financial service liberalization under trade agreements”

The pre-crisis model of the GATS, based on deregulation, universal mega-banks, and free flow of capital across border, has been discredited. The ongoing financial crisis calls for fundamental rethinking on financial service liberalization under trade agreements and delaying financial service liberalization at the bilateral or multilateral levels until the regulatory issues raised by the current financial crisis are addressed. There are policy lessons to be learned from those countries which were not affected by the ongoing crisis.

(b) Myriam Vander Stichele, Senior Researcher, Centre for Research on Multinational Corporations

GATS liberalization of financial services in GATS and in the context of the financial crisis and reforms

1. The crisis has shown that the following assumptions, on which GATS negotiations on financial services were based, are wrong:

- there is no need for regulation before liberalization, however the lack of regulation caused the crisis;
- foreign financial services are more efficient, however they spread toxic products and risky behaviour;





- GATS rules underpin rapid expansion of financial products and financial operators, and increase world-wide competition, however more competition led to pressures to water-down regulations – so-called “light-touch regulation” – which allowed the risky and complex behaviour that caused the crisis.

2. GATS rules not only liberalize but also deregulate and integrate light-touch regulation through:

- permanent commitments, because it is very difficult and costly to withdraw the committed financial service sectors in order to re-regulate: for example, in its GATS commitment, the US incorporated abandonment of the Glass-Steagall Act of 1933 (i.e. the abandonment of the separation between commercial banking and other financial services, which allowed financial conglomerates to become too big to fail);

- the market access rule (GATS Art. XVI) deregulates because of the following “measures which a Member shall not maintain or adopt” when financial service commitments have been taken:

- » limitations of the total number of financial service suppliers;

- » limitations of the total value of the service transactions or assets;

- » limitations of the total number of service operations or the total quantity of service output;

- » requirements for a joint venture or specific legal entities;

- » an economic needs test;

- » limitations of foreign ownership;

- requests during the negotiation process, such as the EC requests which contain many demands to “eliminate” existing regulations (eliminating capital requirements on foreign banks and regulations that limit the operations of hedge funds, for example).

3. GATS liberalization of financial services restricts the ability of governments to change the regulatory structure in order to deal with current financial crisis because:

- the “prudential carve-out” in the Annex on financial services is not sufficient to protect all the national measures that are needed to deal with the economic and financial crisis, and prudential measures can be challenged when considered “as a means of avoiding the Member’s commitments or obligations under the Agreement”;

- the GATS national treatment rule applies even when some foreign banks are being supported by their government (bailouts), and no discrimination is possible between foreign banks with different financial stability or home country supervision;

- the WTO Understanding on Commitments in Financial Services, adopted by 33 WTO member countries, includes a standstill on regulations and a provision “to offer in its territory any new financial service” which might have been responsible for the current meltdown.

This means that no guarantees of good regulation and supervision are provided for under GATS rules and preventive actions are difficult to take.

4. GATS rules and commitments pose problems in the implementation of proposed new regulations, for example because introducing new technical standards, qualifications and licensing requirements might be contrary to the GATS rule on domestic regulation (Art. VI 5), which states that they should not be more burdensome than necessary, or when they could not have been foreseen by a country at the time its commitments were made, or when they are “a restriction on the supply of the service” (Art. VI.4(c) 5).

5. GATS should not negotiate further liberalization of financial services because:

- international and national financial regulation and supervision are not ready, and financial conglomerates are still engaged in risky operations and products;

- there is no level playing field in the financial sector between financial conglomerates that are being supported by their governments and developing country banks that have less access to international capital and are faced with the effects of the economic crisis;

- new disciplines on domestic regulation might undermine national and international financial regulation and supervision;

- trade negotiators have shown that they do not know how to deal with the riskiness of the financial sector.

6. How to deal with the GATS problems in financial services:

- withdraw the requests in financial services, and the (revised) offers;

- no further financial service negotiations should be carried out in the current DDA round and FTAs;

- developing countries should be able to withdraw financial service commitments without compensation;

- full discussions should be engaged in, in all financial reform fora (e.g. G20, the Basel Committee, Financial Stability Board, IOSCO, IMF's Financial Sector Assessment Programme, etc.).

(c) Jane Kelsey, Professor, School of Law, University of Auckland

How FTAs deepen the risks of systemic financial crisis

With the GATS 2000 negotiations stalled, home governments of the financial services lobby have turned to new-generation free trade agreements (FTAs) to bypass that stalemate and achieve what is not possible in the GATS. There is no sign of any rethink in light of the crisis, even though FTAs intensify an interdependent and increasingly deregulated/self-regulating global financial system.

How GATS is being rewritten to close the spaces kept open in Uruguay round

FTAs extend the special treatment for financial services in GATS, which has an Annex on financial services, the Understanding on Commitment in Financial Services and the Fifth Protocol on Financial Services. Among the most significant differences are:

- A negative list approach to commitments, in some FTAs, whereby measures are covered unless they are explicitly excluded. This is contrary to the positive list in the GATS, which allows countries to choose their exposure to financial services. In practice, negative

lists result in more risk of error, and less autonomy to respond to unforeseen policy, regulatory or market failures.

- The GATS Art. V requirement that FTAs should have substantial sectoral coverage is used to require extensive commitments far beyond the GATS: for example, the EU insists that FTAs must have commitments in 80 per cent of service subsectors from developing countries, and up to 65 per cent from LDCs.

- Investment chapters in FTAs guarantee rights and protection for investments, including the "innovative" financial products and financial conglomerates at the heart of the crisis. Some FTAs include protection against government measures that may "expropriate" the value of investments (see report of Ms Reid Smith's presentation, below).

- Modes 1 and 2 are blended into the category "cross-border services" in various ways, and encourage far more extensive commitments for e-services from remote or unidentifiable locations and offshore banking for regulatory arbitrage or in tax havens.

Blocking open the doors for the shadow banking industry and toxic products

Key elements of the GATS Understanding on Commitments in Financial Services are now included in almost all FTAs in various forms. For example, governments must allow foreign firms to sell "new financial services" that are not yet available in their territory but are supplied in the other party, or sometimes anywhere in the world. Even where authorization can be required it can only be denied for prudential reasons, which may be impossible to show in advance.

FTAs promote the adoption of international financial standards, such as the failed Basel II rules that allowed banks to devise their own risk-assessment measures for determining their capital adequacy requirements.

Closing off the exit routes

FTAs tie the hands of governments and prevent them from re-regulating financial services and markets through many measures similar to GATS rules and annexes on financial services, or through measures which have been rejected in the WTO. These include:



- a “best endeavour” obligation to consult with foreign firms before introducing new regulations, under the heading “transparency”;
- unrestricted transfers and payments for services which apply across the board. Most FTAs have some restrictions or safeguard clauses, but US FTAs do not allow a party to suspend its obligations even in a balance of payments emergency.

FTAs should stop being negotiated to serve a financial model that has plunged the world into crisis by:

1. removing financial services and investments from all FTA negotiations;
2. allowing countries to withdraw their existing commitments in FTAs without penalty;
3. adopting a pro-development interpretation of GATS Article V that allows governments to minimize their service obligations under FTAs.

(d) Sanya Reid Smith, Legal Advisor and Senior Researcher, Third World Network

How free trade agreements (FTAs) and bilateral investment treaties (BITs) restrict governments' measures

Most WTO members have, or are in the process of negotiating, bilateral or regional FTAs, covering financial services and BITs: apart from Mongolia, all WTO members are negotiating FTAs, and there are more than 2,000 BITs.

BITs have rules that limit governments' room for manoeuvre to take measures before and during times of crisis, because BITs:

- have a broad definition of investment, including shares, bonds, derivatives and other financial instruments;
- include an (indirect) expropriation rule: if the host country enacts laws or takes measures that reduce the value and profitability of the investment, the investor needs to be compensated for the value of the investment with interest at commercial rates;
- have a loose definition of the “home country” of the investor, which may be the country in which the investor has a mailbox office, yet the investor

can nevertheless use the BIT of that country to obtain protection, and may be able to sue the host government.

As a result, an investor can sue his host government before an international tribunal for having adopted measures to regulate and prevent future crisis, such as:

- requirements for more capital, which reduces the profitability;
- reduction of bonuses for bankers, who are considered investors;
- restricting trading in risky instruments, which restricts profits;
- restricting the freedom of movement of capital; and
- measures such as those that Argentina took during its financial crisis (2001): Argentina has been sued 46 times, which might result in fines of US\$ 17 billion.

These BITs have chilling effects on legislation, and are being reinforced when the country also has an FTA which also covers investments in financial services, through the most-favoured nation clause, and a fine that can be imposed through higher tariffs.

The UN Stiglitz committee called for a review of all FTAs and BITs to be part of a broader framework.

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

The financial crisis and the Doha Round: a changed context for the GATS negotiations

The GATS expansion of financial services has been based on arguments of the benefits of the Western financial model, which experiences in the financial crisis have shown to be invalid:

- The claims of the better risk management and better asset allocation by the Western model have proven to include extremely risky gambles taken by the financial industry.
- GATS negotiations result in opening trade in risky products such as derivatives, even though derivatives

were responsible for transforming the US housing crisis into a worldwide crisis.

- Increased competition from liberalization drives firms into risky activity. For example, Canada's liberalization of mortgage insurance in 2006 introduced high-risk mortgage products.

The environment for financial service negotiations has been distorted by huge government bailouts and subsidies of the Western financial industry, which could be challenged using existing GATS national treatment rules which cover subsidies and change of competitive environment (Art. XVII.3).

WTO members assume that the GATS Annex on Financial Services (Art. 2) provides a "carve-out" for all prudential measures, but the GATS exceptions for prudential measures are limited:

- Panels are the ultimate arbiters of whether governments have acted for prudential reasons or are "avoiding the Member's commitments or obligations under the Agreement".
- Not all financial regulations, such as consumer-protection measures, are covered. According to the WTO Secretariat, these include measures such as: "Lending requirements to certain sectors or geographical regions", or "Requirements to provide certain services".

The draft disciplines on domestic regulation would provide grounds to challenge financial regulations, based on objectivity, relevance, no "undue delays" in processing applications, and could challenge:

- the imposition of "extremely high capital requirements",

- the direction of lending or lending quotas to certain sectors,

- the capping of financial fees and commissions.

"The right to regulate" is clearly restricted according to WTO panel decisions, such as the *China – Publications* panel report (2009), which stated "We observe that China has the undoubted right to regulate trade in services under the GATS. This regulation must however be in accordance with the GATS commitments that China has chosen to make in its Schedule."

2. Conclusions and way forward

- FTAs result in losses for developing countries in many ways, but countries can withdraw from these negotiations.

- Developed countries are not, in practice, opening up their financial services, while nonetheless pushing hard for financial service liberalization in trade agreements.

- Domestic regulation in the financial sector is very country-specific, but GATS and FTA disciplines in domestic regulation cover many non-discriminatory measures, such as complaints of too-long approval processes. The prudential carve-out does not allow regulations that have non financial stability purposes – such as preventing high food prices – in commodity derivative trading.

- The issues discussed in this session are not known to most policy-makers or to the public, and should be challenged collectively by developing countries.

- The alternatives include promoting the regional integration of financial sectors.



W. Formulating and implementing governance on health: the case of access to medicines in the developing and least-developed countries

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr Daniel Crosby – Attorney at Law, Budin & Partners Law Firm

Speakers

Ms Silke Trommer – Researcher, Centre of Excellence in Global Governance Research, Helsinki

Mr David Vivas-Eugui – Deputy Programmes Director, International Centre for Trade and Sustainable Development (ICTSD), Geneva

Professor Raymond Saner – Director, Centre for Socio-Eco-Nomic Development (CSEND), Geneva

Organized by

Centre for Socio-Eco-Nomic Development (CSEND)

Report written by

Centre for Socio-Eco-Nomic Development (CSEND)



Abstract

The objective of this session was to address the institutional issues surrounding the implementation of the Doha Declaration on the TRIPS Agreement.

While the Doha Declaration was a major breakthrough in the adoption of the Doha Development Agenda, its policies have yet to achieve full and effective implementation, especially in the beneficiary developing and least-developed countries. Furthermore, the discussion focused on the impact of provisions related to intellectual property rights and standards in regional agreements on access to medicines. In examining trade agreements, the session analysed offensive and defensive interests of both developing countries (DCs) and the least-developed countries (LDCs) in the health sector, in particular in relation to investments and technology transfers.

The session addressed the issues from four levels; the national level, the regional level, the multilateral level, and the strategic level. The national level focused on identifying and addressing the institutional barriers to successful implementation of the Doha Declaration. The issue was addressed from the regional level through empirical evidence on current regional schemes and an assessment of their progress to date. The multilateral level focused on which trade-related technical assistance and capacity-building activities will provide a better implementation of the legal framework on access to medicines. Lastly, the strategic level focused on the way forward, and how to assist beneficiary countries in implementing the legal multilateral framework in order to ensure effective use of the flexibilities on access to medicines. Each of these levels helped to address how a new perspective on governance in health could assist the developing and least-developed countries in the implementation of the Doha Declaration on TRIPS and public health in the WTO context.

1. Presentations by the panellists

(a) Silke Trommer, Researcher, Centre of Excellence in Global Governance Research

Impact of provisions related to intellectual property standards in regional agreements on access to medicines

Regrettably, most FTAs involving medicines include clauses that favour the rights of the inventor, and obstruct developing countries from receiving affordable generic drugs.

Access to less expensive medicines is greatly hindered by the presence of patents, which are used to compensate the inventor of the medicine. Extended patent terms, second-use patents, and the creation of additional patentability criteria have all decreased access to affordable medicines for developing countries. Additionally, the creation of test data exclusivity, the link between the patent term and marketing approval procedures, and regulation on generic drug imports each create pressure on the production of affordable generic drugs.

Furthermore, tightened enforcement laws on imports and exports have reduced developing countries' abilities to import generic drugs.

This increasingly obstructs south-to-south trade of generic medication, which is completely lawful under public international law.

“It is important that countries are able to use the flexibilities in the TRIPS Agreement, which were guaranteed by the Doha Declaration in 2001”

In order to combat the issue of expensive brand drugs, it is important that countries are able to use the flexibilities in the TRIPS Agreement, which were guaranteed by the Doha Declaration in 2001.

Unfortunately, there are various clauses which restrict existing TRIPS flexibilities, and others which introduce “TRIPS-plus” obligations that are to the sole benefit of the patent holder.

Suggestions to encourage progress include: sticking to TRIPS flexibilities, committing to the Doha Declaration in

FTAs, avoiding all clauses that extend patent protection, and making sure that countries know their defensive and offensive interests when making trade agreements.

Including public health experts and interest groups in the policy formulation process will reintroduce a voice that defends the societal interest over the interests of the inventor.

(b) David Vivas-Eugui, Deputy Programmes Director, International Centre for Trade and Sustainable Development (ICTSD)

Assessing the impact of TRIPS-plus provisions on public health: Lessons from case studies in Latin America

The assessment of the impact of the TRIPS-plus project focused on how TRIPS-plus provisions would impact public health and access to medicines in a particular market at the macro level. The project was implemented through the development of an impact assessment methodology and case studies of several countries, including Costa Rica, Guatemala, Thailand, Jordan, Bolivia, Colombia, Uruguay and the Dominican Republic. The objective of the project was to develop methodological tools, through national assessments, which will assist developing countries to better understand the costs and benefits of FTAs for negotiation and implementation purposes.

The studies were undertaken with a partial equilibrium model at the macro level. The model measured the level of exclusivity, impact over average prices, impact on public and private spending on medicines, and impact on consumption and competition.

There are some limitations to the model. For example the model does not measure the impact over innovation, or market and government failures.

An in-depth look at the examples of Costa Rica and the Dominican Republic revealed important differences on the impact over prices and market structures of the countries.

The following background information on the case study for Costa Rica was given: TRIPS and CAFTA have already been implemented, there is universal health care coverage (almost inelastic demand), and it is applicable only to the institutional market.





The findings in Costa Rica revealed that, by 2030, the price of all drugs will increase between 18 and 40 per cent yearly, and there will be a need for increased public spending from about US\$2.008 million to US\$3.357 million. If the public budget is not increased, consumption will decrease by 24 per cent in the worst-case scenario. Furthermore, the concentration on the supply is putting at risk the sustainability of the universal access and procurement system.

The following background information on the case-study for the Dominican Republic was supplied: TRIPS has been implemented, CAFTA is in the process of being implemented and the study is applicable to both the institutional market and the private market.

The findings in the Dominican Republic study show that there will be a modest price increase of 9 to 17 per cent. Since consumers already pay a very high price in the health care market (about 80 per cent of the purchases today are out-of-pocket), the private sector price will not greatly increase due to TRIPS-plus obligations. If the public budget does not increase, consumption will decrease by 8 per cent in the worst-case scenario.

Some lessons gained from these studies are:

- TRIPS-plus can have an important impact on public spending and social security systems;
- the use of TRIPS flexibilities can mitigate this impact;
- it is important to not underestimate the effect of information asymmetries and market and government imperfections on prices; demand needs to be higher in order to negotiate prices.

Recommendations to mitigate impact include using TRIPS and US/CAFTA-DR flexibilities, exploring the value of regional procurement, increasing consumer subsidies, expanding the coverage of social security systems, and improving institutional capacity in the offices of IP, sanitary regulation, procurement system, and social security.

(c) Raymond Saner, Director, Centre for Socio-Eco-Nomic Development (CSEND)

Offensive and defensive interests of developing countries (DCs) and the least-developed countries (LDCs) in the health sector in relation to investments and technology transfers in the sector

The health sector is one of most rapidly growing sectors of the world economy, with US\$4 trillion/year (Chanda, 2001), but the gap between developed and developing countries is very significant. Healthcare expenditures in OECD countries accounted for US\$3,500/capita/year in 1998, while in comparison, it accounted only for US\$5/capita in the LDCs (UNCTAD/WHO, 1998).

Trade in health services is still small, as it represents only 0.4 per cent of total health expenditure of OECD countries (Lautier, 2005). However cross-border trade and investment in this sector are growing considerably due to numerous factors, such as aging societies in Europe and Japan leading to increased health expenditures, increase of spending on health services, technological application of health services in remote areas, continued FDI liberalization, and a high and increasing demand for skilled medical personnel.

By 2008, 88 WTO member countries had committed to one or several agreements related to health service trade depending on the WTO modes of trade involved (M1 – cross-border supply; M2 – consumption abroad; M3 – commercial presence; or M4 – movement of natural persons). Like any other tradable service, a country can have both offensive interests (e.g. requesting expansion of the scope of activities committed by other WTO member countries, and ensuring their commitment towards greater market access and stringent national treatment) as well as defensive interests (e.g. protecting national service providers and consumers) in health services.

As an example, prior to joining the EC, Hungary had primarily no restriction in terms of market access and national treatment when considering its health-related specific commitment, with Modes 1, 2 and 3 listed as “none” in their schedule of commitments. Hungary did not take any specific Mode 4 commitments on health services (unbound). Certain commitments were, however, taken horizontally to provide for the entry and temporary stay of natural persons under various categories. In terms of commercial presence, while there were no sector-specific restrictions on market access and national treatment, a number of horizontal limitations, requiring the establishment of a limited liability company, joint stock company or representative office, apply. The acquisition of state-owned properties is excluded from the scope of the commitments.

The main offensive interest of a country like Hungary should be to push the EU for the full implementation of the free movement of doctors to complement the free

movement of patients.¹ On the defensive side, Hungary could request that foreign health providers moving to Hungary should learn Hungarian and spend a certain number of days in sharing know-how with Hungarian health professionals.

2. Questions and comments by the audience

Ms Trommer was asked how she would respond to the fact that trade negotiations are very skewed between countries, even between medium sized countries and more powerful countries.

Ms Trommer replied that, from her personal research, she had found that in West Africa, some NGOs with particular technical knowledge of development-related legal and economic issues have been able to help the region negotiate better trade agreements. This shows that medical personnel and outside groups can help to make negotiations fairer between two countries.

Ms Trommer was asked why it is a problem if developing countries exchange concessions on intellectual property for market access in other areas.

She replied that many LDCs exhibit structural problems, such as economic vulnerability, which make it difficult for them to reap trade benefits, despite market-access opportunities. Furthermore, market-access concessions are subject to preference erosion, whereas intellectual property concessions in FTAs are not. The feasibility of the bargain deserves thorough prior econometric analysis to which institutional capacity problems present a true obstacle.

A participant asked Mr Vivas why the Dominican Republic results were so different from the Costa Rican results.

Mr Vivas replied that these differences were also surprising to the researchers. The main reason for price impact differential in the case of the Dominican Republic were (a) the inclusion of future mitigation policies in the model (i.e. expansion of the social security system from 20 to 80 per cent coverage by 2012), and (b) the existence of already high prices at the consumer level in this country (i.e. most of the purchases are out of the pocket at the pharmacy level).

Prof. Saner commented that the main exports for LDCs are usually agricultural, and when they sign trade agreements, they are locked into an agreement in which

they are bound to the trade of agricultural goods, even if they are beyond that level of development and have the potential to export other goods and services. In such a case, it must be determined if the LDC should be able to renegotiate their trade agreement.

Another participant commented that FTAs are drastically different depending on whom the agreement is between. It is up to each and every country to decide how to use or not use the flexibilities of the agreements, especially considering how vague most of the flexibilities are in FTAs.

In response to this comment, it was noted that the flexibility is very hard to implement, especially for the smaller, less-developed countries, who are easily pressured by richer countries.

Prof. Saner added that it must be determined how far to go in allowing countries to take back the commitments they have made. If a country has been persuaded by an institution such as the IMF or a powerful country into an agreement that does not benefit their country, should they be allowed to take back their agreements? Why not talk about bringing back plurilateral agreements, such as the Doha Round negotiations?

Prof. Saner was asked whether Hungary's GATS/health-sector commitments pre-dated its entry into the EC, and are higher than the EC commitments. How should the difference be reconciled?

He replied that the process of harmonization of the EC health sector has not been completed yet. Once completed, the EC and Hungary might have to negotiate compensation for non-EU WTO member countries holding offensive interests for the Hungarian health sector. Meanwhile, the Hungarian government should do its best to restructure its health sector and build up competitiveness.²

3. Conclusions and way forward

There are various clauses which restrict existing TRIPS flexibilities, and others which introduce "TRIPS-plus" obligations that are to the sole benefit of the patent holder. Suggestions to improve developing countries' access to patented medicines include: sticking to TRIPS flexibilities, committing to the Doha Declaration in FTAs, avoiding all clauses that extend patent protection, and making sure that countries know their defensive and offensive interests when making trade agreements.



Including public health experts and interest groups in the policy formulation process will reintroduce a voice that defends the societal interest over the interests of the inventor.

With reference to TRIPS provisions, it was concluded that:

- TRIPS-plus can have an important impact on public spending and social security systems;
- the use of TRIPS flexibilities can mitigate the impact;
- it is important to not underestimate the effect of information asymmetries and market and government imperfections on prices: demand needs to be higher in order to negotiate prices.

Recommendations to mitigate impact on the public health sector include using TRIPS flexibilities, exploring the value of regional procurement, increasing consumer subsidies, expanding the coverage of social security systems, and improving institutional capacity in the offices of IP, sanitary regulation, procurement system, and social security.

Endnotes

1 European Commission, 2001. "The internal market and health services. Report of the High Level Committee on Health" http://ec.europa.eu/health/ph_overview/Documents/key06_en.pdf, page 11.

2 See: Saner, R., "Offensive and defensive interests of developing (DCs) and the least-developed countries (LDCs) in the health sector in relation with investments and technology transfers in the sector", 2009, CSEND occasional papers.

X. Controversy at customs: The detention of medicines in transit: what impact on access to medicines?

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

Ms Michelle Childs – Policy & Advocacy Director, MSF Campaign for Access to Essential Medicines

Speakers

Professor Carlos Correa – University of Buenos Aires

Mr Sunjay Sudhir – Counsellor, Permanent Mission of India to the WTO

H.E. Dr Tom Mboya Okeyo, Ambassador, Deputy Permanent Representative of Kenya

Mr José Estanislau do Amaral Souza Neto – Counsellor, Permanent Mission of Brazil to the WTO

Mr Luc Devigne – Head of Intellectual Property Unit, Directorate-General for Trade, European Commission

Panel respondents

Mr Arnoult Gieske – Lawyer at Van Diepen Van der Kroef, Amsterdam

Mr Edwin de Voogd – Managing Director, IDA Foundation, Representative of the pharmaceutical industry

Mr Niccolo Rinaldi – Member of the European Parliament

Mr Antony Taubman – Director, Intellectual Property Division, World Trade Organization

Organized by

Médecins Sans Frontières (MSF)
Campaign for Access to Essential Medicines

Report written by

Médecins Sans Frontières (MSF)
Campaign for Access to Essential Medicines



Abstract

Recent detentions by EU customs authorities – on the grounds of suspected patent or trademark infringements – of legitimate generic medicines transiting through Europe on their way to developing countries have attracted the criticism of some member states and civil society alike. It has raised questions about whether EC Regulation 1383/2003, which grants such powers, and proposed provisions in free trade agreements are compatible with member states' obligations under Article V of GATT and the TRIPS Agreement. MSF explored these questions in a roundtable with a selection of academics, member states, civil society organizations and representatives of the pharmaceutical industry.

Questions explored: Given the importance of access to and trade in medicines for developing countries, what is the effect of customs transit provisions on the ability of countries to use access provisions enshrined in the Doha Declaration and the WTO decision of 30 August? Are such provisions compatible with paragraph 4 of the Doha declaration? How should Article 51 of the TRIPS Agreement be interpreted? Do the transit provisions breach provisions of the GATT Agreement?





1. Presentations by the panellists

(a) Michelle Childs, Policy & Advocacy Director, MSF Campaign for Access to Essential Medicines

- In the case of the Netherlands detaining shipments of Indian-manufactured generic medicines, patents existed neither in the country of origin, nor in the country of destination, and the drugs were not meant for domestic consumption in the European Union.
- Many developing countries lacking manufacturing capacities have to import affordable drugs, so trade between those countries is essential.
- Médecins Sans Frontières is concerned with the ramifications of such detentions on access to medicines in developing countries generally. In addition MSF's own medical procurement activities may be affected by such actions by EU customs.

(b) Carlos Correa, Professor at the University of Buenos Aires

- Article 5 of the WTO General Agreement on Tariffs and Trade (GATT) states that member countries must ensure freedom of transit, and all charges and regulations imposed are to be reasonable. Preventing the transit of medicine did not seem reasonable.
- Patent rights are territorial by nature, and can only be exercised in the jurisdiction in which they have been granted. The detention of goods in transit for alleged IP infringement goes against the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.
- Neither Dutch nor any other EU customs officials are competent authorities to determine if there is a patent infringement in the country of importation.
- In the pharmaceutical sector, there is a major proliferation of patents around any single active ingredient. The European Commission, in a report on competition in the pharmaceutical industry, said that for one blockbuster drug, there were about 1,200 patents or patent applications in the EU. Thus it is extremely difficult for a customs officer to determine whether there is infringement in the first place.
- The EU regulation must be reviewed, not only for the matter of goods in transit but also for its

applicability to patent infringement. As it stands now, the regulation is prone to abuses by patent owners who can use these thickets of patents to prevent legitimate trade.

(c) Sunjay Sudhir, Counsellor, Permanent Mission of India to WTO

- EU customs regulations have a negative impact on universal access to medicines, national public health budgets, and legitimate trade in generic medicines, and they impair the efforts of civil society organizations engaged in providing medicines and improving public health in the least-developed parts of the world.
- EU Regulation 1383/2003 concerning customs action against goods suspected of IP infringement is open to interpretation.
- It is ironic that the EU provides funds for public health programmes in developing countries, and at the same time creates barriers to legitimate trade in generics, hampering access to medicines.
- There are fears that decisions taken under Regulation 1383/2003 reflect a larger design for tougher enforcement of IP rights, part of which is a campaign of deliberately confusing quality concerns with IP rights in international organizations. The issue has arisen in the World Health Organization, and can be noticed in TRIPS-plus elements in bilateral free trade agreements, and the Anti-Counterfeiting Trade Agreement (ACTA) under negotiation to the exclusion of many countries, including developing and least-developed countries.
- Regulation 1383/2003 should be reviewed and brought into line with TRIPS, GATT, and the Doha Declaration on the TRIPS Agreement and public health.

(d) Luc Devigne, Head of Intellectual Property Unit, Directorate-General for Trade, European Commission

- Very few cases of medicine detention happened in 2008, so there was much noise about nothing. The discussion was about a very limited number of cases, all in the past, and which had been explained in detail. The European Commission disagreed that it could be considered as a policy. Probably only a nano-

percentage of the medicine transiting through the EU had been affected.

- The EU goal is not to hamper generic medicines, and the Union remains totally committed to its policy of access to medicines. The EU is committed to the Doha Declaration, and to the global fund on HIV/AIDS. The main objective of the customs regulations is to prevent IP rights infringement and the trade of counterfeit goods, which is a growing concern.
- It is true that the two issues of generics and fakes are separate, but it is also true that EU customs probably saved lives around the world by stopping fake medicines being marketed.
- A review of the EU customs regulation is foreseen, independently from the detentions, and anyone who has an interest can provide comments for the review.

(e) José Estanislau do Amaral Souza Neto, Counsellor, Permanent mission of Brazil to WTO

Seizures under Regulation 1383/2003 are an attempt at extraterritorial enforcement of patent rights. This regulation can potentially disrupt international trade in generic medicines, since the impact is not confined to individual transactions. Repeated seizures create uncertainty and may lead countries to try to avoid certain transit routes, bringing unnecessary transactional costs that might be added to the price of the medicine.

(f) Tom Mboya Okeyo, Ambassador/ Deputy Permanent Representative of Kenya

- Ambassador Okeyo recalled the difficulties for Kenya and other African countries to face the HIV epidemics, TB, malaria and other neglected diseases in term of access to medicines.
- He highlighted the importance of being able to ensure procurement of affordable quality medicines.
- Ambassador Okeyo also stressed and explained the impact that such detentions could have on patients from Africa. He urged the EU to resolve this.

(g) Arnout Gieske, Lawyer at Van Diepen Van der Kroef, Amsterdam

Cost uncertainty

- Cost is a major dilemma for a generic manufacturer, when confronted with a border detention of its consignment of pharmaceuticals. Such a manufacturer will receive a warning letter with an attached waiver of rights (or declaration of abandonment) to be signed and returned. This letter typically informs the manufacturer that he will forfeit the consignment either by not reacting within a certain time-frame (this is if the simplified procedure applies), or by signing the waiver. Alternatively, by protesting against detention, he will be sued. Even in the Netherlands, which is a relatively cost-friendly country when it comes to court action, it is likely that the cost of litigation will, in typical cases, (far) exceed the value of the detained consignment. These are after all generic medicines, and not their branded high-priced equivalents.

Legal certainty is lacking

- EC law, and Regulation 1383/2003 (colloquially: the Anti-Piracy Regulation or "APR") in particular, fail to offer the required legal certainty for parties involved.
- Dutch courts (rightly or wrongly) have assumed infringement of a Dutch patent by goods detained in transit on the basis of the EC legal framework.

Uncertainty in other EU member states?

- As mentioned, border measures were the subject of a questionnaire at this year's AIPPI convention (Q208). It was interesting to see what the European working groups stated on this subject in their national reports. These demonstrated that an EU-wide confusion reigns regarding the subject. In practice, it is still an open question whether EU law allows detainment, seizure and even destruction of medicines transiting through a particular country merely on the basis of patent rights in that country. This uncertainty can and should be remedied, for instance by scrapping patents from the APR, or by creating a more restrictive regime for detentions based on patent rights.



**(h) Edwin de Voogd, Managing Director,
IDA Foundation**

- Accessibility and affordability go hand in hand with generics. The lion's share (80-90 per cent) of the IDA Foundation's high-quality generics are manufactured in India. As a result, the recent seizures and their apparent random character were a major concern.
- Due to a lack of funding, there is often no safety stock, or no alternative medicine. However, some treatment regimens – such as those for HIV or TB – are very sensitive to resistance caused by an interruption in treatment. As a result, virtually every delay in the supply chain is life threatening, especially in cases where the IDA Foundation opts for costly air shipments to avoid an interruption in treatment. In such cases a delay of weeks (the detainments caused delays of months) is, almost by definition, putting lives at stake.
- The IDA is concerned that the conflicting effects of EU Regulation 1383, anti MEDI-FAKE actions and free access to generic medicines under TRIPS were observed at the end of 2008 and have received broad media and political attention since January 2009. Both politicians and law-makers know the effects on patients' lives, and all seem to agree that this is wrong and should be changed. Nevertheless, nothing in the previous 10 months had officially changed. The statements made earlier in the year, in which the European Commission explained it was a Dutch problem, was proven wrong with the seizures that took place in Frankfurt and Paris in April and May.
- The IDA urged the EU, with support of the national law enforcement bodies, to demonstrate responsibility and a genuine sense of urgency followed by action to assure stakeholders that this problem is resolved.

**(i) Niccolo Rinaldi, Member of the
European Parliament**

- Several members of the European Parliament raised the issue of the detention of transit medicines a number of times: a letter to the EC was sent in March 2009; written and oral questions to the EC were asked; an open letter to the EC was published in the press. Members of the European Parliament expressed strong concerns about these incidents, worrying about the impact they might have on access to legitimate, high-quality generic medicines for developing countries.

- It was crucial that the EU consider reviewing the effect of EC Regulation 1383/2003 on the supply of legitimate medicines, given the EU stated commitment to the full implementation of the Doha Declaration on TRIPS and public health.

**(j) Antony Taubman, Director, Intellectual
Property Division, World Trade
Organization**

In correspondence with several civil society organizations which had raised the issue of detention of in-transit generic medicines earlier in the year, the WTO Director-General had clarified the role of the WTO Secretariat when disagreements arose in trade relations between members, in particular confirming his readiness to assist in finding a solution when there was a disagreement between members. A key point was that any action, including good offices and mediation, is only undertaken at the request of WTO members. It was not the role of the Secretariat to initiate any action, nor to intervene, or to pass judgement on the proper interpretation or implementation of WTO rules. Its task was rather to provide a transparent multilateral forum to address such disagreements and, if necessary, a neutral and trusted system for the settlement of disputes, including through good offices, mediation and the formal dispute settlement system. A further aspect of the prevention and settlement of disputes under TRIPS was the greater transparency enabled by the notification and review processes, and extensive information had been published on IP enforcement that should be more accessible as a resource for a broader policy audience.

There was no doubt about WTO members' political commitment to advancing public health, and in particular to promoting access to medicines, nor about their common sense of purpose, as expressed in the Doha Declaration on TRIPS and Public Health, which has led to the only amendment agreed to the entire package of WTO trade law, and is aimed solely at facilitating access to medicines for countries with limited manufacturing capacity.

The message of WTO members to the Secretariat, and to their counterparts in other international organizations in line with their distinct mandates, was to provide capacity building to enable the use of TRIPS flexibilities, and to ensure the activities of international organizations are well coordinated and mutually supportive, and focused on advancing public health objectives. Depending on the members' requirements, the WTO also offered a forum

to review the broader policy context of these issues, and the current session was an illustration of that role.

“The negotiators of TRIPS did have in mind a balance between the proper exercise of IP rights and the objective of ensuring that legitimate trade is not impeded”

The current debate illustrated how policy debates about IP and public health have moved from a focus solely on what IP rights are (and should be) granted by national authorities, to consideration also of how those rights are exercised in practice, and how firms should, or should not, make use of enforcement mechanisms. There has been less policy attention on the specific impact of enforcement mechanisms in the broader

policy debate in contrast with other patent questions, but it was clear that the negotiators of TRIPS did have in mind a balance between the proper exercise of IP rights and the objective of ensuring that legitimate trade is not impeded. Hence the TRIPS Agreement did include important procedural safeguards concerning enforcement to ensure that legitimate trade could continue. Of course, how members chose to implement those specific mechanisms in their national laws was a different matter.

2. Conclusions and way forward

Participants unanimously agreed that access to affordable quality medicines should not be hampered. Most participants also argued that there was a need for the EU to review EC Regulation 1383/2003 in order to ensure that detention of legitimate generic medicines in transit will not happen again.





WTO OMC



IV. The impact of the global economic crisis on developing countries, in particular LDCs, and the role of trade financing

Y. The BRICs at the Doha Round: Comparing crisis-born agendas and strategies

Monday, 28 September 2009 – 14.00 ~ 16.00

Moderator

Mr Pablo Heidrich – Senior Researcher, Trade and Development, The North South Institute

Speakers

Mr Saulo Nogueira – Senior Researcher, Brazilian Institute for International Trade Negotiations (ICONE)

Dr Wang Jiangyu – Professor, Faculty of Law, National University of Singapore

Ms Swapna Nair – Consultant, Indian Council for Research on International Economic Relations

Mr Rajiv Kumar – Indian Council for Research on International Economic Relations

Professor Lim Chin Leng – University of Hong Kong

Organized by

The North-South Institute and the German Marshall Fund (US)

Report written by

The North-South Institute and the German Marshall Fund (US)



Abstract

This analysis, drawing on the cases of Brazil, India and China, provides suggestions as to what these large trading economies are likely to consider essential, negotiable and non-relevant for this round of negotiations to close successfully. It is based on three variables: their leadership capacity to coordinate with other countries at the negotiations, their policy learning from previous crises (such as the ones affecting their Uruguay Round positions in the early 1990s or their WTO accession in the midst of the Asian Crisis), and how their development strategies are being affected by the current crisis. All these elements are, in turn, informed by internal political processes and the array of domestic interests inside each of these three countries.

The conclusions are that the strategies have not varied very much, but have actually solidified the positions these countries held before the onset of the crisis, in the Ministerial Meeting of July 2008. This is a result of strong domestic support inside the BRICs to obtain more market access in the OECD in order to pre-empt future protectionism, and also from a clear determination to maintain current levels of policy space to provide temporary trade remedies, such as safeguards. In terms of leadership, the most clear possibilities are in closer coordination among the BRICs at the WTO, something that would be very difficult to achieve, however.



1. Presentations by the panellists

(a) Pablo Heidrich, Senior Researcher, Trade and Development, The North-South Institute

The current global economic crisis has greatly affected the BRIC countries (Brazil, Russia, India, China and South Africa) and may cause them to modify their agendas for the Doha Development Agenda round of negotiations. Given their commitment at the G20 meetings to contributing to the successful closing of multilateral trade negotiations, and their increasing relevance in the global economy, the BRICs' involvement is a key component in defining how the global trading system will cope with this crisis and contribute to its resolution.

“The BRICs' involvement is a key component in defining how the global trading system will cope with this crisis and contribute to its resolution”

(b) Saulo Nogueira, Senior Researcher, Brazilian Institute for International Trade Negotiations (ICONE)

Brazil has only recently taken a sustained interest in international trade, emerging from a long history of import substitution policies. The strengths allowing this country's international insertion have been in the export of commodities, such as agricultural and mineral goods, as well as a few industrial goods. This informs its long-term approach to the WTO, and to the Doha Round, in particular. Its current position is to request aggressive cuts in subsidies and tariffs on agricultural goods as essential to close the deal. Issues such as services, trade facilitation and intellectual property rights are, however, not relevant. For those goals, Brazil has remained a leader within the G20 coalition of developing countries at the WTO, but has gradually distanced itself from India, due to divergences on services and some agricultural subsidies. The current global crisis has reaffirmed Brazil's position to reject the sectoral proposals coming from industrialized countries, given the strong domestic interests in maintaining the current levels of protection in this economy.

Domestically, Brazil's stance in the Doha Round is strongly supported by most large enterprises dedicated to exporting agricultural goods, and is not opposed by the majority of industrial groups serving the domestic market. Its short-term response to the current global crisis in trade matters – raising some industrial tariffs,

removing automatic licensing, while simplifying drawback legislation and expanding export financing – has contributed to maintaining a wide-enough support for the government's position at the WTO negotiations. That coordination, between the external bargaining agenda and the domestic remedies applied to deal with a concurrent crisis, was, however, lacking in the previous Uruguay Round in the early 1990s. In contrast, the situation then was that Brazil adopted a series of commitments at the WTO, and proceeded with a very rapid unilateral trade opening without implementing remedial domestic policies to deal with the double-impact of an ongoing economic crisis and a rapid opening of its domestic economy.

“Brazil's domestic policies to deal with the crisis have translated into strong continued support for the government's position at the Doha Round”

The conclusion to be drawn from this analysis is that Brazil's domestic policies to deal with the crisis have translated into strong continued support for the government's position at the Doha Round. However, that same support is conditional on the government maintaining a very strict adherence to its goal of obtaining more access in its trading partners' markets, without making any further concessions in the services, government procurement or sectoral negotiations.

(c) Swapna Nair and Rajiv Kumar, Indian Council for Research on International Economic Relations (ICRIER)

International trade plays an increasingly important role in India's development strategy, and thus this country is very concerned that the world should not slip into a protectionist shell. The Doha Round negotiations fit tightly into India's preference for multilateral solutions to international issues, however the country is increasingly hedging its overall trade strategy, and signing more preferential trade agreements. Presently, over 60 per cent of India's booming international trade is within this latter type of agreements.

“International trade plays an increasingly important role in India's development strategy, and thus this country is very concerned that the world should not slip into a protectionist shell”



The current crisis did not affect India very much initially, given its low degree of financial integration with the rest of the world. The “second-round” effects of the crisis, via trade linkages, are nonetheless being felt strongly, decreasing output and employment. The most affected sectors are gems and jewellery, garments and textiles, leather, handicrafts, marine products and auto parts. Total exports had fallen by over 17 per cent up to October 2009.

The policy response from India has been to confirm its position on SSM (special safeguard measures) to protect its agriculture from the volatility in international prices, and some anti-dumping investigations started against Chinese industrial imports. A strong concern remains about what levels of “disguised” protectionism might surface in OECD countries, exemplified in the “Buy American” clauses from the USA against the movement of IT professionals and others, a measure that has strongly affected India. This, in turn, strengthens India’s determination to advance her agenda in the service negotiations at the Doha Round.

In the NAMA coefficients being discussed at the Doha Round, India remains supportive of the current deal, but very aware of how a reduction in its bound levels would reduce policy space in the future. Like Brazil, India also remains sceptical of the sectoral negotiations, only objecting, however, that they are mandatory to all signatories.

Services are instead the most relevant sector for India’s current offensive interests, where it makes the strongest requests on its trading partners. This comes against a background where India has already liberalized most of its trade in this area, and has done so in an autonomous, unbound manner. This newly-found competitiveness energizes India’s trade policy, and spearheads its current efforts to diversify in markets and sectors, an aspect being given urgent attention as a result of this crisis.

The experience of a previous crisis in the early 1990s, at the time of the Uruguay Round, showed India the importance of having a higher profile in the negotiations as a way of maintaining policy space where needed (i.e. agriculture) and making sure that market access in trade partners is ensured, and hopefully increased, as an outlet for exports. The authors found that a more constructive approach to the current WTO negotiations should involve a less defensive posture from India (as well as other developing countries), which nonetheless retains the progress already made in the Doha Round

and also ensures setting up the necessary safeguard mechanisms required to deal with global crisis situations.

(d) Wang Jiangyu, National University of Singapore, and Lim Chin Leng, University of Hong Kong

China joined the WTO in 2001, after 15 years of negotiations. The motives for that accession were to strengthen its international trade relations, promote certain domestic economic reforms, and participate in the rule-making of international trade. Since then, China has risen to become the largest exporting economy and the third largest market in the world, underscoring not only its importance as a source of goods and services, but increasingly, also, a place to sell foreign products.

“Chinese performance in the Doha negotiations could be characterized thus far as “just staying cool””

Chinese performance in the Doha negotiations could be characterized thus far as “just staying cool”, or keeping a low profile despite its large economic size. It has confronted multiple requests to take greater responsibility and leadership with a confused and sometimes overly worried attitude, as might be expected from a new player that harbours within itself local economies with very large disparities in terms of international competitiveness. For the most part, China had yielded leadership to Brazil and India, while retaining membership in the G20 and G33.

During the July 2008 mini-Ministerial Meeting of the WTO, however, China surprised many with an “abnormal” performance, when it confronted the USA, together with India, in a disagreement over special safeguard mechanisms. When criticized abroad for its actions, the Chinese government counterattacked harshly, using the language of a mid-range developing country. This reaction in fact uncovers a widely-held position in Beijing to support special treatment for new members (all developing nations) and emphasize the developmental dimension of trade issues. In tactical terms, it could be described as the “four Ls”: less requests, lower obligations, longer transition periods, and later liberalization.

On specific issues at this Round, China supports tariff reductions in NAMA with special treatment for developing countries, especially the RAMs, on a slight

variation of the Swiss formula. On services, it has already indicated that it would not make any substantial concessions beyond those already agreed to during its own accession negotiations. Some of the greatest interest is, however, in clarifying existing rules on anti-dumping and the so-called rules of origin.

The current global crisis has hit China very strongly, with exports falling by some 25 per cent after many years of rapid growth. It certainly is a preferred target for many of the protectionist measures adopted by most other countries, especially the industrialized ones. The lessons being drawn domestically from this are that China's growth had become over-reliant on export, and in response, the measures taken to pull the economy out of this crisis have been directed at stimulating domestic demand and investment. The size of the stimulus, US\$ 585 billion, or over 12 per cent of GDP, indicate the relevance assigned to this policy shift away from dependence on international trade. China is already the largest importer in the world for a number of goods – mostly commodities exported by other developing countries – and with this stimulus, that position will become even more dominant. Furthermore, China could become a trade-deficit nation soon, if it maintains this policy of privileging domestic sources of growth. Even if that happens after the conclusion of the Doha Round, these trends will surely modify China's future behaviour at the WTO.

Like India and Brazil, China remains committed to the multilateral system in trade negotiations, but is no longer hesitant to resort to preferential trade agreements to advance its interests. Moreover, it has recently found a new ability to resort to trade litigation, using the WTO DSU with relative success. The Doha Round is therefore at a stage where China will continue to project its self-imposed role as a leader of the developing world, while preserving its own policy space, given the already onerous commitments it undertook in order to become a WTO member.

2. Questions and comments by the audience

East African representatives asked how the BRIC countries are dealing with SPS-like measures of protectionism, including environmental ones, from industrialized countries.

Mr Nogueira confirmed that Brazil has been hit by the use of environmental and SPS arguments for protection, poultry and ethanol in the EU. Ethanol must now be

certified as not causing deforestation, for example. Sanitary barriers have not increased much since the crisis began, but some poultry classifications have been changed by the EU to try to reduce market access, as part of an ongoing trend.

Ms Nair agreed that EU protectionist use of SPS and environmental rules has not necessarily increased due to the crisis, but there is a trend of increased usage. India sometimes has difficulty identifying the NTBs in question, but once it can do that, it approaches the EU or USA bilaterally to try to resolve it.

Dr Wang added that Chinese officials are feeling increasingly frustrated by the margin of manoeuvre given by SPS rules, for example, for protectionism in the OECD countries. However, China might be using them as well. The same applies to WTO rules governing anti-dumping applications. That increased frustration translates into China gradually losing interest in closing the Doha Round.

Another participant asked what the panellists thought of the possibility that the Obama administration would bring labour clauses into the Doha Round negotiations.

Mr Nogueira was sceptical that the Obama administration might be able to include labour in this Round. He must obviously cater to his supporters in the US but most other policy-makers inside the US, such as the Congress or the USTR, would object to that.

Ms Nair also considered it unlikely, while also noting that other observers had concluded that a big handicap in closing this Round is precisely its lack of ambitious goals (and labour clauses could be one of those). Ms Nair disagreed, however, with that latter view.

Another participant asked how India would respond now that its service exports are falling significantly due to the crisis. Would that make India more assertive or, in contrast, make it less ambitious in its demands for market access?

Ms Nair answered that India should have become more assertive in the service negotiations as a result of the fall in those exports due to the crisis. In fact, those industries have been lobbying really hard for such change in strategy. However, given how sensitive agriculture is in India politically, it remains unlikely that service requests will be strengthened while agricultural positions are softened. That is also in spite of the empirical and analytical evidence that India does, in fact, still have



room to make some of those changes without risking much in agriculture.

Another participant from East Africa asked Dr Wang to clarify China's position on how its offer of duty-free access to African countries would operate.

Dr Wang answered that China has already become the largest trading partner for Africa, and has offered to give duty-free access to all African countries on a bilateral basis, beyond its WTO commitments. It has also supported ACP countries in their opposition to EU pressures to provide MFN treatment, thus extending the benefits ACP countries obtain in other FTAs they might be signing. Again, the Chinese position is that Articles 5 and 24 of the GATT need further clarification so that these situations do not come up again.

A participant from Japan commented that the Obama administration's new USTR authorities have made the suggestion that the USA should negotiate bilaterally with each of the BRIC countries to obtain more market access there in exchange for, for example, reducing US agricultural subsidies. He also asked what the position of the BRIC countries was on export taxes on agricultural goods, and other natural resource-based commodities.

Mr Nogueira answered that Brazil has not applied export taxes on agricultural goods but it is concerned about Argentina applying them. On the recent USA offer to perhaps make a side-offer to the BRICs in order to lower its agricultural subsidies, he said that it had raised worries in Brazil that the USA is perhaps not very committed to closing the Doha Round after all.

Dr Wang also mentioned that, on the issue of export taxes on natural resources, China is indeed in a very difficult position as it is one of the largest importers of such goods, but is also today a defendant in a WTO DSU case brought up by the EU and the USA because of Chinese export taxes on some rare minerals. It is still hard to see how China will resolve this policy problem.

An ACP country participant asked what China's long-term strategy is in signing agreements with the ACP-Caribbean countries, as well as ACP-Pacific and ACP-Africa? Are there any elements that have remained silent so far? Another participant asked what the position of India and Brazil is now, given that China is offering duty-free access to African countries.

Dr Wang saw China as having a longer-term interest in forging strong relations with all other developing

countries, and its strategy towards the ACP nations should be read within that. The same applied to granting duty-free access to imports from other developing countries, including those from South-East Asia. This policy is not contested much domestically, and has a long history – going as far back as the time of the Cultural Revolution.

Ms Nair added that India is not likely to match concessions being made by China to African or ACP countries, even in as limited a manner as Brazil had done, despite the official Indian discourse on solidarity with the developing world, often displayed at the WTO.

3. Conclusions and way forward

To conclude the session, Mr Heidrich asked the panellists two questions. The first was on the BRICs' leadership at the WTO negotiating rounds. India has traditionally led protectionist interests, while Brazil has mostly led offensive interests, such as agricultural market access. India has now added some offensive interests in services, and built a coalition around them. But what kind of leadership will China develop? Can the BRICs provide a common leadership? Would it be one circumscribed to their national economic interests, or can they supply a global vision for international trade governance?

Mr Nogueira mentioned that the leadership of Brazil in the WTO suffered a setback when the deal was not closed last July, in part for not having established beforehand a common position with the other leading developing countries, such as India and China, on all the issues that were put on the table then. Brazil, however, continues to anchor its leadership on trying to close this Round as soon as possible, given all the efforts everyone has already put into place.

Dr Wang stated that that China prefers a multi-polar world in the medium term, sharing leadership with other countries. Becoming the dominant global power would not necessarily be conducive to pursuing its own domestic development agenda, if seen from China's self-perception. It remains an inward-looking society, where 90 per cent of the leadership attention is focused on domestic matters. Finally, China has today an authoritarian government, and, until it democratizes, it cannot reach a clear consensus on where to go. For the notion of leadership at the WTO, China is most likely to continue "hiding behind" Brazil and India's leadership of developing country coalitions, as it has very little room to offer concessions, and therefore does not feel it is in a

position to demand too much either. Furthermore, China has not said it sees itself as the leader of the developing world.

Ms Nair thinks that, for the BRICs to actually have a global-size leadership at the WTO, they must join forces in a consistent manner. India, for example, today suspects Brazil of often joining forces with the USA or the EU at the last minute. Such suspicion has to be overcome for both countries to be effective allies. India has a different concern regarding China, seeing it as a rising hegemonic power, with a history of mutual conflicts. China's tactic of "hiding behind" India and Brazil simply confirms those Indian suspicions. If those were also overcome, a BRICs coalition could arise and it would be very different from others already existing at the WTO. Those have usually been regional (EU) or issue-based (G20, G33). A BRICs coalition would be based on a common vision more than on common interests, accepting that some of those interests will have to be sacrificed in order to join forces. This would also require a substantial change in negotiating tactics on the Indian side.

Mr Heidrich asked a second question. What can the WTO do for the BRICs countries, assuming that the Doha Round is eventually finalized with a deal that provides them some of the things they have wanted?

Mr Nogueira answered that Brazil no longer sees international trade as a threat to the development of its national economy. In the future, Brazil might be interested in, for example, negotiating more concessions in services, as it no longer sees it as such a weakness. The same applies to intellectual property rights. That might change the type of leadership it provides at the WTO, and the content of the alliances it makes there.

Dr Wang suggested that India and China do have many common interests, and those will converge further in the future. Areas for that might be in agriculture (SSM), services (Mode 4), and regulatory spaces (anti-dumping, safeguards, countervailing measures, regionalism, etc.). Other things that China may want, the WTO negotiations cannot provide.

Ms Nair concluded this answer by reversing the question. India would certainly lose out if the WTO did not exist, as bilateral trade agreements tend to be much more demanding for market access than multilateral negotiations are, and have nothing comparable to the WTO's DSU. Therefore, India will remain committed to the multilateral trading system, as that is the best it can obtain.



Z. Globalized supply chains and trade in value added

Monday, 28 September 2009 – 16.15 ~ 18.15

Moderator

Mr Rufus Yerxa – WTO Deputy Director-General

Speakers

Mr Guillaume Daudin – Professor in Economics, Lille University. Research Fellow, Sciences Po (OFCE), France

Mr Satoshi Inomata – Director, Microeconomic Analysis Group, Development Studies Center (IDE-JETRO), Japan

Mr Bo Meng – Research Fellow, IDE-JETRO. Economic Analysis and Statistics Division, Organisation for Economic Co-operation and Development (OECD)

Ms Marion Jansen – Senior Specialist for Trade and Employment, International Labour Organization (ILO)

Mr Sébastien Miroudot – Trade and Agriculture Directorate, Trade Policy Linkages and Services Division, OECD

Mr Hubert Escaith – Chief Statistician, WTO

Organized by

WTO – Economic Research and Statistics Division

Report written by

WTO – Economic Research and Statistics Division



Abstract

For the past 20 years, globalization has caused increased geographical fragmentation of industries, with important restructuring within companies and entire manufacturing sectors, resulting in the relocation of activities. For many developing countries, toll manufacturing has provided a unique opportunity to insert themselves in the globalized economy and create employment opportunities. However, greater interdependence has also created larger and faster propagation of adverse external shocks, whose role in the present global recession is not yet completely understood. The outsourcing discussion has also fuelled political debate on the economic and social effects of globalization.

This session provided:

- relevant data for resizing the global trade figures in order to shed some light on the real value-added content of the international trade flows;
- a closer look at the role of this new mode of industrial production in explaining the industrialization process in emerging Asia to help understand the local effects of industrial supply chains in developing countries, and their role in fostering a new type of regional integration;
- an analysis of the new challenges created by the global crisis and their implications for the global supply chains.

1. Presentations by the panellists

The session started by an introduction by the keynote speaker, Mr Yerxa (WTO). He outlined recent changes in international trade and the increase in globalization, especially since the 1990s, and focused on the emergence of global supply chains. He pointed to consequences of this development for regional development (e.g. in Asia) and employment, and used the iPod example as a concrete illustration of a global supply chain and the challenges that are raised by this development.

(a) Guillaume Daudin, Professor in Economics, Lille University; Research Fellow, Sciences Po (OFCE), France

Mr Daudin outlined global trends on the geographical fragmentation of the supply chain, trying to answer the question "Who produces for whom in the world economy?".

He started by explaining the differences between vertical trade and value-added trade; namely that vertical trade refers to trade in inputs relying on the sequential production of goods and services, whereas value-added trade measures trade net of vertical trade and reallocates the value-added created at the different stages of the production process to each of the participating countries and industries.

The indirect computation of value-added trade requires the use of Input-Output (I-O) tables which enable the reconciliation of trade and of the intermediate delivery matrix. However, Mr Daudin pointed out that resulting estimations are based on the strong assumption that an exported good is not more extensive in imported inputs than a domestically-consumed good, which leads to underestimating vertical trade. Based upon GTAP (Global Trade Analysis Project from Purdue University, USA) 2004 data, vertical trade, or trade in intermediate goods, amounts to 27 per cent of world trade, meaning that value-added trade only represents 73 per cent of reported world trade.

One important outcome is that, when considering value-added trade, the share of services in world trade is much more important (around 40 per cent) than that observed through standard trade (around 17 per cent).

Mr Daudin computed a trade intensity bilateral index to assess regionalization. He found out that the level of regionalization is similar between America, Asia

and Africa, which signifies that these regions have approximately the same level of dependency vis-à-vis vertical trade, contrary to Europe, which presents a higher level of regionalization.

In concluding, Mr Daudin emphasized how important it is to measure international specialization correctly, and also argued that measuring trade in terms of value added provides another perspective for the analysis of bilateral trade balances or regionalization.

(b) Bo Meng, Research Fellow, IDE-JETRO, Economic Analysis and Statistics Division, OECD

Mr Meng's presentation focused on the Asian countries to highlight the effects of the geographical fragmentation of the supply chain on regional integration.


He started by demonstrating the changes in trade hubs and the increasing importance of the Asian region, and especially China, in trade in intermediate goods. The panellist presented the evolution of the bilateral trade structure as well as inter-country linkages in the Asian region. Calculations were based on the IDE-JETRO Asian International Input-Output tables (AIO). The direct and indirect linkages between countries and industries could be captured using the Leontief Inverse method applied to the AIO data.

Mr Meng also presented few examples of indicators and calculations derived from the AIO data:

- the Economic Cluster Index (ECI) is used to measure the complexity of vertical specialization in the Asian region;
- vertical specialization indices can be compiled and broken down according to intermediate or final use of goods. Mr Meng observed from the 1990-2008 historical evolution of the index that vertical specialization for intermediate goods varies much more than for final consumption goods;
- employment gains and give-out potentials can also be derived from the AIO tables, thus enabling evaluation of the impact of production and trade interdependencies on a country's labour market.

Finally, Mr Meng stated that Asian regional integration has undergone remarkable development from both direct (trade) and indirect (inter-country linkages) perspectives and that China's emerging economic relationship with





South-East Asia has a huge impact on the production networks in this region.

(c) Marion Jansen, Senior Specialist for Trade and Employment, ILO

Ms Jansen's presentation dealt with labour market aspects of globalized supply chains, and more especially off-shoring and its effects on workers in both developed and developing countries.

Her presentation addressed the following aspects:

- Trade as the transmission mechanism of shocks: Ms Jansen highlighted the insufficient understanding of short-term effects of trade shocks and the lack of suitable measurement. The recent crisis (commodity or financial markets) requires an increased need for social protection as well as additional funding, which both constitute a real challenge for policy makers.
- Effects of trade on employment – Trade and inequality: Off-shoring has probably contributed to the rise in wage inequality in industrialized countries and the loss of bargaining power for workers. For developing countries, evidence of the effects of off-shoring are scarce, but it may bring opportunities of better working conditions for some workers, in particular in multinational enterprises. But once again, adequate indicators are missing to properly assess the impact, potential and threat of off-shoring on employment.
- Public and private initiatives to enhance working conditions within global supply chains: Three major international instruments already exist on Corporate Social Responsibility:
 - » the ILO MNE declaration, including principles concerning Multinational Enterprises and Social Policy;
 - » the UN Global Compact, including universally accepted principles in the area of labour;
 - » the OECD guidelines for multinational enterprises.

A main issue with such guidelines is that they are often implemented on a voluntary basis and rely on the adhesion of companies or governments. Some approaches directly implemented to global supply chains have been successful, more especially when the

improvement of work conditions leads to an increase of productivity, of "labels" or of certifications that generate price mark-up improvements.

In her concluding remarks, Ms Jansen said that recent crises have illustrated the vulnerability of employment to external shocks. She also stated that relevant measures and indicators on the relation between trade and employment are lacking. Public or private initiatives taken to enhance labour conditions within global supply chains, and particularly in multinational enterprises, have tended to be successful, but it may become increasingly difficult for policy makers to affect the working conditions of those who are not part of these supply chains.

(d) Sébastien Miroudot, Trade and Agriculture Directorate, Trade Policy Linkages and Services Division, OECD, and Hubert Escaith, Chief Statistician, WTO

This fourth panel centred on the role of global supply chains during the crisis, their role as transmission channels of real and financial shocks and the risk of de-globalization.

Mr Miroudot presented recent developments of trade during the crisis. A noteworthy 30 per cent decrease of trade was observed for OECD countries during the first quarter of 2009. However, all industries were not affected in the same way by the crisis. Fuels and crude materials, manufactured goods and transport equipment were the most affected industries, mainly due to the evolution of prices or the fall in demand.

He pointed out that world trade moves faster than world GDP, and gave the main reasons. First, GDP and trade statistics do not contain the same proportion of goods and services. Indeed, services represent two thirds of GDP, whereas they account for only 20 per cent within world trade statistics. In addition, intermediate goods (parts and components) have to cross borders several times, and thus trade statistics at least double-count vertical trade flows. In short, traditional trade statistics measure trade across borders on a gross basis, whereas GDP is recorded on a net basis.

Trade has been hit harder by the crisis than world GDP. Mr Miroudot illustrated the relationship between trade and GDP through the historical changes of import multipliers since the 1960s. World trade was sorely affected by the financial crisis, mainly due to the weight of vertical specialization, as well its high dependency on credit.

Mr Escaith continued by describing the role of global supply chains on the transmission of shocks.

Within global supply chains, economies are more interlinked and individual firms rely on each other. Thus a shock in demand is rapidly transmitted to trade partners, and involves high risks and volatility to individual firms. Protectionist reactions can also quickly have negative impacts on supply chains: since goods may have to cross many borders, even a small increase in tariff could significantly affect the entire production chain.

Different scenarios may be envisaged for supply chains after the crisis. Off shoring, a distinctive element of global supply chains, presents systemic risks which cannot be ignored. It is sensitive to many factors, such as an increase in transaction costs (tariffs, primary commodity prices), environmental concerns or changes in consumer preferences (moving towards national goods). To lessen their vulnerability to sudden changes in the economic situation, supply chains might gain more flexibility by reducing their length or by increasing regional concentration. As an example, further to prominent delays in producing its latest airplane, the American company Boeing decided to repatriate the production of major components to its headquarter in Seattle.

Mr Escaith then tackled the risk of deglobalization further to the recent crisis. According to him, global supply chains and off-shoring will survive in the long run, for the following reasons.

“New emerging-economy countries are joining the global supply chains, and are acting as regional poles and attract foreign direct investment”

Offshore plants are often recent, and international companies cannot do without such an efficient production tool. Also, new technologies and business practices widen the pool of tasks which can be outsourced and involve cost reduction. As an example, remote surgery, which consists in the ability for a doctor to perform surgery on a patient located in another place or country, has been made possible through the use of recent developments in robotics and communication technologies. Finally, new emerging-economy countries are joining the global supply chains, and are acting as regional poles and attract foreign direct investment.

2. Questions and comments by the audience

One participant raised the issue of wage differentials across supply chains. Taking the example of Latin America, Mr Escaith responded that top managers or engineers in foreign affiliates tend to receive comparable levels of salary to her/his American counterpart, while lower skilled workers are paid according to local market conditions. Even if work conditions provided by offshore plants are usually better than domestic ones, wage disparity is therefore increasing between skilled and non-skilled workers in the same company.

Mr Inomata replied to a question on how to link trade in value added and employment.

The input-output tables may be combined with employment coefficients indicating the number of workers required to produce one unit of product, by industry. That way, it is possible to estimate, for example, the impact of a decrease in final demand in the USA on employment.

As panellists explained that trade was hit harder than GDP by the financial crisis, one participant asked whether the observed trade multiplier effect could operate within the recovery phase. Mr Miroudot confirmed that the trade multiplier works in both ways, meaning that one could expect a higher rise in trade than in GDP during the recovery. Furthermore, he stressed that this does not reflect the level of the recovery and the consequences of the crisis will remain, at least in the mid-term, especially on unemployment and for some of the most affected economies or industries.

Participants raised several questions related to data availability and quality.

Regarding Input-Output tables, panellists agreed that delays of publication of Input-Output tables are very long. At present, the benchmark years of international Input-Output tables are usually published every five years. However, efforts are being made by national statistical offices to improve data timeliness. A panellist also mentioned that the coefficients or multipliers derived from the Input-Output tables provide structural information which should not vary significantly from one year to another. Another specified that partial update of Input-Output tables, requiring less effort, may be envisaged for specific analysis.



Everybody agreed that service statistics are lacking in several areas (foreign affiliates trade, foreign direct investment, bilateral trade data, etc.). Even though a panellist argued that this is a domain where data collection is an issue, numerous initiatives as well as international task forces are dedicated to the improvement and development of standards, methodologies and collecting systems regarding statistics on trade in services.

Finally, a panellist stated that a few international initiatives are being implemented to develop ad hoc statistical programmes and get a better assessment of the new economy. However, only developed countries are currently able to set up the appropriate data collection systems. Other initiatives are taken to develop enterprise surveys to be compared and associated with traditional trade statistics (customs based). In the long run, analysts should be able to more easily link trade, production and employment statistics.

3. Conclusions and way forward

This session was an opportunity to provide a better understanding on global supply chains, how they operate and their implications on world trade and labour.

The methodological emphasis was on the use of international statistics and Input-Output tables for the measurement of trade in value-added, vertical trade and associated indicators which are useful in drawing a new picture of trade patterns.

“Global supply chains increase the interdependence between economies and industries, and their consideration is and will become more and more of the highest importance for trade policy-makers”

Global supply chains increase the interdependence between economies and industries, and their consideration is and will become more and more of the highest importance for trade policy-makers. More especially as any protectionist measure or any decision related to trade and finance or trade facilitation affects worldwide supply chains.

AA. Finance for trade: Effort to restart the engine

Tuesday, 29 September 2009 – 09.00 ~ 12.00

Moderator

Mr Guy de Jonquières – Senior Fellow of the European Centre for International Political Economy (ECIPE)

Speakers

H.E. Mr Kim Jong-Hoon – Minister for Trade, Republic of Korea

Mr Pascal Lamy – WTO Director-General

Mr Jean Rozwadowski – Secretary General, International Chamber of Commerce (ICC)

Mr Steven Puig – Vice President for Private Sector and Non-Sovereign Guaranteed Operation, Inter American Development Bank (IADB)

Mr Raoul Ascari – Chief Operating Officer, SACE

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Report written by

WTO – Information and External Relations Division



Abstract

Most world trade relies on some form of trade finance. Since the first half of 2008, there has been evidence of tightening market conditions for trade finance. As expected by market participants, the situation has worsened in 2009. The potential damage to the real economy from shrinking finance is enormous, as international supply chain arrangements have globalized not only production but also trade finance. In this context, the WTO Director-General led

a high-level session on trade finance, aimed at reviewing the progress achieved by the international community in providing a response to an important problem for international trade and finance, considering the challenges ahead for the rest of 2009 and early 2010, and drawing lessons for other areas of global governance from this relatively successful episode of inter-governmental cooperation involving a dense network of institutions, at the edge of finance and trade.





1. Presentations by the panellists

The session was moderated by Guy de Jonquières, Senior Fellow of the European Centre for International Political Economy (ECIPE), who introduced trade finance as the main topic for the three-hour discussion. Trade finance is indeed of great importance, but it is also one of the most under-reported aspects of the financial crisis, along with its impact on risk insurance. In fact, its implications are more far-reaching than those in the banking crisis, and have potentially longer-term effects for development, trade, and investment, particularly in the poorer countries of the world. The G20 countries set up a rescue plan and allocated US\$ 250 million for an emergency support package. Trade volumes started to pick up, even though levels are lower than they were before the crisis.

The discussion was structured into two main parts: first, the genesis of the crisis, the current situation, and some uncertainties in the short term; and second, a look at the longer term, since a large number of structural issues are behind this crisis, and are related to the availability of credit.

(a) Kim Jong-Hoon, Minister for Trade, Republic of Korea

Has trade badly affected human lives? Has trade been the cause of the financial crisis? And finally, will the world economy recover even if trade keeps shrinking? Those were the three main questions Mr Kim aimed to address during his intervention. Before speaking about trade finance, he highlighted the importance he gives to trade for the global economy. Trade liberalization can indeed contribute to economic growth, and that explains why concluding the WTO Doha Round of negotiations is of great importance, he said.

“Trade finance is the catalyst to facilitate international trade, by providing facilities to buyers and sellers around the globe and reducing the risks of transaction”

Trade finance is the catalyst to facilitate international trade, by providing facilities to buyers and sellers around the globe and reducing the risks of transaction. Without trade finance, the growth in the world trade which has been achieved so far would not have been possible. In fact, 80 per cent of trade finance is

provided by commercial banks, 15 per cent by export credit agencies, and the remaining 5 per cent by multilateral development banks (MDBs). However, last year, with the sub-prime mortgage crisis, commercial banks aggressively cut trade finance support, and this phenomenon was particularly significant for developing countries. Investment portfolios became riskier in those countries. There was a shortage of trade finance and it became much more expensive.

Mr Kim then referred to the particular case of Korea, where the government, responding to such a chaotic situation, rapidly allocated public funds to the financial markets. The government also allocated funds to Korea's Ex-Im bank, and to the Central Bank, to lend to companies. Export credit insurance was also expanded. These actions taken by the Korean government stabilized financial markets, enabling commercial banks to return to normal business. The real problem, according to Mr Kim, is faced by other developing countries that do not have the means to follow the same course of action. In their case, MDBs should play a greater role in providing broad liquidity.

(b) Pascal Lamy – WTO Director-General

Mr Lamy started his intervention by stating that, during this crisis, a part of the trade system which had always existed, but had remained very obscure, suddenly popped up. He was, of course, referring to short-term trade finance. He added that it is also true that today's trade finance is more vulnerable than it was in the past, as trade transactions and credit transactions are now global and multiplied worldwide. Mr Lamy explained that the WTO has no real jurisdiction on trade finance, but its role is to foster dialogue between the main actors – such as commercial banks, export credit agencies, multilateral banks and a number of public institutions or governments – in order to achieve a cooperative reaction.

The drying-up of liquidity and the huge rise in oil prices are two main areas that need to be addressed, Mr Lamy declared. The G20 package agreed in London goes in that direction. Recovery is starting, especially in Asia, where governments have stepped in to provide support very vigorously. However, more attention should be given to the poorer countries, smaller banks and smaller businesses, which are still struggling. Mr Lamy continued by saying that the Basel regulations may need to be revised, as they are too onerous for trade finance compared to other, more risky, operations.

Although the situation is improving, and there has been a cooperative reaction, policy-makers will have to take a look at long- and medium-term trade finance measures. For developing countries the challenge will be to increase trade capacity, which is currently severely restricted. In their case, public institutions and international finance institutions (including multilateral development banks) should intervene where the private sector is not willing to take any risk.

(c) Jean Rozwadowski – Secretary General, International Chamber of Commerce (ICC)

ICC supports the G20 becoming the new global governance body, which is a signal of recognition of some current economic realities. Mr Rozwadowski added that an even better way to show global confidence would be to conclude the Doha Round. This requires some political will. He explained that trade finance is of great importance for ICC, and they have therefore established an internal committee on this matter. The committee was in charge of analysing the origin of the crisis. Preliminary results show that some factors included a lack of, or un-harmonized, regulation; speculation; and excess of liquidity in the markets, among others. ICC also undertook a survey on more than 100 banks, and gathered evidence demonstrating that improvement is taking place but the recession is not over yet. Stock markets are doing well, but that is not a sign that jobs are being created or that people are investing. Trade finance has been freed up to some extent, but it has been costly in many areas, such as finance for small and medium enterprises (SMEs) in least-developed countries (LDCs), he added.

“An even better way to show global confidence would be to conclude the Doha Round”

In this sense, ICC is a strong proponent of trade finance facilitation and considers that MDBs have an extremely important role to play. In his opinion, the way the Asian crisis was addressed – very well and very quickly – could constitute a model to follow. Best practices regarding governments setting up rapid measures to cope with the crisis should also be considered.

Mr Rozwadowski concluded by saying that the situation is not over yet, and that there are still gaps in information. The ICC will intervene with its banking commission in

precisely this area. He added that multilateral free trade programmes should be strengthened, as should the role of export credit agencies. “It’s not the end of the world, but the situation requires a lot of hard work”, he concluded.

(d) Steven Puig – Vice President for Private Sector and Non-Sovereign Guaranteed Operation, Inter American Development Bank (IADB)

Mr Puig divided his intervention into three main parts. He recalled IADB’s concerns for last year, discussed how these concerns played out and finished by sharing his concerns for the way forward. On the first topic, Mr Puig mentioned that uncertainty on what impact the crisis would have in Latin America was one of the main concerns, mostly because the region had been enjoying a healthy economic cycle – largely led by export-growth – during the years prior to the crisis. Actually, the region as a whole has been doing “ok”, declared Mr Puig, although GDP for Latin America will be negative in 2009. He explained that one of the reasons why the region has been doing relatively well is that the banking practices adopted in the United States were not extended to Latin America. However, the countries with the strongest ties to the United States were the most affected.

Mr Puig then explained some particularities of his region and its trade relations with the EU, the US, and Asian countries. He also explained IADB’s strategy to cope with the crisis, which consists of a six-billion dollar facility for trade finance, and strategic partnerships with other MDBs, such as the Asian Development Bank. In this respect, Mr Puig stated that MDBs are increasingly facing lending demands at unprecedented levels from governments, and he highlighted the importance of recapitalizing MDBs in order to maintain higher levels of activity. On the way forward, Mr Puig stated that he expected a rebound in his region in the next year. However, he expressed some concerns, as the recovery may take several years and increases of debt/GDP could be expected. He also expressed concern regarding the availability of medium- and long-term financing for infrastructure, project finance and microfinance; and on the concessional constraints which highly indebted countries may face.

(e) Raoul Ascari – Chief Operating Officer, SACE

Underlying the financial crash were important global imbalances. To put it simply, Mr Ascari illustrated the



situation as “Chinese farmers subsidizing the American householders”. In his view, the crisis was caused by three major factors: (1) the collapse of confidence in the banking industry; (2) the collapse of stocking worldwide after the Lehman Brothers’ bankruptcy; and (3) a collapse in domestic consumption. Macro policies have helped in addressing those issues, as public expenditure is filling the gap in demand. But, he asked, is this a sustainable recovery? According to Mr Ascari the answer is no, as the fundamentals have not changed and banks keep making profits just because they are investing in high-return activities. The system has been stabilized by taking the liabilities from the financial industry, and putting them into public debt. A debt crisis can be expected in the coming years in several countries.

“A debt crisis can be expected in the coming years in several countries”

Liquidity injected into the economy has guaranteed reasonable reference rates for the moment, but problems will appear when these measures are overtaken, and both reference rates and spreads will start to grow. He then briefly elaborated on the strategies governments are implementing in order to overcome the crisis: (1) adopting a global macro approach to inject liquidity into the economy, thereby increasing public debt, and (2) through direct actions, including direct lending to banks, export credit and credit insurances. To conclude, Mr Ascari considered that we should remain “a bit” worried. He said that the private sector has made mistakes, but it is precisely when markets are weak that they need to be protected. He highlighted the danger of the possible distortions being created as a result of the big push by governments to intervene in markets, which is, in fact, creating significant differences in spreads between banks in different countries.

2. Questions and comments by the audience

After each intervention the moderator took the floor to put questions to the panellists, before giving the floor to the audience. Mr de Jonquières asked Mr Kim about the withdrawal of the measures his government introduced to cope with the crisis, which in Korea’s case are planned to last at least one more year. On the Basel regulations, Mr de Jonquières stated that the G20 has tried to carry out some reforms, but has not yet had much success. He then asked Mr Lamy what his role would be. Mr Lamy replied that the financial

stability board is starting to address this problem of global finance regulation. He expressed his concern about incidents in some countries (Kazakhstan, for example) who consider trade finance too “risky”. In contrast, Mr Lamy believed that trade finance remains safe, and the fact that a number of public institutions and MDBs had created backup systems to absorb part of the risks should help to convince regulators that trade finance deserves their attention. The moderator asked Mr Rozwadowski about the cost of trade finance. In his view, this is a critical question, as the costs are much higher than previously, supply is more limited, and the capital requirements used by financial institutions are much tighter. Mr de Jonquières then referred to the US\$ 250 billion package, and inquired how these funds were being utilized. Panellists agreed that there has been some use made of it, but the tendency is to use it as a backstop. This has contributed to increased confidence in the system, but the funds could be used more actively.

The floor then was given to the public. A student wondered whether the trade situation in South Korea was improving just because of a weak currency at that time. Addressing this question, Mr Kim affirmed that fluctuations on exchange rates are inevitable, and added that in Korea’s case exports have been diversified in terms of products and countries.

A participant stated that trade finance is a casualty of the financial crisis, and asked how the real creators of the crisis are going to be controlled. Mr Lamy concurred that trade is a victim of the crisis, and confirmed that its main origin is lack of proper international regulations in global finance. This situation is to be addressed by the Financial Stability Board, the Basel Committee and the Bank of International Settlement. He expressed uncertainty as to whether the next crisis would be caused by lack of regulation.

A question was asked on how SMEs are going to be supported in order to have access to trade finance. Mr Kim replied that different channels should be used in order to reach SMEs, and noted that microcredit is a good way to do so.

The moderator asked Mr Ascari to elaborate on what he considered “distortions” as a result of governments’ intervention. Mr Ascari replied by giving the example of the OECD, which does not set clear regulations for pricing in its member countries, leaving a great deal of room for manoeuvre.



Moving to the situation in the poorest countries, Mr de Jonquières asked Mr Puig how such countries were coping with the crisis in Latin America. Mr Puig stated that some funds were made available for them for short-term trade finance, but they still face some challenges as their markets are high risk. IADB intervenes in these cases.

A question whether the distribution of trade finance between MDBs, export credit agencies, and commercial banks will change as a consequence of the crisis was addressed to the panellists. Mr Kim stated that, during the crisis, a problem of confidence was generated and commercial banks started to step back, reducing their share in the provision of trade finance, resulting in government intervention. They are now returning to normal business, and their 80 per cent share in the provision of trade finance should therefore remain the same. Mr Puig and Mr Lamy agreed that no major changes were expected on the trade finance market, as institutions (including MDBs) had intervened on a temporary basis.

Turning to the way ahead, the moderator asked the panellists what the major risks were for the poorer countries. For Mr Puig, commercial banks are being a bit more selective now, but may return to the same levels of business as before the crisis. The pricing would not return to the same low pre-crisis levels; and nor would that be healthy. For Africa the reality is that very little trade finance was allocated to SMEs even before the crisis, Mr Lamy said. He added that the efforts made may actually help them to better penetrate into the system and obtain trade finance. This is good news.

Mr de Jonquières turned the discussion to the “exit strategy” for a post-crisis scenario. Mr Ascari shared his main concerns in this area: regulation in the financial sector being highly “subsidized” and not adequately controlled; and increasing levels of sovereign debt. Mr Kim stated that world leaders are in the phase of designing an exit strategy rather than implementing it, since the crisis is not over yet. He added that the exit strategy has to be gradual, so as not to shock the markets. Mr Lamy agreed with Mr Kim, but pointed out that for now the focus should be on short-term and medium-term measures. The exit strategy should be a combination of retreating from the market as stabilizers, but maintaining a back-up strategy to prevent the poorest of the system from being the hardest hit.

A participant declared that if “we restart the engine” we would be contributing to accelerating the depletion of

non-renewable resources. In his opinion, world leaders will need to understand it as an environmentally and scientifically proven fact. Addressing this question, Mr Ascari affirmed that “no growth is not an option”, as many people are starving and living below the poverty line. The discussion should rather be on how to achieve “better” growth. Mr Lamy agreed with Mr Ascari, and added that there is a wide consensus on the need to operate under environmental constraints. The normal means to achieve this is by internalizing environmental costs. The question is how much of that can be done individually, and how much needs to be done collectively. Developing an international mechanism is necessary. Successful negotiations in Copenhagen will require political will.

3. Conclusions and way forward

The debate was very lively and interactive. As they came from different backgrounds, the panellists were able to provide participants with experiences from their own regions and from different perspectives.

Trade finance is a catalyst to facilitate international trade by providing facilities to buyers and sellers around the globe and reducing the risks of transactions. It has been a casualty of the financial crisis and has been overlooked. Those hardest hit by the drying-up of liquidity have been the SMEs and the poorest countries. Exporters experience difficulties in financing their operations, and spreads are increasing as confidence among banks was low. Several strategies and programmes, both regional and global, have been set up in order to inject liquidity into the system. Trade finance has therefore started to stabilize. MDBs have an extremely important role to play. Multilateral free trade programmes should also be strengthened, as should the role of export credit agencies. Panellists agreed that a good way to show global confidence would be by concluding the Doha Round of negotiations.

Although the situation is improving and there has been a cooperative reaction, problems and challenges remain ahead. Policy-makers will have to look for long- and medium-term measures, and examine what finances trade. The danger of possible distortions being created as a result of massive government interventions in the markets will need to be addressed, and an effective “exit strategy” will have to be identified.

Both panellists and participants acknowledged the importance of the WTO Public Forum to discuss important matters between stakeholders.

BB. Developing-country safeguards fly below the WTO radar

Wednesday, 30 September 2009 – 11.15-13.15

Moderators

Mr Charles Owen Verrill Jr. – Attorney at Law, Woley Rein LLP; and President, International Law Institute (ILI)
Dr Esperanza Durán – Executive Director, Agency for International Trade Information and Cooperation (AITIC)

Speakers

Mr Pablo Klein – Counsellor, Permanent Mission of Mexico to the WTO
Mr Mathias Francke – Deputy Chief of Mission, Permanent Mission of Chile to the WTO
Mr Serdar Baskin – Counsellor, Permanent Mission of Turkey to the WTO
Mr Krishna Gupta – Counsellor, Permanent Mission of India to the WTO
Mr Charles Julien – Ministry of Trade, Government of Egypt

Organized by

Agency for International Trade Information and Cooperation (AITIC)
and International Law Institute (ILI)

Report written by

Agency for International Trade Information and Cooperation (AITIC)
and International Law Institute (ILI)



Abstract

The AITIC - ILI session sought to shed light on several aspects of the use of safeguards (SGs) during the present financial and economic crisis. Given the increased use of safeguards by developing countries, the session focused on the following three issues:

- the rationale behind developing countries' use of safeguards in the absence of either the necessary legislation or the means to apply cumbersome and costly anti-dumping (AD) or countervailing (CV) measures;
- whether there is a need for special and differential treatment concerning the application of safeguards by developing countries; and

- more accessible procedures in the Safeguards Agreement to scrutinize the WTO consistency of developing-country safeguards primarily affecting other developing countries.

Esperanza Durán and Charles Verrill made opening statements regarding the practical and legal issues raised by safeguards. Pablo Klein introduced the economics of safeguards versus anti-dumping duties in developing countries. Mathias Francke explained the application process of safeguards in Chile. Serdar Baskin explained why safeguards are important to Turkey. Krishna Gupta presented his country's experience with safeguards and antidumping duties. Mr Verrill read the statement of Charles Julien.

1. Presentations by the panellists

(a) Esperanza Durán, Executive Director, AITIC

Safeguards (SGs) have always been an integral part of the multilateral trading system (MTS). First, under the GATT 1947, regulations on these measures were incorporated in Article 19. Later, the Article 19 obligations were elaborated in the Uruguay Round of negotiations, which adopted the Safeguards Agreement that contains principles, disciplines, a variety of so-called “grey area” measures, and sets time-limits on all safeguard actions.

The use of SGs peaked in 2002, with thirty-four initiations reported by WTO members, and then shrank to only five in the year ending November 2008. However, the pace accelerated in 2009, with India reporting twelve initiations. The most frequent initiators are developing countries (Chile, India, Jordan and Turkey lead the list). However, this trend could accelerate in the face of the economic crisis and protectionist measures.

The SG Agreement requires notification of legislation and SG measures, but has not been taken as seriously as it should by all WTO members, particularly developing and least-developed countries. More efforts should be invested in notifying SG regulations and legislation, as well as in the application of SG measures. In the light of the previous, some questions are: should the WTO Secretariat’s TPR report have noted this? And should the TPR, a transparency mechanism *par excellence*, mention the lack of notifications to improve transparency?

(b) Charles O. Verrill, Attorney at Law, Woley Rein LLP; and President, International Law Institute (ILI)

Contrary to CV and AD measures, SGs do not require evidence of unfair actions. They are, in principle, applied on a most-favoured-nation basis, although Article 9 of the WTO Agreement on Safeguards provides that such measures shall not be applied against developing countries as long as their share of imports does not exceed 3 per cent and all developing countries with less than 3 per cent do not collectively account for more than 9 per cent of the imports involved. In addition, “special safeguards” can be applicable to imports from individual countries – for example, the SG that the Obama administration recently imposed on imports of Chinese tyres under US legislation, which implemented a provision of the Chinese Protocol of Accession to the WTO.

SGs are difficult to justify under the interpretation of Article XIX of GATT 1994 made by the Appellate Body in the decision on the US special SG. That decision reinstated the requirement that there be a demonstration that the increased imports were the result of unforeseen circumstances and that the increased imports caused or threatened to cause serious injury to the domestic industry. The unforeseen development requirement of GATT Article XIX was not included in the SG Agreement. This represents a significant legal hurdle and is the reason that developed countries seldom rely on safeguards, and instead look to the anti-dumping and countervailing duty remedies.

Despite the growing number of SG actions by developing countries against other developing countries, these countries have generally not resorted to the Dispute Settlement Body (DSB) when safeguards are applied. Reasons for staying away from formal dispute resolution may include: (1) the high cost of DSB action in light of the amount of trade involved; (2) the possible existence of an understanding between the countries involved; and (3) the typically short duration of a safeguard.

(c) Pablo Klein, Permanent Mission of Mexico

The economics of safeguards vs. anti-dumping duties in developing countries

Some general observations in the use of SGs include: (1) as fewer SGs than AD measures have been applied of late (from 29 SGs in 2002, down to 17 in 2007, 22 in 2008 and 25 in 2009), the impact of the former may be greater; (2) most SGs take the form of specific duties and quantitative restrictions; and (3) SGs almost always expire within the first four years of application and before the full allowed term. This may be due to political pressure by other members, combined with the fact that in SG cases the complainant generally wins.

“A fundamental part of a successful trading system would be the creation of a carefully designed “escape valve””

The proponents of SGs argue that they buy time to allow certain industries to adjust slowly and in an orderly fashion (which should be one of the core objectives of the Safeguards Agreement); they allow for a temporary protection whereby the affected industries actually become “winners” (e.g. US automobiles in the 1980s); and they are less resource-intensive than anti-dumping.





On the other hand, SGs require institutional capabilities beyond those of WTO's LDC members. They are not the only possible way of providing "cheap" protection. Governments are becoming increasingly creative in circumventing WTO disciplines. Ideally, a fundamental part of a successful trading system would be the creation of a carefully designed "escape valve" which effectively disciplines protectionism, is transparent, strictly limited in duration, and has very clear triggers and phase-out provisions.

(d) Mathias Francke, Permanent Mission of Chile to the WTO

The application of safeguards in Chile

In Chile, the regulatory framework with regard to SGs is governed by the Decree of the Ministry of Finance No. 99 (1999) and other regulations for the application of SGs, in conformity with the Marrakesh Agreement. The procedure is launched with a written application addressed to the Technical Secretariat within the Investigating Authority body, whose main functions are to receive requests, conduct the investigation and recommend the application of measures. A public hearing is held before a definitive decision is adopted by the President of the Republic who, in turn, has the power to reduce, reject or accept the tariff proposed by the National Commission on Price Distortions.

Over the past ten years, Chile has been one of the top five countries in this area; Chile initiated eleven SG measures, seven of which were on agricultural products, which is contrary to the general assumption that SGs are most commonly applied to manufactured products, ceramics, etc. It was noticed that AD measures contain a much broader spectrum of countries – despite the fact that most measures are concentrated in India, the European Communities and the United States – the main target countries being China, Chinese Taipei and Korea.

On the subject of whether rules should be relaxed for developing countries, a concrete proposal on special and differential treatment (S&D) was tabled by the African, Caribbean and Pacific Group of States (ACP) and the African Group in February 2008. The main elements of this proposal encompassed: (1) facilitating initiation (i.e. through increased assistance by governments in collecting evidence); (2) "new remedies" (i.e. longer time-frames for answering questionnaires, reduced duties, etc.); (3) technical assistance; and (4) a proposed review three years after initiation. All in all, while the use of AD measures in the developing world should not be encouraged, institutional and capacity building efforts

to impose measures should be encouraged, when the measures are justified.

(e) Serdar Baskin, Permanent Mission of Turkey to the WTO

Why safeguards are important to Turkey

CV and AD measures differ from SGs in that the first two demand proving "unfair trade" practices and are country-based and company-specific, while SGs do not require proof of the existence of "unfair" practices by another member and are non-discriminatory. Moreover, SGs are permitted if an investigative authority finds clear evidence (1) that there is a sudden increase in imports of a specific product; (2) that such an increase in imports is due to *unforeseen development*; (3) that the increase has caused or is threatening to cause *serious injury*; and (4) that a causal link exists between the increase and the injury. For CV and AD measures to be imposed, an investigation needs to establish the existence of (1) dumped subsidized imports; (2) *injury* to the domestic industry; and (3) a causal link between the dumped imports and the injury.

There is an overall preference in the use of SGs over ADs since they are more rapidly responded to; non-selective; easier to apply; and they do not represent a risk of trade diversion or of anti-circumvention. Turkey's own experience, from 1995-2008, shows a predominant imposition of AD measures, and a progressive application of SGs starting in 2004. Of the trade remedies currently in force, 89 per cent are AD measures, 10 per cent are SGs and 1 per cent are CV measures.

Despite the fact that the Agreement on Safeguards is not part of the Doha Round of negotiations, there remain challenging issues that need to be addressed, namely the procedures relating to *serious injury* and *unforeseen development*; trade liberalization; and the review of measures.

(f) Krishna Gupta, Permanent Mission of India to the WTO

India's experience with safeguards and anti-dumping duties

In India, the investigative authority at the federal level is the Directorate General of Safeguards. This authority reports its findings and makes recommendations to the Board on Safeguards – which is chaired by Secretary of the Department of Commerce – who generally accepts the recommendations of the DG, but is not bound to do so. In recent times, India has resorted to the use of safeguards, mostly on metal and chemical products.



Traditionally, India has made extensive use of AD actions. On the other hand, it is one of the WTO members most frequently challenged through CV measures. In light of the previous, India does not find a substitution effect between AD and SG measures.

Developing countries face capacity constraints in resorting to AD and CV measures, since these measures require elaborate investigation protocols and evidence collection. Two elements that could be improved in the area of SGs are: (1) the notification procedure – which is a rather scattered process – could be improved through enhanced technical assistance to developing countries; and (2) the analysis of the effects of SGs on the trade value of a WTO member in comparison to the number of SGs imposed by this country.

(g) Charles Julien, Counsellor, Ministry of Foreign Trade and Industry, Egypt

Defending safeguard actions against developing countries (read by Mr Verrill)

A written statement, read by Mr Verrill on behalf of Mr Julien, highlighted the following salient points. In the framework of the Doha negotiations it is essential that all members be in a position to enforce their rights and comply with their obligations. Within the S&D provisions, developing country members must be provided with the required technical assistance to implement the AD and SCM Agreements. To this end, members must have the necessary expertise and resources – which is rarely the case in the developing world. While a number of members in Africa may have a regulatory framework in place, they are not in a position to conduct AD or CV investigations because of the lack of sufficient resources (with the exception of Egypt and South Africa, there are no regular users of AD or CV measures).

The SG instrument should be used as a one-size-fits-all solution when a domestic industry is being negatively affected by imports. It is stated that the main problem results from implementation of the provisions of the Agreement on Safeguards – and not with the provisions as such. Although Egypt has never resorted to the mechanism provided for in Article 13.1(b)⁴ of the Agreement on Safeguards, recourse to this mechanism could be envisaged by Egypt if warranted by the circumstances.

In respect to the notifications⁵ procedure, which represents the primary source of information to exporting members, the main problem arises from non-adherence to the deadlines given by Article 12 of the above-mentioned agreement. Moreover, for Egypt, unless the

exports to the member imposing the safeguard measure are significant, the cost of bringing a dispute under the WTO dispute settlement is a deterrent.

2. Questions and comments by the audience

The discussion that followed answered the participants' questions regarding the use of trade remedies in various contexts, such as agriculture special safeguards, regional trade agreements (RTAs), and supply chain processes.

During the discussion, the issue of excessive dairy and meat products in Mexico along the United States border was raised. As a result of this excess, Mexico has resorted to a special SG. In fact, as a rather active user of the AD measures, Mexico has applied the SG instrument only once since 1995 (on plywood imports). It was highlighted that a more appropriate SG mechanism to address the bilateral issue of dairy and meat products, is available through the North American Free Trade Agreement (NAFTA).

3. Conclusions and way forward

With regard to the link between SGs and global supply chains, it was stated that only in cases where these actions are taken on manufactured products, one can find a correlation between the two (such a link, for example, does not apply to the case of Chile, most of whose SG actions correspond to chemicals and raw materials).

It was acknowledged that the non-discriminatory nature of SGs at the WTO level could come into conflict with RTA provisions amongst regional partners.

Endnotes

¹ Some of the criticisms of *unforeseen developments* as established in Article XIX of the GATT, are (1) its inconsistency with the intent of the negotiators in the Uruguay Round, and (2) its ambiguous nature as an objective legal requirement.

² The procedure for the determination of *serious injury* is described in Article 4.2 of the Agreement on Safeguards.

³ The procedure for the determination of *injury* is described in Article 3.4 of the Agreement on Implementation of Article VI of the GATT 1994.

⁴ Article 13.1(b) only requires the Committee on Safeguards to find “*whether or not the procedural requirements*” have been complied with. The Committee on Safeguards is therefore not required to look at substantive conditions.

⁵ Article 12 of the Safeguards Agreement requires notification to the WTO Committee on Safeguards whenever a safeguard investigation is initiated.

CC. The global economic crisis and small and medium enterprises (SMEs)

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

Mr Laurent Matile – Senior Officer, Business and Trade Policy, International Trade Centre (ITC)

Speakers

Mr Chinyemike Torti – Chief Executive Officer, Federation of Nigerian Exporters

Mr Oscar Sañez – President and Chief Executive Officer, Business Processing Association Philippines

Mr Eddy Yeung – Chief Operating Officer, Textile Operations, CIEL Group, Mauritius

Mr Heinz Werner – CEO and Managing Director, Heinz Werner GmbH, Wollbach, Germany, and guest lecturer at German and overseas universities of applied sciences on international management and world trade

Organized by

International Trade Centre (ITC)

Report written by

Ms Theresa Musumhi, Mr Jean-Sébastien Roure
and Mr Laurent Matile, International Trade Centre (ITC)



Abstract

The impact of the global economic crisis on developing countries, in particular LDCs, and the role of trade financing

No one can deny the drop in trade that SMEs throughout the developing world have experienced due to the breakdown in global demand, an increase in market protectionism and the scarcity of trade finance. During this session, SME managers and representatives from chambers of commerce from developing and least-developed countries shared their experiences on the impact of the crisis on specific sectors, presented their coping strategies, and outlined their expectations with regard to the role of the government, and multilateral institutions. The session examined how the global economic crisis has compelled SME managers in developing countries to look at the entire value chain and to search for efficiency gains. In addition, the session addressed the issue of access to trade finance, lowering its cost and enhancing its predictability, as well as examining the case for deeper integration.

Questions that were addressed by the panel included:

- What have you experienced with regard to the impact of the crisis on SMEs in your respective countries?
- What are some of the business practices which have been adopted by SMEs in order to cope with the crisis, from a sector- and enterprise-specific point of view?
- What do SMEs expect from their governments and multilateral institutions, and in particular the WTO, in order to mitigate the impact of the crisis?

1. Presentations by the panellists

(a) Chinyemike Torti – Chief Executive Officer, Federation of Nigerian Exporters

Mr Torti opened the discussion and spoke about the role of trade financing in Africa with a particular emphasis on Nigeria, before, during and after the global financial crisis. Even before the crisis began, Mr Torti explained, trade financing in Africa had been quite dismal. Export financing accessibility from both commercial banks and export agencies was difficult due to a lack of awareness, lack of preparedness, lack of risk mitigation measures and credibility issues. Statistics mentioned during this part of the presentation revealed that less than 3 per cent of SMEs in Nigeria had access to trade credit. Even though commercial banks, non-banking financial institutions and moneylenders provided a *small* amount of finance through short-term loans and loan commitments, the cost of trade financing remained quite high. From this, then, one could understand why trade and the export potential of many economies in sub-Saharan region had been, and continue to be, hindered by the onset of the crisis.

Mr Torti listed the key factors that perpetuated the development of trade and trade finance in Africa: the incomplete range of facilities and services available to traders and producers; the lack of an effective and efficient financial system to encourage savings and encourage better liquidity of financial institutions; and the existence of ill-adapted legislation, regulations and/or jurisdiction. The conclusion would be that without the availability and proper functioning of institutional mechanisms that make trade finance effective, trade finance, in and of itself, can become useless.

The impact of the crisis was severely felt by SMEs within the region. The crisis only heightened the current difficulties that SMEs were facing. The few SMEs that had the means to obtain financing no longer had the access, because banks did not have the means to give trade finance.

Mr Torti's presentation demonstrated that the limited access to trade financing was a severe constraint to export competitiveness in Nigeria, as well as in other developing countries, because of the financial crisis. Measures Mr Torti proposed to counteract this included the introduction of new trade financing tools, improvement in governance, political will and an enabling environment, strengthening south-south trade through the creation of regional unions, the provision

of substantial aid for trade alongside Doha Round agreements from multilateral agencies like the WTO and the World Bank, and the creation of mechanisms to reduce the cost of accessing trade finance.

(b) Oscar Sañez, President and Chief Executive Officer, Business Processing Association, Philippines

Mr Sañez shed light on the Philippine business process outsourcing (BPO) experience and how this service industry had fared with regard to the global financial crisis. It was recognized that the Philippines had become the second global BPO destination after India, with over 6 billion dollars in export revenue annually. In this part of the session, Mr Sañez was specifically asked whether the goal of doubling this share of export revenue by 2010 was still feasible in spite of the crisis.

Mr Sañez began with a general overview of the economic environment of the Philippines, stating that, in spite of the financial meltdown, the economy had remained relatively resilient, and continued to project growth even in the midst of the crisis, although the rate of growth was smaller compared to the previous two years. Such resilience, according to Mr Sañez, could be explained by the growth in public spending and private consumption supported by remittances. Not only this, but the resilience could also be attributed to the fact that the Philippines entered the global recession from a stronger position than it had with regard to previous crises, given the fiscal and other reforms undertaken. The Philippines' overall consistent performance was noticeable in its corporate sector and financial and monetary systems.

The main drivers that were mentioned for such an achievement in the BPO service sector were the highly reliable infrastructure, competitive cost structure, the diverse choice of suitable in-country locations, strong government support, a large pool of highly educated, English-speaking talent with strong cultural affinity to North America, and the presence of a large workforce. It was noticeable that the main drivers for the success of this sector were self-reinforcing and supportive of each other.

Mr Sañez also spoke of how the Philippines very quickly established strength in the voice BPO sector, and was progressing to making inroads into the non-voice BPO market, as well as in IT, digital animation, and educational service outsourcing (ESO). This trend was mainly led by multinational companies, followed by local SMEs, as they were trained by these multinationals. One of the





key factors explaining this sector's success, regardless of the crisis, could be the foresight that was shown. In June 2007, "roadmap 2010" was launched to ensure that growth of this industry was sustained.

Though the Philippines seem to be faring quite well with regard to this sector, there were some key issues that needed to be addressed, which were perhaps preventing the sector from reaching its maximum potential. According to Mr Sañez, these were the lack of popularity of this industry and the incomplete pool of fully qualified applicants. There were key issues in the Philippines business environment that needed to be pointed out: access to micro-finance for SMEs, and other public policy issues such as labour laws, land laws, data protection, etc. There were also mixed messages on government support, weak risk perception and low presence of venture capitalists and private equities (PEs). In these instances, the main topic at hand was one of perception. In many instances the impact of perception perhaps tended to be forgotten, but in light of the global crisis, perception could pave the way for opportunities to help create the right environment for industry growth.

At the end of this part of the presentation, Mr Sañez indicated that, due to the global crisis, the delay in the projected earnings would only be about one year. Evidently then, it would suffice to say that a one-year delay was not that severe and the crisis in and of itself, for the Philippine BPO sector, did not have a negative impact on a large scale.

(c) Eddy Yeung, Chief Operating Officer, Textile Operations, CIEL Group, Mauritius

In response to the economic downturn, the approach taken by CIEL Group was proactive. In this part of the session, Mr Yeung articulated the fact that, due to the global crisis, textile products were no longer going to be a priority in the basket of goods for consumers – especially in Europe and the USA. After having evaluated the potential risks, which were reduction in sales and the changing expectations of customers, there was an immediate assessment of the USA and European markets. Having sent teams to both the US and to Europe, it was discovered that, in the US, the crisis had hit hard and as a result there would be a lot of work that needed to be done, especially in terms of negotiations and the booking and rebooking of orders, whereas in Europe and the United Kingdom there was more of an observant approach taken.

In light of these findings, Mr Yeung stated that a marketing strategy and an industrial strategy were pursued. The marketing strategy had the following elements: a focus on the customer and customer satisfaction; reading the market to understand what the index of satisfaction is; beating the market, which meant going above and beyond what would have been expected; and participating in all pricing decisions. Not only this, but the CIEL Group also embarked on developing and strengthening its market to South Africa. Proximity marketing was practised to enhance contact with the customers, and customer satisfaction was given a high priority. Designers were sent to the South African market to meet their counterparts, and to develop products to the tastes of the market. It was clear to see that the textile group was very tactical in the methods it chose to react to the economic downturn. With regard to industrial strategy, the tactics were pursued with the customer in mind. These tactics included being cash-flow positive; improving productivity and competitiveness through benchmarking; sizing of mills in order to produce as forecast by the order book; and recruiting talent.

As far as trade barriers are concerned, Mr Yeung mentioned that other SMEs who were not able to react to the economic downturn attempted to go to other regional markets, although this was not such an easy feat either. The continual need for certificates and inspection and the lack of transparency only served to complicate matters for SMEs in the wake of the economic meltdown. He mentioned how customers were very stringent about quality and timely delivery. Claims and penalties were applied, impacting on the results of the Group. He highlighted, as well, how suppliers were taking a lot of risks due to the fact that credit insurance for export was very hard to obtain and retailers were very reluctant to open letters of credit.

It sufficed to say that the action taken by the textile group resulted in it being well prepared in face of the economic downturn. The added factor of the government making efforts to help SMEs to strengthen the market also added to the sector's commendable performance.

(d) Heinz Werner, CEO and Managing Director, Heinz Werner GmbH, Wollbach, Germany, and guest lecturer at German and overseas universities of applied sciences on international management and world trade

Mr Werner spoke about the impact of the global financial crisis on SMEs from the European perspective.

His presentation highlighted the difficulties and the challenges faced by SMEs, and how such challenges – if not properly addressed – can have a huge detrimental impact on national and/or regional economies because of the significance of SMEs for economic growth. The importance of SMEs, according to this part of the presentation, could not be understated: SMEs are the principal job creators in the global market today. Mr Werner began his presentation with statistics that proved the prevalence of SMEs within the EU, mentioning that 95 per cent of companies represented by European commerce are SMEs. The sheer importance of SMEs to the European economy is confirmed by their overwhelming presence within the European context.

The basic and important needs of SMEs were cited. These were financial capital, predictability, flexibility, knowledge of international trade laws, managerial know-how, and good governance. Not only this, but the importance of dialogue with the SMEs' respective governments was stressed. It was mentioned that very few SMEs have access to the policymaker/stakeholder, although this would be beneficial not only in times of crisis, but also for the good functioning of the SME itself. This led to the issue of SMEs not having necessary information. Without valid and reliable information, and access to such information, SMEs – in the event of an economic crisis – were likely to experience negative repercussions more severely than would otherwise have happened.

Concerning predictability, Mr Werner indicated that it was a basic requirement, and generally most important, from the beginning of sourcing to the final shipment of orders placed. Logistics, in particular, was one of the sectors where predictability was essential. When products travel from one place to another, there must be some assurance that laws and regulations remain unchanged from the time the order is made to the time the products reach their final destination.

With regard to flexibility, it was averred that flexible circumstances are essential in order for SMEs to make use of their core competencies. SMEs are only able to display their core competencies where there are open markets, and as a result, flexibility is a crucial element for SMEs. The speaker also addressed here the value of impact assessments. These were important in that they help to address the ways in which SMEs deal with the future consequences of a current or proposed action.

On the subject of trade finance, Mr Werner spoke of financial engineering, and revealed that an increasing

number of cases it was the suppliers who were financing their buyers, which, in wake of the global crisis, proved to be quite a feat for some SMEs – especially when advance payment was required for suppliers. Even in the midst of the crisis, it was said that advance payment was now less frequent, and many SMEs had to find their own credit line. Another means of accessing finance was loan commitments. Mr Werner touched on the Basel II requirement, which is a regulatory standard that requires banks to prepare sufficient capital to be able to support businesses that are in jeopardy. In fact, according to Mr Werner, these Basel II requirements only heightened the negative effects of the crisis on SMEs, as the real issue was not addressed. As such, Basel II seemed counterproductive.

Through Mr Werner's presentation, one of the most critical components of this economic crisis was highlighted: a de-globalization in certain sectors because many banks were not able to operate outside their home markets in the way they did before the crisis – in other words, because of the de-globalization of the financial sector. Banks themselves, as an entity, were not readily available or accessible, and those that were, were not able to give meaningful credit to SMEs.

It would be hard to escape the consequences of a financial meltdown if the institutions that SMEs rely on for financial support were hard-pressed themselves for capital, not to mention the intricacies of the damage felt by the SMEs themselves as “stand-alone entities”. In essence, then, the difficulties and challenges for SMEs, as described by Mr Werner, were a means to raise awareness and provide information on what to anticipate when dealing with a global economic crisis. The value of trade was not *per se* undermined by this, but only strengthened.

2. Questions and comments by the audience

Some intriguing questions were put forward by the audience to each of the panellists. Mr Torti was asked to elaborate on the new ways of trade financing, more particularly Islamic financing. Following the challenges that Nigeria had faced with regard to trade finance, Islamic financing would be beneficial in that it was seen to form a vital part of the financial landscape. Moreover, the plethora of Islamic banks already in the country was a means to facilitate this.

The question posed to Mr Yeung related to benchmarking, which was undertaken as part of the industrial strategy



of the textile group. His response revealed that in order to perform the benchmarking exercise, the textile group needed to engage companies with the same product mix and supply in a similar market, which would essentially mean persuading their competitors to participate in the benchmarking exercise. This benchmarking exercise proved valuable for the textile group as they could assess their performance.

Mr Werner addressed a question relating to Doha Development Round, insofar as the Round was an opportunity to tackle the issue of financial protectionism. Mr Sañez' question related to the lack or limited amount of talent in the BPO sector, insofar as there were incentives to involve the migrant population. Without a doubt the Philippines needed expertise in higher value services, which represented opportunities for expatriates. Programmes run by the Government, as well as campaigns carried out by private sector recruitment companies, were taking place. However, involving the migrant population might prove to be a little taxing, as the migrant population was already bringing in remittances, and perhaps in the short term it might not be wise to divert the attention of the migrant population, but rather to focus on the current labour resources in the country.

Mr Sañez concluded that any commitments made under the GATS which resulted in reducing obstacles to outsource-able services would benefit global trade.

3. Conclusions and way forward

It is evident that the global crisis has affected SMEs in a variety of ways, and the responses to the economic meltdown have also been quite diverse. From the discussions that ensued, one key point that emerged is that SMEs must be prepared for events such as the economic meltdown. What is known is that governments need to pull their weight and not leave the private sector enterprises to their own defences. Multilateral agencies also have a role to play in assisting SMEs in this regard. There must be standing mechanisms in place, and plans of action that sector-specific enterprises should have to prevent unnecessary delays or reduction in earnings, and to be able to remain competitive.

DD. New and old challenges to inclusiveness in a recessionary global economic system

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

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

Speakers

Mr Mohammad Razzaque – Economic Adviser, Economic Affairs Division, International Trade & Regional Co-operation Section, Commonwealth Secretariat

Dr Rashid S. Kaukab – Deputy Director, CUTS Geneva Resource Centre, CUTS International

H.E. Mr Matern Yakobo Christian Lumbanga – Ambassador, Permanent Representative of Tanzania to the WTO

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

Organized by

CUTS International and Commonwealth Secretariat

Report written by

CUTS International and Commonwealth Secretariat



Abstract

This session focused on some of the key challenges faced by the multilateral trading system: how to improve the inclusiveness of trade policy-making and implementation, particularly in times of economic crisis, to facilitate stakeholders' buy-in in developing countries. While a number of initiatives have been taken at the multilateral level, further action is needed. The ongoing economic crisis has brought to the fore the importance of adequately meeting this challenge. This can be an important area for the WTO in the post-crisis period to enhance its credibility.

The main objectives of the session were:

- to assess improvements in the inclusiveness, particularly for LDCs and African countries, of the multilateral trading system, and to consider what key concerns still remain in this regard;
- to assess the impact of the global economic crisis and its various aspects – including trade financing – on developing countries, with a focus on LDCs and small and vulnerable economies;
- to share the research findings of CUTS studies on inclusive trade policy-making in Kenya, Malawi, Tanzania, Uganda and Zambia;
- to identify possible solutions to the remaining inclusiveness challenges, including through better national, regional and multilateral linkages;
- to consider how the Inclusive Trade Policy Making Index (ITPMI), prepared for the five African countries (Kenya, Malawi, Tanzania, Uganda and Zambia), might be used to benefit developing countries at the multilateral level; and
- to suggest constructive ways in which the issue of inclusiveness can be dealt with in the post-crisis agenda of the WTO.





1. Presentations by the panellists

(a) Ujal Singh Bhatia, Ambassador and Permanent Representative of India to the WTO

Ambassador Bhatia introduced the topic by highlighting two equally important aspects of inclusiveness:

1. The issue of marginalization of smaller developing countries, especially LDCs, and the efforts required to bring them into the economic mainstream.
2. The effective participation of such LDCs in global economic governance.

“Poor countries must play an important role in economic decision-making if we are to give meaning to the rhetoric of inclusiveness”

On the issue of marginalization, the evidence is increasingly clear that the current economic crisis has affected the poorest developing countries the most. A report by the International Labour Organization has indicated that much of the suffering from job-loss in this economic crisis has been borne by LDCs. The G20 meeting noted with concern the adverse impact of the global crisis on low-income countries' capacity to protect critical core spending in areas such as health, education, safety nets and infrastructure. While international trade is clearly important (and holds promise as a driver of economic growth for low-income countries), the issue to be addressed is that of competitiveness. In an era where trade liberalization is the norm, tariff preferences cannot be expected to provide competitiveness in the long term. This must come from within, and therefore investment deficits on economic infrastructure, regulatory mechanisms, capacity-building, etc., in such countries must be addressed. Clearly, new policy approaches are called for to protect small countries from such external shocks. At the same time, it is important to ensure that low-income countries are placed high on the agenda in the new global architecture which the G20 promises to usher in. Poor countries must play an important role in economic decision-making if we are to give meaning to the rhetoric of inclusiveness.

(b) Mohammed Razzaque, Economic Adviser, Economic Affairs Division, International Trade & Regional Co-operation Section, Commonwealth Secretariat

Dr Razzaque covered the following issues on inclusiveness:

- The global economic crisis and its impact on developing countries, mainly Commonwealth LDCs and small states.
- New challenges in the aftermath of the crisis.
- Responses to ensure inclusiveness in the global economic system.

The world is experiencing the greatest synchronized downturn in the global economy since the Great Depression. Existing challenges had already constrained the participation of LDCs and small states in the global trading system, and the ongoing global economic downturn is likely to bring new challenges. Quoting World Bank estimates, Dr Razzaque mentioned that global GDP is expected to shrink by nearly 1.5 per cent in 2009 – the first such decline in world output on record – and world trade in goods and services is expected to fall by up to 9 per cent in 2009.

UNCTAD data show that the export-GDP ratio for LDCs is 45 per cent today, compared to 17 per cent in 1995, and the contribution of exports to GDP in landlocked developing countries increased from 23 to 58 per cent from 1995 to 2008. A large number of LDCs are also commodity exporters, and have been affected by declining prices when some are net food-importing countries.

Dr Razzaque also touched on FDI and remittances, which are also important factors in economic slowdown. FDI inflows in 2008 declined by 15 per cent, and further decreases are expected in 2009. The World Bank projects a negative growth of approximately –7.3 per cent for 2009. He noted that there are twenty Commonwealth countries where the remittances-GDP ratio is at least 2 per cent.

Furthermore, trade financing both from international and domestic financial markets became increasingly difficult with the advent of the crisis. Global trade finance (including for aircraft and shipping) in the fourth quarter of 2008 was down by 39 per cent compared

to that of the fourth quarter in 2007. Many LDCs and SVEs were initially affected, but then depressed world demand became the dominating factor. More recent country-specific studies show that poverty due to growth slowdown could increase more than projected.

Thus, small countries are facing not only the old challenges of structural characteristics, weak physical and social infrastructures, poor supply-side capacity and domestic governance-related factors, but now must deal with new challenges, such as rising protectionism, emerging debt problems, etc., leading to marginalization of LDCs and SVEs. Furthermore, new rules due to the economic crisis are likely to emerge and could affect LDCs' and SVEs' competitiveness.

(c) Matern Yakobo Christian Lumbanga, Ambassador of Tanzania to the WTO

Ambassador Lumbanga stated that the epicentre of the global financial and economic crisis is Wall Street, and developing countries had no role in causing the crisis. However, these countries are the ones that are suffering the most. This financial and economic crisis has not only severely affected global economy, but has proven even more catastrophic to millions of people in LDCs. He cited some examples in this regard:

1. Almost all LDCs have limited production of a few, similar export commodities/products. Exports of these products/commodities are in raw form, with little value addition, and with current low demand in markets, these products fetch low prices. This results in reduced revenues for governments, which cannot implement the necessary projects and programmes due to lack of funds, leading to perpetual dependence on overseas development aid (ODA) – which can only provide short-term solutions, and has also been declining over the years. Attainment of the Millennium Development Goals by 2015 will therefore not be possible.

“ This financial and economic crisis has not only severely affected global economy, but has proved even more catastrophic to millions of people in LDCs ”

2. The severe restriction of trade financing due to the global crisis has left farmers with nowhere to sell their commodity/product, because cooperatives and individual buyers still had unused stocks.

3. Since the Hong Kong Ministerial in 2005, ministers had called on developed-country WTO members to provide Duty Free Quota Free Market Access (DFQFMA) so that LDCs could sell more to these markets. However, DFQFMA has had little success so far in view of LDCs' low productive capacity in goods and services due to supply-side constraints. To circumvent these constraints LDCs have called for increased financial support through Aid for Trade (AFT) and the Enhanced Integrated Framework (EIF). There have been some positive developments, however a joint global review carried out by OECD/WTO on AFT in 2007 and 2008 has confirmed that most AFT for those years went to non-LDCs. Thus more resources will have to be channelled to LDCs from now on.

4. The global crisis has also tempted some countries to adopt protectionist policies, which are detrimental to all WTO members, but even more so to LDCs. There is a danger that DFQFMA that has been offered to LDCs could be put on hold.

5. Finally, as the global crisis unfolded, energy prices skyrocketed with the consequence that, in developing countries and LDCs, more forest degradation has occurred as dependence on charcoal and wood for cooking and heating has increased.

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

Mr Kaukab reviewed the challenges that impede inclusiveness in trade policy-making at domestic level. He said that the process determines the outcomes and substance: if the process is inclusive, the various interests are reconciled and represented in both the outcome and substance. This results in greater buy-in and enables national ownership, and the policy is therefore more collectively representative and has good chances of better implementation.

Mr Kaukab's presentation was based on the study conducted by CUTS Geneva Resource Centre (GRC), under the Fostering Equity and Accountability in Trading System (FEATS) project. The study focuses on five African countries: Kenya, Malawi, Tanzania, Uganda, and Zambia, and discusses trade and trade policy as a means to achieve growth and development, and the importance of inclusive trade policy-making to ensure national multi-stakeholder ownership. In the study, four broad categories of stakeholders were selected:



- government ministry responsible for trade policy-making;
- other relevant government ministries and agencies;
- private sector;
- civil society organizations (CSOs).

Each of the five countries adopted a number of formal consultative processes in trade policy-making, which can be categorized either on the basis of membership or mandate.

Mr Kaukab shared two conclusions on stakeholders' involvement in policy process: (i) both government agencies and the private sector have many more channels for consultation than CSOs; and (ii) involvement of multiple stakeholders is highlighted in the study when it comes to dealing with a specific issue.

An inclusive trade policy-making (ITPM) index was formulated and the performance of the four groups was measured. The main conclusions from the application of this index include:

- Several consultative mechanisms on trade issues were established; however, they suffered from lack of legal mandates and adequate resources, from a multiplicity of consultative fora which nonetheless did not cover all trade issues, and from irregular and ad hoc functioning.
- Improved stakeholder participation; but not all stakeholders were represented, or had equal opportunities to participate.
- The remaining challenges were classified in three broad categories:
 - » capacity (limited technical, human, and financial capacities of stakeholders);
 - » institutional and structural issues (design and functioning of consultative mechanisms); and
 - » challenges internal to each group of stakeholders.

(e) Darlington Mwape, Ambassador and Permanent Representative of Zambia to the WTO and other International Organizations in Geneva

Building upon Mr Kaukab's presentation, Ambassador Mwape presented some in-country experiences in trade policy-making.

In order to understand the trade policy-making process, it is important to define the meaning of policy and its relationship with the legal framework. Although the focus is policy formulation in the area of trade, there are common elements to the policy-making process, which must be adhered to.

Governance structures

According to Ambassador Mwape, this is one area where democracy meets trade. Effective policy-making requires a clear understanding of governance structures, especially in a democratic institution: policy-makers are accountable to the people they serve, and must understand that the decision-making process should be accessible to the stakeholders in order to avoid infringing on their constitutional rights to freedom of information.

Competencies of policy-makers and the beneficiaries

Policy-makers should have the ability to balance competing interests in view of the declared goals, and should have the capacity to objectively assess the input of various stakeholders and choose those contributions that maximize the chances of attaining the desired goals.

A policy-maker must be able to define the goals, vision and direction within a given context and should be in a position to set up adjustment mechanisms to respond to emerging challenges/opportunities.

Policy-makers should be able to assess the capacities of stakeholders to comprehend the set goals/vision in order to devise the right tools for extracting and disseminating information.

Internal and external environment

Policy-makers should have a good understanding of both the internal and external environment to avoid creating ill-defined solutions to problems.

Furthermore, a policy-maker should understand the interconnectivity of different sectors and the priorities and roles of various stakeholders, the overall development goal and the relation with the external environment (whether regional or multilateral), and should also understand strengths, weakness, opportunities and threats.

Research

A good policy should be based on research, and for this independent think-tanks can be useful. In many LDCs there is no connection between trade policy-making and research. The involvement of independent think-tanks should not be a matter of last resort but an inbuilt principle and best practice in any policy-making process. Ambassador Mwape further elaborated on the quality and types of research to ensure that the right research feeds into the policy formulation process.

In every policy-making process, there should be an institution that will give direction and vision, which must have the requisite human and financial resource capacities in order to effectively direct the policy formulation process towards the desired outcome. These institutions help in establishing communication mechanisms and facilitate effective policy-making.

Furthermore, policy-making must not be relegated to the lower ranks of technical staff. There must be commitment at the highest institutional level, and this should be facilitated by instituting the necessary information flow and feedback mechanisms.

Ambassador Mwape, then explained the trade policy-making process in Zambia, explaining the private sector reforms which Zambia undertook in 2004, with the objective of creating an enabling environment and to promote private sector involvement, which is a key component in inclusiveness. The Zambia Development Agency was created to facilitate trade and to by-pass the previous multi-institutional setup.

Despite having systems of consultations in place, Ambassador Mwape concluded, Zambia still faces a number of challenges in the policy-making process.

2. Questions and comments by the audience

Ann Weston, North South Institute, applauded the rich presentation and mentioned that, indeed, trade policy-making lacks transparency not only in developing

countries but in developed countries too. She was curious about the different weights that were given to different groups while formulating the ITPM index in CUTS GRC's FEATS study, and wished to know if CUTS was able to interview small stakeholders as well. She also enquired if the Commonwealth favours the extension of DFQF to other developing countries also.

Michael Hindley, freelance trade consultant and a former European parliamentarian, asked if parliamentarians feature in the issue of inclusiveness.

An additional comment was that, although the presentations were quite comprehensive, yet the challenges faced by countries – especially the LDCs – in acceding to the WTO were not covered.

In responses by panellists, it was agreed that there is a need to freshen up the consultative process in which parliamentarians are not only involved in trade policy-making, but also actively participate in monitoring implementation.

Mr Kaukab said that in the FEATS study, small businesses were not targeted specifically, but were part of the survey sample.

Dr Razzaque stated that the participation of parliamentarians is low, as in several small economies awareness levels are low, but the fundamental problem lies in the fact that it is difficult for parliamentarians of small countries to keep up with the ever-changing trade scenario.

3. Conclusions and way forward

Dr Razzaque suggested a comprehensive approach to ensure inclusiveness of LDCs and SVEs. Conclusion of the DDA alone will not address the issue, but S&D treatment for LDCs and SVEs should be implemented effectively and without stringent provisions. The limited negotiating capacity of LDCs and SVEs should not be a constraint in protecting and promoting their interests. It is essential to consider areas where poor countries have comparative advantage (e.g. Mode IV). Promoting supply-side capacity is very important, but a flexible and supportive international trading environment to enable quick response is also needed.

Ambassador Lumbanga recommended some policy responses to reverse the global financial and economic crisis:



1. Strengthen the multilateral financial institutions to improve terms and conditions of multilateral lending.
2. LDCs' marginal share (less than 0.5 per cent) in global trade must be urgently addressed through an inclusive and transparent approach to the Doha Development Agenda (DDA).
3. Early conclusion of the DDA is vital to reduce the lost opportunities to LDCs as the round continues to drag. However, the development dimension must be at centre stage for any meaningful conclusion of the DDA.
4. For LDCs to be integrated in the world economy and the international trading system there is need for immediate and intensified implementation of the AFT initiative with LDCs being given priority; and immediate implementation of EIF projects under their Diagnostic Trade Integration Studies (DITS).
5. LDCs must undertake their own domestic responses in addition to ongoing global interventions, some of which are designed to assist LDCs.

“Early conclusion of the DDA is vital to reduce the lost opportunities to LDCs as the round continues to drag”

With regard to the policy-making process, there are common elements which must be adhered to.

- Effective policy-making requires a clear understanding of governance structures.

- Policy-makers should have the ability to balance competing interests in view of the declared goals.
- A policy-maker should have the competence to define the goals within a given context and should be in a position to put in place adjustment mechanisms to respond to emerging challenges/opportunities.
- The policy-makers should be able to assess the capacities of stakeholders to comprehend the set goals.
- Policy-makers should have a good understanding of both the internal and external environment to avoid creating ill-defined solutions to problems.
- Policy-makers should know and understand the interconnectivity of different sectors and the priorities and role of various stakeholders, the overall development goal and the relation with the external environment, and should understand strengths, weakness, opportunities and threats.
- A good policy should be based on research.
- There should be an institution that will give direction and vision, with the requisite human and financial resource capacities in order to effectively direct the policy formulation process towards the desired outcome.
- Policy-making should not be relegated to the lower ranks of technical staff. There must be commitment at the highest institutional level, and this should be facilitated by instituting the necessary information flow and feedback mechanisms.

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

Ms Aileen Kwa – South Centre

Speakers

Mr Timothy Wise – Global Development and Environment Institute, Tufts University

Mr Bertrand Munier – GRID, Arts-et-MétiersParisTech/ESTP/IAE de Paris

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

Ms Ellen Gould – Consultant

Mr Vice Yu – South Centre

Organized by

South Centre and the Global Development and Environment Institute, Tufts University

Report written by

South Centre and the Global Development and Environment Institute, Tufts University



Abstract

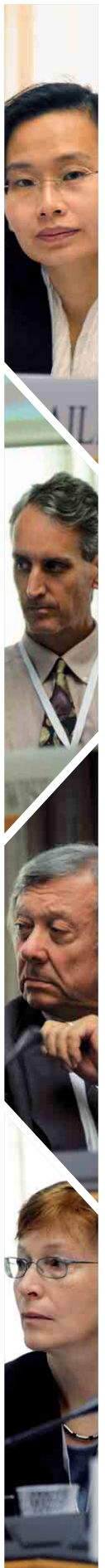
Developing countries are deeply impacted by the global financial and economic crisis. Food issues and climate change also remain extremely acute problems for many of the poorest countries. Against these premises, panellists tried to respond to the question: will the Doha Round of negotiations, if completed, facilitate or hinder countries in reducing their vulnerability during these crises?

In order to provide a comprehensive answer, the session examined the issue from different angles:

- What is happening to developing countries in the areas of food and agriculture, and industrialization, and also in terms of the challenges of climate change?

- What is being asked of developing countries in the Doha negotiations in agriculture, non-agricultural market access (NAMA) and services?
- Will the Doha Development Agenda be a help or a hindrance in increasing the resilience of vulnerable countries during these tumultuous times?
- Are there some fresh approaches to trade rules that can better support developing countries through these crises, and also assist them in achieving their long-term development goals?

Each speaker examined different aspects related to different areas of negotiation.





1. Presentations by the panellists

(a) Timothy Wise, Global Development and Environment Institute, Tufts University

Mr Wise addressed the impact of the Agriculture negotiations on food security and food crises. He provided some examples from developing countries, and insisted that gains from trade liberalization are not as high as expected. While recognizing that trade liberalization has some promise in terms of agricultural exports and market access, Mr Wise presented data showing that only a few developing countries are in a strong position to capture a market share in a liberalized global market. He also highlighted the perils in relation to small farmers and imports. He stressed the historical importance of small-scale agriculture for development, and emphasized the need for developing countries to be granted policy space in order to defend themselves from dumping and anti-competitive policies. He presented new research suggesting that, from 1997 to 2005, the costs to Mexican corn producers resulting from expanded US corn exports, which came in below the costs of production – one definition of dumping under the WTO – amounted to US\$ 6.6 billion, or nearly US\$ 100 per hectare.

(b) Bertrand Munier, GRID, Arts et Métiers Paris Tech/ESTP/IAE de Paris

Mr Munier continued the discussion on the risks of liberalization for the agricultural sector and the effects that conclusion of the DDA will have. He showed how liberalization in the agricultural sector will increase price volatility, imposing high costs on the economy and reducing investments in growth, with the risk of damaging African and least-developed countries. In his simulations, Mr Munier showed that in a 100 per cent liberalization scenario, cereal incomes for African farmers would show a downward trend and an increase in volatility. Mr Munier noted the irony that, whilst the commodities markets are becoming increasingly “financialized” and hence volatile, countries are being asked to liberalize – making them even more vulnerable to this volatility. He proposed regulating the commodities markets, restoring inventories of commodities to reduce volatility and increasing required deposits on forward markets.

“Liberalization in the agricultural sector will increase price volatility, imposing high costs on the economy”

(c) Esther Busser, Assistant Director, International Trade Union Confederation (ITUC), Geneva Office

Ms Busser's presentation shifted the focus from agricultural to industrial goods. She first illustrated the impact of the crisis on employment, before moving on to analysing the state of the NAMA negotiations, which in her view would only aggravate the current employment crisis.

In pointing out the link between trade and employment, Ms Busser emphasized the importance of tariffs for developing countries in their attempt to improve their industrial development. Tariff reductions in NAMA would result in low levels of tariffs across the board, and would leave hardly any space for strategic use of tariffs for industrialization. In her view, trade liberalization has also led to increased inequality and has undermined countries' development opportunities, while at the same time eroding the bargaining power of the unions and the regulating power of the state.

She suggested a model of development focused on domestic markets, domestic production and domestic demand. This model does not forsake trade liberalization, but includes it in the form of strategic liberalization, where trade opening is functional to development.

(d) Ellen Gould, Consultant

Ms Gould's intervention addressed the issue of trade in services. She analysed the changed dynamics in the GATS negotiations in light of the financial crisis. She contrasted the claims made for liberalization of the financial sector – more innovative financial products, better credit quality control – versus the reality experienced in the recent crisis. She also explained how GATS national treatment rules could conflict with financial sector subsidies. Ms Gould illustrated what lessons can be learnt from the crisis, and how they could be applied in the development of the GATS negotiations. She paid particular attention to the implications of GATS for financial policy space.

(e) Vice Yu, South Centre

The final speaker analysed the repercussions of the adoption of trade measures addressing climate change in the current WTO negotiations and within the United Nations Framework Convention on Climate Change (UNFCCC). In his view, what is missing is an approach that addresses the implementation gap which has

stopped developed countries from meeting their existing commitments of emission reduction and technology transfer. Mr Yu noted that the implementation gap, combined with the policy effects of trade liberalization, would make it harder for developing countries to address the challenges of both climate change and development in the near future.

2. Conclusions and way forward

The overall conclusion seems to be that pressure for liberalizing agriculture, NAMA and services as a result of the Doha Round of negotiations are not proving effective for the development interests of developing countries. In addition, the climate challenge will do nothing but compound the existing – and possibly worsening – development challenges faced by the poorest countries.



FF. Special and differential or equal and equitable? Systemic logic and the tailored integration of developing countries and least-developed countries into the world trading system

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr Hannes Schloemann – Director, WTI Advisors and Partner, MSBH Rechtsanwälte

Speakers

Mr Bernard Hoekman – Sector Director of the Trade Department (PRMTR) in the Poverty Reduction and Economic Management Vice-Presidency (PRMVP), The World Bank, Washington D.C.

Professor Dr Thomas Cottier – Managing Director, World Trade Institute, Bern, and Professor of European and International Economic Law, University of Bern

Mr Peter Tulloch – Consultant, formerly Director, Development Division and TPR Division, WTO Secretariat

Mr Edwini Kessie – Head of Africa Desk, Institute for Training and Technical Cooperation

Organized by

WTI Advisors and the World Trade Institute (WTI)

Report written by

WTI Advisors and the World Trade Institute (WTI)



Abstract

The term “special and differential (S&D) treatment” is arguably a misnomer. It suggests that the task may be to provide charitable accommodation for the weak in the form of friendly exceptions, whereas the challenge is, in fact, to integrate differently situated players into the system for the political and economic benefit of all. The ambition of this session was to provide a forum for out-of-the box thinking on the function and implementation of the concept of special and differential treatment in the WTO, with the aim of proposing forward-looking thoughts on, and possibly solutions for, a debate which too often exhausts itself in assertions of unconsidered assumptions and statements of principle from all sides. As a result, the effective use of this tool often seems elusive.

The four speakers and the moderator – a World Bank economist, a professor of law, a former WTO Secretariat Director, a current WTO Secretariat official, and a trade lawyer and consultant – reflected on a multitude of interrelated aspects

of the S&D issue, such as the history and background of S&D in the WTO; the current review of existing S&D provisions; the multiplicity of S&D aspects in the Doha Development Agenda (DDA) negotiations; the difficulty of finding and using appropriate objective indicators that could allow for a meaningful differentiation between S&D beneficiaries; the *a priori* lack of development focus and purpose within the WTO; and the possibility of embracing a “progressive regulation” approach. Comments from the audience highlighted practical and conceptual concerns, from the fact that South-South trade may be affected by S&D flexibilities and thus hurt the weak, to the fundamental question: What is development?

Both the panel and the audience agreed that current S&D provisions and approaches were often ineffective, and further progressive thinking was needed. One example of such thinking in action was the S&D approach taken in the Trade Facilitation negotiations, which offered inspiration for other areas.

1. Presentations by the panellists

(a) Hannes Schloemann, Director, WTI Advisors and Partner, MSBH Rechtsanwälte

Mr Schloemann introduced the panel and highlighted the overarching point of the exercise and the rationale behind S&D, namely the search for the best way to foster the progressive integration of developing countries, particularly LDCs, into the current world trading system(s). Issues to be addressed included the questions of where and when one size did fit all, and where and when it didn't; whether the use of indicators and indices offered a way forward to provide tailored solutions; whether and how substantive rules and procedural mechanics could be tailored to provide the right combination of flexibilities and rigidities; to what extent variable geometry could play a role; and to what extent flexibilities on even the most core rules and principles could be accepted as exceptions confirming the validity of the rule. What function and future was there for S&D in the WTO?

(b) Edwini Kessie, Head of Africa Desk, Institute for Training and Technical Cooperation

As the first speaker, Mr Kessie offered his reflections on the history of the concept of S&D in the GATT/WTO, up to the current DDA negotiations on S&D under the Doha mandate provision which states that "*all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational*". He recalled the background of Part IV of the GATT and the principle of less than full reciprocity, as well as the steps taken in the Tokyo and Uruguay Rounds of negotiations, but also highlighted the "best endeavour" nature of most S&D provisions from the outset until today. A major need was to ensure internal coherence in S&D treatment in the WTO.

Mr Kessie recalled the possible categorization of S&D provisions, or mechanisms, into five groups (market access preferences; safeguards for interests of developing countries; lesser obligations for developing countries; longer transition periods; and technical assistance), stressing that in most cases such S&D provisions remained non-enforceable.

Reflecting broad consensus among observers, he provided a rather dim view of the progress in the DDA

negotiations on S&D so far. While the agreement on the five LDC-related proposals reflected in Annex F of the Hong Kong Ministerial Declaration, in particular DFQF market access, was a success, progress on the remainder of the programme was slow. Views on the nature and extent of the Doha mandate differed, with developing countries viewing the negotiations on S&D provisions as an important part of the Round, while developed countries continued to view them rather as voluntary or optional elements, and tended to focus on gains from market access commitments in Agriculture, NAMA and Services, and new mechanisms such as the emerging Agreement on Trade Facilitation.

Among the fundamental issues raised by the negotiations was the question of differentiation between developing countries, and the reluctance of developed countries to grant S&D to more advanced developing countries. He recalled the *Turkey – Textiles* case and the parameters for legitimate differentiation established by the Appellate Body, and asked whether further tools were needed.

Mr Kessie concluded by stating that, in his view, current S&D mechanisms were insufficient, and more needed to be done, for example in terms of flexible rules of origin, simplified administrative procedures, etc. Aid for trade could also play a useful role in helping developing countries integrate into the MTS. A promising example was set by the Trade Facilitation negotiations, where implementation obligations were envisaged to be linked to individual implementation capacities, as well as related technical assistance and capacity building.

(c) Bernard Hoekman, Sector Director of the Trade Department (PRMTR) in the Poverty Reduction and Economic Management Vice-Presidency (PRMVP), The World Bank, Washington D.C.

Mr Hoekman focused on the role of trade policies in addressing the externalities derived from economic asymmetries. In his view, economic research suggests that the status quo on S&D does not contribute to promoting economic growth. The focus should not be on S&D, but on reducing trade costs and monitoring.

Three problems illustrated the approach taken at the WTO, and motivated concerns about the discourse on S&D. First, the size of small countries meant that they had less bargaining power to negotiate market access. Second, the focus of the WTO system was not development, but trade liberalization. As a result,





the reaction and primary focus of developing countries was to seek S&D in the form of opt-outs and transition periods. Third, the WTO dealt with trade policy, which may in fact not be the appropriate tool to address developmental concerns and aims in the first place. The recent Aid for Trade initiative can be seen as a reaction to these problems.

“Economic research suggests that the status quo on S&D does not contribute to promoting economic growth. The focus should not be on S&D, but on reducing trade costs and monitoring”

As to the issue of differentiation between developing countries, Mr Hoekman observed that there was, in fact, a lot of *de facto* differentiation in the current system as practised. For example, the value of non-reciprocal preferences granted by developed countries, and hence preferences received, varied considerably; flexibility regarding the reach of WTO rules was often based on self-declaration; acceding countries were treated differently from existing members; preferential trade agreements led to deeper discriminations; and in the DDA negotiations many countries tried to avoid the formulae, which resulted in numerous additional groupings, such as RAMs and SVEs. The net result was much discrimination, with exports from many developing countries often facing higher than average barriers. The status quo, research showed, did little to increase growth.

Mr Hoekman suggested thinking in alternative perspectives. All countries should make binding commitments, but the focus should be on negative externalities imposed on others, which warranted a focus on bringing large countries under discipline, a shift back to critical mass/plurilateral approaches to rule-making, and a request-offer approach in negotiations. Would it be possible to use indicators to differentiate meaningfully? In Mr Hoekman's view, it would be very difficult for economists to agree on objective criteria to determine who should benefit from which S&D treatment. Criteria could only be negotiated.

Mr Hoekman concluded that current WTO rules and mechanisms did not operate to promote development and were not designed to do so, but further asked whether, indeed, this mattered. Small and poor countries were, in fact, usually not held accountable under the rules, and were not subjected to dispute settlement if they violated

them. Once sufficient growth occurred, reciprocity was demanded of them, and hence graduation *de facto* occurred. The question was therefore: What minimizes transaction costs, or maximizes payoffs, for low-income developing countries? What policy space would be useful for developing countries? In Mr Hoekman's view, trade policy as a distributional tool generated countervailing forces, and was often relatively ineffective.

Changing global business realities, such as the splintering of global value chains, has highlighted the importance of reducing transaction costs and improving the operating environment confronting firms and farmers in developing countries. This suggests that from a development perspective the focus in the WTO should be less on designing *ex ante* a “complete contract” in terms of trade policy, including S&D, but to focus on mechanisms to reduce costs (trade facilitation; SPS; TBT; regulation of backbone services; etc.), and strengthening, monitoring and analysis of the sources and magnitude of such costs.

(d) Peter Tulloch, Consultant, formerly Director, Development Division and TPR Division, WTO Secretariat

Mr Tulloch expressed his agreement with both preceding speakers on the main issues that they had addressed. In particular, he agreed with Mr Hoekman's view that it was very difficult, in the light of developments in the trading system, to determine – from an economist's point of view – which countries could effectively benefit from S&D.

First, the spread and complexity of “regional” and other preferential – and hence discriminatory – trading arrangements affecting differing groups of developing countries (SVEs and LDCs, among others), had created (to borrow Bhagwati's term) a “spaghetti bowl” of incoherencies, in which developing countries even within the same geographical area would each receive different differential treatment in market access to developed markets. Furthermore, this treatment would not necessarily be more favourable, in any sense, than the access given by the same developed markets to developed partners linked in customs unions and free-trade areas. In discussing market access, therefore, focus might better be placed on two elements: (i) what terms of access are available, and (ii) which countries (developed or developing) are the competing suppliers, and on what terms. This focus (already being used in negotiations) might help to define better where S&D is important, or where open access in itself should be the first priority.

Second, although at a “broad-brush” level common elements could be found, policy interests in the trading system, and internal economic and political constraints and opportunities, varied considerably among developing countries. The past 20 years had seen an enormous differentiation among levels of development, and it was difficult now to speak of “developing” and “developed” countries as two distinct groups; rather, one should think in terms of a spectrum of development. This was one reason why so many different groups were now identified in the WTO negotiations, and why these negotiations are so difficult.

“The past 20 years had seen an enormous differentiation among levels of development, and it was difficult now to speak of “developing” and “developed” countries as two distinct groups”

Last, he referred to the increasing complexity of WTO rules as an area where S&D was still necessary. It was essential that developing countries were assisted to understand and adhere to these rules via technical cooperation and training. But it was also necessary to ensure that the rules themselves were adapted to the trading realities of developing countries. A flexible attitude to the development and administration of rules, incorporating S&D treatment as a central feature, was essential.

In his view, it was time to rethink the concept of “S&D” treatment. The focus should be on how best individual developing countries, or groups of countries at similar levels of development and economic structures, might seek to negotiate and otherwise participate in order to benefit from the WTO trading system and promote their development through trade. A unitary concept of S&D was no longer, in his view, a valid model.

(e) Thomas Cottier, Managing Director, World Trade Institute, Bern, and Professor of European and International Economic Law, University of Bern

Prof. Cottier, recalling the GATT/WTO system’s original focus on trade liberalization, suggested that it was time to move to a system of “progressive regulation” based on objective indicators or “thresholds” (e.g. according to the member’s GNP or competitiveness) to determine when a rule on S&D treatment applies. A concept of graduation is more appropriate and workable to allow for

tailored application of regulatory disciplines to members, according to their needs and abilities.

He recalled that this is neither alien nor new to the system, as shown by the solution found in Article 27.4 of the Agreement on Subsidies and Countervailing Measures with regard to export subsidies. The determination of who would be obliged by, or benefit from, a provision would ultimately need to be determined on a case-by-case basis. Economists were called upon to develop suitable parameters and criteria, and corresponding research work was under way.

More generally, Prof. Cottier stressed that it was important to think in terms of appropriate “incentives” to make developing countries engage in trade liberalization.

2. Questions and comments by the audience

A round of exchanges between the panellists, followed by comments and questions from the audience, reflected the wide range of issues touched upon. One speaker strongly doubted the usefulness of using GDP or other economic data as indicators to determine WTO obligations, and pointed to the fact that many problems arose in the context of South-South trade. Allowing one developing country to deviate from WTO rules would often hurt its equally vulnerable developing country neighbour.

Several speakers highlighted the possibility of linking disciplines to the provision of Aid for Trade, as reflected in the Trade Facilitation negotiations. Beyond this conditionality, Aid for Trade had a key role to play in the further integration of developing countries into the world trading system.

The progressive approach taken in the Trade Facilitation negotiations, with individually adjusted implementation schedules and additional flexibilities allowing for an adjusted application of disciplines, was highlighted by several speakers, and echoed by panellists.

Others participants raised the question of incentives for developing countries set by S&D rules and approaches, and stressed that many such approaches in the current system and negotiations were in fact wrong, and often perverse.

One commentator observed that a key issue underlying the issue of flexibilities was the broader question of the role of interventionist policies in furthering development.



The answer would inform the need for policy space for developing country governments. The broader question behind this was: What, in fact, is “development”?

One speaker observed that, arguably, less developed countries are often, in fact, *more* integrated into the world economy than more developed countries which use subsidies and trade protection to shield themselves – options which are often not available to weaker members.

3. Conclusions and way forward

Concluding reactions from the panellists and the moderator reflected broad agreement that the existing rules on S&D, mainstream thinking on S&D, and the approaches taken to S&D in negotiations would benefit from more critical analysis and more creative ideas. The ideas reflected in the current Trade Facilitation

negotiations merited attention, and could and should be employed elsewhere.

Taking up the question of how to define development, the moderator pointed to the possible inspiration to be gained from the approach taken by the Kingdom of Bhutan, a country in accession, which has set “Gross National Happiness” as its official goal.

Prof. Cottier encouraged all present to move beyond the issues discussed and to cut through to the “real issues” affecting development – including the need to address export cartels and competition issues more generally, and the somewhat messy situation in investment, where bilateral treaties dominated – which often operated as an obstacle to optimal, development-supporting solutions.



WTO OMC



V. The main challenges facing the multilateral trading systems and reflections on the post-crisis agenda for the WTO

GG. Between negotiations and litigation: reinventing the “middle pillar” in the WTO

Monday, 28 September 2009 – 14.00 ~ 16.00

Moderator

Mr Lucian Cernat – Chief Trade Economist, European Commission

Speakers

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

Mr Andre Sapir – Professor of Economics, Université Libre de Bruxelles, Senior Fellow of the Brussels European and Global Economic Laboratory (BRUEGEL)

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

Mr Denis Redonnet – Head of Unit, WTO, OECD and Dual-Use, European Commission

Organized by

European Commission DG Trade

Report written by

Ms Ramona Samson, Civil Society Dialogue Coordinator, DG Trade, European Commission



Abstract

The WTO, in its present shape as a main forum for trade negotiations and the most effective mechanism for litigating trade disputes, has been hailed as one of the most successful post-World War II international organizations. However, ten years after its successful institutionalization, and with an uncertain outcome for the Doha round of negotiations, repeated calls were made in favour

of the need for rediscovering and rebranding the “middle pillar” in the WTO architecture between negotiations and litigation: a set of “missing middle”, consensus-building and transparency-enhancing instruments that could provide the middle ground for a more effective functioning of the other two main pillars of the WTO system.

Introduction

Developing a dynamic “missing middle” is important for systemic issues and in order to preserve a proper “constitutional balance” in the WTO. At a time when negotiations of hard law by consensus become more and more difficult, the judicial arm of the WTO risks becoming overloaded. A high level of litigation and trade friction may make it more difficult for the WTO to withstand public and political criticism. Its overall legitimacy as a consensus-building organization could ultimately be affected. Moreover, given that the role of the WTO dispute settlement system is to clarify existing rules, not change them, that system would be incapable of delivering the needed results. The panel considered the case, in certain areas, for moving from potentially ineffective hard law to an enhanced use of soft law.

Using the “missing middle” is also a way to pursue more specific objectives that are part of the core WTO mandate. This may concern the functioning of various WTO committees, as well as a more constructive dialogue among WTO members on various trade-related issues.

The session examined possible means of establishing the “missing middle”, such as:

- “Soft” WTO law, such as declarations, recommendations, and agreed interpretations, which could be approved by the General Council or by WTO Committees.
- Model WTO implementation: non-binding clauses that would be considered as WTO-compliant means to nationally implement WTO obligations.
- Best national practices: exchange amongst practitioners that can lead to the adoption of agreed, but non-binding, best practices.
- WTO notifications: enhanced notification mechanisms and transparency.
- WTO reviews of:
 - » national legislation and Trade Policy Reviews: ways to enhance interaction and establish conclusions and follow-up.

key WTO clauses: how some key clauses are being implemented at the national level

1. Presentations by the panellists

(a) Lucian Cernat, Chief Trade Economist, European Commission

Mr Cernat explained that the context for the session is WTO Director-General Pascal Lamy’s comment in the 2007 World Trade Report that the WTO should develop the “missing middle” between its negotiation and litigation activities. Whilst this agenda remains to be built up, the crisis has provided a “missing middle” of its own for the WTO, which has developed an influential and effective role in monitoring protectionist trends. Moreover, this element of the WTO’s work should attract broad support across business, NGOs and WTO members.


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

Mr Meléndez-Ortiz said that WTO members should be making better use of the regular committees of the WTO. The ITA showed how an effective “middle pillar” could be used, but this has not been followed up more recently. The TRIPS/Public Health saga demonstrates how long it can still take to resolve issues via the Committees. In this context, a new committee on trade and climate change should be considered.

(c) Andre Sapir, Professor, ULB and Senior Fellow, BRUEGEL

Mr Sapir stressed that there is currently a “WTO paradox”: in spite of a common perception that the WTO is losing “centrality” in international economic governance, the crisis has shown that the rules were there when we needed them. The G20 is a positive development that (implicitly) acknowledges the rising share in international trade of the emerging countries and the declining relative share of the “Old Quad” countries, which “no longer run the show”. There were three main areas for developing the missing middle: (i) giving more teeth to the CRTA; (ii) addressing the linkages between energy/natural resources and trade; and (iii) moving from a hard law to a soft law approach in the area of IPR.





(d) **Fernando de Mateo, Mexican Ambassador**

Ambassador de Mateo said that the way forward on the missing middle would be fundamentally affected by whether the DDA was concluded or not. Nonetheless, progress should be made on: notification of subsidies, SPS issues related to human and animal health (e.g. H1N1-related); and improving databases on anti-dumping and trade and development. The CRTA should also be strengthened via a database of notified agreements: we must get beyond approval of Czech Republic – Slovakia as the high-water mark! A more radical idea was to look at whether the General Council/Council on Trade in Goods could be given a mandate to modify some aspects of existing agreements where there was agreement among the membership.

(e) **Denis Redonnet, Head of Unit, DG Trade**

Mr Redonnet concluded that we should recognize at the outset that there may be some inbuilt resistance to the “missing middle”. The heart of the WTO system is a set of negotiated rules. Both lawyers and negotiators often instinctively recoil from weakening this. However, there is a risk of “legislating from the bench”, especially in the absence of further negotiated changes in the rule-book, and so arbitration approaches may have an enhanced role to play. Transparency and enhanced

peer-review could build upon the Secretariat’s “success” in developing the TPRB process to give greater visibility to the TPRM and to notifications. Agreed minimum standards on RTAs could also help to fill a systemic gap. More generally, the missing middle might help to re-establish a sense of common purpose among the membership by building consensus on the basis of deliberation rather than negotiation.

“The missing middle might help to re-establish a sense of common purpose among the membership by building consensus on the basis of deliberation rather than negotiation”

2. Conclusions and way forward

Mr Cernat summed up the debate, indicating that it shows that there are sharp arguments in favour of developing this area of the WTO’s work. This can often be done without the need to develop new structures. But there is a careful balance to strike between hard law and soft law approaches, in order not to undermine the core strength of the WTO rule-book. Finally, the missing middle agenda should also be seen as a tool for engaging civil society in a wider debate on the future of the WTO, as well as an internal process for generating ideas for reforms.

HH. Is the WTO out of touch with business? The subjects the WTO needs to address notwithstanding the negotiating stalemate

Monday, 28 September 2009 – 14.00 ~ 16.00

Moderator

Mr Jonathan Lynn – World Trade Correspondent, Reuters News

Speakers

Dr Hubertus Erlen - Chairman of BUSINESSEUROPE International Relations Committee

Mr Rufus Yerxa – WTO Deputy Director-General

H.E. Mr Eckart Guth – Ambassador, Permanent Representative of the EC to the International Organizations in Geneva

H.E. Mr Sun Zhenyu – Ambassador, Permanent Representative of China to the WTO

Mr David Shark – US Deputy Chief of Mission and Deputy Permanent Representative to the WTO

Mr Reinhard Quick – Vice-Chairman of BUSINESSEUROPE WTO Working Group

Organized by

BUSINESSEUROPE – The Confederation of European Business

Report written by

BUSINESSEUROPE – The Confederation of European Business



Abstract

The session assessed if the WTO is capable of, and is still, dealing with the real concerns of business. Given the fact that companies today more and more face varying barriers to trade, the WTO has to define its role in tackling these issues. Panellists agreed upon the key role the WTO is playing in setting and ensuring respect of multilateral rules, and assessed how it is tackling some of the key business issues,

such as the protectionist threat, NTBs, trade and environment, access to raw materials, investment or rules of origin. There was overall consensus that a rapid and ambitious conclusion of the DDA would be the essential first step to strengthening the multilateral approach, and that the WTO's scope was very likely to be expanded in the future to new areas such as climate change.





1. Presentations by the panellists

(a) Hubertus Erlen, Chairman of BUSINESSEUROPE International Relations Committee

A drift away from the multilateral approach and lack of business support would have negative real world consequences and be a sad lookout for the WTO. After all, it is the main purpose of the international trading system to facilitate the work of companies from all the 153 member states.

The global economic crisis is already leading to the biggest slowdown in international trade for at least 25 years. Moreover, companies are very concerned that governments are enacting restrictive, protectionist measures that will burden the recovery. These relate to direct import restricting measures like tariffs and customs rules, risks of illegal export subsidization and increased dumping, or increased regulatory divergence in economic crisis/stimulus plans.

BUSINESSEUROPE has been pleased with the WTO's approach to name-and-shame WTO members enacting protectionist measures. This peer pressure has so far helped to keep a lid on impulses to close markets, but continued vigilance is needed.

“Companies may be frustrated with the lack of progress on the DDA but remain strong supporters of its conclusion”

BUSINESSEUROPE has placed the Doha Round at the top of its international priorities since 2001, and has lobbied hard for its conclusion. Companies may be frustrated with the lack of progress on the DDA but remain strong supporters of its conclusion, which is the best tool to counter the threat of protectionism. The commitment – expressed in the Delhi meeting – to finish the DDA in 2010 needs to be lived up to by all WTO members.

The US position is difficult to understand as, on the one hand, in the G20 context, President Obama has expressed willingness to move forward on the Doha Round and to avoid protectionist measures, while on the other hand, the Buy American provisions in the stimulus package, or pressing domestic issues, fuel concerns that the US is not ready to spend political capital on the concessions it must make to secure a deal.

With its Buy China policy, China has also raised some concerns, although it will be one of the major beneficiaries of an ambitious Doha deal. If these benefits are to be gained it must be ready to improve market access in those sectors where it is competitive.

Mr Erlen, for his part, believed that the EU may need to look again at its defensive concerns – including agricultural matters – in order to achieve the requirements of new industrial and service market access.

A successful and ambitious DDA conclusion must deliver new market access by ambitious tariff liberalization, sectoral agreements in industries of EU export interest, new disciplines on non-tariff barriers, progress on service sector liberalization, and improvements in the WTO rules agreements.

Businesses have been experiencing new challenges, for example in the areas of NTBs and investment. New trade barriers are cropping up under the guise of environmental, health and consumer protection standards. In addition, numerous industrial policies are implemented to protect or subsidize industries, for instance through double-pricing schemes for energy-related products. Secondly, there is a global trend towards investment protectionism although everybody acknowledges the importance of foreign direct investment. Therefore it remains highly regrettable that investment has been excluded from the current Doha mandate.

(b) Eckart Guth, Ambassador of the EU and Permanent Representative to the WTO

The WTO provides a number of highly useful instruments that have proven their benefits for the multilateral trading system. The WTO Dispute Settlement Mechanism is one example which has been efficiently used, although its process is sometimes lengthy. Small WTO members also increasingly make use of it in order to target big countries.

The WTO has also been very effective in monitoring protectionist measures and exerting peer pressure. Fortunately no tit-for-tat trade war has been witnessed as a consequence of the crisis.

The WTO has furthermore enlarged its influence by taking up new members, although few important countries are still missing. It is also positive that the WTO Government Procurement Agreement has seen Taiwan recently acceding as a new member. The WTO is also very active

in the area of sanitary and phytosanitary measures, as well as in the area of trade and development.

On the DDA, the finishing line is now in sight and a number of countries have done their utmost to help achieve this. On agriculture, a final agreement is near which will include elimination of export subsidies. This will fundamentally change the world trading system in this area. On NAMA, there are still some diverging views, with the US being concerned that the level of ambition and transparency is not sufficient. The services signalling conference was a positive step, but more work is still necessary. On trade facilitation, developing countries will be the biggest beneficiaries. Finally, the EU attaches high importance to the TRIPS Agreement. Investment is a very important issue, but has been postponed. Procurement and climate change are subjects to be dealt with in future.

(c) Sun Zhenyu, Ambassador, Permanent Representative of China to the WTO

The WTO remains very relevant for business in establishing a large number of multilateral rules for global trade. The WTO Dispute Settlement Mechanism – “the jewel in the crown” – works very effectively. The TPR system has been proven very useful and has also helped to prevent protectionism.

China has a strong interest in, and has given its full support to, the conclusion of the DDA. The main DDA issues are trade distortive subsidies in agriculture, as well as market access in some sectors. It is the first time since its accession that China participates in the drafting of future WTO rules. It should be noted that China has already made many adjustments since its WTO accession.

Developing countries have already made unprecedented commitments in the DDA, although the Doha mandate calls for less than full reciprocity. It is also important to remember that flexibilities exist for developing and developed countries alike. The Swiss Formula will lead to up to 36 per cent of tariff cuts. The argument that developing countries are only doing “cuts into the water” does not fit, particularly not in times of economic crisis. In addition, the NAMA text contains an anti-concentration clause.

China will make 30 per cent cuts on applied tariffs in NAMA, and 20 per cent on applied tariffs in agriculture. On the other hand, it is facing special safeguards and

other remedies, which make it difficult to get public support for further cuts.

(d) David Shark, US Deputy Chief of Mission and Deputy Permanent Representative to the WTO

The WTO system provides a very useful framework of rules with only limited exemptions. The recent protectionism monitoring reports have created accounting which was very positive. Also the TPR system is a useful instrument.


On the DDA, the US remains committed to a successful conclusion. However, at this stage it remains unclear what other WTO members will be ready to offer. The latest developments have gone in the direction of less ambition by giving greater flexibilities. Moreover, it should be kept in mind that LDCs do not have to make cuts; SVEs are also not part of the formula. Overall, only 20 to 30 countries will have to make real cuts in their tariffs.

Industry interest has been lower in the past, which might be linked to the fact that stronger issues like the Services Agreement have been discussed in previous Rounds. US companies do not disengage from the DDA, but currently also do not see that it is something they should battle for.

(e) Reinhard Quick, Vice-Chairman of BUSINESSEUROPE WTO Working Group

The business sector is not generally satisfied with the WTO, nor was it always satisfied with the GATT. Companies are in favour of the multilateral trading system, but this needs to be adapted to recent developments. A comprehensive Doha Development Agenda would have been highly beneficial for world trade, but unfortunately it was reduced during the Cancún Ministerial meeting.

Progress on the DDA is too slow and does not always address the right business issues. WTO members also have to decide if they want “real” tariff cuts or only “cuts into the water”. Looking at economic forecasts for the BRIC, GCC, Latin American or some Asian countries in 2020, it is important to know where their flexibilities will be applied. It is better to focus on the competitiveness of countries and sectors, instead of implementing a mercantilist give and take approach. BUSINESSEUROPE therefore calls for sectorals,



for instance in chemicals, to be included in the final agreement.

Some of the key business issues will be delayed beyond 2030 if the WTO does not solve them today. One area is export taxes/duties on raw materials which are particularly harmful and need to be eliminated. The EU and the US have made some good proposals on this.

Another issue is trade and environment. There are some protectionist trends both in the EU and the US. Caution is necessary to ensure that this does not escalate into a trade war on climate change. Furthermore, reaching agreement on environmental goods is difficult, as it will be complicated to get a list of goods that is neither arbitrary nor discriminatory.

Finally, much stronger rules are needed on FTAs in order to prevent the risk of ending up with a “spaghetti bowl” of different rules.

(f) Rufus Yerxa, WTO Deputy Director-General

The WTO system establishes a regulated open market which has been beneficial for business. The WTO has proven its usefulness; it is sometimes easier to perform good work if it is outside political debates. The WTO today also has to reflect the new global economy with more important players than in the past. Some of the issues discussed today would not have been discussed after the Uruguay Round. It is the role of the WTO to take into account the views of all its members. Business should remain committed to the DDA, as the post-DDA system will provide a better and more stable multilateral framework.

“The post-DDA system will provide a better and more stable multilateral framework”

2. Questions and comments by the audience

The subsequent debate focused mainly on the state of the DDA and the question of whether to have sectorals included in the final agreement.

Ambassador Sun underlined that sectoral agreements are voluntary, and China had no interest in them. Speaking specifically on chemicals, China already had very low tariffs and foreign companies did not face real barriers. Moreover, the DDA was a development round, and therefore competitiveness could not be the right criteria. This being said, in cases where China was more competitive in some specific area, it would also face more remedies. In some sectors, countries have already excluded themselves, for instance in textiles and clothing. WTO members would have to be realistic about the potential outcome of the DDA.

Ambassador Guth said that, after the G20 Pittsburgh meeting, he was neither more nor less confident of a rapid DDA conclusion. A work programme was now on the table, but the key elements on transparency and ambition would have to be dealt with at the bilateral level.

Mr Yerxa noted that the DDA outcome will be an “evolution”, but not a “revolution” of the multilateral trade system. It was impossible for all demands from all members to be met, and nor had this happened in the past. This being said, the “perfect could not be the enemy of the good”.

Mr Shark concluded that one of the underlying problems was that some WTO members considered the DDA as a development round, whereas others focused more on the market access issues.

3. Conclusions and way forward

Overall, panellists agreed on the key role the WTO is playing in setting and ensuring the respect of multilateral rules, as well as on the need to rapidly achieve an ambitious conclusion of the Doha round.

II. The universe of standards: legitimate protection, sophisticated protectionism, or potential development opportunity?

Monday, 28 September 2009 – 16.15 ~ 18.15

Moderator

Mr Steffen Grammling – Program Officer (Trade and Development), Friedrich-Ebert-Stiftung, Geneva Office

Speakers

Dr Johann Swinnen – Professor and Director, LICOS, Centre for Institutions and Economic Performance, Catholic University of Leuven

Mr Joseph Wozniak – Programme Manager, Trade for Sustainable Development (T4SD), Market Analysis and Research, International Trade Centre (ITC)

Dr Sasha Courville – Executive Director, ISEAL Alliance

Mr Adriana Mejia Cuartas – Director, International Cooperation (Europe), National Federation of Coffee Growers of Colombia (FNC)

Organized by

Friedrich-Ebert-Stiftung (FES)

Report written by

Friedrich-Ebert-Stiftung (FES)



Abstract

The proliferation of public and private standards has intensified over the last decades. Given that this process has occurred in parallel with the reduction of traditional trade restrictions, such as tariffs and quotas, standards are commonly referred to as a new form of Non-Tariff Barriers (NTBs). However, the assessment of whether standards constitute an obstacle to or leverage for trade is much more complex and difficult; it depends on various factors, such as their organization, specifications and implementation, as well as the perspective of actors. This shows the need for a more differentiated view on the diversity of standards and their impacts.

Against this background, the three main objectives of the session were:

- i) to broaden awareness of and to increase transparency on the universe of standards and their growing importance for international trade;
- ii) to depoliticize the debate on standards and to allow for a more objective view on the issue, juxtaposing potential costs and benefits that arise from the implementation of standards; and
- iii) to present good practices on how the application of standards works on the ground and on how they can be transformed into potential export and development opportunities for small and medium-sized enterprises (SMEs) in developing countries, based on empirical evidence.





1. Presentations by the panellists

(a) Steffen Grammling, Program Officer (Trade and Development), Friedrich-Ebert-Stiftung (FES), Geneva Office

Mr Grammling, the session's moderator, pointed out that standards are commonly referred to as barriers to trade. Producers from developing countries raise concerns over the demanding standards that are required to export to developed countries' markets. On the other hand, there is the legitimate interest of governments to protect human, animal and plant life and health in their countries. In this regard, standards are considered one of the most effective instruments. If their conditions are too strict, however, they become obstacles to trade; sometimes even a disguised form of protectionism.

The WTO sets out general rules for product standards, specifically in the Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Measures. But the universe of standards is much broader and much more complex. It can be subdivided into the categories of *obligatory* and *voluntary*, as well as *public* and *private* standards. Whether they are perceived as an obstacle to or leverage for international trade depends on the perspective of actors, be they the private sector, civil society, or governments; be they producers or consumers; or be they exporters or importers. The standpoint also differs widely between developed and developing countries. Although voluntary standards, such as Fairtrade, are still a niche market, their importance has increased quickly and they offer new export and development potentials.

(b) Johan Swinnen, Professor and Director, LICOS, Centre for Institutions and Economic Performance, Catholic University of Leuven

Dr Swinnen focused in his presentation on the following five points: First, he noted that in the past few years the importance of standards for trade has been growing tremendously. In Europe, the agricultural and food crisis at the end of the last century triggered the adoption of various regulations, such as the European Union (EU) Food Safety Law of 2002. Moreover, private actors have introduced different standards, which regulate the way they source their products.

Second, he stated that the impact of standards on developing and emerging countries comes through two channels: on the one hand, private companies have

increased their foreign direct investment in developing countries; on the other hand, standards are becoming more important for developing countries and emerging economies due to their growing role in international trade. In this regard, the fulfilment of various standards and regulations is a necessary condition for exporters.

Third, Dr Swinnen discussed the relationship between public and private standards. Companies introduce private standards to govern business transactions and to lower transaction costs. Private standards also help companies to profile themselves and to distinguish their products from other products. From an international trade perspective, private standards in principle do not fall under the mandate of the WTO. However, this argument may be contested in the future as many private standards include reference to or aspects of public regulations. There are also other complexities in distinguishing private from public standards: If retail companies, for example, dominate around 80 per cent of the EU's trade in fresh products, their standards may become *de facto* public standards.

Fourth, concerning conceptual issues, Dr Swinnen pointed at the difficulty of modelling welfare effects. He argued that, in conventional trade theory, standards are typically modelled as trade barriers, which ignores two crucial facts: on the one hand, private companies apply standards also in their non-trade activities to reduce information asymmetries, which enhances welfare; on the other hand, standards can reduce transaction costs among businesses. If these two factors are included in a trade model, the welfare effects are much more difficult to assess, given the existing trade-offs. This also complicates the assessment on when standards are optimal or suboptimal, and could lead to "over-standardization" and "under-standardization".

“Rural areas in developing countries can actually benefit tremendously from export-based standards systems”

Fifth, Dr Swinnen stated that the vast majority of models used for empirical evidence also suffer from methodological problems. This makes their results highly questionable. Most of the early studies found that standards were too costly for many developing countries, that poor producers would lose out, and that international trading companies would take out all the rents of the system. Recent studies, however, found that compliance costs would be rather modest compared to the value of

export benefits. New models with better methodology show that rural areas in developing countries can actually benefit tremendously from export-based standards systems due to a number of reasons. First, higher standards lead to higher value products and higher revenues. Second, most supply chains are organized vertically, which implies that local farmers are provided with inputs, credits, technology, management advice, and guidance on production techniques. Third, benefits for poor farmers arise from smallholder contracting, which has strong anti-poverty effects, and even more through the local labour markets, as poor farmers typically lack basic assets, such as human capital, credit, and land. In concluding, Dr Swinnen cautioned that these results are mainly based on a series of case studies and that their consistency needs further verification.

(c) Joseph Wozniak, Programme Manager, Trade for Sustainable Development (T4SD), Market Analysis and Research, International Trade Centre (ITC)

Mr Wozniak stated that it is crucial to answer the question of whether voluntary sustainability standards are a benefit for producers and exporters from developing countries, whether they constitute technical barriers to trade, or whether they are a combination of both. He pointed out that a main purpose of ITC's programme on Trade for Sustainable Development (T4SD) is to provide data to allow users to answer this question. The programme originated from the results of surveys on the benefits and costs of standards among trade support institutions, producers, and exporters in the developing world. These surveys identified as a major challenge the lack of access to market information and NTBs, such as regulations and standards. The programme is pursued in partnership with other United Nations (UN) agencies, private initiatives, and bilateral donors.

The T4SD programme's goal is to increase the overall participation of producers and exporters of developing countries by enhancing transparency on voluntary social and environmental standards, which are operated by non-governmental organizations (NGOs) and private corporations. The programme's main output will be a database, which is made accessible to policy-makers, academics, development institutions, buyers, and consumers, in the form of an interactive web-based tool. This tool seeks to facilitate access to specific research on different aspects of standards, their organization, their compliance and verification mechanisms, and their requirements on environmental, social, labour, and other issues. The programme's expected impact will be

to increase transparency vis-à-vis voluntary social and environmental standards and the tangible economic benefits for producers and exporters when they engage in sustainable trade.

The core pilot programme consists of two pillars. The first pillar is a comprehensive database on NGO standards, with a robust and flexible framework that breaks them down to their specific elements. The pilot standards comprise commodities, such as coffee and cocoa, and forestry products. Other sectors, such as cotton and seafood, will be added post pilot. The second pillar is a compendium of research and case studies which cover the impacts or implementation of standards "on the ground". Thus, the database would provide the user with a one-stop shop for the necessary information. Researchers on certified coffee of Uganda, for example, would find the certification schemes that are operational in this sector in this country, as well as cross-reference to all relevant research that has been undertaken in this sector related to a Ugandan context.

Mr Wozniak also referred to the relevance of standards for connected issues, such as public procurement. This has recently gained importance in European countries, in particular Switzerland and Germany, where legislation concerning the procurement of products has changed by adding sustainability criteria. ITC is working with external partners to create a third-party "front-end" that will serve the needs of public procurement officials in these countries. This example illustrates one particular, unique aspect of the database, i.e. to build different front-ends – be they public procurement or consumer information – for different constituencies.

Currently, the T4SD programme focuses on six pilot standard-setting bodies and three pilot sectors, i.e. coffee, cocoa, and forestry products. Once the structure is verified, the coverage is planned to be expanded. The long-term challenge will then be to disseminate the tool on the ground.

(d) Sasha Courville, Executive Director, ISEAL Alliance

Referring to the session's title question, Dr Courville stated that there is no black or white answer; it rather depends on how standards are implemented. She re-emphasized that voluntary sustainability standards are a recent phenomenon and that their evolution was quite specific. She focused in her presentation on a number of emerging governance frameworks for sustainability standards, which illustrated both the status



quo and the need to move forward to make standards an effective tool for sustainable consumption and production.

ISEAL is an alliance with the vision to ensure that voluntary standards systems play an expanding role in achieving social justice and ecological sustainability. It defines credible practices for social and environmental standards and created a learning network for standard-setters to strengthen performance, demonstrate best practices, and avoid reinventing the wheel. It seeks to empower governments, business, and NGO leaders to use standards systems to help them achieve their own objectives. ISEAL works to facilitate an effective movement of standard-setting systems in order to scale up their impact and to promote collaboration between them.

ISEAL members are growing quite rapidly due to the increased proliferation of standards initiatives. Full members comply with ISEAL's Standard-Setting Code and other internationally recognized guidance. Newer members make a commitment to demonstrate full compliance within three years. ISEAL's membership covers a variety of issues and sectors, from labour rights, fair trade, agriculture (including biofuels), forestry, fisheries, water, and carbon-offset green technology.

One of ISEAL's core work areas is to define what a credible sustainable standards system is. For this, credible standard-setting and verification procedures are necessary. In 2004, ISEAL developed the ISEAL Code of Good Practice for Setting Social and Environmental Standards. This is based on WTO's TBT Agreement Annex 3 and ISO Guide 59 on standardization. Thus, they comply with the WTO disciplines of openness, transparency, participation, and due process. A credible verification system is also important to ensure that claims about compliance can be backed up. This includes auditing, certification, accreditation, and labelling dimensions. ISEAL will be developing a Verification Code of Good Practice, starting in 2010.

At the moment, ISEAL is working on a code of good practice for assessing the impacts of standards systems. The code will set the requirement for all global standard-setting systems to demonstrate their contribution to social, environmental, and economic impacts in a consistent way.

Dr Courville also highlighted the need to improve the accessibility of standards, especially for small-scale producers in developing countries. It is crucial to

harmonize standards systems where they are overlapping and duplicate themselves. She gave the example of the ISEAL Common Group Certification Requirements. This is a way for small-scale producers to reduce costs by having an external inspector from a certification body come only to check the integrity of an internal control system, managed by the producer group itself. This can dramatically reduce the costs of certification. Instead of having to visit every single producer, the external inspector can visit a sample of producers to make sure the internal system works. Previously, most ISEAL members had their own requirements for how these group certification systems operate. In 2008, they came together to come up with common requirements. These will begin to be applied, starting this year in Peru, to look at how costs can be further reduced and how the efficiency and effectiveness of standards systems can be improved.

Dr Courville identified the following challenges. First, sustainable capacity building should be promoted and better coordinated, using the existing infrastructure, resources, and networks. New models of governance and financing are needed to ensure long-term sustainability. They should be designed to be appropriate to the needs of each country. Second, in addition to standard-specific training, there is also a need for producer training in pre-certification issues, such as financial literacy and strengthening farmer groups and organizations. If these elements are in place, one could move to good agricultural practices and the introduction of standards. A number of pilot projects in the coffee sector already seek to implement this in Honduras, Peru, Tanzania and Viet Nam through the Sustainable Commodity Assistance Network (SCAN) project.

**(e) Adriana Mejia Cuartas, Director,
International Cooperation (Europe),
National Federation of Coffee Growers of
Colombia (FNC)**

Ms Mejia started by recalling that there is a general lack of information about voluntary standards and certification systems at the practical level among both consumers and producers. She pointed out that coffee production plays a crucial role for Colombia. The implementation of standards, however, is a huge challenge, as around 90 per cent of the coffee growers have less than 3 hectares.

The National Federation of Coffee Growers of Colombia (FNC) has been working towards coffee growers' welfare and sustainable development for over 80

years, and represents more than half a million families. FNC supports standardization as a business model, as long as it increases the value for coffee producers in the form of better practices, higher incomes, and sustainability. Ms Mejia identified four key factors to achieve a successful certification: training and education; promotion of good agricultural practices; research, development, and implementation of better technologies; and intensive work with partners.

In Colombia, there are various labels and certifications in place, not because one or the other is better, but because one sort of certification suits a given group of producers better than another. Rainforest Alliance, for example, has a strong environmental focus and matches the interests of certain regions. Fairtrade is a label that takes into account to a higher degree the interests of indigenous producers. For the production of AAA coffee, Nespresso has chosen two strategic locations in Colombia, because only those fulfil the required quality. UTZ Certified applies a broader approach and has a significant impact on small, medium, and large producers by implementing UTZ practices. The Common Code for the Coffee Community (4C) is a verification scheme that is commonly used as a first step towards the certification of standards.

Ms Mejia cautioned that certification is expensive and that producers depend on donors and strategic partners to achieve voluntary certifications. On the one hand, capacity-building programmes are needed and already implemented, such as e-learning tools and training of trainers programmes. On the other hand, the plantations' infrastructure (energy, climate change related adaptation, water protection, and forestry) needs to be improved to allow producers to fulfil the requirements for certification. Ms Mejia enumerated five benefits that arise out of certifications. First, sustainable production patterns are encouraged. Second, better working conditions are guaranteed in the coffee and other sectors due to an increased overall conscientiousness of the principles of decent work. Third, producers that implement good practices and improve the quality gain better and secured market access. Fourth, income levels rise because of higher coffee quality. Fifth, there are more business-oriented people and certification leads to a better administration of farms. She cautioned, however, that certification should be a means and not the final goal; it should be followed by a permanent improvement system.

Ms Mejia concluded by emphasizing that producers need much stronger alliances with governments and NGOs to

facilitate certifications and promote their interests at the political level. Flexibility is needed to incrementally move producers to higher levels of sustainability. Another huge challenge is to raise awareness among consumers in both developed and developing countries about good quality coffee, its labels, and the coffee production chain.

2. Questions and comments by the audience

Several questions touched on the problem of confusion about standards, the future of standards systems, the political economy of standards, their practical implementation, and their potential negative effect as barriers to trade and innovation. Another set of comments and questions were on the differentiation between public and private standards, as well as the need for more specific global enforcement regulations and for an international framework on standards.

One speaker pointed out that the WTO system provides for different options for a country to react to regulations, which are imposed by another country and create market access problems: these range from bilateral consultations, discussions at the TBT committee, to the initiation of a dispute settlement case. On the contrary, the options for governments are far more unclear when a company adopts a private standard and requires compliance with it.

Another comment was that many standards were originally public standards before they became private standards, such as the ones that originated from multilateral environmental agreements (MEAs) and the International Labour Organization (ILO). There might be a problem if those standards are transformed or diverted into a "patchy pick and choose" way, allowing for opportunistic use by private actors. The delegate argued that if the legal standing and significance of international standard-setting organizations was enhanced, the streamlining activities among voluntary standards systems would become less important.

One participant highlighted the importance of raising awareness on standards by consumers in developing countries, which would open a whole new market. Consumers should inform themselves better and take part in the standard-setting process. In Brazil, for example, certain standards in the organic sector were not successful, because consumers did not trust in the validity of the standard-setting process, and considered them mainly a marketing scheme. Recently, a new standard for organic products was implemented with



greater success, as it was a coordinated effort between the private and the public sector.

A Kenyan agriculture and flower exporter criticized the frequent overlap between private and NGO standards, leading to inefficiencies. Even more problematic is that for similar standards, different compliance and verification systems are in place. Although producers are trained to comply with these requirements, it is extremely burdensome. Thus, she called for a streamlining of compliance mechanisms, which would reduce the costs significantly.

Ms Mejia and Dr Courville both advocated the existence of different standards, as long as they serve different purposes. But they agreed that harmonized certification and verification systems are necessary to bring down costs and scale up impacts.

Ms Mejia picked up on the importance of consumers' trust in labels in developing countries. She argued that consumers in developing countries are mainly interested in affordable prices and that certified products do not constitute much additional value for them. She recognized, however, that this is changing and Brazil became one of the biggest markets for coffee, because it had a specific strategy to promote internal consumption.

Mr Wozniak re-emphasized the need to increase the transparency of standards to better understand their impacts. ITC's T4SD programme tries to identify overlaps and gaps, which could add some rationalization and provide the basis for decision-making. He cautioned, however, that, as a UN product, the T4SD programme has neutrality and cannot serve as a global clearing house. The programme tries to disclose ways to become certified and will have e-learning modules in place. It will also facilitate further research by providing a continuously updated pool on academic work and case studies that have been published on various matters of sustainability standards and their impacts on economic, environmental, social, and labour issues.

Dr Swinnen pointed out that the confusion about standards is specifically problematic for exporters. He referred to a case study on small farmers in Madagascar who are producing and exporting vegetables to the European Union (EU). The export is organized by one single Madagascan company. This implies that the farmers do not know beforehand to which EU country their products go; but all countries have different standards. Therefore, producers revise all relevant standards and implement the toughest one for their

whole production, although it will often exceed the requirements. The GLOBALGAP standard that is increasingly used by retail companies tries to address this problem from the demand side.

With regard to the implementation of standards, he highlighted the role of private companies. They often train producers on the regulations they need to satisfy, provide them with inputs, such as pesticides, and teach them management and production techniques, which ultimately raises overall productivity.

Dr Swinnen reacted to the question on the political economy of standards by calling for more sophisticated and comprehensive trade models. This is necessary, because the way standards are set and implemented influences their efficiency and welfare effects, and determines whether they constrain innovation or not.

Concerning the question of public versus private regulation, he argued that while the objective of public intervention should be to guarantee food safety, there should remain enough room for the private sector to create niche markets, if there is a demand. However, if all companies or the entire market are affected by certain initiatives, the distinction between public and private standards becomes blurred and problematic. Given that some of the private standards are even implemented via public operation systems, it makes them potentially challengeable under WTO rules.

Dr Courville responded to the question about the future of standards and prognosticated that the landscape of standards will change dramatically. Standard-setting organizations will have to rethink their business models that evolved in the 1990s by linking very specific issues, specific sectors, as well as producers and consumers. New and participatory governance and business models need to be developed to make sure that they are self-sustaining. A good example is the evolving framework in the biofuels area.

With regard to the question of whether standards stifle innovation or not, she stated that it depends on how standards are structured. She pointed out that best practice is going into performance and impact based systems that encourage innovation. On the other hand, she cautioned against the kind of "kitchen soup" standards, such as ISO 26000, as they fulfil a different objective than sustainability standards do.

She commented on what should be the legitimate role for governments in voluntary global standards systems.



She argued that all credible social and environmental standards systems aim at social justice and environmental protection, i.e. sustainability. Thus, instead of counteracting ILO or MEA regulations, voluntary standards rather provide concrete enforcement mechanisms, which are even used by governments. The government of Guatemala, for example, requires certification by the Forestry Stewardship Council before granting forest concessions in the Maya Biosphere Reserve.

3. Conclusions and way forward

The session demonstrated that there is a need for a more differentiated debate on public and private standards, and on how to increase their complementarity. Whether standards are a form of legitimate protection, sophisticated protectionism, or a potential development opportunity, depends on their nature, organization, specifications, implementation, and certification. The following six main challenges were identified:

“There is a need for a more differentiated debate on public and private standards, and on how to increase their complementarity”

First, standards systems should become more transparent to allow both producers and consumers to increasingly use them as instruments for sustainable trade. In this regard, more empirical studies are needed that illustrate the costs and benefits of standards.

Second, the way standards are modelled needs to be improved. This is crucial to assess the efficiency and welfare effects of standards more accurately and to provide decision-makers with a better basis.

Third, standards need credibility in order to be accepted by consumers and producers. This requires clear benchmarks, a standard-setting code, and reliable verification systems. Moreover, standards systems should be harmonized and streamlined to reduce costs and scale up impacts.

Fourth, the role of the WTO in the standard-setting process and the enforcement of standards should be clarified. This is also important for the discussion on whether and in which form private standards may fall under the mandate of the WTO.

Fifth, there is a need for further deliberation on the contribution that voluntary sustainability standards can make towards real sustainable governance. The role of international and regional organizations, national institutions, as well as private companies and civil society actors in standard-setting, implementation, and enforcement should be redefined to improve the efficiency and effectiveness of standards.

Finally, efforts should be intensified to raise awareness on standards among consumers in both developed and developing countries. This is particularly relevant for developing countries, where the introduction of voluntary labels could open up a completely new domestic market.

JJ. Global networking to increase member-state capacity within the WTO dispute settlement process¹

Tuesday, 29 September 2009 – 09.00 ~ 11.00

Moderator

Dr Michael Strange² – Assistant Professor, Centre for Democratic Network Governance, Department of Society & Globalisation, Roskilde University

Speakers

Professor Gregory Shaffer – University of Minnesota Law School

Mr Brendan McGivern – Executive Partner of the Geneva office of White & Case LLP

H.E. Mr Virachai Plasai – Ambassador of Thailand to the Netherlands, formerly Director-General of the Department of International Economic Affairs of the Ministry of Foreign Affairs of Thailand

Mr Johannes Bernabe – Senior Associate, International Centre for Trade and Sustainable Development

Organized by

Centre for Democratic Network Governance, Roskilde University and the International Centre for Trade and Sustainable Development (ICTSD)

Report written by

Dr Michael Strange – Assistant Professor, Centre for Democratic Network Governance, Department of Society & Globalisation, Roskilde University



Abstract

While the WTO dispute settlement mechanism is intergovernmental to the extent that only member states may launch cases and be represented within the process, the system could not operate without the involvement of a wider network of stakeholders. Private firms, legal counsel, and non-governmental organizations all provide invaluable assistance to member states hoping to overcome disagreement via the dispute settlement mechanism. Member states most active within the dispute settlement mechanism have developed extensive and fruitful relations with non-state actors who have helped identify potential cases, give relevant input to the submissions, and support the complex process of monitoring compliance with panel findings.

Though it is important not to over-exaggerate the role of non-state actors, it is necessary to acknowledge this wider network of stakeholders, since it helps improve understanding of how the mechanism can be best used. This point has particular salience with respect to overcoming the often-cited criticism that developing-country member states remain under-represented within WTO dispute settlement. Therefore, with a development orientation, the purpose of the panel was to consider: (a) the role of non-state actors in WTO disputes up to the present; (b) whether they present a threat to the system by undermining its intergovernmental character; and (c) how they are used, and might be further used, to help increase the capacity of member states to engage in the process.

1. Presentations by the panellists

(a) Gregory Shaffer, Melvin C. Steen Professor of Law at the University of Minnesota Law School

The first presentation was given by Prof. Shaffer, whose work on member state legal capacity within WTO litigation leads the academic debate in this field, with highly respected empirical studies on the US, the EC and developing countries, including Brazil.

Prof. Shaffer began by arguing that whether member states are able to participate in the WTO dispute settlement system is important in four ways: (1) complainants have been largely successful, and there is evidence that exports of the goods in question have increased to the target country as a result; (2) challenging trade barriers can improve a country's terms of trade; (3) how cases are argued can shape WTO law over time; and (4) political bargaining over trade measures operates in the shadow of WTO law. The level of participation in the system, however, varies greatly among WTO members. Prof. Shaffer discussed three possible explanations.

First, there is a close correlation between trading patterns and the number of cases brought before the WTO dispute settlement mechanism. This explanation suggests that the system is not biased. Nonetheless, Prof. Shaffer noted that, below a certain trading level, participation in WTO dispute settlement drops to zero, involving a large number of members. He stated that "you can see variation in participation as involving not just a difference in degree but differences in kind – at some point, members are simply outside the legal system".

Second, Prof. Shaffer referred to research by Chad Bown, which suggests that market size is an explanatory variable for variation in participation. Those members with larger markets tend to bring cases where a trade barrier affects multiple members, which, according to Bown, reflects the fact that market size increases a member's retaliatory powers in dispute settlement. Where a case eventually ends in a negotiated settlement, it is those members with the largest markets that are best equipped to ensure it fits their trading interests.

Third, Prof. Shaffer finds that there is a clear correlation between legal capacity and a member's participation in the system. He developed this explanation by discussing the key challenges facing developing countries'

use of WTO dispute settlement. These challenges included: (1) legal and technical expertise; (2) financial resources; (3) differentials in power and leverage; and (4) governmental capacity.

Legal and technical capacity: Many WTO members lack the legal capacity to bring claims. A lack of engagement with the system means that there is little "bottom-up" demand from trainee lawyers to be educated in WTO law. This contrasts starkly to the United States, in particular, where there are many courses teaching international trade law. As WTO law becomes increasingly complex – involving over thirty thousand pages of jurisprudence – the disparity between knowledge of WTO law and the demands of WTO dispute settlement will only further compound this problem.

Financial: Participation in the system is perceived to be costly. The existence of the Advisory Centre on WTO Law enables developing countries to access legal services at reduced rates. However, costs still need to be considered in light of the risks of losing a case and non-compliance with the outcome. Several ministries – including the treasury department – will be involved in the decision of whether or not to launch a case, and need to be convinced that the potential benefits are worth the potential costs.

Differentials in power: The ministries deciding whether to launch a case do not make their decision in isolation of other political realities. To illustrate this process, Prof. Shaffer referred to the first case brought by a least-developed country, Bangladesh, which brought a complaint against India. He stated that the biggest hurdle against bringing that case was the inter-ministerial process, testing whether the government would have the gumption to file a complaint against India, a much larger country.

Governmental capacity: WTO law is different from other areas of public international law and it creates unique challenges for government institutions. It requires new types of relationships between actors. For example, there needs to be sustained cooperation between the home capital and the Geneva mission. This requires a basic unit with some expertise in WTO law. Those developing countries which have been active within WTO dispute settlement – including Brazil and Thailand – have done so by developing specialized legal units. Furthermore, there is need for a coordinating mechanism to ensure that all government departments are able to coordinate, rather than allowing one department to undercut a case in response to international pressure related to its





particular policy area. In many cases, there is insufficient support from the home capital to the Geneva mission. This matters, in particular, where dispute settlement requires the meeting of strict deadlines. In the case of Brazil, a well-equipped Geneva mission receiving good support from the capital is supplemented by collaboration with the private sector and private lawyers with the necessary expertise. These “public-private partnerships”, as Prof. Shaffer called them, mean that those actors with first-hand experience of a trade barrier and the relevant facts are able to communicate that information to the government so that complaints can be identified and developed. In addition to the private sector, civil society has sometimes played a similar role, such as where domestic and foreign environmental NGOs helped Brazil defend a case against the EC over the import of retreaded tyres.

“The ultimate purpose and the greatest success of the WTO system is to ... persuade countries from imposing protectionist barriers in the first place”

Prof. Shaffer concluded by stating: “The ultimate purpose and the greatest success of the WTO system is to ... persuade countries from imposing protectionist barriers in the first place”. He referred to a project undertaken for the International Centre for Trade and Sustainable Development to examine the options available for developing countries to increase their legal capacity within WTO dispute settlement. The findings of this project will be published by Cambridge University Press in 2010.

(b) Brendan McGivern, Executive Partner at the Geneva offices of the legal firm White & Case

The second presentation was given by Mr McGivern, who has extensive experience as private counsel helping to enhance the legal capacity of member states within the dispute settlement mechanism.

Mr McGivern structured his talk in three parts: (1) the evolving role of private counsel in WTO dispute settlement; (2) systemic issues arising from the use of private counsel, including conflicts of interest and the duty of confidentiality; and (3) strategies for developing countries when drawing on private counsel in WTO disputes.

The evolving role of private counsel in WTO dispute settlement: As advisers to governments in GATT and WTO disputes, private counsel have been active in the system for a long time. In part, this is due to the role always played within trade disputes by private companies, who then require representation by private lawyers. Under the general international law concept of diplomatic protection, Mr McGivern explained, it is a normal practice that a nation-state should extend diplomatic protection to one of its own companies, whether as a challenger or a defendant. To illustrate the point, he referred to the WTO dispute settlement case formally known as *EC – Measures affecting trade in large civil aircraft*, but referred to as “*Boeing – Airbus*”. In return for diplomatic protection, governments expect private companies to assist with preparing and defending cases. This has then required substantial work from private counsel.

However, it is only since the *EC – Bananas* case that private counsel have been given direct access to the proceedings. Originally, the US opposed a request by St Lucia to include its private lawyer in the room, on the basis that, as quoted by Mr McGivern, “If private lawyers were allowed to participate in panel proceedings, and Appellate Body hearings, a number of questions concerning lawyers’ ethics, conflicts of interest, representation of multiple governments, and confidentiality would need to be resolved”. Mr McGivern then recounted the Appellate Body’s ruling in which the long history of active involvement by private counsel in GATT and WTO dispute settlement was noted and, importantly, the inclusion of private counsel within proceedings was argued as a means to help developing countries better utilize the mechanism. Referring to Prof. Shaffer’s earlier comment that many member states have zero participation within the system, private counsel were argued to be one way in which those members could overcome their lack of experience with WTO dispute settlement.

One concern about the use of private counsel has been that those trained as lawyers lack sufficient understanding of the policy context, to the extent that they prioritize a “win-at-all-costs” or “scorched earth” approach, and squeeze out any room for diplomacy. However, for Mr McGivern, this fear is unfounded since, even at the consultation stage, WTO dispute settlement in practice is a process of litigation rather than diplomacy. Moreover, he added, most WTO lawyers are quite sensitive to the policy context.

Systemic issues: The WTO’s code of conduct – which covers conflicts of interest and a duty of confidentiality –

does not apply to private counsel. However, Mr McGivern argued that this was not a problem in practice, since private counsel are already bound by their own professional bar rules which are usually far stricter than the WTO's code of conduct. Therefore, private counsel do not present any significant problems with respect to either conflicts of interest or the need for confidentiality.

Strategies for developing countries in WTO Dispute Settlement using private counsel: Mr McGivern stressed that the role private counsel play in the system ultimately depends on member states, since it comes down to government control. Based on his own experience, he discussed how lawyers frequently found their advice tempered by government actors taking a broader perspective beyond winning the individual case. In some cases, in order to minimize legal fees, the initial draft of a submission may be produced by government, and only then handed to private counsel for comments. With respect to government control, Mr McGivern stated: "It's a cooperative effort in collaboration with the government concerned; it really is a team effort at all stages."

“Developing countries can increase their legal capacity by linking up with one of the larger WTO members in pursuing a dispute”

In addition to being able to seek help from the Advisory Centre on WTO Law, developing countries can increase their legal capacity by linking up with one of the larger WTO members in pursuing a dispute. Members like the US and the EC are particularly keen to involve any parties supporting their position. Such linkages can help developing countries, as they can draw upon the legal resources of the larger members.

(c) Virachai Plasai, Thai Ambassador to the Hague

The third presentation was given by Ambassador Plasai, a former Director-General of the Department of International Economic Affairs of the Ministry of Foreign Affairs of Thailand, and well placed to discuss the possibilities for increasing the engagement of developing country member states via linkages with non-state actors.

Stating that Thailand has participated in a handful of WTO dispute cases, Ambassador Plasai explained that Thailand believes the system is workable, although it

requires huge permanent legal resources from members to be able to make effective use of the system. In this sense, developing countries are more than likely to be at a disadvantage. With respect to the role of non-state actors, Thai civil society seems to be focusing on WTO negotiations, rather than on the dispute settlement process. Thailand's involvement in the system is more driven by stakeholders in the private sector, who are "natural actors" in WTO dispute settlement due to their business interests.

Ambassador Plasai considered that non-state actors' roles are potentially useful and constructive, and may even complement and strengthen governmental actors. Thailand has been outsourcing legal counsel for WTO disputes to independent legal experts. This is because Thailand cannot afford to assign its public sector lawyers to work full time on WTO cases due to their other routine responsibilities. Furthermore, its lawyers are trained as generalists, while specialist lawyers are needed to help in the complicated WTO trade disputes. Where Thailand is involved in a dispute, private counsel work under guidance and policy from government lawyers.

“Non-state actors' roles are potentially useful and constructive, and may even complement and strengthen governmental actors”

Thailand is a founding member of the Advisory Centre on WTO Law (ACWL), and first made use of its services in *EC – Export subsidies on sugar*. ACWL lawyers often appreciate that members do not want to win at all costs, but may want to maintain space for diplomacy. Ambassador Plasai commented that the ACWL functions extremely well as an international organization that acts like a law firm, and that it can further help members by creating more opportunities for their government lawyers to get involved and gain experience through "learning-by-doing" on WTO dispute settlement cases, especially with regard to DSU procedural issues.

(d) Johannes Bernabe, Senior Associate at the International Centre for Trade and Sustainable Development (ICTSD)

The final presentation was given by Mr Bernabe, who spoke as an NGO practitioner networking with other stakeholders to enhance the capacity of developing-country member states to better utilize the WTO dispute settlement system.



Mr Bernabe first listed three tracks by which ICTSD works to enhance the ability of WTO members, and developing countries in particular, to engage in the dispute settlement mechanism: (1) dialogues in various capitals and in Geneva; (2) research and issue papers; and (3) the Bridges weekly and monthly publications. Overall, ICTSD centres its work on the dissemination of knowledge on substantive developments in WTO law and on the policy impacts or options often not otherwise discussed.

In producing and disseminating this knowledge, Mr Bernabe explained that ICTSD has to work with different “stakeholders in capital, representatives of various missions here [in Geneva], private sector, NGOs and academia, trying to identify what are these issues”. One concrete strategy that has worked well is to partner with local institutions who may then aid their governments in evaluating potential disputes. Two examples given were in Indonesia and the Philippines, where in both cases ICTSD’s collaboration with local institutions led to new courses being taught on WTO law.

ICTSD has also used its dialogues as a means to bring together actors from different government agencies and discuss the possibilities for improving their coordination on WTO disputes. What ICTSD is uniquely placed to do, as opposed to the ACWL or legal firms, is to analyse the policy impacts of dispute rulings and communicate this research to capitals via the dialogues. ICTSD also uses its dialogues as a means to advertise the ACWL, which is not that well known in capitals.

For Mr Bernabe, the greatest obstacle faced by developing countries who are considering using WTO dispute settlement mechanism is not the cost – since they can receive discounted legal services from the ACWL and some law firms – but, rather, the fear of

reprisal from more powerful member states. In many cases this is a matter of perception, but there are also cases of real threats made in order to deter their involvement in cases.

2. Conclusions and way forward

Overall, the panel concluded that those involved in WTO dispute settlement have great importance, since how WTO law is put into action shapes what WTO law means in practice. While NGOs were mentioned, much of the discussion focused on the role of private counsel and, to a lesser extent, private firms, as central actors assisting member states in advocating their cases. The relationship between member states and these non-state actors operates as a productive partnership, though special care was taken to stress that member states remain the central drivers of the mechanism.

Endnotes

1 The author would like to thank the panellists for their presentations, as well as the Danish Social Science Research Council and the ICTSD for funding. The panel is the product of a larger Danish Social Science Research Council project titled “Complex decision-making at the global level: the WTO’s Dispute Settlement Body as a transnational governance network”. Further information can be found at: <http://akira.ruc.dk/~mstran/>

2 E-mail: mstran@ruc.dk. Postal address: Department of Society & Globalisation, Building 25, Roskilde University, Universitetsvej 1, DK-4000 Roskilde, Denmark.

KK. Understanding WTO disciplines on agricultural domestic support

Tuesday, 29 September 2009 – 09.00 ~ 11.00

Moderator

Professor David Orden – International Food Policy Research Institute (IFPRI) and Virginia Tech

Speakers

H.E. Dr David Walker – Ambassador, Permanent Representative of New Zealand to the WTO and Chairperson of the Special Session of the Committee on Agriculture

Professor Tim Josling – Stanford University

Professor Munisamy Gopinath – Oregon State University

Ms Valeria Csukasi – First Secretary, Permanent Mission of Uruguay and Chairperson of the Committee on Agriculture

Organized by

International Food Policy Research Institute (IFPRI)

Report written by

International Food Policy Research Institute (IFPRI)



Abstract

Formulating new rules for agricultural domestic support to reduce international market distortions remains a critical challenge facing the multilateral trade system. The WTO domestic support rules are critical but not well understood in this complex policy context. This session brought together researchers and policy practitioners to address the existing and proposed rules and other options to strengthen the rule-based system governing global

agricultural support. Two of the panellists drew their analyses from an IFPRI research project that has assessed the implications of the rules relative to the policies of a diverse set of developed and developing countries, including the EU, the US, Japan, Norway, Brazil, China, India, and the Philippines.¹ Support projections through the mid 2010s provide a basis to assess the potential effects of a new agreement.





Overarching issues

The session focused on four overarching issues:

1. Has the WTO Agreement on Agriculture been successful in increasing policy transparency in the area of domestic support?
2. Have the rules of the Agreement motivated countries to shift their domestic policies in ways that lessen trade-distorting economic impacts?
3. If new rules are established through the ongoing Doha negotiations, will they translate into a more effective set of incentives to reduce production and trade distortions?
4. What improvements might be made, even going beyond the Doha negotiations, in the way in which domestic support is notified to the WTO?

The constraints on domestic support are an essential part of the disciplines for agriculture, along with improving market access and export competition. It was concluded that transparency has been improved with a consistent database of notifications that mirrors the paths of domestic policies. The changes in policy have mostly reduced the notified aggregate measurement of support (AMS), although some exceptions were noted. The causality of policy reform, or absence of reform, has differed among countries.

The part of the AMS that suffers from analytical ambiguities is the market price support (MPS), measured for the relevant commodities as the difference between an administered price and a fixed reference price, multiplied by the eligible quantity. This measure in particular overlaps with commitments on market access, and was found to be an imperfect indicator of policy change. A successful conclusion to the Doha negotiations would tighten the domestic support commitments. The new commitments would remove much of the flexibility that countries now have in shifting among categories of support, but would not resolve the ambiguity about MPS.

Monitoring and the disciplines on domestic support could be improved by earlier notifications, by more consistency among countries in the calculation of the AMS, and by possibly separating the MPS from the non-exempt direct payments, as they have different economic impacts. From a pragmatic policy perspective, emphasis was placed on achieving progressive liberalization building on the commitments of the Uruguay Round.

1. Presentations by the panellists

(a) David Orden, IFPRI and Virginia Tech

If international trade rules are to be effective, countries' compliance with their commitments under the rules must be monitored and enforced. Prof. Orden opened the session by emphasizing that the notification process has had substantial success in increasing policy transparency. With annual information available, it is possible to make direct links between policy changes and the notified domestic support for the relevant year. However, the notifications as a device to track policies and monitor compliance is hampered when there are significant delays in filing, as the Committee on Agriculture continues to note. By design, the notifications do not encompass forward-looking projections relevant to policy debates focused on the likely effects that decisions will have over a future period. Thus, independent studies provide a valuable complementary source of information for policy monitoring.

(b) David Walker, Ambassador, Permanent Representative of New Zealand to the WTO and Chairperson of the Special Session of the Committee on Agriculture

In his opening remarks, Ambassador Walker noted that, just fifteen years ago, the GATT rules were basically ineffective for agriculture, and subsidies were substantial. The commitments made through the Agreement on Agriculture constituted a first step toward international disciplines under the three pillars of market access, export competition and domestic support, without which there would be no ceiling commitments. The Doha negotiations have built on this basis and substantial cuts are being considered. These include the willingness of members to eliminate export subsidies by 2013, as declared at the Hong Kong ministerial, and the ongoing negotiations around tiered cuts, in which countries with higher initial levels of tariffs or domestic support make larger reduction commitments, albeit with some flexibilities built in. Ambassador Walker reviewed the commitments and reductions under discussion for overall trade-distorting support (defined to include the current total AMS, the Blue box and *de minimis*), the components of OTDS, and product-specific support. He also called attention to negotiations' over-enhanced surveillance procedures to improve transparency.

“Just fifteen years ago, the GATT rules were basically ineffective for agriculture, and subsidies were substantial. The commitments made through the Agreement on Agriculture constituted a first step toward international disciplines”

Commitments of developed countries

As a basis for making judgments about whether domestic policy changes have been encouraged by the existing rules and about the potential impact of a Doha agreement, the panellists reporting on the IFPRI study presented analyses of (1) available notification and, when needed, shadow notifications (what might be expected to be notified when no notification has been made); and (2) projections of likely notifications through the mid 2010s, based on anticipated policy decisions and market conditions. Whether the possible Doha commitments would have been binding on past policies as notified was a particularly relevant question through the early years of the negotiations (2001-06), when the broad outlines of possible commitments were being hammered out. With increased agricultural prices in 2007-2008 a new era of higher prices has been widely thought to be beginning. Price projections are subject to uncertainty, but such a shift in prices would have implications for the tightness of domestic support commitments. Projections were undertaken in part to make this assessment.

(c) Tim Josling, Stanford University

Across the four developed countries, Prof. Josling reported a diversity of experiences likely to encompass those of other countries as well:

- Japan has notified primarily Green box and current total AMS support. Its MPS dropped sharply in 1998 with a change in rice price support policy. This reduced its notified and projected current total AMS so much that neither the existing obligations nor possible Doha AMS or OTDS commitments would be binding constraints on projected (or even past) support. However, Japan's notified MPS drops very sharply compared to a slight downward movement in the value of the nominal protection (VNP) for the corresponding commodities, as measured annually, based on total domestic production and the difference


between domestic and international prices as reported by OECD.²

- For Norway, support is notified in each of the categories of Green box, Blue box and AMS. Essentially all its AMS is comprised of MPS, which has been about constant at a level close to its commitment. The MPS is also relatively close to the VNP as calculated from total production and annual price gaps. Possible Doha AMS, Blue box and OTDS commitments would have been binding if they had applied in the past, and are projected to be binding in the future. So Norway will apparently have to make some changes in its policy instruments if a Doha agreement is reached.

- For the EU, notified Blue box and (later) Green box support has expanded, while notified current total AMS has declined as MPS has been reduced. The MPS reflects policy changes, but now understates the VNP. Possible Doha AMS, Blue box and OTDS commitments would have been binding on past notified support, even with these policy changes. The Doha AMS and OTDS commitments could prove binding on the EU in the future without further reform of its policies.

- The US is perhaps the most complex case. Its current total AMS includes relatively little MPS, and both current total AMS and support notified as non-product-specific *de minimis* are highly sensitive to world prices. The US current total AMS has exceeded the potential Doha commitment in 7 of the past 13 years, and challenges to it having met its existing AMS commitment are well known but not resolved. Projections under relatively strong prices and continuation of its 2008 support policies suggest the Doha AMS and OTDS commitments would not be binding on the US, but its latitude would be relatively small and could dissipate under a variety of plausible circumstances.

In terms of the impact of the Agreement's domestic support rules on policy change and the possible effects of a Doha conclusion for these four developed countries, there are many ways to describe a half-full glass. The WTO rules clearly accommodated and encouraged the shift in EU policies, and the Doha agreement would continue to take up the slack that the reforms have created under its commitment. The new policy direction was also appropriate for domestic reasons. The US has been close to its current total AMS commitment in the



past, but has gained flexibility recently as a result of higher market prices.

The examination of the behaviour of the MPS notifications raises some troubling questions. In both Japan and the EU, the fall in the MPS seemed to be ahead of the actual policy impact on producers. The VNP was reduced at a slower pace. So in effect, countries have provided some policy latitude for themselves under the AMS commitment by changes that affected the MPS but not producer protection relative to world prices. Much of the assessed latitude for the US under possible Doha AMS and OTDS commitments arises similarly.³ The analysis for Norway points out that there may be some options for recasting subsidies by reducing MPS, while retaining allowed tariff protection under Doha.

(d) Munisamy Gopinath, Oregon State University

Commitments of developing countries

For developing countries, Prof. Gopinath also pointed to a range of experiences. Under the existing Agreement:

- India has only notified its domestic support for the period 1995-97, so a set of shadow notifications were computed. India's MPS has been mostly negative because its external reference prices have exceeded its administered prices for rice and wheat. The notified eligible quantities are based on levels of procurement which are only a share of total production. Input subsidies, including for electricity and irrigation, fall into two categories: special and differential treatment (Article 6.2), and non-product-specific AMS. This support has been less than the 10 per cent *de minimis* allowance. Green box expenditures have increased to around 8 per cent of the value of agricultural production.
- China has only notified its domestic support for 1999-2001, so shadow notifications were again computed. MPS has been mostly negative, with the eligible quantities based on procured quantities. Non-product-specific support has been less than 2 per cent of the value of agricultural production (without electricity and irrigation subsidies, for which estimates are not available). Input subsidies have increased in recent years, but remain well below China's 8.5 per cent *de minimis* allowance. Green box expenditures are about 10 per cent of the value of production.

- The Philippines has notified its domestic support from 1995-2004. MPS has been positive, with rice the key commodity. The gap between administered and reference prices exceeds the gap between current domestic and international prices, but only the fraction of total rice output that is purchased under the price support programme is notified as the eligible quantity. Thus, MPS remains well below the product-specific *de minimis* allowances, and well below VNP. The subsidies the Philippines notified under S&DT average less than 1 per cent of the value of production. Green box expenditures are also quite low.

- Brazil has notified its support for 1995-2004. It has a small AMS commitment (US\$ 912 million). Crop support payment and credit subsidies/debt rescheduling are the principal policies. Notified current total AMS has been well below Brazil's commitment. Like India, Brazil notifies non-product-specific support both under S&DT and as *de minimis*. These amount to less than 4 per cent of the value of production.

Overall, with respect to these four developing countries the WTO rules and commitments have not significantly constrained domestic support. S&DT offers a category into which subsidies that would otherwise be constrained can be placed when they meet certain development-related criteria. While this allows developing countries to address rural poverty by assisting farmers, it lessens the effectiveness of the WTO rules, as these are intended also to guide countries away from trade-distorting forms of support. In practice, even if the support reported as S&DT were included in the AMS for these four countries, the support has been so low that their commitments would not have been binding. If support rises as incomes continue to grow in large countries such as India or China, various interpretations under the rules may prove more important quantitatively in creating latitude. The Doha modalities do not tighten the limits on domestic support, except for Brazil which would face a reduced AMS commitment and lower *de minimis* allowances.

Market price support may prove problematic for developing countries in the future. Product-specific support has been well below allowed levels for India, China, the Philippines and Brazil. But if administered prices continue to rise compared to fixed reference prices, positive MPS may need to be notified by India or China, or may increase for the Philippines or Brazil. The IFPRI studies point to possible difficulties meeting the rules-based obligations – at least for some commodities – in one or more of these countries.



(e) Valeria Csukasi, First Secretary, Permanent Mission of Uruguay, and Chairperson of the Committee on Agriculture

Policy perspective

Ms Csukasi, in her panel remarks, made the point that it is incumbent on all members to participate in the notification and review process. The Committee on Agriculture is undertaking several efforts to improve the capacity of developing countries to provide notifications, and the submissions from several developed-country major subsidizers have also improved. Proposed penalties for failure to notify, as suggested early in the Doha negotiations, proved unrealistic. Instead, the Committee on Agriculture has sought to utilize the existing rules to their full capacity, and strengthen the process of peer reviews. Ms Csukasi pointed out that countries can bring up counter-notifications for discussion in the Committee, showing what they estimate the notifications of domestic support would be from a non-notifying member, but this has never been done. Hence, tools for an effective notification process appear to be in place, but the review process needs to work better.

In terms of the effectiveness of the domestic support commitments, Ms Csukasi noted that the existing disciplines are working because countries are not exceeding their constraints. As a representative of Uruguay, which has low subsidies and agricultural export interests, she pointed out that there are two ways to view the Doha domestic support proposals: that the cuts are not enough, or that it is not possible to get everything that is wanted in this round. She argued for seeking to finalize the strengthened disciplines of the Doha negotiations. The WTO aims for progressive liberalization and a future round can address the issue that cuts do not go far enough.

2. Questions and comments by the audience

With session attendance standing room only, a lively discussion followed the presentations by the speakers. Several comments by the audience and panellists addressed whether subsidies were being adequately measured in the US and the EU, how Brazil accounted for credit and debt rescheduling subsidies, the absence of accounting for biofuel subsidies, and the potential for the rules to be binding on developing countries. Representatives of farmers' organizations in Switzerland and Mexico decried a perceived loss of sovereignty under the WTO rules. In response, Uruguay's Ms Csukasi

emphasized the importance of the multilateral rules – especially to small export-dependent countries. A call was made for making notifications available in a more accessible format, and it was pointed out that the Committee on Agriculture is working on doing so. One member of the audience suggested that the review process could be strengthened by use of expert panels, and Prof. Josling noted that it ought not to take developed countries much longer to submit their notifications to the WTO than they took to submit their annual policy information to the OECD.

3. Conclusions and way forward

All of these considerations are relevant in a world agricultural economy in which domestic support still abounds, the food supply and sustainable production technologies are uncertain, and markets have been shaken recently by both a sharp commodity price boom and a global financial crisis. For these and other reasons, substantial issues will remain to be addressed in domestic support even if a Doha agreement is reached. The panel concluded that there remains an ongoing policy challenge to make agricultural domestic support policies worldwide more consistent with open markets, environmental progress, and other public-good policy objectives.

“There remains an ongoing policy challenge to make agricultural domestic support policies worldwide more consistent with open markets, environmental progress, and other public-good policy objectives”

Endnotes

1 The series of county papers “Shadow Agricultural Domestic Support Notifications” are available in the IFPRI Discussion Paper series (www.ifpri.org): EU (number 809), US (821), Japan (822), Norway (812), Brazil (865), China (793), India (792), and the Philippines (827).

2 The OECD also reports a market price support. We use the alternative nomenclature VNP for our calculations for the comparison with the WTO measure. The VNP differs in a few cases from OECD's market price support.

3 Prof. Orden pointed out that dairy prices have fallen sharply in 2009 and the US increased its dairy subsidies in response, providing a cautionary example against assuming world agricultural prices will remain high enough to keep subsidies low. The increased dairy support will not cause the US to exceed its existing current total AMS commitment, but under its past notification procedures the level of support provided by the US in 2009 would exceed the level allowed after the phase-in of product-specific commitments based on the Doha draft modalities. This illustrates the more substantial disciplines in the Doha negotiations, but changes made to dairy support legislation in 2008 may allow the US to circumvent any such constraint by reducing its notified MPS.

LL. Strengthening global trade governance: Lessons from Latin America

Tuesday, 29 September 2009 – 11.15 ~ 13.15

Moderator

Mr Enrique Mendizabal – Chair, Research Fellow at the Overseas Development Institute, UK

Speakers

Mr Waldo Mendoza – Pontificia Universidad Católica del Perú, Peru

Ms Vivianne Ventura-Dias – Latin America Trade Network, Brasil

Ms Maria Esperanza Dangond – Corporación para el Desarrollo y el Comercio de Servicios, Colombia

Ms Sheila Page – Senior Research Associate at the Overseas Development Institute, UK

Organized by

Programa de Comercio y Pobreza en América Latina (Latin American Trade and Poverty Program); ODI; LATN; and CIES

Report written by

Programa de Comercio y Pobreza en América Latina (Latin American Trade and Poverty Program); ODI; LATN; and CIES



Abstract

Over the past 18 months, Latin America has been subjected to highly volatile prices for basic export products, the collapse of major import markets, and the curtailment of basic financing. Nevertheless, the majority of governments kept their coping strategies within the legal limits of WTO commitments. Should the flexibility still provided by the Uruguay Round commitments be reduced in order to protect trade and investment? Or, conversely, was it this very room for manoeuvre within the Round which gave the multilateral trading system its resilience in the midst of the worst post-World War II crisis?

This session addressed the contradictions within the multilateral trading system between broadening trade liberalization while increasing investment protection, on the one hand; and the need to provide “policy space” to governments, on the other. The panellists considered several questions on how national governments can face up to short- and long-term development problems without “beggaring their neighbour”, in the light of ongoing Latin American practice.

The panel had the following structure:

- Mr Enrique Mendizabal welcomed the panellists and participants;
- Mr Waldo Mendoza provided an analysis of Latin America’s economic outlook and its implications for Latin American participation in the multilateral trade system;
- Ms Vivianne Ventura-Dias offered further analysis of the situation and answered the question: Can the WTO protect Latin America from protectionism?
- Ms Maria Esperanza Dangond focused her attention on the opportunities and challenges for trade in services in Latin America;
- Finally, Ms Sheila Page considered how the multilateral system has responded during the current crisis.

1. Presentations by the panellists

(a) Waldo Mendoza, Pontificia Universidad Católica del Perú, Peru

An analysis of the economic outlook in Latin America, and its implications for Latin American participation in the multilateral trade system

Mr Mendoza's presentation provided an overview of the region's economic outlook. Since early 2008, Latin America has been facing a global crisis that has had a double adverse impact, strong and sudden, on the balance of payments. On the one hand, the crisis has deteriorated the current account balance, due both to the collapse of external prices of export commodities and to the volume of manufactured exports and remittances from migrants; while, on the other hand, the capital account has suffered. According to ECLAC reviews of 14 selected countries in Latin America, there have been seven episodes of significant falls in exports and four major capital outflows from the region since the international crisis began.

The effects of the crisis are clear across the region: after six years of uninterrupted growth, the GDP will fall in 2009. According to ECLAC, the GDP growth rate of the region fell from 4.2 per cent in 2008 to -1.9 per cent this year, ending a long cycle of improvement in macroeconomic and social indicators, such as poverty, which had fallen by 10 percentage points over the preceding five years.

Macro-economic policy in response to the crisis has been mixed. During the boom, some countries' fiscal policies promoted a significant reduction in the debt ratio to GDP, contributing to increasing their access to local markets and international capital and to the generation of fiscal funds. Their monetary policies focused on preventively accumulating international reserves. Chile and Peru stand out as countries that accumulated the most international reserves (as a percentage of GDP).

However, not all cases have shown counter-cyclical fiscal policies: while Chile's central government surplus of 5.3 per cent of GDP in 2008 has been reduced to an estimated deficit of 4.1 per cent of GDP in 2009, Ecuador, at the other extreme, had significantly higher public spending before the crisis and has subsequently found itself unable to sustain that pace.

Mr Mendoza concluded that in Latin America booms and recessions are related to the global economy – the current crisis only confirms that the region has always

been exposed. However, given the macroeconomic policies of many countries during their expansionary phases, they are now better prepared to deal with the recession.

“The expectation that the world's recovery will pull Latin America from the recession is weak. The region must find solutions within itself”

Countries with abundant currency, sound public finances and sound banks have been able to finance their balance of payments deficit, thus preventing a sharp exchange rate adjustment. They have sustained a fiscal expansion which partly offset the fall in exports, and avoided a credit crunch that might have exacerbated the recession. In fact, these countries are already emerging from recession.

Mr Mendoza argued that the expectation that the world's recovery will pull Latin America from the recession is weak. The region must find solutions within itself.

(b) Vivianne Ventura-Dias, Latin America Trade Network, Brasil

Can the WTO protect Latin America from protectionism?

Ms Ventura-Dias' presentation provided further insights into the effects of the crisis. Of 19 Latin American countries, eight economies are likely to contract in 2009: Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Paraguay. The economies of these countries (except Chile and Paraguay), she said, are very sensitive to the economic situation in the United States (and are affected by drops in trade, tourism and remittances).

The crisis has affected the region through a number of transmission channels, including external financing (private trade finance); demand for exports (goods and services); commodity prices; and remittances.

The region seems, nonetheless, to be coping well with the crisis. There is more opportunity for countercyclical policies in larger and more macro-economically stable countries; there are prudent foreign currency reserves; a number of social programmes are underway; and there has been overall compliance to WTO rules. In particular, many Latin American countries have seen growth in





their domestic markets, making them less vulnerable to changes in foreign ones.

In fact, she argued, there is no evidence of rampant protectionism (and thus comparison with the 1930s is spurious).

In this sense, the WTO has responded well, because the crisis seems to have arrived at a time when the WTO code of conduct has been effectively internalized by its members. Countries are, today, better able to use the WTO to deal with the crisis, rather than resorting to protectionist policies.

There are some concerns, however short-term they might seem: larger economies have responded to the crisis by promoting a number of policies that discourage imports (e.g. the “buy American” policy).

“The crisis seems to have arrived at a time when the WTO code of conduct has been effectively internalized by its members”

Ms Ventura-Dias concluded that it is quite clearly better to be a large country than a small one; and that international trade is both good and important, but that an internal market is a reliable back-up. For smaller countries, however, regional markets are neither trusted nor protected so regional trade remains pro-cyclical. In this context, sound macro-economic foundations cannot prevent external shocks but can improve the policy space for using counter-cyclical tools.

(c) **María Esperanza Dangond,**
Corporación para el Desarrollo y el
Comercio de Servicios, Colombia

Opportunities and challenges for trade in services in Latin America

Ms Dangond considered the situation of the trade in services in the region. She argued that trade in services in a crisis is multifunctional, resilient and counter-cyclical. However, 80 per cent of all trade in services in the region is accounted for by only five countries (Brazil, Mexico, Argentina, Chile and Cuba), suggesting that there is a great deal of room for improvement for the rest of the region's countries.

To promote trade in services, it is necessary to focus on the development of an appropriate environment, economic integration and trade agreements, as well as

public policies to develop the sector and entrepreneurial capabilities.

However, a key challenge facing the region is the lack of relevant and reliable data on the sector. In most countries, service providers are SMEs – which makes it difficult both for them to access the necessary information to function effectively, and for governments to access information about their situation and therefore develop appropriate policies for them.

Ms Dangond concluded that the global governance of the trade in services needs to consider the sectors and modes of supply relevant to developing countries' interests. Developing countries must strengthen existing legislation and finalize pending legislation. More spaces for dialogue also need to be developed.

(d) **Sheila Page, Senior Research
Associate at the Overseas Development
Institute, United Kingdom**

The multilateral system's response during the current crisis

Ms Page rounded up the panel, considering opportunities and challenges for Latin America in the context of the crisis. Ms Page argued that there has been a rise in legal trade barriers (rather than illegal, as in the past). This coincides with Ms Ventura-Dias' view that there have been few clearly protectionist measures, that countries have learned to use the WTO system, and that most countries have acted within the trading rules. This is partly because it is becoming more difficult to break these rules.

As a consequence, Ms Page argued that a crisis in output and employment is not the time to tighten rules on trade, but it may be a good time to identify the areas where rules would be useful: in labour movements and the financial sector, for instance.

2. Conclusions and way forward

The session concluded that the dispute mechanisms within the WTO have finally demonstrated their usefulness, and that, as a result, governments may have been more careful to protect their interests and flexibilities in their multinational than in their regional negotiations. Negotiators of regional agreements should learn from these lessons, and address the more likely protectionist behaviours of regional markets.

MM. New global contract for food and agriculture: what can the WTO contribute?

Tuesday, 29 September 2009 – 14.15 ~ 16.15

Moderator

Ms Caroline Dommen – Quaker United Nations Office (QUONO)

Speakers

Ms Ester Penunia – Secretary General, Asian Farmers Association

Mr André Pouilles-Duplaix – Deputy Director, Operational Technical Department, Agence Française de Développement (French Development Agency)

Mr Jim Harkness – President, Institute for Agriculture and Trade Policy

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

Organized by

Institute for Agriculture and Trade Policy (IATP)

Report written by

Institute for Agriculture and Trade Policy



Abstract

More than one billion people are suffering from hunger in 2009, according to the FAO, and the unfolding global economic crisis is only making matters worse. It is urgent to reform the international governance of food and agriculture so as to remedy this situation.

Reforming agriculture and trade policies will be part of this global effort – whether it takes the form of a partnership, a contract, or a convention. As such, the WTO has a contribution to make.

The Panel discussed the following questions:

- **What are the innovative ideas to reform the global governance of food and agriculture?**
- **What is the role for WTO in such a new framework?**
- **What are the possible next steps for this discussion?**





1. Presentations by the panellists

(a) Ester Penunia, Secretary General, Asian Farmers Association

Ms Penunia made the following main recommendations:

The key strategic response to the current food crisis and food insecurity issues is the creation of integrated sustainable agriculture and agriculture-based businesses that are owned and controlled by organizations of small-scale producers and indigenous people. All levels of government must support small-scale, environmentally integrated production of agriculture.

“The key element of sustainable agriculture is small-holders' access and control of production resources and access to marketing resources and infrastructure”

These small-scale farmers, using organic agricultural methods, are the way forward to solve the current food crisis and meet the needs of local communities.

The specific points Ms Penunia raised included:

- The key element of sustainable agriculture is small-holders' access and control of production resources and access to marketing resources and infrastructure.
- WTO trade agreements must protect food security and livelihood security, rural development and poverty alleviation from trade liberalization, and protect the livelihood of the small producers.
- The Asian Farmers Association is working with ASEAN to create a rice reserve mechanism to help stabilize the price and supply of rice.

(b) André Pouilles-Duplaix, Agence Francaise de Développement

According to Mr Pouilles-Duplaix, the 2007-2008 food price crisis was caused by:

- low stocks in key countries (China, US, EU, Russia, etc.);
- speculation on commodities;

- an increase in demand (food and biofuels); and
- climate incidents in some of the large producing countries.

The causes lie mostly in developed countries, but the impacts were most intensely felt in developing countries. The global financial crisis is adding to this situation, with reduced remittances and additional constraints on development aid.

“Developing countries have become more open to global trade and have become more dependent on the global market”

Whatever the policies put in place by developing countries, they are overwhelmed by disruptions coming from the North. This is even more the case, as developing countries have become more open to global trade and have become more dependent on the global market.

This interdependence leads to food security being identified as a global public good. This is why, last year, France proposed a Global Partnership for agriculture and food security, with three pillars: policy, science and finance.

Recent declarations (on 25 September) by US Secretary of State, Hillary Clinton, seem to illustrate a similar understanding of the necessary measures to take in view of improving global food security.

Some initiatives have seen the light of the day over the past months, in the spirit of the Global Partnership: a UN High Level Task Force on the food crisis, a reform process at the Committee on World Food Security at the FAO. UN Secretary-General, Ban Ki-moon, recently called for Geneva and Rome to be better coordinated, but this remains theoretical so far.

Global coherence is a work in progress, but there are no results so far. We remain at the level of declarations. Countries need to pressure the WTO and the Bretton Woods institutions for trade to become part of the effort to guarantee food security. If countries do not exert that pressure, nothing is likely to happen. There is still a long way to go.

(c) Jim Harkness, President, Institute for Agriculture and Trade Policy

An overarching recommendation for the WTO and G8 is to recognize and promote the multi-functionality of agriculture. Agricultural and development programmes that enhance the domestic employment, natural resource conservation and food security functions of agriculture should not be regarded as a disguised barrier to trade.

“Countries need to pressure the WTO and the Bretton Woods institutions for trade to become part of the effort to guarantee food security”

The WTO has the opportunity to revise the rules on food reserves. Current rules on food reserves are too restrictive to allow governments to respond to food shortages and crises. Food reserves are allowed under WTO rules, provided that the food is purchased and resold at prevailing market prices. This policy is too restrictive to address the needs created by the food crisis. Reserves should be used as an effective tool in the face of food shortages to strengthen the global trading system by increasing the predictability of food supplies.

The WTO should consider removing the obstacles to financial re-regulation. Regulation can prevent excessive speculation and extreme price volatility in commodity stock and futures markets. Governments should protect the right to food by preventing extreme volatility in commodity prices. Governments should have the right to regulate under WTO rules.

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

India has high rates of hunger and malnutrition, and food security is an important policy concern for the government. The right to food is increasingly seen by the government as a fundamental right, protected under the constitution. The government of India

maintains numerous programmes to provide food and income support to rural and low-income people. These programmes are, in some cases, India-specific, and the resources for the programmes are almost entirely domestically raised, yet the WTO impacts India's ability to provide these programmes.

The current global agricultural situation related to food security is one in which many developed countries are able to produce huge surpluses as a result of subsidies, and dump them on developing countries' markets. They are also able to protect their own markets by putting up market access barriers. Many developing nations have neglected their own agricultural sectors, and use cheap imports to manage their food shortages.

Overall, the record of the WTO negotiations in enhancing or even protecting food security for the poor, developing countries is clearly less than impressive. The WTO has continued its emphasis on trade liberalization, and all other issues are secondary.

2. Conclusions and way forward

- Despite high-level calls and declarations to address the food crisis last year, nothing has been delivered to improve the coherence of global governance on food and agriculture: a major failure of the post-food-crisis response.
- The WTO is still unable to take account of rural development and food security concerns in its treatment of agriculture. Instead, it consistently reinforces an unsustainable model, characterized in particular by market concentration.
- The International Assessment of Agricultural Science and Technology for Development (IAASTD) report – a global assessment of agriculture at the turn of the 21st century – provides recommendations for the way forward on agriculture which WTO members should take on board to put the multilateral trading system back on track.

NN. The collapse of global trade: Avoiding “murky” protectionism in times of crisis

Tuesday, 29 September 2009 – 14.15 ~ 16.15

Moderator

Dr Theresa Carpenter – Graduate Institute and CTEI, Geneva

Speakers

Professor Richard Baldwin – Graduate Institute and CTEI, Geneva

Dr Richard Newfarmer – World Bank

Dr Peter Holmes – University of Sussex

Organized by

The Graduate Institute's Centre for Trade and Economic Integration

Report written by

Theresa Carpenter and Andreas Lendle,
Graduate Institute and CTEI, Geneva



Abstract

Professor Baldwin presented some insights into the effects of the global economic crisis on trade. In particular, he explained why trade had fallen relatively much more than GDP during the crisis. He pointed out the links between global supply chains and the impact of the crisis on trade. New protectionist measures could be observed, but had been quite contained so far.

Dr Newfarmer presented some more detailed insights into protectionist measures undertaken

by countries since the beginning of the crisis. Although such measures were often very difficult to observe and to evaluate, their number and effect seemed by and large rather limited.

Dr Holmes focused on the relationship between climate change and trade and considered ways in which countries might use trade measures as part of their emission-containing policies. He highlighted the risk that such measures might be introduced under the pretext of climate change, but with an essentially protectionist intention.

1. Presentations by the panellists

(a) Theresa Carpenter, Graduate Institute and CTEI, Geneva

Dr Carpenter welcomed the audience and briefly introduced the speakers. She explained that the session would explore recent trends in protectionist measures that had emerged in the wake of the global crisis, and would, in particular, look at the development of “murky” protectionism. The session would also explore whether measures used as part of climate change mitigation policies might constitute protectionism.

(b) Richard Baldwin, Graduate Institute and CTEI, Geneva

Prof. Baldwin started his presentation by pointing out that there was a lot to say about the global financial crisis, but that he intended to focus on trade. He emphasized that global trade experienced a dramatic collapse during the crisis, which has not been fully understood, but he would try to explain the main reasons for the collapse. He then presented some figures showing that global trade had collapsed by 40 per cent in value terms within just a few months (between July 2008 and February 2009), and in a synchronized way around the whole world – which distinguished the process from previous crises. But a distinction had to be made between price effects and volume effects. While the value of trade started to decline significantly even before the collapse of the Lehman Brothers, this was mainly due to a reduction of prices, whereas trade volumes remained relatively stable. Only after the Lehman collapse did trade volumes start to decline as well – a process which took place mainly between October 2008 and May 2009.

Countries were affected by the collapse in two different ways: those countries which were producing as part of global supply chains saw a sudden collapse in demand for intermediates, whereas commodity exporters saw a collapse in prices due to a collapse in world demand.

Prof. Baldwin then discussed results found by some of his colleagues – such as Caroline Freund, a World Bank researcher – showing that the collapse of trade has been of greater magnitude than in previous crises. The depression in 1930 may have been more severe but was mainly a US phenomenon, whereas the current crisis is a truly global one.

One phenomenon of this crisis is that trade fell much more, in percentage terms, than GDP, but also recovered

faster. The OECD forecasts suggest that exports will recover, but will not return quickly to the same growth rates.

Prof. Baldwin then presented several reasons for the sharp collapse in trade. He first pointed out that a lot of trade is in durables, which are produced in global supply chains, such that parts and components are traded globally. For example, a computer which is bought for US\$ 2,000 in the United States, and then brought to Switzerland, might have caused trade which is worth several times more than that amount, because parts and components are traded and assembled around the world, leading to re-exports. Therefore, a fall in demand of US\$ 2,000 would lead to a much higher fall in world trade. But because the share of durables in trade is higher than in GDP, a drop in demand for those durables will reduce the share of trade over GDP because trade falls proportionally more than GDP. Also, trade in durables is affected relatively more during a recession because people can postpone buying them. Statistics from the US suggest that the reduced demand for durables explains a substantial part of the decline in GDP. In the EU, trade in intermediates fell more than proportionally. Another important point is “just in time” production chains, which now lead to a global “just in time” collapse.

There is at least anecdotal evidence that the lack of trade credit is another problem. Prof. Baldwin pointed out that, due to the immediate policy reactions by governments and international organizations (IOs), the effect had been successfully limited. However, it had become clear that trade finance is a weak point in the global trading system.

An increase in protectionism had been seen – as shown by initiatives such as the Global Trade Alert (GTA) – but Prof. Baldwin emphasized that the situation had been “so far, so good” because protectionist measures were not very widespread.

Dr Carpenter thanked Prof. Baldwin, and pointed out that, although new protectionist measures were, to date, very limited in nature and scope, some commentators considered these insipient trends as potentially very worrying if they were left unchecked.

(c) Richard Newfarmer, World Bank

Dr Newfarmer focused on protectionist measures which had been taken since the beginning of the crisis. He pointed out that, because the danger of protectionism





had been raised at all levels, and promises had been made by major countries to not use such measures, it would almost be an embarrassment for ministers to come out and announce such measures, such as an increase in tariffs. But since the start of the crisis, a number of new protectionist measures could be seen compared to new measures which liberalize trade. Lots of protectionist measures were rather difficult to observe or to evaluate (hence the term “murky”), such as subsidies or new standards. The effect of these measures on trade, or on other countries, is often unknown.

Dr Newfarmer then presented figures showing that the number of protectionist measures had increased during the crisis. Richer countries had mainly used investment subsidies, whereas developing countries had made use of tariff and non-tariff measures. Some additional subsidies were not covered by the statistics, such as agricultural subsidies which are automatically increasing (i.e. due to falling prices), but without a change in legislation being necessary. Very few direct increases in tariffs could be observed to date, with almost all observed countries (56) having increased their tariffs by less than 1 per cent on average, and around half of those not having increased them at all.

A major target of protectionist measures had been China: for example, 51 per cent of AD measures had been targeted at that country alone.

“Even though protectionism does not seem to have had a large effect so far, there is still a need to watch it closely”

He then pointed out that there is some good news: trade is recovering. One reason for that is the inventory cycle. Inventories are low now, and have to be stocked up again. But even though protectionism does not seem to have had a large effect so far, there is still a need to watch it closely. One reason is that once trade recovers, this will have a competition effect for domestic markets at a time when unemployment is still high. He also added that protectionist measures could have very severe effects for specific markets or small countries, even if they do not have large effects on a global scale.

(d) Peter Holmes, University of Sussex

Dr Holmes focused on climate change and possible border adjustment measures. He argued that climate change could create an opportunity for countries to

adopt opportunistic behaviour. He and his colleagues had been asked by the UK government to evaluate which border measures countries might take in the future under the pretext of climate change mitigation. The basic problem, he explained, was that there was a dual concern about climate change and about a possible loss of competitiveness. Border measures might be WTO-compatible, but there were very complex information requirements for such measures. Carbon footprints were very difficult to calculate. The resulting tariffs were not necessarily very high, but estimates about the carbon footprint of key products would vary widely. Dr Holmes explained that he and his colleagues had looked at existing estimates of the carbon footprint for some products, and found that they often varied by 2:1 to 6:1 for the same product. Therefore, there was a lot of room for opportunistic behaviour, as no “true” value for the carbon footprint existed.

He then explained two different means of carbon taxes. Consumption could be taxed, which would be the better way if one is mainly concerned about a loss in competitiveness. But a consumption-based tax would require two border adjustments: a carbon tax for imports, and a refund of carbon taxes for exports. On the other hand, a tax based on production was more logical. Monitoring would be the key issue, and it would require that countries trust each other’s measurements. This may be feasible within a regional group of countries, but not necessarily on a global basis.

He explained that production-based tax is also not straightforward, using the example of steel: industry delegates have argued that such a tax would difficult to apply fairly because there is both “virgin steel” (which causes more emissions) and “recycled steel”, each of which would have to be taxed differently. AD measures are being discussed already in cases where countries allegedly subsidize inputs, such as energy for fertilizer production. Solving these problems would be very difficult unless a clear set of rules was established, providing guidelines as to which measures may be used.

2. Questions and comments by the audience

Mr Michael Hindley (trade consultant, former MEP) asked whether the trade collapse could be seen as a policy failure. Politicians had to act globally, but were elected nationally. He argued that there was no general support for trade liberalization, especially when times are bad. He raised the point that the crisis had been caused by too much credit and too high consumption,

so could increasing demand (in durables) be a solution? And where would such demand come from, if it were not to be financed again by credit, which was a reason for the collapse, as we saw during the crisis. Prof. Baldwin responded, saying that government failure in regulation had been a major cause for the crisis, but the recent steps taken by the G20 would help make a similar crisis less likely. Addressing the question where demand would come from for a recovery, he pointed out that long-run growth comes from the supply side, so the main question was not where demand would come from, but rather whether enough will be invested and produced. He added that global imbalances would fall during the recession, but were likely to increase again once trade recovers – which is mainly a matter of accounting (trade is falling faster than GDP).

Dr Newfarmer added that the cause was not only poor regulation, but also excessive fiscal and monetary policy. Global imbalances would not go away, although they might change slightly. The process of globalization (with increasing shares of trade over GDP) would continue.

Addressing Dr Newfarmer, Dr Sheila Page (ODI) pointed out that the numbers of AD measures were levels, and not changes, and that the numbers actually went down between 2008 and 2006. She then argued that there is a certain risk associated with showing data on protectionist measures and trying to make them public, as this could make it easier for policy-makers to also use such measures by arguing that others were doing the same. Dr Newfarmer disagreed, arguing that it was indeed helpful for potential protectionist measures to be put under scrutiny.


Dr Musafa al Said (Chairman, Economic Committee, Parliament of Egypt) wanted to give a view from a developing country perspective. He argued that developing countries had limited resources and difficulties in exporting to advanced countries due to the crisis, and at the same time they had limited abilities to import due to the credit crunch. He asked the podium what they could attribute this to, other than referring to protection. In response, Prof. Baldwin said that indeed developed countries had rather used subsidies during the crisis, and developing countries had rather used protectionist border measures. But this had been limited, as in today's world with global supply chains one has to import inputs in order to export, so raising tariffs on imports could directly harm exports, which is why it is hardly ever done.

Mr Jonathan Peel (European Economic and Social Committee, UK) asked whether research had been done to look at “reverse” trade facilitation, such as new and non-transparent legislation which could favour domestic over foreign investors. Mr Ronald Steenblick (OECD), referring to Dr Newfarmer's presentation, pointed out that protectionism is not always the reason for the introduction of new standards and regulations, but rather is a normal process in developing countries which are catching up with the regulations in developed countries. He also asked which types of subsidies were covered in the figures presented. Dr Newfarmer confirmed Mr Steenblick's first point. He agreed that standards were very difficult to evaluate as these were often highly technical. Regarding subsidies, he pointed out the large subsidies for the car industry in several countries, which had forced other countries to match those subsidies in their own economies. Addressing Dr Holmes, he argued that there were a large number of other potentially distorting climate-protection measures, such as subsidies to green technology, public procurement for such technologies, public-private ventures, and so on. Dr Holmes agreed with that view.

A representative from the Asian Development Bank (ADB) asked Prof. Baldwin whether it would be useful to use supply-side measures in countries with a large trade surplus, such as in East Asia. He also raised concerns about possible distortion due to interventions in trade finance, which could not always easily be distinguished from subsidies. Prof. Baldwin pointed out that one of the big mistakes in the 1930s was that protectionist measures which were introduced during the crisis subsequently remained in place. A removal of new protectionist measures should possibly be negotiated.

A member of the audience from the European Commission suggested that a distinction should be made between classic trade measures and subsidies or bailout measures. Aggregate figures might exaggerate the real subsidies because of different market structures, such as different structures of banking sectors across countries.

Mr Peter Glenn (trade policy consultant), addressing Dr Holmes, argued that the pressure to use border adjustments against climate change would decline because people would realize how difficult these were to apply. Dr Holmes replied that he indeed hoped so, but that he was less optimistic. The EU was already planning a revision of its climate-change measures in 2010, and it could not be ruled out that this might include border measures. Dr Newfarmer shared that view. Prof. Baldwin



added that it had to be ensured that climate change would not wreck the WTO system. The best option would be to take it out of the WTO system. The main emitters should work this out outside of the WTO.

Dr Michael Gasiorek (University of Sussex) made two comments. He agreed with Prof. Baldwin, that trade finance was not a major problem in general. But it might be very important for some countries or regions. Referring to the question of standards, he agreed with previous commentators that they might be protectionist, but were often implemented to facilitate, rather than hinder, market access. Dr Gasiorek then raised the question of what effect the crisis might have on the speed of future liberalization and on the Doha round. He pointed out that the crisis, even if it did not trigger many protectionist measures, may well slow down further liberalization, and cited the EU-India free trade talks as a possible example.

Dr Lucien Cernat (Chief Economist, DG Trade, European Commission) argued that one should be more precise when debating measures taken during the crisis. The Global Trade Alert had shown that less than 1 per cent of global trade flows had been affected by allegedly protectionist measures. This meant that protectionism has so far been quite contained. He also asked whether

research had been undertaken on the link between trade finance and intra-firm trade. Dr Newfarmer, in response, pointed out that an economic analysis of measures had to be conducted on a sectoral basis. The financial bailout was not dealt with in his study, and it was not clear whether this could be seen as a protectionist measure. Dr Cernat also raised the issue of intra-firm trade, which might be less affected by protectionist measures and also less affected by a lack of trade finance. Mr Newfarmer argued that more research is needed on intra-firm trade. It may have been a reason why no large upsurge in protectionist measures had been seen so far.

Prof. Baldwin responded to the audience by arguing that the crisis had its origin in the developed world, and poor countries which were also hit did not cause the crisis. Continued vigilance was needed, as pressure for protectionist measures could increase with a rise in unemployment. What could happen was that, in the future, WTO members could agree to eliminate certain measures, such as AD measures against steel, subsidies for the car industry, etc., instead of trying to conclude another large round. He pointed out that this had happened in the past, such as with the ITA.

Dr Carpenter thanked the presenters and audience for their participation.

OO. Labour and environment provisions in bilateral and regional agreements: Challenges for the multilateral trading system

Wednesday, 30 September 2009 – 11.15 ~ 13.15

Moderator

Mr Miguel Rodriguez Mendoza – Senior Fellow of International Centre for Trade and Sustainable Development (ICTSD)

Speakers

Mr Pablo Lazo Grandi – General Directorate for International Economic Affairs, Chile (DIRECON)

Ms Evelyne Pichenot – European Economic and Social Committee (EESC)

Dr El-Hadji Diouf – Manager, EPA and Regionalism Program, International Centre for Trade and Sustainable Development (ICTSD)

Organized by

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

Report written by

ICTSD



Abstract

Regional trade agreements (RTAs) have become a distinctive feature of the international trading landscape. Their number has increased significantly in recent years, as WTO member countries continue to pursue the negotiation of these agreements. Some 200-odd agreements have been notified to the WTO but their number may be actually higher, as some agreements are never notified to the multilateral bodies and many more are still under negotiation. As a result more and more trade is covered by such preferential deals, prompting many analysts to suggest that RTAs are becoming the norm rather than the exception.

Many regional pacts contain obligations that go beyond existing multilateral commitments, and others deal with areas not yet included in the WTO, such as investment and competition policies, as well as labour and environmental issues. Regional and bilateral agreements between countries at different stages of development have become commonplace, as have attempts to form region-wide economic areas by dismantling existing trade and investment barriers, an objective that figures

prominently in East Asian countries' trade strategies.

Thus, gaining a better understanding of the workings of RTAs and their impact on the multilateral trading system is a key concern for trade analysts and practitioners. Current WTO rules on regional agreements, mainly written in the late 1940s, do not seem well equipped to deal with today's web of RTAs. Economists dispute whether RTAs create or deviate trade, and political scientists try to explain the resurgence of RTAs by a mix of economic, political and security considerations. In some cases, the fear of losing existing unilateral non-reciprocal trade preferences provides the rationale for launching RTA negotiations, as is the case of the Economic Partnership Agreement (EPA) negotiations between the European Union and its former colonies in Africa, the Caribbean and the Pacific. Many worry about the systemic impact of RTAs, and dispute whether they can be considered as "building blocks" to a stronger and freer international trading system, or are rather "stumbling blocks", which erode multilateral rules and disciplines.





1. Presentations by the panellists

(a) Pablo Lazo Grandi, General Directorate for International Economic Affairs, Chile (DIRECON)

Mr Lazo Grandi presented a political and legal review of how international labour standards have been introduced, and how those standards have evolved in the international trade arena. As milestones of this process he highlighted:

- Copenhagen World Summit of Heads of State on Social Development, 1995;
- WTO: Singapore Declaration, 1996;
- ILO: Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998;
- UN ECOSOC: Ministerial Declaration, 2006;
- ILO: Declaration on Social Justice for a Fair Globalization, 2008.

Moreover, the panellist explained the new trends and negotiations on trade and labour standards at the multilateral, regional, and bilateral levels. In so doing, he highlighted how labour matters have been treated in the context of bilateral agreements. He pointed out four models of negotiations:

- US: trade sanctions;
- EU: commitments under civil society supervision;
- Canada: monetary contributions;
- New Zealand-Chile: consultation and cooperative approaches.

Mr Lazo Grandi presented the experience of so-called “Soft Law”, in particular the United Nations Global Compact (UNGC) and the ISO Standard 26000 covering social responsibility.

Mr Lazo Grandi stressed that there are a number of misconceptions related to labour standards and FTAs. For example, he noted that:

- there is no evidence of any labour case in an FTA arbitral panel;

- there is no evidence of protectionist use of labour clauses;
- no evidence exists of damages due to social clauses;
- cooperation experiences have been positive;
- some cases related to GSP; and
- consultations have been held only in NAFTA countries.

Finally, Mr Lazo Grandi formulated some thoughts on the challenges facing attempts to enforce the agreements, on the role of the ILO in these new circumstances, and on the implications for developing countries. These included:

- sound economic and trade policies can be compatible with sound social policies;
- economic growth is not compromised by core labour protection, nationally or internationally;
- labour engagements increase competitiveness.

(b) Evelyne Pichenot, European Economic and Social Committee (EESC)

Ms Pichenot is a member of the EESC, a consultative body that gives representatives of Europe's socio-occupational interest groups, among others, a formal platform to express their points of view on EU issues. Her presentation was based on “The Opinion of the EESC Section for External Relations on the New Trade Agreement Negotiations”. Ms Pichenot highlighted the following points:

- The Committee believes that bilateral agreements must be seen as compatible with and indeed eventually strengthening multilateralism. Eventual gains made bilaterally can stimulate the multilateral process. Our prosperity depends on trade, as the EC states.

“Bilateral agreements must be seen as compatible with and indeed eventually strengthening multilateralism”

- However, the Committee stresses there must be a qualitative change in the approach to this new

series of negotiations: it is not sufficient to simply try to repeat on the bilateral level policies which have not succeeded at the multilateral level.

- The bilateral approach may allow more respect to regional and national differences than is the case with multilateral agreements, which perforce follow a broader approach.
- The Committee believes that, in the area of monitoring, it has the potential to play an active role because of its structure. In particular, the experience of the Committee enables it to identify effective potential partners in other countries.
- The Committee, while noting that the Commission is seeking comment and cooperation on the proposed negotiations as a whole, also notes the very extensive range of issues and concerns that these negotiations will cover, many of which are alluded to in the body of its opinion. The Committee therefore strongly recommends that it should look further and in greater depth into a number of these specific issues in the near future, for example, in relation to decent work and market access.
- The Committee welcomes, in particular, the re-emergence of social and environmental considerations in the Commission's brief for these negotiations, noting to this end that sustainable development includes economic, social and environmental considerations. However, the Committee also notes that many of the primarily economic-related issues that are raised include civil society considerations, not least those affecting the free movement of people.
- The Committee considers that a basis of fundamental, universal rights as enshrined in ILO standards is essential. The Committee also believes such standards must be used to intensify mutually acceptable and practicable definitions of "decent work".

**(c) El-Hadji Diouf, Programme Manager,
International Centre for Trade and
Sustainable Development (ICTSD)**

ICTSD commissioned a paper on *Environmental Issues in Economic Partnership Agreements: Implications for Developing Countries*, written by Ms Beatrice Chaytor. The aim of Dr Diouf's presentation was to highlight the paper's main results and recommendations for developing countries.

Dr Diouf focused on the cornerstones of the study that almost exhaustively reviews the different rules related to the environment in the different existing EPAs. He carried out a reading of the European environmental approach in the trade agreements it is party to. The aim is to enable ACP countries to understand the outlines of this trade policy in relation to the environment and to evaluate a possible introduction in EPAs. Also, the study covers the ongoing negotiations' current state, reveals the proposals' contents, and determines the implications of introducing environmental issues in EPAs. It examines possible implications regarding management and coordination between the different regional economic communities; the implementation of environmental rules; the sensitive relations of complementarity and/or conflict with other existing international agreements; the introduction of new rules in domestic law; the settlement of disputes; and the strengthening of environmental capacities. The presentation paid particular attention to the possible costs and benefits of introducing environmental issues in EPAs, and concludes with some recommendations for ACP countries to enable them to negotiate balanced agreements which take into account their trade interests as well as their sustainable development requirements. The main recommendations are the following:

- Place the negotiation of environmental provisions in the RTA within the broader context of their environmental protection priorities as well as their export interests. The identification of specific export interests should be based on sound economic analysis. Issues could include compliance with SPS and TBT requirements, environmental goods and services, and management of natural resources.
- Manage and coordinate the process of negotiation in order to ensure the intended outcome. This will entail coordination among government institutions, as well as between the government and private sector (business community), and the government and civil society.
- Use *ex ante* and *ex post* environmental impact assessments as a tool for (a) ensuring that all potential environmental and sustainable development implications of the EPA are considered, and (b) allowing adequate stakeholder involvement in the design and implementation of the EPA.
- Ensure the incorporation of as much detail as possible in the RTA text on provisions for environmental cooperation priorities, including provisions on funding



for such activities, in order to secure their effective implementation.

- Incorporate adequate provisions on technical assistance and capacity building targeted at improvements in environmental standards and strengthening of institutions for monitoring and enforcement of such standards. These could include financing of the costs of adjustment to new environmental standards for SMEs, access to new or existing technologies for improved environmental performance, financing for adaptation to new market access requirements, etc.

2. Conclusions and way forward

One of the objectives of this session was to submit ICTSD's studies to the audience, in order to share their main recommendations. It emerged from the discussions that it is relevant to have a global picture of the relationship between regional and multilateral levels on environment and labour provisions related to trade.

Furthermore, developing countries should be aware of the potential negative impact resulting from overlapping negotiations. They do not need to establish a hierarchic linkage between regionalism and multilateralism, but must choose the best forum to advance their development agenda.

In addition, it does not seem realistic to think that certain specific issues, such as environment and labour standards, should be considered as negotiating positions which are defended exclusively by developed countries. These issues should be of common concern, protecting global interests. ICTSD's staff undertook to disseminate copies of these studies to the audience as soon as they have been printed.

PP. Rebuilding global trade and a post-Doha agenda for sustainable development: Priorities for reform of WTO governance

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

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

Speakers

H.E. Mr Faizel Ismail – Head of the South African Delegation to the WTO

Dr Zhang Xiangchen – Deputy Ambassador at the Permanent Mission of China to the WTO

H.E. Mr Guillermo Valles Galmés – Ambassador, Permanent Representative of Uruguay to the WTO

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

Organized by

The Global Economic Governance Programme of the University of Oxford

Report written by

The Global Economic Governance Programme of the University of Oxford, and The International Centre for Trade and Sustainable Development (ICTSD)



Abstract

Amidst the economic crisis, demands from various stakeholders for reform of global economic governance have become particularly acute. The session addressed the challenges of strengthening the multilateral trading system for trade and sustainable development. The panel was designed to provide concrete input into ongoing dialogue among governments, stakeholders, experts and non-governmental organizations (NGOs) about the scope of discussions on WTO reform that ought to take place at the 2009 WTO Ministerial Conference and future Ministerial meetings.

The starting point for this panel was that that the WTO is a vital and valuable institution, but improvements need to be made to ensure the multilateral trading system addresses the changing political and economic realities of the trading system, the global financial crisis, and the pressing challenges of sustainable development.

The session addressed the issues of the WTO's position and role in global economic governance, including its relationships to other international organizations and processes; and reforms to the governance of the WTO's functions and activities (including its negotiating process, dispute settlement, monitoring of trade policies, Aid for Trade and technical assistance), as well as innovations in governance that might improve accountability to citizens around the world, and to international commitments such as the Millennium Development Goals.





1. Presentations by the panellists

(a) Sergio Marchi, Senior Fellow,
International Centre for Trade and
Sustainable Development ICTSD

*Strengthening multilateralism in trade for sustainable
development: Preparing the WTO for the future*

The moderator, Ambassador Marchi, opened the session by setting the context for the importance of discussion on a WTO reform agenda:

“The WTO is a key and valuable institution, but one that needs to be updated to the new political and economic times”

- The panel was based on the premise that the WTO is a key and valuable institution, but one that needs to be updated to the new political and economic times in a globally integrated world.
- In order to promote a rules-based approach to international governance, if the WTO did not exist, it would have to be created.
- The WTO should be reformed in a sustainable way.

“If the WTO did not exist, it would have to be created”

(b) Faizel Ismail, Head of the South African
Delegation to the WTO

- Agreed that there is a need to strengthen the rules-based system and multilateral approach to trade.
- Formulated a criticism with regard to the decision-making process, and more specifically to inequities that arise through informal decision-making processes.
- Brought up existing criticism about the process for the accession of small developing countries, and the lack of clear rules and procedures in this respect.

- Raised concerns about the lack of enforcement of some Dispute Settlement Body decisions.

- Stressed the need for clearer policy objectives to frame the work of the WTO and its member states, and suggested that efforts should be made on the policy coherence front with other relevant organizations in a collaborative manner, rather than in a competitive way.

- In the context of collapse of the Doha negotiations, the fundamental underlying systemic issue – which has not been addressed yet – lies at the intersection of the disagreement between the “mercantilist view” of the WTO, on one hand, and on the other, the vision of the WTO as a body that must play a part in the broader global institutional architecture, which has as a core mission to aid in the integration of developing countries.

(c) Zhang Xiangchen, Deputy Ambassador
at the Permanent Mission of China to the
WTO

- Concurred with the preceding panellists on the need for discussion of WTO reform.
- Compared the WTO to other organizations, concluding that the WTO is quite successful. By contrast, Dr Zhang noted that, in the midst of the financial crisis, the IMF has been widely criticized.
- Stated that the Dispute Settlement Body is one of the WTO’s institutional strengths.
- Envisioned a future dispute on trade restrictions related to climate change, noting that at the present moment the DSB would not be able to render a decision on such a conflict.
- Stressed the importance of carrying on with the Doha negotiations, which have continued for eight years.
- Stated that there is need for a parallel process to the Doha negotiations, focused on WTO reform from a developing country perspective.
- Raised issues related to the consensus-based approach to decision-making, the single undertaking, transparency, and civil society engagement, as issues worthy of attention in a discussion of reform.

- Drew attention to the fact that the “good old days” were over with regard to traditional lines of power at the WTO.
- Concluded with the remarks that member states should concentrate more on the WTO, rather than regional trade agreements.
- Argued that a reform agenda should not be conceptualized in terms of fundamental and radical “surgery” but rather as a long “to do list”.

“A reform agenda should not be conceptualized in terms of fundamental and radical “surgery” but rather as a long “to do list””

(d) Guillermo Valles Galmés, Ambassador, Permanent Representative of Uruguay to the WTO

- Agreed with the need to discuss reform, but started from the premise that changes should not be made just for the sake of change.
- Referred to the need to avoid the “virus” of reform.
- Noting the rise of the G20 in the global political arena, stated that G20 is not an “institution” and should not detract from formal multilateral decision-making bodies such as the WTO. As in the Henry Kissinger example with regard to the EU, the question “Who do you call when you want to speak to the G20?” is ever more present.
- Drew attention to the need to improve access to the Dispute Settlement Body and to strengthen the enforcement of DSB decisions.
- Said that there is need to enhance the WTO’s Trade Policy Review mechanism and, once the Doha Development Agenda is concluded, to tackle a new trade agenda.
- Mentioned the fragmentation caused by regional trade agreements.
- Concluded by agreeing strongly with the observation regarding the need for a parallel WTO reform process led by member states.

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

- Paid tribute to the work of Dr Carolyn Deere Birkbeck, whom he substituted as a discussant due to her absence through illness.
- Stressed the creative capacity and ability of WTO ambassadors in dealing with challenges over the years.
- Noted that the WTO must “walk and chew gum” at the same time, referring to the idea that the Doha negotiations could and should proceed parallel to a reform agenda discussion.
- Argued that thoughtful consideration of the future of the organization is needed now.
- Argued that there is need to update the relevance of international trade institutions to current and emerging challenges.
- Discussed the idea that the WTO has good tools at its disposition (such as the WTO’s structure of committees) which are not being used as they should.
- Recommended that the WTO should better manage the interdependence and integration of global markets, and should strive for better coherence – “the Big Bargain”.
- Raised the issue and challenges posed by the proliferation of bilateral and regional trade arrangements.
- Stressed that the WTO must upgrade its transparency and monitoring function.
- Noted in conclusion that the WTO remains an organization that is misunderstood by the public.

“The WTO remains an organization that is misunderstood by the public”

2. Questions and comments by the audience

The audience seemed favourable to the need for change and reform of the WTO. Only one respondent disagreed with the need for reform. The first question from the audience highlighted ongoing concerns about the need for WTO members to reconsider the “broader objectives” of the global trading system – asking participants whether, in their view, that notion should properly also include human rights and environmental priorities. Another participant challenged the assumption that the problems facing global trade are caused by institutions and institutional architecture (i.e. decision-making processes). The participant argued that the problem rather lies with the fact that member states are not able to reach consensus within member states’ home countries, rather than a problem within the organization in Geneva. The participant was against adding a wider range of tasks to the WTO agenda, cautioning against burdening the institution with new issues, and warning against the goal of “securing” and “guaranteeing” results in the multilateral system.

Another participant spoke on the importance of greater attention to development objectives in the WTO system, noting the need to strengthen the link between the WTO and the rest of the international system, and the broader global goals that aim towards a more equitable international economy and social justice. Other audience interventions called for comments from panellists on problems associated with regional trade agreements, inadequate private sector engagement, insufficient political leadership and the scope for greater attention to competition policy at the WTO.

3. Conclusions and way forward

In concluding the session, Mr Meléndez-Ortiz drew attention to the ICTSD’s upcoming publication “Strengthening Multilateralism” by Carolyn Deere and Catherine Monagle, which maps an array of different WTO reform proposals reflecting many of the views expressed in the panel. In their final remarks, panellists noted that the WTO should follow two parallel paths – one of completing the Doha Round and another of simultaneously pursuing a reform process aimed at strengthening the institution. In that respect, the emphasis was put on adaptation rather than institutional change just for the sake of change, and panellists cautioned against transforming it beyond recognition. They emphasized the importance of pursuing and incorporating a strategic view on where the institution needs to go in future. In their concluding remarks, the panellists also noted that a smart idea has little value if there is no process through which reform ideas can be channelled. A political process driven by member states – and in particular ministers – was recommended to ensure that ideas lead to actual changes. Finally, the panellists highlighted their opinion that leadership – from a variety of states – is indispensable to the reform process.

QQ. How food security and sustainable agriculture will change the post-crisis agenda of WTO

Wednesday, 30 September 2009 – 14.15 ~ 16.15

Moderator

Mr Ajay Vashee – President, International Federation of Agricultural Producers (IFAP)

Speakers

H.E. Ms Laura Mirachian – Ambassador, Permanent Representative of Italy to the WTO

Mr Ahmad Manzoor – Director, FAO Liaison Office in Geneva

Mr Ravi Bangar – Deputy Permanent Representative of India to the WTO

H.E. Mr David Walker – Ambassador, Permanent Representative of New Zealand to the WTO and Chair of the WTO Committee on Agriculture Special Negotiating Sessions

Organized by

International Federation of Agricultural Producers (IFAP)

Report written by

IFAP



Abstract

The session examined the changes necessary to the WTO Agreement on Agriculture in order to meet renewed world food security targets, to meet climate-change goals and to re-launch the global economy. It outlined the following questions to the panellists:

- Globally, there are 1 billion hungry people to feed. Farmers need special programmes of investment in local food production. Are such programmes in conflict with WTO trade rules?
- Meeting climate-change goals means encouraging agricultural development in places where it has the lowest carbon footprint. Do WTO rules need to be adjusted to provide for this?
- Opportunities for employment creation in the fiscal stimulus packages of many countries could focus on “green jobs”. Are such “green” or “natural resource management” criteria compatible with WTO trade rules?

This session was motivated by the results of the first G8 Agriculture Ministers’ meeting in Treviso, Italy, in April 2009, in which Ministers “underlined

the need to place agriculture and food security at the core of the international political agenda”. The G8 is supporting a “Global Partnership for Agriculture, Food Security and Nutrition within the UN system”. These new global governance structures are lifting food and agriculture issues above other policy priorities. What do these challenges imply for the post-crisis agenda of WTO?

Undoubtedly, the global crises are challenging the WTO Agreement on Agriculture. Global institutions are under attack for inadequate responses to the food, energy and financial crises, and national governments are widely criticized for the excessive deregulation and “free market fundamentalism” that let speculators and traders bring the world into a deep recession.

Family agriculture can be an authentic response to these concerns through: rational use of natural resources; fighting hunger and poverty; supporting rural communities as a balance against excessive urbanization; mitigating climate change and focusing on renewable energy on certain types of land; and at the same time, creating jobs and improving the economy.





1. Presentations by the panellists

(a) Ajay Vashee, IFAP President

Mr Vashee, moderator of the session, keyed in on new global governance structures that are lifting food and agriculture issues above other policy priorities. “Where does the WTO stand on this and how does it accommodate food security issues and climate change?” Mr Vashee asked.

The IFAP President noted that he did not expect the WTO to solve climate change or establish a food-secure world. However, he said that farmers expect that WTO would not block the facilitation of national governments in implementing efforts to address these global challenges, in a non-trade-distorting way.

“If we do not address food security and climate change from a trade perspective, comprehensive progress on these fronts is impossible”

“We would also expect that the WTO rules would ensure that all countries are able to maintain their competitiveness in the markets when regulations relating to climate change and food security are applied by individual countries”, continued Mr Vashee. “In essence, an Agreement on Agriculture should not block development, and it is very clear that if we do not address food security and climate change from a trade perspective, comprehensive progress on these fronts is impossible”, Mr Vashee concluded.

(b) Ravi Bangar, Deputy Permanent Representative of India to the WTO

Mr Bangar noted that the global challenges which humanity faces, including environmental degradation and more specifically climate change, make sustainable agriculture for farmers more difficult. The promotion of food security with economic, social and ecological sustainability requires the removal of trade-distorting barriers.

“The promotion of food security with economic, social and ecological sustainability requires the removal of trade-distorting barriers.”

While some countries grow most of the food they need, most rely to some extent on international trade. In the Asia-Pacific region, 25 countries are net food importers.

Mr Bangar explained that multilateral trade governance in the area of agriculture and food products is still weak. Before 1995, most developed countries, excluding Australia and New Zealand, took advantage of opportunities to offer protection and subsidies to their own food producers, leading to over-production, while most developing countries, influenced by the structural adjustment policies of the IMF and the World Bank, generally neglected agriculture, leading to under-production. In developed countries, this may have supported local agriculture, but it harmed farmers around the world when the flood of subsidized crops into international markets resulted in surges of imports into developing countries.

He cited Fiji as one example. In 1986, Fiji was 75 per cent self-sufficient in rice but, due to deregulation and the influx of cheaper imports, that proportion is now down to 15 per cent.

Mr Bangar noted that the Doha Development Agenda (DDA), while still dominantly focused on the removal of distorting policies identified in the Uruguay Round, needs to use this opportunity to add rules on export restrictions. Furthermore, it needs to enlarge development policy space for developing countries through special products and special safeguard measures.

(c) Laura Mirachian, Ambassador of Italy to the WTO

Ambassador Mirachian maintained that markets must remain open, protectionism must be rejected, and factors potentially affecting commodity price volatility, including speculation, must be monitored and analysed further.

She noted that G8 members confirmed the commitment to reduce trade distortions, to refrain from raising barriers to trade and investment and from implementing WTO-inconsistent measures to stimulate exports, with a strong pledge towards concluding the DDA. She said that concluding the DDA remains a top priority for the EU. “The EU was ready to conclude negotiations in July 2008, and it stands ready to move ahead on the basis of current negotiating texts”, stated Ambassador Mirachian.

Ambassador Mirachian continued to emphasize that the G8 Summit recognized the global dimension of food

security and agriculture, and the urgency of tackling the issue with more determination. The G8, she said, confirmed the need for a global strategy that goes beyond the current situation and implements a long-term perspective – a strategy involving all concerned stakeholders – placing food security at the core of the international agenda.

(d) Ahmad Manzoor, Director of the FAO Liaison Office in Geneva

Food production has to double to meet a rising population that will reach 9.2 billion by 2050. “How can food production be increased so much?” asked Mr Manzoor. There is a limited scope for increasing cultivated land area, which in the best of scenarios, is estimated to be by approximately 10 per cent. This being said, he noted that the only realistic option then is striving for higher yields and increasing crop intensity. However, increases in crop yields – particularly in developing countries, where population has been rising rapidly – have been slowing down over the years. The bottom line response to this question, Mr Manzoor maintained is that, “[i]f there is to be a substantial increase in agricultural production, investment in agriculture has to increase. The current trend, whereby investment in agriculture – both by the nations from their own resources and through foreign aid – has been decreasing in the developing world, has to be reversed.” Foreign aid to agriculture decreased from US\$ 6.2 billion in 1980 to US\$ 2.3 billion in 2002, he said. The result was a decline in the growth rate of agricultural production, which Mr Manzoor compared with the “10 per cent increase in total producer support in OECD countries in the last 20 years, and the resulting 53 per cent increase in agricultural production in those countries”.

“Food production has to double to meet a rising population that will reach 9.2 billion by 2050”

Mr Manzoor explained that the subsidies given by OECD countries to their farmers cannot be matched by the poorer countries, with the result that their farmers cannot compete globally. Also, tariff and non-tariff barriers hinder developing countries from exporting their surplus produce.

While the Doha Round of negotiations will be a step forward to correct some of these distortions, Mr Manzoor remarked, it is not likely to fully address

some of the underlying problems, such as those which led to the 2007-2008 food-price surges. The WTO rules were found to be weak on disciplining controls on food exports and conversion of some food crops into biofuels through use of subsidies. This undermined confidence in the world markets.

Mr Manzoor outlined the kind of investments needed in developing countries to boost agricultural productivity. He referred to a recent paper, presented at an FAO Conference in June 2009, that categorized such support in four main categories, namely: (a) those relating to maintaining or improving productive capacity, such as research and development, improving storage and infrastructure; (b) reducing income and price risks/uncertainty through insurance for crop failures; (c) better food security; and (d) preserving natural resources and the environment. Mr Manzoor pointed out that all these seem to be non-trade-distorting subsidies and thus were covered under the Green box.

(e) David Walker, Chair of the WTO Committee on Agriculture Special Negotiating Sessions

Ambassador Walker noted that there is a large spectrum of issues that the international community is grappling with – such as food security, climate change, poverty and global inequality – and the WTO is just one of those international communities where member governments come together to talk about issues. The WTO does not pretend by any means that it is the only answer to any of these questions, but it is part of the solution, he said.

“Looking at agriculture, and agriculture in the WTO in particular, I think it’s important to remember that virtually everyone agrees that agriculture remains the most distorted area in global trade, and it’s only 15 years ago that the members of the trading systems really tried to start to get grips with that through the Agreement on Agriculture which resulted from the Uruguay Round”, he remarked.

For areas of government assistance which are designed to address issues like food security and boosting investment in the developing world, Ambassador Walker mentioned that the Green box has a range of flexibilities in this regard. However, he explained, “Where I sit in the middle of this discussion, you often hear the developing world saying that there is an uneven playing field where we haven’t fully gotten to grips with large subsidies in the developed world that developing countries still need the flexibility to relate to in order to be able to



develop their agriculture through having some residual protection at the border. So again, if that's the case, that should also be an evolving situation."

“The Doha Round will make a further step forward, but it won't finish the job on agriculture”

Ambassador Walker was insistent that the Doha Development Round is part of the solution to the challenges, but noted that the “Doha Round will make a further step forward, but it won't finish the job on agriculture. ... It will be, when it's concluded, a very important signal of the ability of the international community to continue to agree cooperatively to make joint progress in one particular area of international cooperation”. He added that the “conclusion of the Doha Round is a necessary step before the international community, in the WTO at least, can get to grips with these other issues which are pressing on the agenda”.

2. Questions and comments by the audience

In the discussion that followed, interventions were made by farmer leaders, intergovernmental organizations, and other participants.

The following considerations emerged from the event:

- How the public investment that will be needed in the farming sector in order to substantially gear up production can be protected within the WTO framework.
- The impacts of volatility on both agricultural markets and farming inputs and how these can be accommodated under WTO rules.
- The effects of industrial concentration in the agri-food chain and how this changes the rules of the game in terms of trade and investment in agriculture.
- Opportunities for employment creation in the fiscal stimulus packages of many countries could focus on “green jobs”. Are such “green” or “natural resource management” criteria compatible with WTO trade rules?

- And finally, the coherence between the WTO and other elements of international governance in agriculture – the IMF, World Bank, FAO, G20 and, critically any successor to the Kyoto protocol on climate change. How will the WTO seek coherence in its conclusions with other global governance structures?

3. Conclusions and way forward

Mr Vashee urged panellists to keep farmers' interests and sustainability concerns at the forefront when negotiating. IFAP welcomes a framework that farmers can adapt to and adjust to. Global problems require global solutions, as well as global governance structures that, instead of wasting resources and time, work together and ensure that all mandates and policies among them are cohesive, avoiding contradictions. If policies among global governance structures are not compatible, this will just block progress, and comprehensive solutions will never be found.

There are some issues that need to be resolved in the WTO. For example, the issue of subsidies can only be addressed in a multilateral forum and the WTO is certainly the right framework for this. It is not possible to discuss it within the framework of bilateral or regional free trade agreements. For long-term sustainability and food security, particularly in the developing world, this is essential. The Doha Round of negotiations should not be concluded until a reasonable solution is found in this regard.

IFAP encourages the member states in the WTO to properly consult from the ground up, and involve their farmers' organizations. Why would you negotiate agricultural policies without involving those who will have to implement the final outcome? Moreover, IFAP urges that an agreement on agriculture would be truly representative of all countries around the world, of all ranges of agricultural production and farmers, and that if a deal is signed, it would be the deal that puts us most closely on the track towards a food-secure world.

RR. Fundamental human rights at work and the role of the WTO: operational routes

Wednesday, 30 September 2009 – 16.30 ~ 18.30

Moderator

Mr Tom Jenkins – Advisor, European Trade Union Confederation (ETUC)

Speaker

Mr Philippe Morvannou – SYNDEX

Organized by

European Trade Union Confederation (ETUC)

Report written by

European Trade Union Confederation (ETUC)



Abstract

From the economic and political standpoints, the early years of the 21st century have been marked by the emergence of new global powers, dominated by the two most densely populated countries on the planet – China and India. This new historical phenomenon has given birth to a new world order which raises the question of the values that will govern the international scene in the decades to come.

At the heart of this redefinition of the terms of trade of the future international order lies the World Trade Organization, which is the only major global governance institution to have been created since the end of the cold war. While economic growth has driven back poverty in some - though ultimately very few - emerging countries, development as a source of wellbeing and better living conditions for the population at large has yet to be achieved. All the more so, since violations of human rights at work are still rife, and are possibly even spreading.





1. Presentation by the panellist

(a) Philippe Morvannou — SYNDEX

The session was based on the presentation of a report requested by the ETUC. The aim was to identify which operational routes trade unions could use to play a major role in the WTO. The identified routes are:

The legal route

This was explored on the basis of two questions: (1) What are the arguments in favour of including core labour rights in WTO law? and (2) How, and on what terms, can trade union players assert their points of view in the WTO?

The presentation focused on the hierarchy of standards in the global system and on Article 20 of the GATT. Mr Morvannou concluded that WTO law is not isolated from international law.

The economic route

The economic route dealt with the question of whether social dumping can be justified in economic terms, and focused on the search for new regulatory tools. Mr Morvannou suggested a development method that should examine the case of China as a source of commercial and financial imbalance. This method should also incorporate standards and labels, and the concept of decent work.

The contractual route

The analysis of the contractual route assessed the scope and limits of international framework agreements that propose seemingly promising labelling standards and programmes.

The political and institutional routes

Finally, in presenting the political and institutional routes, Mr Morvannou called for stronger coherence between the global governance institutions. He made a critical analysis of the economic partnership agreements (EPAs), while stressing the importance of systemic impact assessments. In this framework, sustainable development is seen as a lever in bringing about compliance with fundamental human rights at work.

2. Conclusions and way forward

The main conclusions of the session were that the respect of labour rights is not a protectionist measure but, on the contrary, is compatible with international trade. The global governance institutions must be reformed with a view to increasing the involvement of trade unions. The speaker proposed the establishment of a WTO consultative body, composed of trade unions, following the example of the OECD. Ultimately, however, it was agreed that the WTO perspective on labour rights remains different from the ILO perspective.



WTO OMC



Abbreviations

4C	Common Code for the Coffee Community
AAA	Nespresso's AAA Sustainability Quality™ Coffee Program
ACP	African, Caribbean and Pacific Group of States
ACTA	Anti-Counterfeiting Trade Agreement
ACWL	Advisory Centre on WTO Law
AD	Anti-dumping
ADB	Asian Development Bank
AFA	Asian Farmers Association for Sustainable Rural Development
AFT	Aid for Trade
AIO	Asian International Input-Output Table
AIPPI	International Association for the Protection of Intellectual Property (<i>Association Internationale pour la Protection de la Propriété Intellectuelle</i>)
AITIC	Agency for International Trade Information and Cooperation
AmCham EU	American Chamber of Commerce to the European Union
AMS	Aggregate measurement of support
APHIS	Animal and Plant Health Inspection Service (US Department of Agriculture)
APR	Anti-Piracy Regulation
ASEAN	Association of Southeast Asian Nations
AsiaDHRRA	Asian Partnership for the Development of Human Resources in Rural Asia
BCA	Border carbon adjustment
BIT	Bilateral investment treaty
Blue box	In agriculture, a category of domestic support with permitted supports linked to production, but subject to production limits, and therefore minimally trade-distorting
BPO	Business process outsourcing
BRIC	Brazil, Russia, India and China (and also South Africa)
BRUEGEL	Brussels European and Global Economic Laboratory
CADE	Council for Economic Defence (Brazil)
CAFTA	Central America Free Trade Agreement
CAFTA-DR	Central America-Dominican Republic-United States Free Trade Agreement
CDR	Carbon discount rate
CELCAA	European Liaison Committee for the Agricultural and Agri-Food Trade
CEO	Chief executive officer
CFC	Federal Competition Commission
CFTC	Commodity Futures Trading Commission
CIAA	Confederation of Food and Drink Industries of the European Union
CIEL	Center for International Environmental Law
CIES	Economic and Social Research Consortium
CIMA	Comprehensive indicator of market access
CO₂	Carbon dioxide
CODEX	Codex Alimentarius Commission
COGECA	General Confederation of Agricultural Cooperatives in the European Union
COP15	15th Conference of the Parties [to the United Nations Framework Convention on Climate Change]
COPA	Committee of Professional Agricultural Organisations
COPA-COGECA	European Farmers and European Agri-Cooperatives
CRTA	WTO Committee on Regional Trade Agreements
CSA	<i>Collectif Stratégies Alimentaires</i> (Food Strategy Group)
CSO	Civil society organization
CSR	Corporate social responsibility
CTEI	Centre for Trade and Economic Integration
CV	Countervailing
CVD	Countervailing duties
DC	Developing country
DDA	Doha Development Agenda
DFQF	Duty-free and quota-free
DFQFMA	Duty free quota free market access
DITC	Division on International Trade in Goods and Services, and Commodities
DTIS	Diagnostic Trade Integration Studies

DSB	Dispute Settlement Body [of WTO]
DSU	Dispute Settlement Understanding
EAA	Ecumenical Advocacy Alliance
EAFF	Eastern Africa Farmers Federation
ECI	Economic Cluster Index
ECIPE	European Centre for International Political Economy
ECLAC	Economic Commission for Latin America and the Caribbean (<i>Comisión Económica para América Latina y el Caribe</i>)
ECN	European Competition Network
ECOSOC	United Nations Economic and Social Council
EESC	European Economic and Social Committee
EGS	Environmental goods and services
EIF	Enhanced Integrated Framework
EPAs	Economic Partnership Agreements
EPC	European Patent Convention
ESF	European Services Forum
ESO	Education service outsourcing
ESTP	Ecole spéciale des travaux publics
ETUC	European Trade Union Confederation
EU	European Union
Euro Coop	European Community of Consumer Cooperatives
EUROFER	European Confederation of Iron and Steel Industries
Ex-Im	Export-Import
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign direct investment
FETRAF-Sul	<i>Federação dos Trabalhadores na Agricultura Familiar da Região Sul</i> (Federation of Rural Workers and Family Farmers in South Brazil)
FNC	National Federation of Coffee Growers of Colombia
FOEE	Friends of the Earth Europe
FTA	Free trade agreement
FTA	Foreign Trade Association
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>
GAP	Good agricultural practices
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross domestic product
GHG	Greenhouse gas
GMO	Genetically modified organism
GNP	Gross national product
GPA	Agreement on Government Procurement
Green box	In agriculture, a category of domestic support, with supports considered not to distort trade, and therefore permitted with no limits
GRID	Groupe de recherche sur le Risque, l'Information et la Décision
GSP	Generalized System of Preferences
GTA	Global trade alert
GTAP	Global Trade Analysis Project from Purdue University, USA
HIV	Human immunodeficiency virus
HRIA	Human rights impact assessment
IAASTD	International Assessment of Agricultural Knowledge, Science and Technology for Development



IADB	Inter-American Development Bank
IAE de Paris	Institut d'Administration des Entreprises de Paris
IATP	Institute for Agriculture and Trade Policy
ICC	International Chamber of Commerce
ICN	International Competition Network
ICONE	Brazilian Institute for International Trade Negotiations
ICRIER	Indian Council for Research on International Economic Relations
ICTSD	International Centre for Trade and Sustainable Development
IDE-JETRO	Institute of Developing Economies, Japan External Trade Organization
IFAP	International Federation of Agricultural Producers
IFPRI	International Food Policy Research Institute
IISD	International Institute for Sustainable Development
ILI	International Law Institute
ILO	International Labour Organization
ILO-MNE	ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
IMD	International Institute for Management Development
IMF	International Monetary Fund
IOs	International organizations
IOSCO	International Organization of Securities Commissions
IP	Intellectual property
IPC	International Food & Agricultural Trade Policy Council
IPR	Intellectual property rights
IPU	Inter-Parliamentary Union
ISEAL	International Social and Environmental Accreditation and Labelling
ISO	International Organization for Standardization
IT	Information technology
ITA	Information Technology Agreement (Ministerial Declaration on Trade in Information Technology Products)
ITC	International Trade Centre
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ITPMI	Inclusive trade policy-making index
ITUC	International Trade Union Confederation
LA	Latin America
LATN	Latin American Trade Network
LDC	Least-developed country
MAST	Multi-agency study team
MDBs	Multilateral development banks
MEA	Multilateral environmental agreement
MEP	Member of the European Parliament
MERCOSUR	Southern Common Market
MFN	Most-favoured nation
MIRAGE	Modeling International Relationships in Applied General Equilibrium
Momagri	Mouvement pour une organisation mondiale de l'agriculture
MP	Member of parliament
MPS	Market price support
MSF	Médecins Sans Frontières
MTS	Multilateral trading system
NAFTA	North American Free Trade Agreement
NAMA	Non-agricultural market access
NFIC	Net food-importing country
NGO	Non-governmental organization
NHRC	National Human Rights Commission
NTB	Non-tariff barrier [to trade]
NTM	Non-tariff measure
ODA	Official development assistance
ODA	Overseas development aid
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development

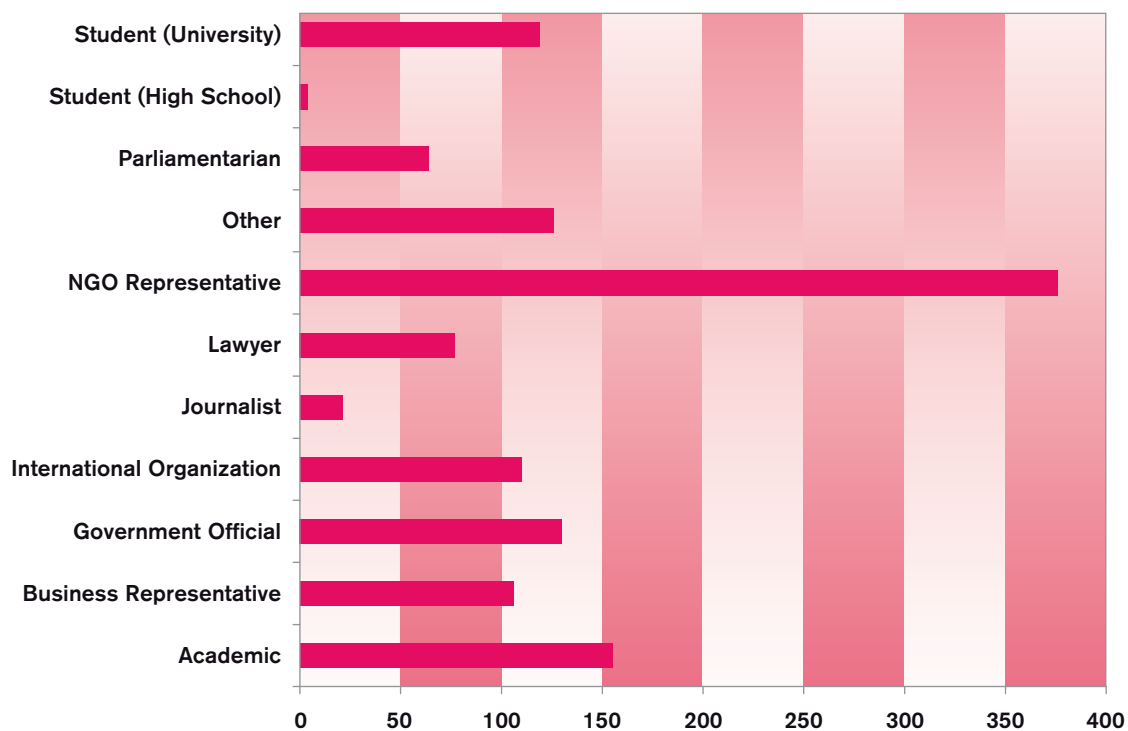


OEM	Original equipment manufacturer
OFT	Office of Fair Trading
OHCHR	Office of the High Commissioner for Human Rights
OIE	World Organisation for Animal Health
OTDS	Overall trade-distorting domestic support
PE	Private equity
POs	Producer organizations (see, for example, www.agricord.org)
ppm	Parts per million
PPM	Process and production method
PPP	Public-private partnership
QUNO	Quaker United Nations Office
R&D	Research and development
RAMs	Recently added members
ROPPA	<i>Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest</i> (Network of West African Farmer and Producer Organizations)
RTA	Regional trade agreement
S&D/S&DT/SDT	Special and Differential Treatment
SCAN	Sustainable Commodity Assistance Network
SCM	Subsidies and countervailing measures
SCP	Sustainable Consumption and Production
SDE	Secretary of Economic Law
SEAE	Secretary of Economic Monitoring of the Finance Ministry (Brazil)
SG	Safeguards
SIA	Sustainability impact assessment
SME	Small and medium sized enterprise
SOMO	Centre for Research on Multinational Corporation
SPS	Sanitary and phytosanitary
SSM	Special Safeguard Mechanism/special safeguard measures
STDF	Standards and Trade Development Facility
SVE	Small and vulnerable economy
SWF	Sovereign wealth funds
T4SD	Trade for Sustainable Development
TB	Tuberculosis
TBT	[Agreement on] Technical Barriers to Trade
TBT Agreement	Agreement on Technical Barriers to Trade
TPR	Trade Policy Review
TPRB	Trade Policy Review Board
TPRM	Trade Policy Review Mechanism
TRAINS	TRade Analysis and INformation System
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TWN	Third World Network
UECBV	European Livestock and Meat Trading Union
ULB	Université Libre de Bruxelles
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGC	United Nations Global Compact
UPOV	International Union for the Protection of New Varieties of Plants
USDA/ERS	US Department of Agriculture Economic Research Service
USTR	United States Trade Representative
VNP	Value of the nominal protection
WHO	World Health Organization
WTI	World Trade Institute

Overview of Registered Participants

Academic	155
Business Representative	106
Government Official	130
International Organization	110
Journalist	21
Lawyer	77
NGO Representative	376
Other	126
Parliamentarian	64
Student (High School)	4
Student (University)	119
* Grand Total	1,288

* Numbers taken from the on-line registration



WTO Public Forum 2009

This year's edition of the WTO Public Forum offers an overview of discussions at the 2009 Forum, whose title was "Global Problems, Global Solutions: Towards Better Global Governance".

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 to assess the role of the multilateral trading system in addressing the consequences of the financial and economic crisis. The issues discussed included improving global governance as a way of addressing world problems; the role of the WTO and the Doha Round of negotiations in the current crisis; the impact of the crisis on developing countries; and the challenges lying ahead and the post-crisis agenda for the WTO.

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.



ISBN 978-92-870-3730-5

