

WTO Public Forum 2011

Seeking answers to global trade challenges



About the Public Forum

The WTO Public Forum provides an opportunity for governments, non-governmental organizations, academics, businesses and students to come together to discuss issues regarding the multilateral trading system. The theme of this year's Forum was "Seeking answers to global trade challenges". Some 1,500 participants registered to attend the 2011 Public Forum.

About this publication

This publication brings together summaries of the sessions held during the 2011 Forum. These summaries were prepared by the organizers of each session.

Find out more

www.wto.org/publicforum



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Foreword by the Director-General

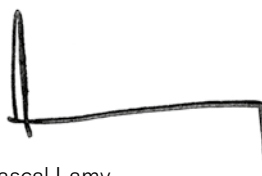
In 2011, the WTO Public Forum demonstrated, once again, its significance as a forum to deepen public dialogue on current global trade governance issues and challenges.

The backdrop for the Public Forum was one of global food, economic and financial crises; a series of turbulent transformations in the Arab world; economies growing too quickly to be environmentally or financially sustainable, or too slowly to consolidate anti-crisis measures; stubbornly high unemployment; and the threat of economic isolationism and protectionism, which must be kept at bay.

While the Doha Development Agenda remains a priority, the WTO recognizes that it needs to continue to examine all aspects of its work, and to contribute to greater cooperation across all areas of global governance. We need to address the challenges to the multilateral trading system and outline future directions for it. The 2011 Forum, entitled “Seeking Answers to Global Trade Challenges”, provided an important contribution to the WTO’s engagement with civil society and the public and facilitated debate about the challenges faced by the multilateral trading system.

The Forum attracted over 1,500 participants from various backgrounds and organizations, each bringing to the fore a variety of views and concerns. This diversity contributed to a rich interactive debate among those present. Discussions were organized around four sub-themes: food security; trade in natural resources; “Made in the World” and value-added trade; and “What next for the trading system?”

This publication is a compilation of the views and ideas expressed during our three-day event that will, undoubtedly, feed into future discussions on these issues. Once again, the Forum has proven to be at the vanguard of global dialogue on the world trading system. I trust that the continued engagement of all of the relevant stakeholders in the multilateral trading system will only become stronger in the years to come, and that it will contribute to identifying the principal challenges for the multilateral trading system and to finding solutions to ensure that the WTO responds to our rapidly changing world.



Pascal Lamy



Acknowledgements

The WTO Public Forum 2011 publication was prepared by the Information and External Relations Division (IERD). María Pérez-Esteve, Counsellor in the IERD, led the project. This publication would not have been possible without the support and contributions of all those who organized sessions during the 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.

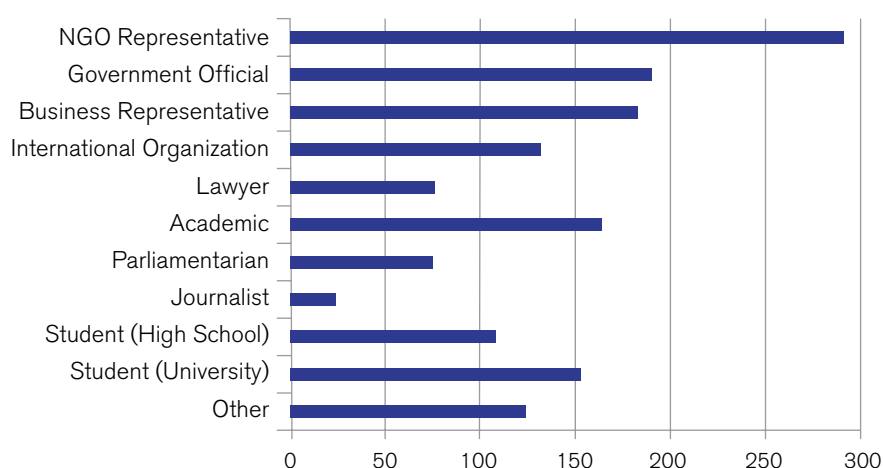
The IERD also acknowledges the cooperation of staff in the Administrative and General Services Division, the Agriculture and Commodities Division, the Development Division, the Office of the Director-General, the Economic Research and Statistics Division, the Intellectual Property Division, the Languages, Documentation and Information Management Division (LDIMD), the Legal Affairs Division, and the Trade and Environment 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.

Anthony Martin and Helen Swain of the IERD coordinated the production of the publication. Helen Swain undertook the editing. Special gratitude is due to Jeanne Lambert, Arnau Izaguerri and Melanie Wahl for their contributions in coordinating and drafting submissions for the publication, as well as to the translators in the LDIMD for their hard work.

Overview of registered participants

Category	Total
NGO Representative	291
Government Official	190
Business Representative	183
International Organization	132
Lawyer	76
Academic	164
Parliamentarian	75
Journalist	24
Student (High School)	108
Student (University)	153
Other	124
Grand Total	1,520

Public Forum 2011 Statistics of registered participants by category



On 19-21 September, the WTO hosted the 2011 Public Forum on “Seeking Answers to Global Trade Challenges” at its headquarters in Geneva. It provided an opportunity for relevant stakeholders to identify the principal challenges for the multilateral trading system and suggest solutions for the WTO to respond to our fast-changing world.

Politically, economically and socially, the world we live in today is very different to that of a decade ago. For instance, food security, trade in natural resources and its effects on the environment, and the phenomenon of international supply chains pose new global challenges. As a result, there is a widening gap between existing trade rules and the realities of the 21st century. Examining how the WTO should adapt to deal with the new challenges has become increasingly important as the organization reflects on the way forward.

This publication provides a summary of the proceedings of the different sessions held during the Forum. Each report was prepared under the full responsibility of the organizer(s) of each panel. The publication is structured around the four themes debated during this year's event: (1) Food security; (2) Trade in natural resources; (3) “Made in the world” and value-added trade; and (4) What next for the trading system?

Sessions under sub-theme 1 focused on the contribution of trade and the WTO rules-based system to achieving food security. Food price volatility, including food price hikes, generates uncertainty and entails economic costs, and poor countries are particularly affected. The issue of food security – concerning the availability of food and access to it – is one that gives rise to keen debate and needs to be addressed by policies aimed at long-lasting results.

The discussions on sub-theme 1 addressed the sensitive question of how trade openness can contribute to food security at global, regional and country levels. The role of trade in protecting food security and the impact of international, regional and domestic trade policies and regulations, or the lack thereof, on food price volatility and on the flow of agricultural and food products was examined. The outlook for global food security was discussed, as well as the key factors determining food security outcomes at the national level and services commitments in regional trade agreements, which could have potentially far-reaching impacts on food security. Another issue was how commodity, currency and financial markets could help to control speculation in the global food trade. Further sessions examined the motivations behind and impacts of agricultural export restrictions on food price volatility and access to food in low-income food importers.

Sessions under sub-theme 2 aimed to identify the gains that can be drawn from liberalizing trade in natural resources and the effects of international trade on the sustainability of natural resources. Discussion focused on access to natural resources, and how trade rules can help governments attain better environmental protection and resource management at the national level. In addition, participants examined the coherence between WTO rules and those of other international agreements in the management of trade and related areas. Sustainability within the context of the trade and climate change debate was also examined.

The importance of trade in natural resources for sustained economic development in Africa and the emerging economies was critically assessed, addressing the question of whether the current boom in trade in natural resources is sustainable and the implications for Africa and for emerging economies. Other sessions served as part of a consultative process on trade and the green economy in the lead-up to Rio 2012 in June, focusing on presenting new perspectives and exploring potential ways forward. Topics explored were the role of subsidies in greening key sectors; greening Aid for Trade; and the evolving nature of

intellectual property, technology transfer and innovation with regard to environmental technologies. Other sessions addressed challenges related to energy trade, focusing on the international regulation of energy trade by the rules of the WTO Agreements and the Energy Charter Treaty (ECT). There was discussion around the particular role of parliamentarians, who are regularly faced with the dilemma of making balanced policy choices in order to ensure sustainable development and inclusive economic growth.

Sessions under sub-theme 3 looked at how rules of origin and the calculation of trade flows could be revisited in an era of global supply chains, where goods are produced in many countries. Against this backdrop, the concept of country of origin and the calculation of trade flows may need to be reconsidered to better reflect the way global business is done today. This in turn could help policy-makers base their decisions on economically meaningful data. As a result, governments are likely to better understand that raising trade barriers hurts domestic companies dependent on the availability of competitive inputs. It could also alleviate some of the misunderstandings resulting from inflated bilateral trade imbalances based on the gross calculation of trade figures rather than on a value added basis.

Panels explored how these global supply chains challenge outmoded trading rules and exert mounting influence within the global trading system. The ways in which the trading regime faces new challenges from complex global supply chains were also considered. Specific examples were discussed, such as Mexico's "spaghetti bowl" of rules of origin and the consequences that the proliferation of regional or bilateral free trade agreements have on the private businesses that try to take advantage of trade liberalization.

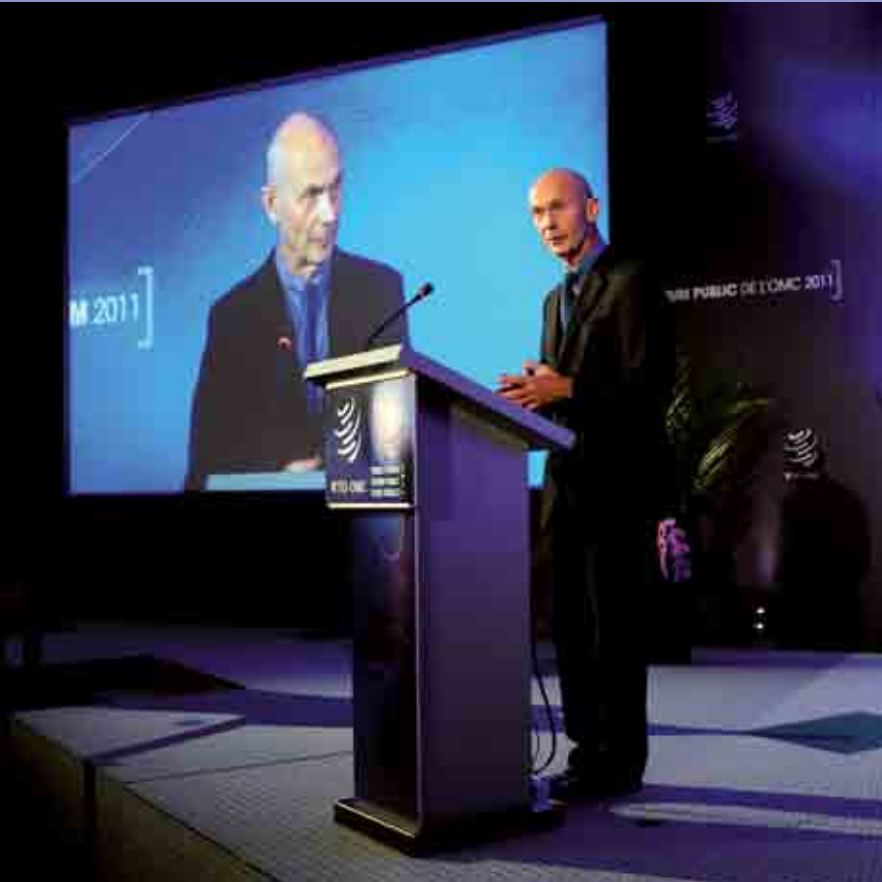
Finally, the **sessions taking place under sub-theme 4** discussed how the multilateral trading system should respond to the rapidly changing global environment and promote coherence at the international level to better address global trade challenges. Alongside developed countries, a number of fast-growing developing economies have acquired significant influence in international trade relations. In this context, examining how the WTO should adapt to effectively deal with the new realities becomes a question of paramount significance. Addressing these questions prompted participants to examine the existing rules, acknowledge loopholes and recognize that there are areas for future rule-making, while identifying the virtues of the system and the need to preserve what has already been achieved.

The proliferation of preferential trade agreements (PTAs); the shift of power in international politics, in particular with the accession of powerful new players in the global economy to the WTO (such as China and Saudi Arabia); new technological developments; the growing role of non-state actors; evolving public attitudes towards the WTO; current reflections on social and environmental considerations; and the future of both multilateral and sectoral trade negotiations, were some of the issues debated to help the WTO effectively to adapt to our fast-changing world.

Discussion in the sessions centred on whether current WTO rules are supportive of clean energy development and on the opportunities to advance key trade and environment issues in the absence of a "round" of negotiations. Other debates addressed the issue of increased intellectual property protection and asked the question of whether it was a boon or a barrier for domestic industry and for development. The challenges and opportunities for developing countries wishing to benefit from intellectual property (IP) rules in recent free trade agreements were discussed. Finally, panels focused on 21st-century regionalism and the emerging determinants of international trade policy. The 2011 Public Forum allowed participants to identify ways of moving towards a multilateral trading system that is responsive to the challenges offered by today's world.



Inaugural speech by the Director-General and Opening address by President Laura Chinchilla Miranda of Costa Rica



Inaugural speech by the Director-General

“Seeking Answers to
Global Trade Challenges”

Your Excellency, President Laura Chinchilla,

Your Excellency, President Mahamadou Issoufou,

Your Excellencies,

Ladies and gentlemen,

It is my pleasure to inaugurate the WTO Public Forum of 2011 — our annual rendez-vous with civil society and the public. This year's Forum is entitled “Seeking Answers to Global Trade Challenges”. I must express my joy at your presence at this year's Forum in such large numbers. Nearly 1500 participants have registered this year from all spectrums of society.

The vast majority of you are from non-governmental organizations (about 300 of you to be precise), from academia, and from business. But other international organizations are present too, and so are many parliamentarians, and journalists. The very rich three-day programme that we have before us, and which you yourselves have mounted in reflection of your concerns, stands as testimony to the continued relevance of the WTO to today's world. Your sessions span topics as diverse as trade and climate change, new patterns of world trade, trade and health, and regionalism. The programme reflects your sense of “ownership” (if I may say so) of the multilateral trading system, a sense which the WTO Secretariat and members will be doing everything to reinforce in the coming three days.

The world is going through a turbulent period. We are witnessing a food crisis. The economies in many parts of the world are not growing at a pace sufficient to achieve the fiscal consolidation needed after the measures taken during the financial crisis. In other parts of the world the pace of growth is raising concerns about its ecological and social sustainability. Unemployment remains far too high and its painful consequences are fuelling isolationist tendencies. We are seeing regime changes in many parts of the Arab world.

This is the background for this year's Public Forum. A world in need of a compass. A world in need of more and better global cooperation.

And the WTO is not immune to this. The multilateral trading system has gone through its most serious stress test since its creation. And it has successfully helped countries navigate during the worst of the recent economic crisis. But resisting cannot be enough. We need to build a stronger global trading system to face the challenge ahead of us. And to build it we need to have a shared sense of objectives and direction. And this is where this Public Forum has a crucial role to play.

Ladies and gentlemen, Her Excellency President Laura Chinchilla of Costa Rica will be delivering today's opening address. Representing one of the most open nations in the world, one that has successfully used trade as an engine for growth. One that has found the answer is opening to the world. And one that aims to become the world's first carbon-neutral economy, Mrs President I am certain that the audience is looking forward to your address just as much as I am. The floor is yours.



Opening address by President Laura Chinchilla Miranda of Costa Rica

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

Esteemed WTO representatives,

Ladies and gentlemen,

It is a great honour for me to be here with you at this inaugural session, which over the years has become one of the most important events on the calendar of the international community. I thank Mr Pascal Lamy, Director-General of the WTO, for kindly inviting me to open these discussions on the challenges facing international trade.

I take this honour of addressing you as a mark of recognition of Costa Rica, a country of modest size which bears faithful witness to the benefits of international trade for the development of nations, particularly when it also involves human development and democracy.

Since the creation of the WTO, our discussions have rarely been as decisive as they are today, with the world experiencing one of the most complex economic, political and social episodes of its history.

I. The international crisis and trade: free trade as a historical and moral imperative

It is precisely the nature of the times we are living through that inspires me to begin my address on a note of optimism. I see this as an obligation: because it is my responsibility to inaugurate this debate, I feel dutybound to reaffirm the particular confidence that the world should be feeling at this moment, in spite of the circumstances.

Let us not forget that at other times in the history of our world, international trade was one of the first victims of financial problems. The crisis of 1929 spelled the end of an ambitious global market-opening scheme: countries turned inward, and the resulting decline in trade fuelled nationalist and authoritarian movements that humanity paid for with devastation and suffering.

This time, the economic crisis has not led to any massive resurgence of protectionist policies or barriers to trade; in fact, there is every indication that we are moving towards a strengthening of international institutional frameworks. The difference between the attitudes of yesterday and those of today can be attributed to the lessons learnt at such cost from that traumatic past, reinforced by the existence of this great Organization, the WTO.

In the midst of this crisis of confidence that has afflicted the financial institutions, the WTO stands out as a pillar of international legal security, a legitimate multilateral decisionmaking framework which contributes to an international governance founded on the premise that trade is essential to global prosperity.

Trade continues to be the engine of world economic growth, and as long as we are clear on that point, we have reason to hope. Nowadays, we share the benefits and the challenges: national problems take on an international dimension and regional crises are globally linked. Indeed, the global nature of the crisis we are experiencing reminds us that

the days of isolated unilateral decisions are over, because the welfare of each one of us concerns us all, and we are all responsible.

We are living under the sign of world trade, which has become an essential development tool. You know better than anyone how much the world has changed over the past few decades under the driving force of trade. Trade has fed on rapid technological and scientific progress, and has become, in turn, the driving force behind that progress. Information and communication technologies have helped to revitalize trade by reducing the distances separating us, both physical and cultural.

Whether we like it or not, we are living in a technology-based and trade-driven world. Technology has radically changed the way in which we produce goods and services. The expansion of global value chains reflects the new dynamism of the world economy. In today's world, a considerable share of production is organized into value chains, substantially altering the geopolitics of trade in the knowledge society. This phenomenon is becoming a powerful development tool for countries, opening up new opportunities to share the benefits of international trade.

However, we must not allow our relative optimism to obscure the dangers threatening free trade. The kind of circumstances we find ourselves in today are once again testing our positive assessment of international trade. We are living through a protracted period of trouble and uncertainty. In some cases, our development index was just reaching its peak when we were surprised by the worst financial crisis in generations — and when we were just beginning to breathe again, we were rudely awakened by the high level of indebtedness of the developed countries and the inevitable return of generalized volatility on the financial markets.

Financial insecurity slows growth, leading to a decline in exports, a fall in the demand for raw materials, a growth in unemployment and increased poverty and hunger in the world.

We must remember that any economic crisis will almost immediately be followed by a social crisis, and that means political conflicts that often undermine the very principles of civilized cohabitation. As crises develop, the illusion of populist nationalism begins to cloud the vision of certain people, and the well-established vocation of free trade as a powerful tool for economic growth can easily be forgotten. In the resulting confusion, our leaders and their countries might give into the temptation of focusing entirely on obtaining benefits and preferences at all costs. This is contrary to the very essence of the multilateral trading system, which is based on a more comprehensive, more global, more systemic, and longer-term approach to the collective task of development. Today's recipe consists of more opening up, less protectionism, fewer subsidies and fewer barriers.

We need to reinforce the role of trade policy in the international economic recovery. This Organization really comes into its own when dark clouds are gathering on the horizon. It is then that its voice emerges as a beacon, calling people to their senses. Its very existence upholds legal security in the midst of financial uncertainty, because its history is one of cautious but firm steps forward. There are no quick fixes for the world economy. The answers we are seeking lie in decisions that lead to more trade in goods and services, more trade facilitation, more investment, more legal security and more innovation.

The eve of the Uruguay Round was full of great promises: production would surge, employment would grow and poverty would diminish. In the 25 years that followed, these promises of 1986 were fulfilled. Never has the world economy grown so much as during



those years. Never have so many people crossed the poverty threshold and so many countries embarked on the path to development. We were transformed by the engine of world trade, and to switch that engine off would be to end any hope of economic recovery. What we need to do, then, is to see what further steps are needed to spread the benefits of free trade, and then find the necessary will to implement them.

II. Costa Rica and free trade: A success story

But it is not only at the global level that we can see the importance of international trade: we also have the examples of countries that resolutely decided to embrace trade and are now benefiting from that decision. My country, Costa Rica, is a case in point.

Costa Rica is an example of successful integration into the world economy that resulted in unprecedented economic growth, development of production and improvement in the welfare of its citizens. Trade paved the way for our successful integration in the world, thanks to a number of correct decisions on various aspects of our development. As a result, Costa Rica is now a bastion of human development, democracy and environmental sustainability.

As befits a small republic founded 190 years ago by teachers, education became our main tool for generating wealth and social mobility. In 1869, earlier than many other countries, we declared education to be a universal right, financed by the state. Today, we devote 7 per cent of GDP to public education. Eighty per cent of our schools have IT laboratories, and by 2017 we aim to provide English as a second language to 100 per cent of our secondary school students. We are currently promoting technical education, so that we expect to double the number of technical graduates over a period of four years. We have matched these high standards of human development with the establishment of strong democratic institutions and the strengthening of the rule of law. By abolishing the army as a permanent institution in 1948, we guaranteed a lasting climate of peace and stability, and transformed the country into a solid and stable Latin American democracy.

Thus, our investment in human development and political and social stability became the pillars of our development, which we were able to stimulate by embracing the free trade option with similar enthusiasm. We believe in trade with clear and transparent rules, with a level playing field on which all nations can compete in the great global market. We would not have been able to achieve our current level of development if we had not steadily and decisively opened up our economy over the last 30 years. We opened it unilaterally when our economic agenda did not coincide with that of the multilateral trading system. We opened it up bilaterally or regionally when our agenda coincided with that of our friends. And in any case, we opened it up multilaterally with the entire membership of the WTO.

The history of Costa Rica is split into two phases: before and after the opening up of its economy and trade. Until almost three decades ago, our economy was essentially based on the exportation of coffee and bananas. At the end of the 1980s, the Latin American external debt crisis came as a rude awakening. Like today's crisis, it was essentially a financial crisis, but our dependence on two agricultural products made us particularly vulnerable. This was our opportunity to open up to the world. Our recovery depended on increased investment to diversify our production. We began by unilaterally reducing our tariffs, and we joined the Uruguay Round as an observer. Then, in 1990, we became the 100th GATT contracting party.

Today, although with a mere 4.5 million inhabitants we are a small country, we have been able, thanks to the trade agreements concluded thus far — including with the United States, Europe and China — to guarantee preferential access to markets soon totalling more than two billion consumers and representing approximately 70 per cent of the gross world product.

Our export supply is now highly diversified, with more than 4,000 products. We are present on world markets, not only with tropical fruit and exotic flowers, but also with computer chips and heart valves. If we exclude minerals and fuels, since Costa Rica has moved away from the highly polluting extractive industries, we are now Latin America's leading exporter of goods in per capita terms, and the leading exporter of hightechnology products.

We have also learned to place our products on more demanding and advanced markets and to be part of international production chains. In 2009, more than 40 per cent of Costa Rica's exports were already associated with global value chains, in particular medical devices and electronic, automotive and aeronautical products. Some 40 per cent of the value of these end products is added by Costa Rican production. I can say with a certain amount of satisfaction that Costa Rica is moving from "made in Costa Rica" to "created in Costa Rica".

In spite of the economic climate, in 2011 Costa Rica attracted the equivalent of about 4 per cent of its GDP in foreign direct investment, an amount exceeding total investment in the country during the first half of the 1990s. New investments supplemented the already established ones, like HewlettPackard, Intel and Procter & Gamble, which paved the way for the development of a large hightechnology cluster that is attracting giants like IBM.

The free trade that Costa Rica is promoting would not have been possible without the WTO. This Organization provides the legal and institutional framework that enables us to meet our aims. At the WTO, my country found itself shoulder to shoulder with the richest countries — sometimes in disputes that led to the restoration of our rights, and sometimes in negotiations involving interests that were difficult to reconcile. However, more often than not we were participating in alliances that sought to obtain common benefits in a context of greater liberalization.

Thanks to the WTO, a small country like ours is also able to speak on an equal footing with the larger countries, and we have not hesitated to do so. Pursuing our vocation and acting in accordance with the law, we found a place where we could defend ourselves, where we could use our comparative advantages and where we could claim our rights under the WTO Agreements. Because this is a legal environment that reaffirms the confidence of peoples in public international law, we must not waiver in the face of the tasks that await us as we seek to further strengthen multilateral trade and investment institutions.

III. Ensuring the sustainability of the multilateral trading system: Building a new basis for confidence and progress

In times of uncertainty like the present, we look for solutions to the issues currently facing us. At the same time, however, we must take careful stock of what has been achieved so far. The WTO has an enormous amount of work left to do, and meeting this challenge is one of the main topics of current international debate.



There has never been a more pressing need to restore confidence and to reach an agreement that will break the deadlock which is trying the patience of many of the world's nations. The slowness characterizing the close of the Doha Round is weakening confidence in the system and accentuates the centrifugal tendencies of regionalism. States, businessmen and citizens the world over are longing for the increased security and confidence that the WTO can only provide by overcoming its remaining stumbling blocks.

During the ten years in which we have been bogged down negotiating the Doha Round, the world has continued its course and changed our agenda. The least we can provide, after a decade of talks, is sense and flexibility. Holding pointless discussions on extreme positions is of no help at all. We can no longer limit ourselves to discussion of the original issues, since the world is no longer the same. Our needs have changed and we cannot ignore new trade-related aspects such as climate change, global value chains, currency exchange rates and new investment conditions.

Despite all the difficulties involved, the Doha Round is a task that remains pending and one that we cannot avoid. And here lies the greatest obstacle on our agenda. The Doha Round should not be viewed as a unilateral concession by the developed countries to the developing countries. On the contrary, the opportunity that it presents must be extended to each and every nation, so as to promote greater mutual benefit. So far, we have all benefited from the established rules, but we must acknowledge that some have benefited more than others. For the multilateral trading system to be sustainable, all the nations represented here must have not only a seat, but the same opportunities.

The world would undoubtedly survive without a successful conclusion to the Doha Round, and yet our aim should not be simply to survive, but to move forward and progress. We must build a new basis for confidence, which is in very short supply in today's world. Failing to reach an agreement would have many practical implications, and yet the worst of these would be that we would be giving the world the message that our leaders were refusing to move forward and make changes and that they had not been able to find reliable solutions to the problems we currently share.

We cannot remain as we are. Times of crisis provide an opportunity to build consensus. I am sure that the differences separating us will one day be overcome by what we have in common. The question is when, because time is short.

No one is exempt from responsibility; we are all responsible for finding answers that will dispel the storm clouds. I am confident that many of these answers will stem from this forum on the basis of the exceptional framework provided by the WTO and international trade. History must go on; we have a right to hope.

Thank you very much.

Plenary Opening



Plenary Opening

Seeking answers to global trade challenges

Moderator

Mr Daniel Franklin, Executive Director,
The Economist

Speakers

H.E. Mr Mahamadou Issoufou, President
of Niger

Mr James Leape, Director-General, WWF
International

Dr Maximo Torero, Director, Markets, Trade
and Institutions Division, International
Food Policy Research Institute (IFPRI)

Mr Pascal Lamy, Director-General, WTO

Organized by

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Report written by

Information and External Relations
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Abstract

The four panellists of the inaugural session provided points of view on the four sub-themes of the Public Forum and detailed some of the questions to be addressed in the sessions of this year's event. In the context of food security, the discussion dealt with how derivative speculation and subsidies for biofuels impact on grain prices. The issue of sustainability and how trade can contribute was at the heart of the debate on trade in natural resources. Regarding the "Made in the World" initiative, the prevalence of intermediary goods in current trade flows was noted, as well as the necessity to adjust trade accounting practices to this new reality. Finally, discussions on the way ahead for the multilateral trading system highlighted some of the challenges faced by the Doha Round negotiations, including the possibility to shift to sectorial or plurilateral agreements on some of the topics and so unblock the negotiations.



1. Presentations by the panellists

Mr Franklin opened the floor for brief comments from each of the panellists to be followed by a discussion.

(a) *H.E. Mr Mahamadou Issoufou, President of Niger*

Mr Issoufou recalled that the Doha Development Agenda has been aiming to address dysfunctions in the world economy and trade since 2001. In the case of Niger, the key challenge is to aid the poor — most of them women — in gaining access to industrialized markets that currently limit the trading possibilities of the global South. According to Mr Issoufou, although liberalization is often spoken of, it is only pursued in areas where developed countries have comparative advantages, and this is at the heart of the problems faced by the Doha Round.

Mr Issoufou blamed derivative contracts and exchange rate volatility for fluctuations of grain prices, rather than an imbalance of offer and demand, and suggested that this was an issue to be discussed at the WTO. Regarding the trade of natural resources, he discussed how revenue from the exploitation of Niger's resources, such as uranium, coal and oil, could be optimized to better serve its people. He identified unequal exchanges as a difficulty that should also be addressed at the WTO. Loans for production are becoming more expensive, while the decrease in commodities prices has resulted in a wealth transfer from the global South to the global North. He encouraged the WTO to support the development of infrastructure through the Aid for Trade programme, saying that it is crucial to cultivating trade and improving the competitiveness of regional economies. In the case of Niger, he signalled that the two handicapping factors in this context were energy and transportation.

Answering a question on the short-run impact of the events in Libya and in the Arab world on Niger, he noted that they related first to security, due to the increased trafficking of weapons in the country. They also had an economic impact, as exchanges between Niger and Libya and projects financed by Libya, such as investments in telecommunication and roads, had been arrested. Socially, this affects about 210,000 migrants from Niger, who have had to return and thus have ceased the economic transfers they used to make to Niger. Initial responses have focused on security with the aim of preventing the development of terrorism in the region, but in the long run they will have to address economic and social development as well. According to Mr Issoufou, poverty offers the conditions from which terrorism develops. As to the trade opportunities that can stem from these events, he noted that trade and foreign direct investment can flourish when countries are stable, with strong, durable democratic institutions.

(b) *Mr James Leape, Director-General, WWF International*

Mr Leape discussed the sustainability challenge and what it means for the global trade regime. He noted that there is enormous pressure on the earth's resources, which is escalating as population and consumption per capita grows. According to him, the world will have to produce as much food in the next 40 years as it has produced in the last 8,000 years. He affirmed that sustainability is not a special interest to be addressed in the trade regime, but is a central theme, since there will be no shared prosperous economy if we do not find a way to render trade ecologically sustainable. The trade regime could be a powerful engine to eliminate barriers to sustainability, bringing markets to a more sustainable use of resources, e.g. by disciplining subsidies. Commenting on how to avoid

protectionism disguised as environmental rules, he affirmed that vigilance is needed to spot protectionism in favour of the interests of the North at the expense of the South and that the WTO would need to navigate through this challenge.

(c) Dr Maximo Torero, Director, Markets, Trade and Institutions Division, International Food Policy Research Institute (IFPRI)

Dr Torero commented on the role trade can play to lessen the dangers of food inflation and security. He noted that food supply will have to increase dramatically to cope with demand in the next decades, not only at the local but also at the global level. Since the production of grain is highly concentrated, spikes in prices can occur due either to restrictions from suppliers or to governmental policies, such as those that aim at diverting crops to the production of biofuels. Financial markets linked to the future food commodities market increase the pressure on prices. In this context, trade plays a crucial role in finding ways to improve market access and satisfying these new demands, reducing long-term imbalances. This also implies supporting developing countries and investing in their infrastructure in order to improve inter-regional movement.

Dr Torero considered it to be necessary to adopt an operational definition of when a country has a food emergency, with a time frame for the resolution of problems. He also pointed to the need to reduce production losses in post-harvest periods, which can reach 20-25 per cent in developing countries and BRICS (i.e. Brazil, Russia, India, China and South Africa). On speculation and food prices, Dr Torero said that some level of speculation is good, since it provides liquidity to the markets. "Excessive speculation", however, can be dangerous, since it can exacerbate volatility, with consequences for the poor. Defining what constitutes "excessive", however, is complicated.

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

Finally, Mr Lamy discussed the four themes for this year's Forum, which were selected as a result of the sessions proposed by other organizations, and mentioned their long-term importance. On the first theme, food security, he affirmed that trade must be activated as a transmission belt between offer and demand. He said that ending the impasse in the Doha Round negotiations would enable the WTO to tackle other challenges, and would also answer expectations by developing countries that the multilateral trading system can respond to their hopes for an end to subsidy-driven unfair competition for their agricultural products.

Regarding trade in natural resources, the second sub-theme of the Forum, Mr Lamy noted that concerns of sustainability are increasingly present in the WTO, as the case law of panels and the Appellate Body shows. The availability of raw materials, which will undergo increasing pressure as a result of rapid development in emerging countries, will bring medium-term concerns, which the members of the WTO will have to deal with.

On the third sub-theme, Mr Lamy noted that the "Made in the World" initiative represented a shift of perspective towards current trade. Given that most added value does not necessarily come from the last stage of assembly, he suggested that the way trade is accounted for, as well as origin labelling, should be updated so as to reflect this reality.

As to the last sub-theme, on the challenges ahead for the multilateral trading system, Mr Lamy commented on the progress of the Doha round. Of the 20 topics in the negotiation basket, some are more advanced than others; if just one stalls, all are blocked. A further problem lies with the GATT system of reciprocal concessions, which originated



at a time when a different geo-political reality prevailed, in which the rich were powerful and the powerful rich, but this is not the case anymore. On the prospects for a little Doha, he admitted that some members have asked whether a sectorial or plurilateral approach should not be adopted on some issues, delivering results on more urgent matters for developing countries. He said that the Ministerial Conference in December 2011 should provide some direction on what to do over the next two years.

2. Questions and comments by the audience

A rich debate ensued, covering the spectrum of issues raised by panellists. On the volatility of grain prices, Mr Leape stressed that subsidy-driven conversion of corn to ethanol distorts the market and should be abandoned. The focus on future biofuels should be on technologies that require liquid fuel only, while the rest move to electricity produced by other means (e.g. wind or solar power), reducing pressure on biofuel as part of the solution.

In response to questions about trade and exchange rate fluctuations, both Mr Issoufou and Director-General Lamy remarked that the issue was simpler under the pre-1970s international regime of fixed exchange rates, under which a bridge existed between the GATT and International Monetary Fund (IMF) regimes, (GATT Article XV). Mr Lamy stressed that the WTO was not the forum for addressing exchange rate levels; the IMF and the Financial Stability Forum exist for that. Nevertheless, he observed that discussing the trade implications of exchange rate movements is no longer a taboo at the WTO — in fact, a WTO Working Group on Trade, Debt and Finance has started to discuss the issue.

Asked whether the institutional design of the WTO, with its consensus focus and veto for every member, was to blame for the Doha impasse, Mr Lamy noted that the source of the disagreement was an old-fashioned difference between two groups of countries about how much to open their markets. He said that consensus would remain a core principle of the WTO, not least because finding an alternative would be harder than Doha. On the other hand, procedural issues, such as whether to retain the single undertaking or to authorize plurilateral agreements, could be revisited by consensus.

High-level sessions



One-on-one interview with Pascal Lamy

Abstract

In a one-to-one interview, Ms Zeinab Badawi asked Director-General Pascal Lamy a number of pertinent questions, including the current state of the Doha Development Round and the key obstacles to its conclusion, the financial crisis and protectionism, trade and growth, and the issue of free trade.

Moderator

Ms Zeinab Badawi, Presenter
of *World News Today*, BBC

Speaker

Mr Pascal Lamy, Director-General, WTO

Organized by

Information and External Relations
Division, WTO

Report written by

Information and External Relations
Division, WTO



1. Interview

Ms Badawi opened by asking Mr Lamy whether the Doha Round is “dead and the corpse is twitching” after ten years of negotiations without a definitive agreement. Mr Lamy suggested that the metaphor of a living organism was misleading, as negotiations do not die; in the worst case, they are not concluded. Members are realizing that this deadlock is not without costs, and the upcoming Ministerial Conference offers an opportunity for progress.

In 2008, agricultural tariffs were the main obstacle to the conclusion of the Doha Round; now it is industrial tariffs. Mr Lamy suggested that, in the future, regulatory discrepancies are likely to be the main source of trade conflicts.

Asked whether the WTO needs an institutional reform, Mr Lamy argued that it is not institutions, but national vested interests, that are acting as impediments in the conclusion of the Doha Round. However, there might be some room for procedural improvements. Some argue that the single-undertaking principle of “nothing is approved until everything is” has resulted in the current deadlock. Mr Lamy recalled that members mandated the single-undertaking principle, which provides clear benefits for ratification purposes because it is easier for municipal parliaments to ratify a single treaty rather than a collection of smaller ones. However, he also referred to paragraph 47 of the Doha Declaration, which offers flexibility on this principle if there is an “early harvest”. Other paths such as waivers or bilateral agreements can also smooth negotiations. This is for members to decide upon.

Ms Badawi asked whether it is possible to find a level playing field for both developed and developing countries. Mr Lamy dwelt on the category of developing countries, saying that he does not believe that this label is useful anymore. Ten years ago, developing countries were a homogenous group. Nowadays, emerging economies (Argentina, Brazil, China, India, Indonesia, Mexico and South Africa, among others) are clearly not in the same position as least-developed countries. He suggested that, while we are still far away from an ideal playing field, we are much closer to it than we were 15 years ago. The WTO's mission is to ensure surveillance, monitoring and transparency in this forum where each trade issue is identified, discussed and decided upon.

When developed countries ask for reciprocity vis-à-vis emerging countries, a balance must be struck. The United States, for instance, sees equal competitors for its companies in emerging markets, and demands reciprocity in certain industrial sectors. Emerging markets counter that, given the fact that they are still relatively poor, and are home to hundreds of millions of poor people, reciprocity is inappropriate. On the other hand, wages and productivity might level the competitive position of countries.

Nevertheless, Mr Lamy acknowledged that “the protectionist temptation” is likely to remain strong as long as unemployment is high by historical standards, although trade protectionism does not protect jobs. As the jobs created in the new economy are re-exportation-oriented, protectionism goes against job creation. Some countries do need protectionism for their agriculture, but it is not possible to argue for industrial protectionism, due to the current state of the world economy and its economies of scale.

On the issue of the increase of regional and bilateral trade agreements, Mr Lamy noted that the proliferation of tariff preferences ultimately defeats its purpose and can actually become a levelling factor. If one generally imposes low tariffs, the unevenness

of preferences is eroded. A more serious problem arises when preferential trade agreements establish different regulatory measures. In that case, the issue becomes more complicated.

Another subject of discussion was the impact of exchange rates on trade. Acknowledging the lively academic debate on this issue, Mr Lamy argued that currency developments are not generated by trade but rather by macroeconomic conditions and, while exchange rates do have an impact on a country's relative position, their fluctuations cancel each other out in the long run. For the last 15 years, few countries have departed from stability. There is no real need for exchange rates to be taken into consideration in trade negotiations. For example, the US trade deficit with Asia has been a constant 2-3 per cent of GDP, despite the ups and downs of Asian exchange rates in the last few years. One issue on which members may wish to reflect is how the IMF should relate to the WTO and vice versa.

In December, some members may want to discuss the possibility of export restrictions relating to food security. In this respect, Mr Lamy pointed out that food prices are on the rise due to a long-term imbalance between supply and demand. Historically, the WTO has been more focused on import restrictions than on export ones.

2. Questions and comments by the audience

Would the lack of a new treaty entail a surge in case filing before the Dispute Settlement Mechanisms?

Mr Lamy agreed that there is a risk, if the WTO's rule-making function continues to falter, that the dispute settlement purpose of the WTO could become overloaded, as if a country's judges were forced to settle all the issues that its parliament could not. In Mr Lamy's words, the government of judges should not substitute legislatures, and the same reasoning is applicable at the international level.

Would harder WTO sanctions be beneficial?

Mr Lamy disagreed with this proposal since he believes the current system works efficiently. Although some improvements of the dispute settlement mechanisms are being proposed, the current enforcement system is so effective that the rate of compliance with WTO rulings is in many cases higher than at the municipal level.

The EU is starting bilateral agreements. How does this affect the Doha discussions?

Mr Lamy refused to judge bilateral or multilateral EU policies. However, he believes that there is no clear manifestation that they would do less multilaterally and more bilaterally at this stage. So long as these bilateral agreements are on tariffs, there is no threat to trade. On the other hand, if those agreements deal with regulatory measures, trade could be affected. Those concluding bilateral agreements need to believe that these agreements should be multilateralized in the near future. The current mandate will not be altered, and all 20 of the Doha topics are fully relevant.



On the issue of trade in natural resources and energy, the WTO is ill-conceived for their specificities, to the extent that neither Algeria, Iran, Libya nor the Russian Federation needs to be a member of the WTO in order to export energy resources. Does OPEC represent a failure for the WTO?

Mr Lamy recognized that the principles of trade have not been applicable to energy in the same way they have been applicable to agriculture, industrial products or intellectual property. He labelled energy as a "fatal" market, since importing and exporting countries need to trade in order to survive. OPEC is not opposed to international law, as there is no international anti-trust law. Besides, no member of the WTO has proposed a collective mandate to negotiate this issue.

How does Mr Lamy assess the Russian Federation's accession to the WTO?

Mr Lamy believes the process of accession to be a negotiation in itself: it is about adapting the Russian Federation's trade regime to WTO requirements. This part is already completed. There is also the question of negotiating concessions, which currently deal with the Russian Federation's obligation to open its market to other members' automotive industries. This year the Russian Federation may join the WTO, but the process has not yet been finalized.

How is it that small countries do not have the power to retaliate against big countries, even if they are entitled to by the Dispute Settlement Body?

Mr Lamy stressed that experience has showed that this does work. When the EU lost a case against Peru, the EU complied not because of the prospect of retaliation, but because its systemic interest is based on WTO compliance. Cross-retaliation is a solid deterrent from potentially rebellious members, as it proved for Antigua and Barbuda against the US.

In today's world, should we incorporate an "obligation to share" basic raw materials?

Mr Lamy recalled that this issue was addressed in the 2010 *WTO World Trade Report*. He believes WTO rules interpretation should recognize the sovereign right to exploit natural resources, but not in a way that gives a competitive advantage to national producers. Since there is a pending dispute, no more can be said on the issue.

What is the WTO's take on the financial crisis?

Mr Lamy stressed that it was inadequacy in the regulation of financial sectors, not the openness of financial services trade, that was at the root of the recent global financial crisis. The WTO simply stipulates that, once countries decide to open up their financial services sectors, they cannot use regulations to discriminate against foreign companies; however, this does not prevent them from implementing stronger regulations. Mr Lamy expressed the view that greater financial sector openness would require greater global regulation, and the Financial Stability Forum exists to do this.

3. Conclusions

Mr Lamy believes that the global economic crisis proved the importance and relevance of the WTO. The notion of an international system strong enough to prevent protectionism was demonstrated to be the WTO's strength.

On the issue of whether trade opening only benefits relatively richer people in countries such as China and India, Mr Lamy stressed that the WTO is "in the business of growing the [economic] pie". How it is shared is a matter for sovereign domestic politics. Pressed on whether he believes in "free trade", Mr Lamy said that he believes in "more open trade". He said he does not object to the WTO's addressing 21st-century challenges, but that first we must address the 19th-century issues that are still on the table for the Doha Round.



Abstract

The panellists discussed the Arab Spring and addressed issues such as the current concerns of Arab people and their craving for rapid change. Most panellists expressed the belief that democratic stability and rule-of-law reinforcement are crucial to secure foreign investment. One issue that arose was that of the further integration of Arab countries into the global economy. Despite their narrow patterns of trade, transitional governments have expressed interest in joining the WTO and diversifying their economies from natural resources. The rate of intra-regional trade in the Middle East and North Africa is one of the lowest in the world, so there is much potential for growth. Other issues raised during the debate included the Saudi role in the current situation, the role of regional organizations and of the international community, the question of investment in the region, and what is likely to happen in the aftermath of the Arab Spring.

Arab Spring – implications for trade and competitiveness of the Arab world

Moderator

Ms Zeinab Badawi, Presenter
of *World News Today*, BBC

Speakers

Mr Abdel Bari Atwan, Editor,
Al-Quds al-Arabi

Mr Naguib Sawiris, former Chairman and
CEO, Orascom Telecom

Mr Taleb D. Rifai, Secretary-General,
World Tourism Organization

Ms Nahida Nakad, Director of the Arabic
Language Channel, France 24

Mr Pascal Lamy, Director-General, WTO

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Division, WTO

1. Presentations by the panellists

(a) *Ms Zeinab Badawi, Presenter of World News Today, BBC*

Ms Badawi opened the session by underlining its focus on the economic and trade dimensions of what is happening in the Arab countries. She dwelled on such issues as whether the Arab Spring will give way to a summer or go straight into a cold winter; whether investors will take the same wait-and-see approach that tourists seem to be taking; and whether opening trade to Arab revolutionary countries would bring the same meagre results as opening trade to African countries brought ten years ago.

(b) *Mr Abdel Bari Atwan, Editor, Al-Quds al-Arabi*

Mr Atwan thinks that a new Middle East is emerging and that, beyond economic hardship, the Arab Spring is an issue of dignity and respect for Arab populations. He questioned the role of the media in post-revolution countries, pointing out that tourists are easily alarmed by unprofessional reporting or by certain talk shows. He regretted that this will probably leave the region in a worse economic situation than before the Arab Spring. He doubted that wealthier Arab countries would help, saying these countries are too worried about domestic revolutions to give money to Egypt and Tunisia (although they are willing to help fellow monarchies like Jordan and Morocco). In addition, they are already busy buying US bonds. On the other hand, Western countries need to be wary of portraying the image that they only intervene in oil-rich countries such as Iraq or Libya, while standing back from others, such as the Syrian Arab Republic.

(c) *Mr Naguib Sawiris, former Chairman and CEO, Orascom Telecom*

Mr Sawiris, who has founded a new political party, the Free Egyptians Party, said that the former dictators inhibit the creation of liberal, secular political formations, and then warn opponents that the status quo is the only way to keep Islamic fundamentalists out. He had similar worries about the post-revolution situation. He believes that rich Arab countries, such as the Kingdom of Saudi Arabia or the State of Kuwait, are reluctant to play a role in funding economic transition elsewhere in the region because those countries are worried that their governments might be toppled. He said that the secular, liberal forces in Egypt are six-month-old babies facing an 80-year-old, organized, extremist party.

Mr Sawiris said that investors are even more likely than tourists to be scared off by political uncertainty. Total foreign direct investment in Egypt this year has been "zero", he said. Investors are waiting to see the restoration of law and order, general public safety and policy certainty. Arab people want to see rapid change and do not want to have to wait for years, but weak transitional governments are in a difficult position to adopt economy-boosting policies.

Mr Sawiris sounded a more sombre note about the likely outcomes of the Arab revolutions, noting that a wide swathe of society participated in Iran's 1979 revolution, but that, ultimately, it was the Islamists that took over the government. Liberals have been less organized in countries like Egypt, and risk losing their freedom as a result.



(d) Mr Taleb Rifai, Secretary-General, World Tourism Organization

Mr. Rifai said he would not ask impatient youth to be more patient, but he expressed confidence that, in due course, the revolutions would bear economic fruit, although it would be naive to expect too much in the immediate short term. For him, money is not the issue; the challenge is to produce the right government. He said regional integration is a real issue, and he noted that many of the autocrats in the region prefer to engage in trade relations with Europe or Japan rather than with each other. Regarding tourism, however, people still travel within the region. He also indicated that trickling-down of wealth is unlikely to happen unless governments are transparent and accountable, highlighting the importance of rule-of-law enhancing policies.

(e) Ms Nahida Nakad, Director of the Arabic Language Channel, France 24

Ms Nakad echoed Mr Atwan's comments about Arab peoples' dignity. She noted that the Algerian government had in effect bought social peace by providing people with more money. However, people now feel that something different is starting, she said, and are rejecting the old suggestion that revolutions happen everywhere but in the Arab world. She said that, although they are nervous, Arab people are not as impatient as some other panellists claim, as they realize that changes will take time. Exposure to international media is building awareness of how monumental the task ahead is. She agreed with most of the other panellists' comments, except for the role of media in the low turnout of tourists to the region, and she called for international aid to help build institutions in post-revolution Arab countries.

(f) Mr Pascal Lamy, Director-General, WTO

Mr Lamy concentrated most of his remarks on the lack of regional integration in the Arab region compared to all other regions of the world. He noted that a little more than half of the countries in the Arab world are members of the WTO, with accession talks currently taking place for a number of countries, such as Algeria, Iraq, the Lebanese Republic, Sudan, Yemen and most recently the Syrian Arab Republic.

Mr Lamy believes the reason for such low membership in the WTO is that oil accounts for three-quarters of the region's exports, and many have not yet diversified economically. However, accession would certainly be good for Arab countries and for the WTO.

Mr Lamy highlighted some of the necessary steps to rebuild the post-revolution countries. He expressed the opinion that the Arab Spring would ultimately result in more trade openness and integration, both regionally and internationally, as the Arab region is possibly the world's least integrated region for trade in goods, being even less open than Africa. Referring to North African countries he noted that they suffer from a "colonial" trade pattern and are heavily reliant on European markets, whereas increased regional trade and economic links would make the region more resilient. He said that most of the affected countries were emerging countries, with wealth and education levels considerably higher than in African countries ten years ago.

A re-shuffling of social and economical factors will be necessary for the region to trade more, since it will require greater specialization. Morocco and Tunisia are already achieving significant economic diversification, both in light manufactures, like textiles, services, health and air transport. Mr Lamy noted that the formerly autocratic regimes engaged in trade for rent-seeking processes, and added that the benefits from the fairly solid

rates of economic growth had failed to trickle down. Structural change is needed. Unlike other parts of the world, money to fund a Marshall Plan for the region is not an issue, as Arab institutions such as the Arab Monetary Fund or the Gulf Cooperation Council are financially solid.

2. Questions and comments by the audience

- Did the surge in food prices spark the revolutions?
- Will there be a possibility of a waiver on tariffs for Arab countries' exports?
- Do small and medium-sized enterprises (SMEs) have a role in the Arab revolution? How can they get access to credit, to EU markets and to contacts?
- Is the Arab Spring good for the world?

3. Conclusions

Mr Rifai said that history suggests that convergence in terms of rule-of-law and the political system is necessary for regional integration to work. A healthy, transparent, democratic Arab region is good news for the world, he stressed. Regardless of how these revolutions end, they have established that the "barrier of fear has been broken". Ms Nakad called for aid to help build institutions in countries immersed in transition. Mr Rifai stressed that a democratic Arab world is in the long-term interest of the international community, since they should want to deal with healthy partners. Mr Sawiris stressed that revolutions are only good news as long as they are not hijacked by extremists, at which point they become bad news. Mr Lamy said that serious reflection is necessary about what the international community can do to support the transitions, particularly given that the countries in question have not yet chosen clear policy paths. He expressed the view that the revolutions are going in the right direction, though he agreed that much remains yet to be determined.



Abstract

The central theme for this session was the challenges businesses identify for the multilateral trading system. Issues which arose were the changing nature of global production structures, the impact of technological evolution on IT and manufacturing, and food security. Internet-related issues and trade were identified as a domain in which global trade rules have to evolve, given that the internet is increasingly contributing to economic growth. It was noted that businesses may begin to see the WTO as irrelevant if it does not keep up with real issues such as globalization and the internet, and that this would undermine the effectiveness of the monitoring and dispute settlement functions of the organization. Therefore, the WTO should find ways to work more effectively with business, while remaining wary of being caught up in special interests.

Business leadership on trade in the 21st century

Moderator

Mr Alejandro Jara, Deputy Director-General, WTO

Speakers

Mr Juan Rada, Senior Vice President,
Oracle Corporation

Mr Emmanuel Faber, Chief Operating
Officer, Danone

Mr William Echikson, Head of Free
Expression Policy and Public Relations,
EMEA, Google

Mr Stephen Pattison, Director and CEO,
International Chamber of Commerce,
United Kingdom

Mr Wayne Paterson, Head of Emerging
Markets and GBU CardioMetabolic Care
and General Medicine, Merck Serono

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Division, WTO

1. Presentations by the panellists

The session opened with a brief video clip on how the WTO helps business, offering stability and predictability through its rules, supporting the opening of markets, and providing information and a forum for negotiation and monitoring. Executives interviewed in the clip explained how the WTO had helped their business and explained the issues they thought the WTO should address in the future.

(a) Mr Alejandro Jara, Deputy Director-General, WTO

In Mr Jara's introduction, he gave an overview of the areas where input from businesses could be needed. The first area he mentioned was global trade rules. The political, economic, and social aspects of the world we live in today are very different from those that existed when the ground rules were crafted over 60 years ago. In addition, new rules have been developed in areas which were, up to now, outside of the purview of the multilateral trading system. He asked the panellists to help in identifying the areas that might require changes and encouraged them to talk about how the WTO could address the widening gap between existing trade rules and the realities of the 21st century, identifying areas that need improvement and the scope for rule-making in the future.

The second theme he identified was the connection between trade and jobs. There is strong evidence to suggest that trade boosts economic growth, and that economic growth means more jobs. It is true that some jobs are lost even when trade is expanding. However, the picture is not the same all over the world, partly because some countries have more effective adjustment policies. He asked for the speakers' experience in this area and their take on how this issue is evolving.

He also suggested that panellists comment on the changing nature of global production structures. A significant change in the current international trade landscape is the spread of globally-integrated production chains as firms locate various stages of the production process in the most cost-efficient markets. This suggests that the "Made in a particular country" label on the back of a product should really read: "Made in the World". This new global reality forces us to re-examine how we analyse and measure what we call "international trade". What can industries and the WTO do together on this front, to better associate business needs with international trade rule-making? Why are some industries/regions more immersed in globally-integrated production chains than others?

Finally, Mr Jara invited representatives of industry to share their trade experience of what is actually happening on the ground with the WTO and asked what advice they might give to the WTO.

(b) Mr Juan Rada, Senior Vice President, Oracle Corporation

Mr Rada discussed the areas that will undergo the highest impact by technological evolution in the coming years. He foresees the evolution of the technology sector towards super-bandwidth telecoms networks that will enable the transportation of vastly increased quantities and complexity of services. This could break down long-existing cultural and national barriers in areas such as education. It would also enable more complex forms of outsourcing. Currently, it is already routine for architecture firms to have different aspects of their work carried out at offices around the world. Faster networks will allow even more knowledge-based work to be done in other parts of the world.



Manufacturing is the second area in which considerable evolution is likely to take place, with multi-functional plants with the ability to make different products on different days of the week, and three-dimensional printers that are already transforming the way products are made. Finally, he said that the single area on which technology impacts the most is research and development, accelerating the pace of innovation.

Mr Rada identified two central challenges ahead in terms of rules and regulations. The first is that online systems, data superhighways and cloud computing are not subject to any clear rules. The capacity of judiciaries to enforce rules and deliver quick verdicts needs to be reinforced. As for sustainability, Mr Rada said that industries are by and large looking into their own sustainability solutions. Support for solar and photovoltaic industries will soon no longer be necessary because of the development of economies of scale. He concluded by saying that the challenge for the WTO is to ensure that rules and regulations are clear and enforced.

(c) Mr Emmanuel Faber, Chief Operating Officer, Danone

On the complex relationship between trade and jobs, Mr Faber noted that important shareholders even in rich countries were urging the company to expand in emerging markets. He suggested that the search for returns had pushed people in rich countries to invest abroad, possibly favouring the education of people in other countries while neglecting those that could be helped at home. Faber said that future WTO negotiations and the long-term impact of their results might depend on their fairness, requiring the inclusion of social and financial chapters.

He said that “we have no clue” about how to achieve food security for the two billion people – paradoxically most of them farmers – who live in extreme poverty, and he called for a “de-synchronization” of food and water from capital markets to decrease volatility, suggesting that they should instead be linked to carbon markets, which can create sustainable agricultural systems. More complex thinking is needed in the future for better results; according to Mr Faber, “we are not in supply chains, we are in supply webs”.

(d) Mr William Echikson, Head of Free Expression Policy and Public Relations, EMEA, Google

Mr Echikson said that, as far as Google is concerned, free expression is a human right, but even aside from this, there is a compelling economic case to be made for open networks. Attempts to block such exchanges will be one of the big trade challenges of the 21st century. The internet is contributing more and more to economic growth, and studies commissioned by Google suggest that it is also generating jobs. The internet is “mainstream and crucial” to the future of the global economy. Cutting the internet is expensive; when Egypt cut the internet for five days, it cost the country tens of millions of dollars per day. The internet, and the free flow of information it embodies, is crucial even for industries that are offline.

He affirmed the WTO and most international agreements have neglected the internet, in contrast to governments that frequently install firewalls, restrict internet content and introduce requirements for local data storage, citing national security and employment concerns as reasons to hinder free access. For Mr Echikson, it is critical that internet-related trade should enter the WTO post-Doha Round agenda, as clear rules in trade agreement are needed for the internet to reach its full potential. This, he said, would require worldwide

cooperation. He described the Global Network Initiative, a multi-company initiative aimed at developing a code of conduct for how to behave in the face of restrictions.

(e) Mr Stephen Pattison, Director and CEO, International Chamber of Commerce, United Kingdom

Mr Pattison acknowledged that difficult economic and political circumstances increase the attraction of protectionist measures. In response to this, his advice to the WTO is to "Think fast, think big, and think out of the box on how to handle all of this".

He praised the WTO's dispute settlement system, but contrasted it unfavourably with the stalled Doha Round. It is necessary to ensure that the Round's paralysis does not infect broader commitments to open markets and sensible regulation. The WTO must not go the way of the League of Nations, which became irrelevant in the 1930s because it could not address the pressing challenges of the day. Mr Pattinson said that the UN has demonstrated that multilateralism is never easy, but that with creative thinking, you can drive towards a goal. He cited how the UN worked around a deadlocked Security Council to intervene in the Korean War. In business circles, the WTO is beginning to be seen as irrelevant to the real issues, such as for not keeping up with globalization and the internet. The monitoring and dispute settlement functions of the WTO risked being weakened if negotiations are deadlocked.

Mr Pattinson called for a hard look at plurilateral negotiations, starting with countries that have a real interest in addressing issues such as investment and technical barriers to trade. He also recommended enhancing the monitoring role of the WTO, suggesting that it could play a bigger role as the "conscience of the trade policy world". He suggested that the WTO should get closer to businesses, to better grasp the complexities of the globalized economy and to understand the problems businesses are facing. At the same time, the institution must not become a captive of special interests. Finally, he suggested that the G20 could play a more active role in taking the WTO's work forward.

(f) Mr Wayne Paterson, Head of Emerging Markets and GBU CardioMetabolic Care and General Medicine, Merck Serono

Mr Paterson said that the pharmaceutical industry has been transferring resources to emerging markets in recent years, with most companies having opened up research centres in places like Shanghai, Beijing and Singapore. Emerging markets also account for an increasing share of their revenues. Among the challenges in those markets, he listed fragmentation in the regulatory framework and processes, as well as the increasing drive to nationalize industries or national production requirements. He also mentioned the difficulty in keeping up financing of research and development in view of the battleground of drug prices in emerging markets, with several countries introducing laws requiring price decreases. He praised the WTO for addressing issues in the early application of the TRIPS agreement, especially in markets such as China and India.



2. Questions and comments by the audience

In reply to a question on the modernization of justice, Mr Rada noted that part of the reason judicial processes are so slow is that registries are on paper, while procedures date back centuries. If an individual is seeking recourse on an internet privacy matter, it should not take years.

On whether food would remain local, Mr Faber said that it would in the long term. He foresaw pressures from a number of sources, including climate change, that will ultimately result in food systems that are more local than those predicted by industry 20 years ago. Culture is a deeply ingrained aspect of food, and “de-synchronization” will ensure that the cultural traditions embedded in food continue to exist. He illustrated this point by citing India’s Green Revolution; although other crops can provide more calories to more Indians, in some cases white rice displaced other grains that had more of the micronutrients required for growth and cognitive development. Such external aspects need to be considered in the future, or else analyses will be full of blind spots. New food models and systems will be necessary in a world of nine billion people, but social and environmental impacts will need to be taken into account.

Mr Echikson commented on the interaction between the internet and labour, noting that for every job disrupted by the internet, another two are created. Mr Rada commented that the free flow of information can have effects that go far beyond what we may assume. For example, post-Inquisition Spain forbade the import of books (and consequently, ideas) from elsewhere in Europe. This in turn probably had a significant impact on the evolution of judicial and political institutions in Spain and Latin America.

In response to a question about what business has been doing to push governments to conclude a Doha Agreement, Mr Pattinson said that businesses had issued various statements. However, businesses focus on where the action is, and have thus focused more on bilateral and regional processes. If the Doha agenda appeared more relevant to business needs, there would be more interest. On the impact of codes of conduct, for instance, he noted that corporate social responsibility is of large interest to businesses, but only when companies are able to make these decisions are part of their calculations of their strategic interest, rather than as part of a bureaucratic process. Paterson agreed on the importance of codes of conduct within the pharmaceutical industry, and praised the support of governments for these initiatives.

I. Food security



Abstract

Panellists in this session focused on the G20's agriculture ministers' "Action plan on food price volatility and agriculture", highlighting new and evolving approaches for improving global governance of food security. Discussions began with an overview of the four main areas of work which were agreed by the G20 agriculture ministers: agricultural production in the long run, transparency and information in international markets, international coordination and risk management and financial markets. The G20 discussions had led to the establishment of the new Agriculture Marketing Information System (AMIS), a joint OECD/FAO initiative that seeks to provide up-to-date data on agriculture markets to as wide an audience as possible. The agencies represented on the panel highlighted the various fora that are available for countries to discuss approaches for achieving food security and the types of changes these organizations are making to contribute to global food security. Several panellists commented on the negative effect of export restrictions on global food security. In particular, the World Food Programme (WFP) stressed the importance of finding agreement on a resolution to prohibit export barriers for humanitarian purchases by the WFP at the WTO Ministerial in December 2011.

Moderator

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

Speakers

Ms Carmel Cahill, Senior Counsellor,
Trade and Agriculture Directorate, OECD

Mr Kostas Stamoulis, Director,
Agricultural Development Economics
Division, FAO

Ms Lauren Landis, Director, World Food
Programme Office in Geneva

Mr François Riegert, Permanent
Representative, French Mission
to the WTO

Organized by

Agriculture and Commodities Division,
WTO

Report written by

Ms Lee Ann Jackson, Counsellor,
Agriculture and Commodities Division,
WTO



1. Presentations by the panellists

(a) *Mr François Riegert, Permanent Representative, French Mission to the WTO*

Mr Riegert described the G20 process that had led to agreement on an Action Plan on Food Price Volatility and Agriculture. The G20 had invited an inter-agency team, including FAO, IFAD, OECD, UNCTAD, WFP, the World Bank, the WTO, IFPRI and the UN High Level Task Force, “to work with key stakeholders to develop options for G20 consideration on how to better mitigate and manage the risks associated with the price volatility of food and other agriculture commodities, without distorting market behaviour, ultimately to protect the most vulnerable”. In the report “Price volatility in food and agricultural markets: Policy responses”, the inter-agency team developed nine recommendations that touched on long-term and immediate objectives with respect to strengthening agricultural productivity, and shorter-term objectives relating to enhancing information and transparency in agricultural markets. From these nine recommendations the G20 agriculture ministers developed an Action Plan emphasizing five key areas: agriculture production and investment, transparency and information, reducing the impact of price volatility on the most vulnerable, financial regulation and international policy coordination.

With respect to increasing agricultural investments, the Action Plan stressed the need to increase agricultural production and productivity. To this end, several events were planned, including a conference on agricultural research for development in Montpellier. The investments in this area, as foreseen by the World Bank in 2008, need to be sustainable in order to address the root causes of agricultural productivity.

The ministers also decided to establish AMIS in order to enhance the quality, timeliness and reliability of food market outlook information, including data on production, consumption and stocks. The AMIS Secretariat would be hosted in FAO and would involve other international organizations. While the goal of this initiative was to encourage countries to share data, there was recognition that this could be challenging given the strategic nature of the information

In order to reduce the impact of price volatility, the ministers agreed to develop a risk management toolbox, including insurance for vulnerable populations. The ministers also asked the WFP to conduct a feasibility study and cost-benefit analysis on the possibility of establishing a pilot programme for a targeted emergency humanitarian food reserves system, and invited the international organizations to develop a code of conduct for responsible emergency food reserves management.

Given the lack of consensus on the impact of commodity-derivative markets on food price volatility, the ministers sent a political message to the finance ministers and Central Bank governors to take appropriate decisions for better regulation and supervision of agricultural financial markets. The Technical Committee of the International Organization of Securities Commissions (IOSCO) released its report on Principles for the Regulation and Supervision of Commodity Derivatives Markets on September 15, 2011.

The ministers recognized that international policy coordination and governance are crucial for addressing questions of volatility in the agriculture sector, and decided to establish a Rapid Response Forum to promote policy coherence and coordination in times of crisis. The ministers agreed to remove food-export barriers for food purchased

for non-commercial humanitarian purchases by WFP and recommended consideration of the adoption of a specific resolution on this issue by the WTO Ministerial Conference in December 2011. The goal of these initiatives was to support a predictable, non-distorted, transparent trading system of governance that ensures better trading and contributes to food security based on rules.

(b) Ms Carmel Cahill, Senior Counsellor, Trade and Agriculture Directorate, OECD

Ms Cahill described in more detail the structure of AMIS and underlying discussions held by the agencies on the impact of trade and of biofuel policies on food price volatility. AMIS would include three distinct components: a secretariat, a rapid response group and a technical group. The AMIS secretariat would be housed at FAO and would build on existing mechanisms and knowledge and personnel, principally from FAO and WFP and IFAD. Some G20 countries have already offered to provide data. The Secretariat would function as technical secretariat producing reports, monthly bulletins and a toolkit for recognizing signals of an impending market crisis. The goal would be to provide a rapid response forum, composed of senior officials close to ministers, with timely access to relevant information for managing potential crises. The technical group of member countries of AMIS would work on short-term forecasts, initially in the area of wheat, grain rice and soybeans. Web-based dissemination would ensure that the information reaches as wide an audience as possible.

The agencies that contributed to the report on price volatility agreed that trade has to be an important part of any food security strategy – and that trade has both short-term and long-term impacts. Trade is needed to buffer shocks that happen in a particular region. In the long term, not all countries should seek to supply all their own food. Only trade can ensure that food can flow from where it is produced cheaply, efficiently and reliably. Policies targeting self-sufficiency cannot provide security if production conditions constrain agricultural production or if production depends on imported inputs. The agency report called for improved market access for food commodities, reduced trade-distorting support from developed countries and elimination of export subsidies. In addition, the report considered export restrictions and advised that more work was needed to define the circumstances in which an export restriction could be used. In most cases export restrictions should be time-limited measures of last resort when other measures, such as safety nets, are exhausted. Other recommendations included strengthening the WTO notification process and considering an exemption for humanitarian purchases of food.

On the question for biofuels, Ms Cahill noted that the G20 ministers had not adopted the agencies' recommendation that G20 countries remove all measures that subsidize or mandate biofuel production. Instead the G20 ministers had called for more work on this topic. According to the agencies involved in the price volatility report, evidence showed that the large increase in demand for agricultural raw materials in the production of ethanol contributed to price increases and to price volatility. The agencies stressed that trade should be open for biofuels and recommended that research be accelerated, with a focus on foodstuffs that compete directly with food.



(c) Mr Kostas Stamoulis, Director, Agriculture Development Economics Division, FAO

Mr Stamoulis noted that in future the world will need to provide food for a growing world population in the context of declining resource base. Since every country will have a different national agenda for food security, the challenge will be to ensure that these agendas are a product of dialogue among stakeholders. Among the issues that require discussion is the role of governments in catalysing investment, property rights relating to land and other natural resources, gender issues, and responses to climate change. Governments need to develop strategies for managing information and statistics necessary for thoughtful policy-making for food security.

Many initiatives have begun to promote good global governance and coherence in this area. These include the High-Level Task Force which coordinates UN action on food security, the World Bank's global agriculture and food security programme, the New Partnership for Africa's Development (NEPAD), and FAO's Committee on Food Security (CFS). Global coherence requires a system that will encourage dialogue among these initiatives to develop a common vision for goals and desired outcomes through a process that ensures efficiency, transparency and accountability.

According to the Mr Stamoulis, the CFS is a promising forum for promoting coherence. The CFS provides a forum for dialogue among all stakeholders in the world food system, including UN agencies, civil society and the private sector. The CFS has also convened meetings in which high level panels of experts present information and analysis to relevant stakeholders for debate. CFS is an essential forum for consensus building about approaches to address global challenges and offers a platform for policy convergence across countries, including through the development of voluntary guidelines. Finally, the CFS facilitates the process of monitoring policy implementation at the national level.

(d) Ms Lauren Landis, Director, World Food Programme

Ms Landis commented on how price volatility has created challenges for the WFP. As volatility increases, the number of hungry people grows, leading to rising costs for the WFP. The WFP is evolving to address these new economic conditions. First, the WFP is expanding the toolbox of interventions used to deal with food insecurity situations. WFP programmes consider both food assistance and food aid in order to take into the account the needs of vulnerable people. The WFP is also adjusting the ways in which it acquires food, including by sourcing food locally and engaging in forward purchases.

Ms Landis described two proposals in the area of export restrictions and humanitarian aid. An exemption from export restrictions for humanitarian aid would assist the WFP in helping the most vulnerable populations in a timely manner. The second proposal related to the development of regional humanitarian food reserves. The G20 meeting called for a pilot project, feasibility study and cost benefit analysis to look at small targeted regional food reserves. Over the past months, the WFP had worked on the development of this study in partnership with African regional organizations, including ECOWAS. The goal of the reserve would be to address the food crisis and shocks and to contribute to the implementation of safety nets and other targeted distribution programmes. A team of global experts is developing the idea of the reserve in order to limit impacts on markets and trade and to ensure consistency with WTO rules.

2. Questions and comments by the audience

Several WTO members had questions during the discussion. The Swiss representative called for clarification and a strengthening of disciplines on export restrictions, and welcomed the export restriction exemption on food for humanitarian purposes. The Egyptian representative highlighted the proposal that had been put forward by the NFIDCS calling for an exemption for NFIDCs and LDCs from food export restrictions. The Australian representative stressed the important contributions made by international organizations like the WTO to market predictability, and recalled that both import and export measures have impacts on food security outcomes.

Members of the audience raised questions regarding the role of commodity markets and cross-border investment in land. Others noted that food crisis situations were often predictable, such as the current crisis in the Horn of Africa, and questioned why action had not been taken earlier as the crisis unfolded. Some concerns were expressed that the AMIS would not generate practical solutions but would instead serve as a discussion forum without leading to subsequent action. Noting the importance of trade as part of the package of tools to address food security, one WTO member wondered what would be included in a "Food Security" round of negotiations at the WTO.

3. Conclusions

The panellists stressed that the agreement reached by the international organizations contributing to the price volatility report and the G20 countries was a positive step towards achieving a global coherence for food security. One key new issue that had been raised in this process was the contribution of export restrictions to price volatility and the question of what disciplines would be useful to avoid repeating past experiences. Panellists also noted that addressing food security requires both short-term approaches to ensure that vulnerable populations have access to safety nets during times of crisis, and long-term commitments to investment in agriculture. In terms of the types of issues that should be included in a "Food Security" trade round, panellists noted that, while export restrictions were the obvious issue, import protection could also contribute to food price volatility and therefore a comprehensive package was needed.



Abstract

As the world's food demand and supply gap continues to increase, WTO member states need to adopt trade policies that support an uninterrupted flow of agricultural products.

This session explored how the multilateral trading system can contribute to food security and minimize food price volatility and interruptions to the flow of agricultural and food products. Questions addressed were:

- Will further liberalization of trade and agricultural policies help or hinder food security and sustainability?
- What are the economic impacts of regulatory asynchronicity?
- What policies ensure that farmers have access to new technologies that increase productivity and food security?
- What is the role of the WTO in addressing food security?
- What is the role of the multilateral trading system (if any) in promoting coherence at the international level?

Food – from abundant and cheap to scarce and expensive: Is the global trading system coping with change?

Moderator

Ms Pamela Kirby Johnson,
Director-General,
The Grain and Feed Trade Association

Speakers

Ms Denise Dewar, Executive Director
for Plant Biotechnology,
CropLife International

Dr Antoine Bouet, Senior Research
Fellow, International Food Policy Research
Institute (IFPRI)

Dr Nicholas Kalaitzandonakes, Director,
Economics and Management of
Agrobiotechnology Center
(EMAC), University of Missouri

Ms Alice Chepleting Kalya, National
Chairman, Agricultural Society of Kenya

Mr Stuart Harbinson, Senior Policy
Adviser, Sidley Austin LLP

Organized by

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Report Written by

Ms Deb Carstou, Director of
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CropLife International



1. Presentations by panellists

(a) *Ms Pamela Kirby Johnson, Director-General, The Grain and Feed Trade Association*

Ms Johnson noted that many issues have impacted on the recent volatility of food availability and prices, including changed weather conditions, supply chain costs, policies on imports and exports and increased competition for food product utilization. She noted the G20's recent commitment to find ways to reduce food price volatility while increasing agricultural productivity by 70 per cent. This session will examine how the international community can help meet these objectives.

(b) *Dr Antoine Bouet, Senior Research Fellow, International Food Policy Research Institute (IFPRI)*

Dr Bouet presented the results of several economic studies. He noted that trade distortions are concentrated in the agricultural sector. The WTO acts as an "international public good" that supports trade negotiations and prevents the occurrence of trade wars. Concluding the Doha Round would most likely increase trade in agricultural products, and thus benefit both developed and developing countries.

Economic studies show that protectionist measures applied by WTO members (e.g., export taxes or export restrictions) in the agricultural sector result in high and volatile food prices, endangering food security, particularly in small net food-importing countries.

When large countries have an objective of constant domestic food prices, in the event of an increase in world agricultural prices the optimal response is: (i) to decrease import tariffs in net food-importing countries; and (ii) to increase export tariffs in net food-exporting countries. Yet small countries are harmed by both decisions.

Dr Bouet also illustrated the costs of a binding process, i.e. a lack of cooperation in and regulation of such policies, in times of crisis using a model illustration that mimicked the mechanisms that have appeared during the recent food price surge. The idea is to understand why, in cases of initial exogenous food price increase on the world market, countries react by imposing export taxes or export restrictions and decreasing import taxes, and why these policies amplify initial price increases.

Dr Bouet concluded with a call for international regulation, in particular because small net food-importing countries may be substantially harmed by these beggar-thy-neighbour policies that amplify the already negative impact of the food crisis. He emphasized the advantages of the multilateral trading system. Multilateral liberalization is good for international food security. Consolidation of trade policies is good for international food security. In closing, he stressed that the WTO needs to address the issue of export restrictions very soon.

(c) *Dr Nicholas Kalaitzandonakes, Director, Economics and Management of Agrobiotechnology Center (EMAC), University of Missouri*

Dr Kalaitzandonakes stressed that agricultural innovation, productivity growth and trade can temper price increases and volatility and thus contribute towards food security.



He examined the drivers and trends of prices for maize, soybeans and wheat. He noted that in the last ten years, we have seen a reversal of a 40-year trend of declining real commodity prices. He noted that a number of structural (demand and supply) factors have contributed to food price increases over the last decade. He noted that innovation, productivity growth and trade can temper price increases and volatility. Government policies should pay attention to both. Agricultural biotechnology is important here, due to its scope for sustained productivity growth and potential impact on agricultural commodity trade.

He quoted studies showing the impact of biotechnology on the expansion of supplies and the lowering prices of agricultural commodities (soybean, maize, cotton, canola) and of various oilseeds (soybeans, canola, sunflower, palm). Productivity growth, in turn, leads to increased exports of commodities, as the success stories of Argentina, Brazil, Canada, China, Paraguay and the United States demonstrate.

Studies show that impacts of trade disruptions resulting from regulatory asynchronicity (i.e. a biotech product approved by an exporting country but not the importing country) can be costly both to importing and exporting countries. The reason is that the biotech pipeline has been expanding and the biotech regulatory systems and approvals in different countries have become less synchronized. "Zero tolerance" policies for asynchronously approved agricultural innovation thus imply zero trade. One study found that in the case of soybeans, the impact on the EU may be as much as a 200 per cent price increase, in case of zero tolerance.

Dr Kalaitzandonakes concluded that structural factors and some new constraints (e.g. climate change) will likely continue to put pressure on global food prices. Biotech and other innovations will need to keep supply growth rates in line with demand and prices at sustainable levels. Regulatory asynchronicity and zero tolerance will impact on trade like any other technical barriers. Low-level pricing policies (LLP) and regulatory synchronicity deserve strong attention. One study found that if bilateral trade disruptions caused by LLP created a 5-10 per cent reduction of soybean imports into China, there would be an 8-15 per cent increase in price.

(d) Ms Alice Chepleting Kayla, National Chairman, Agricultural Society of Kenya

Ms Kayla spoke about the problems that farmers in Sub-Saharan Africa are facing in trading their agricultural products. Problems include:

- the high cost of production (the cost of producing one tonne of sugar in Egypt is US\$ 220, compared to US\$ 500 in Swaziland, Uganda, Malawi and Zambia)
- the general absence of government policies, which restricts the movement of commodities across borders
- the general lack of government subsidies in the event of droughts, the high cost of raw materials, over-production
- the reluctance of countries to adopt agricultural biotechnology
- the lack of economies of scale
- the low value in the market chain.

Ms Kayla concluded that the farmers are left out in key decisions when it comes to trade policies. She noted that it will be a long time before farmers realise their objectives unless all countries adopt agricultural biotechnology.

(e) Mr Stuart Harbinson, Senior Policy Adviser, Sidley Austin LLP

Mr Harbinson discussed the role of the WTO in addressing food security. He said that the current Doha mandate is relevant in addressing agriculture concerns, though international trade is only one of many elements relevant to food security, and trade not the answer to all of the challenges in agriculture. Nevertheless, the WTO Agreement on Agriculture affirms that the long-term objective is “to establish a fair and market-oriented agricultural trading system”. This was reconfirmed in the Doha mandate in 2001.

The key elements of the Doha agriculture mandate still seem relevant to addressing food security concerns:

- substantial improvements in market access
- reductions of all forms of export subsidies with a view to phasing them out
- substantial reductions in trade-distorting domestic support
- special and differential treatment for developing countries
- “non-trade concerns” to be taken into account.

Expanding slightly on the special and differential treatment aspect, it is perhaps worth mentioning in particular the provision for “special products” in the Doha draft modalities – closely related to many developing countries’ desire to protect their food security.

Other elements of the Doha Round also remain broadly relevant to promoting food security:

- addressing non-tariff barriers
- trade facilitation
- NAMA (non-agricultural market access) sectoral negotiations
- the reduction/elimination of barriers to trade in environmental goods and services.

Mr Harbinson disagreed with critics questioning the continuing appropriateness of Doha in a food crisis. He also disagreed with proponents of less trade, more food sovereignty and even more subsidies. Agricultural products are not currently heavily traded – according to Director-General Pascal Lamy, they currently make up only 10 per cent of world trade; only 25 per cent of the world’s agricultural production is traded globally; and, in some key commodities (e.g. rice) the figure is much lower.

Food self-sufficiency at the national level does not seem to be a viable option in many cases. It might well imply that labour and capital would be redirected from the more productive to the less productive areas, with a negative impact on national income and



purchasing power, one of the keys to food security. What is more, in some cases there could be adverse consequences for the environment. Over-emphasis on food security could make put net food importing countries even in more precarious situation.

International trade is not the source of the food crisis. If anything, international trade, conducted properly, moderates prices through greater competition. Doha can help to reform what remains in many cases an unfair system and deepen markets. It is perhaps not enough – for example there are the weak WTO rules on export restrictions which could be more meaningfully addressed than they are in the current draft modalities. But at least it is moving in the right direction.

Contrary to popular conception, the WTO as an institution is well equipped to carry forward negotiations in agriculture and produce a balanced result. It has a very flexible governance structure and can benefit from the considerable impact and effectiveness of diverse groups like the G20, G33, G10 and the Cairns Group. In fact, while negotiations on Doha as a whole might be stuck, the negotiations in agriculture have made huge progress, even if problems still remain to be solved.

Given the overall impasse on Doha, various alternatives are now being floated by some analysts and commentators, e.g.

- to abandon Doha and construct a new negotiating agenda which recognizes “21st-century issues”, like food security; or
- to dismember Doha but “salvage” some of the individual elements, perhaps on a plurilateral or “critical mass” basis.

Mr Harbinson did not consider these suggestions workable. The first could waste years of effort with no prospect of reaching consensus on a new agenda. Any “21st-century” agenda in agriculture would naturally replicate the “20th-century” agenda we are still addressing. The second is at best uncertain. Critical mass is a useful concept – but how likely is it that major emerging market economies and other developing countries would participate in the negative atmosphere that would be created by the abandonment of the Doha Development Agenda?

Mr Harbinson concluded that the way forward was to finish Doha, though something must change in order to conclude the negotiations. Maybe the final outcome will need some reconfiguring, and the incredibly detailed “modalities” may have been an obstacle.

In the meantime, the WTO should start to discuss – if not yet negotiate – some of the “21st-century issues”. This could include a more holistic discussion of food security. He was confident that the flexible machinery of the WTO would find a way to do this. There will surely be more work for the WTO to do after Doha to address food security.

Finally, the WTO's powers of monitoring protectionism, ensuring that the required notifications of trade measures come in on time, and are reviewed promptly, should be enhanced. Lots of things can be done by governments in the name of food security but not all will be justifiable.

2. Questions and comments by the audience

Questions focused on the role of the Doha negotiations in strengthening food security, such as by addressing export restrictions. There should be more discussion on the role of innovative agricultural technologies and food security – and what guidelines are needed to address trade in such technologies.

3. Conclusions

Four points were highlighted in conclusion:

1. Economic studies show that protectionist measures applied by WTO members in the agricultural sector result in high and volatile food prices, endangering food security, in particular in small net food-importing countries. The WTO should address the issue of export restrictions on agricultural commodities.
2. Agricultural innovation, productivity growth, and trade can temper price increases and volatility and thus contribute towards food security, but regulatory asynchronicity can be costly and needs to be addressed.
3. Adopting agricultural biotechnology would help farmers in Sub-Saharan African to become more competitive globally.
4. The current Doha mandate is relevant in addressing agriculture concerns, such as food security.

Next steps could involve more discussions and coordination at the international level on the impact of policies on agricultural innovation, and, in turn, the effect on food prices and food security.



Abstract

The panellists adopted the premise that there is an urgent need to bring the WTO more fully into the 21st century. A principal challenge for the WTO, as well as for, its members is to adjust to new realities in order to achieve its goals in an increasingly uncertain global environment.

The panellists explored why the WTO has been incapable of achieving its goals in an increasingly complex world and discussed possible solutions. While agriculture and food security are important sub-themes of this session, the speakers also addressed problems and possible solutions in a broader context. The influence of the changing global environment were addressed. The challenges brought about as a result of natural crises, both in terms of the climate and of disease, price shocks, food to fuel switches and price volatility, as well as financial and geopolitical events, have changed the world dramatically even since the time of the Marrakesh Ministerial.

The session also addressed the impacts of speculation in futures markets, export controls, currency manipulation and the disruptive impact of subsidies for rich countries, as well as food safety, "buy local" policies and labelling initiatives. The panellists adopted a zero-based approach in order to stimulate discussion and audience participation.

Questions related to the nature of agricultural support and impacts on food security. Comments were made on the inadequacy of WTO coordination with other institutions, the impact of speculation on food price spikes, and how to explore other methods of advancing negotiations which would enhance food security and make WTO negotiations more favourable for farmers.

The WTO in transition: Coping with new and evolving challenges

Moderator

H.E. Mr John Gero, Ambassador,
Permanent Representative of Canada to
the WTO

Speakers

Mr Peter Clark, President, Grey, Clark,
Shih and Associates, Limited; International
Trade Columnist for iPolitics.ca, Ottawa

Mr Jacques Carles, Executive Vice
President of Momagri; President of Carles
& Associés, Paris

Mr John Magnus, Lawyer and President,
TRADEWINS LLC, Washington, D.C.

Mr Alvaro Jana, Partner, Bofill Mir &
Alvarez Jana Abogados, Santiago

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Report written by

Mr Peter Clark, President, Grey, Clark,
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Trade Columnist for iPolitics.ca, Ottawa



1. Presentations by panellists

(a) Mr Peter Clark, President, Grey, Clark, Shih and Associates, Limited; International Trade Columnist for iPolitics.ca, Ottawa

Mr Clark explained that the WTO is in transition. The world is not the same as it was at the creation of the GATT, or even at the end of the Uruguay Round. Leadership among WTO members has changed, expanded and become more inclusive. Developing countries have become more influential since the Cancun Ministerial Conference.

The depth of the problems that have paralysed the Doha Round go well beyond global North-South problems. There is an overall lack of flexibility and excessive ambition in both agriculture and non-agricultural market access negotiations. Mercantilism has replaced foreign policy imperatives as a driver of trade negotiations. The WTO is not seen as farmer-friendly. It cannot cope with speculators or deep pockets subsidizers. Without farmer-sensitive policies, food security will suffer.

Mr Clark concluded there should be a greater focus on incremental, plurilateral negotiations, which can subsequently be open to acceptance by others.

(b) Mr Jacques Carles, Executive Vice President of Momagri; President of Carles & Associés, Paris

Mr Carles argued that a certain level of support in agriculture is needed. Because of price volatility, many farmers do not recover their production costs and do not earn a profit. Complete liberalization of trade is not going to solve the problems of global agriculture.

That the noble objectives of Doha are not coming to fruition is a major problem. There is major incoherence in world governance of agriculture. The WTO does not coordinate well with other international organizations concerned with agriculture. Efficient agricultural production should not be undermined by overly bureaucratic, directive rules.

Mr Carles said that the WTO is negotiating as if it was still the 1950s, but now it is 2011. He suggested that maybe it is time to remove the agriculture component from the WTO and create a World Agriculture Organization.

(c) Mr John Magnus, Lawyer and President, TRADEWINS LLC, Washington, D.C.

Mr Magnus offered that disciplines that were agreed upon in 1947 are incomplete; as a result, it not surprising that the negotiations on market access have never really been engaged. Negotiations on subsidies are highly complex and need to be simplified. The reason the Doha Development Round is not working is that it had too few attractive features and did not conclude on time. It simply could not stay ahead of the geopolitical factors now affecting the round. Big companies, whose support was essential for a successful completion, are worried about what they will lose and yet are not excited about what they might gain, making the round less relevant. The United States knows what it should do about preference programmes and farm subsidies. However, the question is, will they do it without getting something in return?



Capitals need to become leaders instead of unenlightened mercantilists. There are many improvements that can be made despite the deadlock in the negotiations. Countries need to just start making them without making promises or asking for things in return.

2. Questions and comments by the audience

The Question and Answer Session was extensive and animated, with all panellists active in responding. Questions were raised by farm groups and other participants from Europe, Africa and North America. The participants posed questions about or commented on:

- the scope for autonomous (unilateral) trade liberalization
- imbalances in safety net programmes between risk management as compared to risk elimination
- the scope for the G20 Agricultural Minister to address food security issues
- the need for a more proactive policing and enforcement role for the WTO, and
- how to prevent and discipline speculation and financial manipulation of agricultural markets – did GATS stand in the way of this?

The Danish Agricultural and Food Council focused on how farmers in developing and OECD countries could address their problem. Noted agricultural economist Jacques Berthelot of Solidarité (France) talked about the lack of reliable internal WTO statistical data and the WTO's reluctance to police its members or to treat decisions as precedents, i.e. creating and enhancing an enforcement role.

3. Conclusions

The objective of this session was to expose participants to new ideas on how to bring the WTO into the 21st century. Important sub-themes were the negotiating process, the function of the WTO in agricultural trade and how to improve food security.

The participants did not expect to find solutions, magic keys or silver bullets. They wanted to expose deficiencies, discuss ways to overcome them and find ways in which to use the WTO to liberalize trade in farmer-friendly ways and to support food security. The underlying support for the basic human right to sufficient nutritious food was a common theme.

There was a willingness to explore new methods, including abandoning the Single Undertaking and focusing on negotiations in more manageable groups of like-minded or capable members.

The speakers actively engaged participants in seeking information, asking questions and taking part in the discussion. The session achieved its objectives.

Rebalancing the rights of importers and exporters: How to address agricultural export restrictions?

Moderator

Mr Nicolas Imboden, Executive Director, IDEAS Center and IPC member

Speakers

Mr Bipul Chatterjee, Deputy Executive Director, CUTS; Head, CUTS CITEE

Dr Dmitri Rylko, General Director, Institute for Agricultural Market Studies (IKAR), Moscow

Dr Debapriya Bhattacharya, Centre for Policy Dialogue, Bangladesh; IPC member

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

Organized by

International Food & Agricultural Trade Policy Council (IPC)

CUTS International

Report written by

Mr Thom Achterbosch, Senior advisor for Europe, International Food & Agricultural Trade Policy Council

Abstract

Over the past four years, food prices have repeatedly jumped to crisis levels. Over two dozen governments, all from low- and middle-income countries, have responded with policies that curtail exports of agricultural products in order to promote national food security. Such measures have been shown to trigger further price increases on the world market, and to make world markets a less reliable source of food supplies in both the short and the long run.

The existing international trade rules impose few disciplines on export restrictions, and are primarily focused on the rights of exporters. There have been proposals to put in place greater rights for importers, most recently from G20 agricultural ministers and from the group of low-income net food importing countries, as part of the Doha Round negotiations.

This discussion examined the motivations behind and the impacts of agricultural export restrictions in countries that impose restrictions on food price volatility and access to food in low-income food importers. The panellists explored whether and how international trade disciplines on agricultural export restrictions can be improved. In particular they addressed the question of the kinds of rules regarding notification, limitation, and special and differential treatment the international community should agree to with regard to agricultural export restrictions. A panel of ambassadors and policy advisors examined the political factors involved when advocating rules governing export restrictions. The ultimate aim has been to speed up the process towards much-needed progress on this dossier.



1. Presentations by panellists

More and more experts agree that the fundamentals of the world food market have changed substantially. If the world is indeed moving into an era of higher and more volatile prices, there are significant implications for food security in low-income regions that rely on food imports from the world market.

This presents a need for rule-making focused on the instruments and actions of food exporters. Yet in past decades, the trade community under GATT and WTO has been more concerned with situations of food surpluses and depressed prices. This calls for a rebalancing of importers' and exporters' rights under the WTO, said Mr Chatterjee in his introduction.

(a) Rebalancing trade rules

The discussion recalled the long-standing debates about export restrictions under the GATT/WTO. Panellists agreed that export restrictions are not a new phenomenon, and that there are no easy solutions. Ambassador Yoichi Otabe, Permanent Representative of Japan to the United Nations and other international organizations in Geneva, reminded participants of efforts by his country to advance rule-making in this area from the early days of the Doha Round. Export restrictions are also relevant in other sectors, in particular on rare earth materials, but agricultural export restrictions merit particular attention given their link to food security.

It is important to keep the existing rules in mind: quantitative restrictions are banned under the GATT 1994 Rules, although there are notable exceptions that have made it easy for countries to justify export restrictions. GATT 1994 states, in Article XI paragraph 2(a), that the prohibition on export restrictions does not extend to "restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party."

While such language provides a basis for disciplining export restrictions, substantial efforts are required to better define key terms, such as "temporarily" and "critical shortages", and the WTO Agricultural Committee should undertake such efforts. The Agricultural Committee was urged to elevate the profile of export restrictions in its deliberations.

(b) Focus on transparency and dialogue and "abide by existing rules"

Several contributors suggested that a practical and potentially potent way of raising the Committee's profile on export restrictions is for members to insist on a better implementation of existing rules on transparency. There are clear notification rules under Article 12 of the Uruguay Round Agreement on Agriculture, which have hardly been followed (even though providing information on trade policies is part and parcel of WTO membership obligations). Article 12 stipulates that any WTO member implementing export restrictions shall "give due consideration to the effects of such prohibition or restriction on importing Members' food security", "give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure" and "consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question".

Panellists from the missions of Egypt, Japan, the Netherlands and the United States, agreed that existing rules are not perfect. Ms González voiced the widely shared sentiment that “We may not be able to craft big rules on export restrictions in the present, but we should abide by the existing rules”. Participants emphasized that improved transparency and information on export restrictions would facilitate dialogue among members. It could also make an important contribution to the transparency and dialogue efforts launched under the G20 process, in particular the new Agricultural Market Information System (AMIS).

(c) Ramifications and solutions go well beyond the trade agenda

Food inflation has risen across the world, but many low-income net food importing countries (NFIDCs) have experienced particularly profound food crises with rising food insecurity and “deep ramifications on their macroeconomic fundamentals”, said Mr Bhattachariya. He recalled that the Marrakesh Agreement on NFIDCs and subsequent conferences issued calls to eliminate measures on food imports into the least-developed countries. Yet, as pointed out by Mr Rylko, export restrictions are being imposed more frequently and rapidly in Kazakhstan, the Russian Federation and Ukraine. Livestock producers that rely on domestic feedstock supply have been observed to call upon the Russian Federation government for restrictions. Following extraordinary droughts last year, the transparent export tax system was temporarily replaced with more trade-distorting export bans. This year, however, the Russian Federation is back on the world grain market as a major exporter.

The April 2011 proposal of the NFIDCs also called for improved disciplines on export measures, as explained by Mr Mokhtar Warida of Egypt's Mission to the WTO. This proposal has not been taken up in the trade debate, which so far is limited to “carving out” an exemption on export measures for purchases by the World Food Programme. It is important to keep in mind that the scope of that exemption in terms of volume on the global grains market is very limited, as Mr Gregg Young of the US Mission reminded the audience.

It was also stated that the solution to the food crises lies to a large extent beyond the trade domain. Mr Pieter Gooren of the Netherlands Mission and other contributors highlighted the positive thrust of the G20 process, which includes a much-needed agenda on agricultural productivity and growth, in particular in developing countries.

2. Questions and comments by the audience

Spurred by some panel members' outspoken preferences for enhancing the enforcement of existing rules, several participants called for more stringent disciplining of export restrictions. This would in part be motivated by the widespread use of such measures for reasons other than food security, including tax collection, environmental and health considerations and industry policy. Other participants connected the issue to the standstill in the agenda for agricultural trade reform. They questioned whether advanced rule-making on export restrictions would be possible given the fragile consensus in this agenda (e.g. on removal of export subsidies and increased transparency regarding domestic support) between the key players. The suggestion was made that the low-income net food importing countries, who particularly need to benefit from the rebalanced trade rules, stand to lose from the removal of the status quo on farm protection. The argument was that reduced farm support will curtail food supplies, thus contributing to price rises and



more thin and volatile markets. In response, Mr Bhattacharya insisted on the need to protect vulnerable consumers from price shocks, but also reminded the audience not to underestimate the potential response in low-income countries.

3. Conclusions

There are several options to improve disciplines on food export restrictions, as Mr Chatterjee pointed out at the session, even if only the humanitarian exemption seems feasible in the short term. He called for stepping up the dialogue in the Agriculture Committee. With population growth, dietary changes and more frequent climatic incidents expected over the next decades, more upheavals in the food system seem inevitable. In his summary of the session, Mr Imboden said that the disciplines on export restrictions can substantially be improved by ensuring enforcement of existing rules and operationalizing the definitions contained in present rules. It is hoped that ministers' discussions at the 8th Ministerial Conference will therefore go beyond carving out humanitarian WFP food aid from export restrictions.

Are FAO/WHO pesticide standards distorting trade and increasing food costs?

Moderator

Mr Peter Lunenborg, Economist/
Researcher, Trade for Development, South
Centre

Speakers

Dr Román F. Macaya, President, AgroCare

Dr Keith Solomon, Professor Emeritus
in Toxicology, School of Environmental
Sciences, University of Guelph, Canada

Mr Stéphane Delautre-Drouillon,
Secretary-General, Association of Users
and Distributors of AgroChemicals in
Europe (AUDACE)

Dr Carlos M. Correa, Professor in Law,
University of Buenos Aires, Argentina

Organized by

AgroCare

Report written by

Mr Peter Lunenborg, Economist,
South Centre

Abstract

This panel session addressed the extent to which FAO/WHO pesticide specifications have the potential to distort trade in crop protection products and their possible effect on food production costs, if such specifications are introduced into mandatory national legislation of member states.

The panel discussed how FAO/WHO pesticide specifications are developed and assessed the consistency of these standards with WTO Agreements, in the particular with the Technical Barriers to Trade (TBT) Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

During this session, speakers outlined the changes in the procedures for the development and application of pesticides standards by FAO/WHO. The presentations highlighted, from different perspectives (legal, scientific and private sector), how the "new procedure" standards, as currently implemented, may introduce barriers to market generic pesticides once these recommended by international standards are incorporated into national laws for mandatory compliance. Such market distortions can limit the availability of pesticides for farmers, thereby impacting on their production and sustainability, since pesticides are one of the most important input costs in the production cost structure for many agricultural commodities. Higher food production costs have a negative impact on food security.

From a legal point of view, the panellists argued that the FAO/WHO pesticide standards do not conform with the core principles of transparency and harmonization, as highlighted in the TBT Agreement. In addition, speakers also observed that the current pesticide standards involve an intellectual property component, by way of the inclusion of a trade secret protection element, which has no time limit under the TRIPS Agreement. As such, there is no indication of when the market will be freed for other pesticide producers. One of the solutions identified to tackle this issue is for Member States of FAO/WHO to advocate a change in the procedures.



1. Presentations by the panellists

The panel moderator, Mr Lunenborg, introduced the panellists and subject matter. He spoke about the importance of standards for international trade and how standards can be used to introduce trade barriers through the incorporation of intellectual property into standards. In this specific case, Mr Lunenborg stated that the panel would address problems with the international standards for pesticides recommended by FAO and WHO, and would discuss their potential conflict with principles developed by the WTO.

(a) Dr Román F. Macaya, President, AgroCare

Dr Macaya framed the issue that was being addressed with an overview of real-life production costs for a series of agricultural commodities in different countries. The data presented demonstrated that pesticides are one of the most important production input costs for a series of crops. The panellist illustrated the fact that prices for the same pesticide product can vary greatly between different countries, and that the critical factor in determining pesticide prices is the level of competition in the market. Therefore, any barrier to competition in the pesticide market can keep pesticides at monopoly prices and increase food production costs.

Dr Macaya then explained how the FAO/WHO Joint Meeting on Pesticide Specifications (JMPS) defines specifications for pesticides that are recommended as international standards of quality. The standard setting process has changed to such an extent that today standards contain confidential information that is claimed as intellectual property by individual companies. One serious obstacle to the TBT Agreement is the fact that only one entity in the world, the FAO/WHO JMPS, can conduct a conformity assessment of a product to the standard since only the JMPS has access to the confidential information contained in the standard. This is a serious operational bottleneck since the JMPS does not have the resources to evaluate conformity assessments on a timely basis. The rate at which specifications are evaluated and determined by the JMPS was presented, demonstrating a real capacity of fewer than five specifications per year.

The process of developing standards by the FAO/WHO JMPS was also compared to the principles for international standards development issued by WTO Members in the TBT Committee, among others transparency, openness, impartiality and the principle of consensus (see the Decision of the Committee on Principles for the Development of International Standards, Guidelines and Recommendations with Relation to Articles 2, 5, and Annex 3 of the Agreement, WTO document G/TBT/1/Rev.10, p. 46). This comparison yielded some evident discrepancies, highlighting that the FAO/WHO pesticide specifications do not serve their intended purpose well under the current system.

(b) Dr Keith Solomon, Professor Emeritus in Toxicology, School of Environmental Sciences, University of Guelph, Canada

Dr Solomon gave a brief overview on how pesticides are regulated. Pesticides are registered for use in all countries. Before registration, products must undergo extensive testing, which is paid for by the registrant. In addition, as products are reregistered, additional testing may be needed. Once off-patent, products may be manufactured by several manufacturers. The chemical constituents in the products are used to determine equivalency of the active ingredient, which essentially means determining the similarity in the chemical composition of a new applicant's product with the chemical composition of

a product used as a reference in the market. The technical process by which equivalence is determined was explained. Information on the toxicology and effects of the impurities is required for all the relevant impurities. The relevance of these impurities is determined by experts at the FAO/WHO JMPS. The specifications are published and available to the public but some of the impurities listed may be classified as confidential business information and omitted from the published specifications, even though they are used to determine equivalency, which protects the user, the public and the environment. For detailed information on how specifications are prepared and the handling of confidential data, more information is available in the "Manual on development and use of FAO and WHO specifications for pesticides. November 2010 - second revision of the First Edition", which can be downloaded at http://www.fao.org/fileadmin/templates/agphome/documents/Pests_Pesticides/PestSpecsManual2010.pdf

(c) Mr Stéphane Delautre-Drouillon, Secretary-General, Association of Users and Distributors of AgroChemicals in Europe (AUDACE)

Mr Delautre-Drouillon started his presentation stating that the mission assigned to agriculture in the 21st century is to feed an increasing population by using sustainable farming methods. In this context, the responsibility of all stakeholders is to continually review the consistency of using plant protection products with an agriculture that first and foremost is respectful of health and the environment. Farmers, who are putting in a lot of effort in bringing their practices in line with society's expectations, have come to realize that new environmental regulations only come about when, incidentally, they also bring benefits to other stakeholders, usually in the form of increased intellectual property protection. European farmers recall losing, almost from one day to the next in 2002, 346 plant protection active substances out of 740 because of lack of interest on the part of the industry to support the said substances through the programme of revision, leaving many crops and uses bereft of any chemical solution. It is only recently that a new regulation was adopted providing for more data protection. The community legislator's hope is obviously to further motivate the industry to support minor uses and orphan crops through the evaluation process of new active substances in order to gain more protection on their overall investments. Within the perspective of a sustainable and equitable agriculture, AUDACE is focusing its interest on areas of practice or regulation relevant to agriculture when these seem to compromise the legitimate objectives. This includes FAO specifications which, in the past, had been regarded as benefiting farming by opening markets to more controlled productions of generic plant protection products.

(d) Dr Carlos M. Correa, Professor in Law, University of Buenos Aires, Argentina

Dr Correa started his presentation by pointing out the rationale for international standards: to promote trade, increase competition and diffuse information on production methods and new technology. He explained how standards recommended by standard-setting bodies become mandatory once they are incorporated into national laws. He explained the standard-setting process followed by the FAO/WHO JMPS and pointed out some of the potential inconsistencies with how standards should be defined and the characteristics they should possess. For example, the proposed pesticide standards contain confidential information that is claimed as intellectual property. This confidential information is only held by the originator company and a single entity (the JMPS), which has a monopoly on assessing conformity with the standard. While recognising the validity of maintaining confidential business information as a trade secret, he questioned their inclusion into a standard, especially since the protection of confidential information has no time limit.



Dr Correa compared how standards are defined in this case for pesticides, with built-in confidential information, versus the situation for pharmaceuticals, which do not contain confidential information. He also highlighted the severe bottleneck that would be created if member states started to rely on the JMPS for conformity assessment on a routine basis. Dr Correa finalized his presentation by sounding the alert to the potential creation of monopolies if standards contain elements protected as intellectual property, such as trade secrets.

2. Questions and comments by the audience

One question raised was whether the TBT Committee or the TRIPS Committee of the WTO have sought a solution to this problem. The panel explained that a request for such a solution must be made by a member state, and probably through the FAO or WHO, although these organizations should work closely with the WTO.

Another comment raised was how the European Commission (EC) is planning to address the problem of pesticide standards that are tied to a single company, since the registration of pesticides in Europe requires the compliance of the product with an FAO/WHO specification. The EC has issued a letter indicating that, in the next revision of the registration regulations in Europe, all mention of FAO specifications will be deleted.

Another question raised was whether the lack of transparency in pesticide specifications affects risk assessment. The panel indicated that the standards themselves have undergone a risk assessment, but that the conformity assessment of similar pesticide products to the standard requires an evaluation by a single entity, the JMPS, which implies a serious bottleneck.

An enquiry was made as to why the standard-setting system had changed in 1999. The panel replied that this was probably due to the intention to conduct a comprehensive risk assessment on the complete chemical composition of the product, which has its merits. However, the final procedure ended up creating standards that are not practical to use due to the incorporation of confidential information.

The moderator concluded the panel session by summarizing the main points addressed by the panel and thanking all attendees.

Controlling food prices in turbulent times: An agenda for South Asia

Moderator

Mr Arun Goyal, Director, Academy of Business Studies, New Delhi

Speakers

Mr Petko Draganov, Deputy Secretary-General, UNCTAD

Dr Sadiq Ahmed, Vice Chairman, Policy Research Institute of Bangladesh; formerly Economist in charge of South Asia, World Bank

Ms Lauren R. Landis, Director, World Food Programme, Geneva

Mr Vijay Kalantri, Vice Chairman, World Trade Centre Mumbai; Board Director, World Trade Centers Association, New York; President, All India Association of Industries, Mumbai

Organized by

World Trade Centre Mumbai
Academy of Business Studies, New Delhi

Report written by

Mr Vijay G. Kalantri, Vice Chairman, World Trade Centre Mumbai; Board Director, World Trade Centers Association, New York; President, All India Association of Industries, Mumbai

Tuesday, 20 September 2011,
16.15 - 18.15

Abstract

World food prices rose by a steep 43 per cent in 2007, creating shock waves around the globe, specially in food deficit countries in Africa and Asia. More shocks like this are forecast in the near future on account of spiralling prices in rice.

South Asia, covering mainly Bangladesh, India, Nepal, Pakistan and Sri Lanka, accounts for a quarter of the world population. It is a key player in world food markets for wheat, rice, sugar and edible oil. The region can play a role as a market maker to control food prices and move regular supplies to food deficit countries. During periods of uncertainty and volatility arising from natural factors or economic crisis, it can act as a swing factor to turn the direction of prices.

This session examined issues involved in getting food supplies from South Asia to the Horn of Africa and West Africa, the main food deficit regions. It also examined the role of futures trading, commodity exchanges, supply side export controls on food prices, and the need for a special window for freeing humanitarian food assistance from controls and extraordinary taxes.



1. Presentations by panellists

(a) *Mr Arun Goyal, Director, Academy of Business Studies, New Delhi*

The moderator of the session, Mr Goyal opened the session by describing the current situation in South Asia. He said that South Asia used to be a region which had the highest number of poor, hungry people; however, this has changed and South Asia now has a surplus in wheat and rice.

Indian low-priced rice is very popular in the food deficit region of Sub-Saharan Africa on account of its taste, and India has exported nearly a billion dollars' worth of rice to the region in the face of competition. Both India and Pakistan have a surplus in rice and wheat and this is likely to continue in the future. Exporters can deliver in hard-to-reach destinations; all they need is the guarantee of open policies which ensure that the export window remains open at least for the food deficit countries.

The thin world trade markets in rice and wheat, which currently account for a mere 6 per cent and 25 per cent, respectively, of world production, must develop to become deeper and wider. Liquidity must come from the private sector as well as banks and financial institutions. Global market development and regulation are key to controlling turbulence in food prices, Mr Goyal said.

(b) *Mr Petko Draganov, Deputy Secretary-General, UNCTAD*

Mr Draganov reminded the audience that the Horn of Africa is currently suffering one of the worst famine and food security crises since the 1980s, largely due to a devastating drought which has severely affected local food production. Rising oil prices and changing exchange rates are as problematic now as they were three years ago when food prices spiked. UNCTAD believes that futures trade and over-the-counter markets for agricultural commodities impact significantly on this volatility.

Extreme volatility in food prices deters producers from making the necessary investments for increasing productivity and production: this is one of the underlying causes of continued worldwide food insecurity. There is no harmonized regulation for these markets, and some of them do not have a basic set of rules governing market abuses and price manipulations. Increased transparency for physical commodity markets is a must.

In South Asia, countries protect most agriculture goods under the Agreement on South Asian Free Trade Area (SAFTA) by putting them on their sensitive lists. The most-favoured nation (MFN) applied tariff on agriculture goods in South Asia is higher than in some other regions. It was 29 per cent during 2006-2009, compared to just 9.9 per cent in ASEAN.

The average share of consumer income spent on food in the United States is 9.8 per cent compared with 65.5 per cent in Bangladesh. Food aid as a share of total official development assistance is rising in least-developed countries; for example, Africa's dependency on food aid can be valued at nearly US\$ 2 billion per year.

The use of strategic and emergency food stocks to prevent and deal with food crises should be better coordinated at the international level.

(c) Dr Sadiq Ahmed, Vice Chairman, Policy Research Institute of Bangladesh; formerly Economist in charge of South Asia, World Bank

Dr Ahmed said that South Asia has a mixture of food surplus (India, Pakistan) and food deficit (Afghanistan, Bangladesh, Nepal and Sri Lanka) countries. Collectively, it can produce enough to meet the regional requirements as well as generate a net exportable surplus.

Food price inflation must be examined along with energy prices, which bring down real income. The poorer countries of Afghanistan, Bangladesh and Nepal have been hit more severely because they are net importers of both food and fuel.

Trade bans, price controls and subsidies may have been justifiable on political economy grounds, but they have adverse implications for efficiency and resource allocation over the longer term. Safety net programmes must be their effectiveness and fiscal sustainability. There is tremendous scope for reducing fiscal cost and food stock leakages. The idea of a regional buffer as food bank might also make sense and would help to mitigate a regional food crisis.

Agriculture's contribution to value added has declined showing very low levels of productivity. The improved terms of trade in favour of agriculture resulting from the global price increases allow South Asian governments to let farmers benefit from these higher output prices while removing fiscally expensive and inefficient subsidies. The resources thus saved can be redirected to areas that support farm productivity. South Asian governments also need to revisit agriculture trade policies. Importantly, trade barriers among neighbours are not very effective given physical proximity, and simply encourage illegal trade.

(d) Ms Lauren R. Landis, Director, World Food Programme, Geneva

Ms Landis introduced the World Food Programme as the world's largest humanitarian agency for food aid, particularly during emergencies, such as the current one in the Horn of Africa.

Emergency humanitarian food reserves must be created to support safety nets and mitigate the impact of food crisis. Ethiopia is a success story, showing what reserves can do to combat famine; the numbers of deaths and vulnerable people during famines have fallen since they established their emergency food security reserve. Similar ideas, supported by ECOWAS (the 15-member West African grouping of countries), are being explored in West Africa.

At the June 2011 meeting, G20 Agricultural Ministers called upon the WFP and other international organizations for a feasibility study for small, targeted, regional emergency humanitarian food reserves. The G20 met in Cannes on 3-4 November 2011 along with the African Union and the Gulf countries to take forward paragraph 40 of the G20 action plan, in which agriculture ministers agreed to remove all food export restriction and extraordinary taxes on food purchased by WFP.

Mismanagement and panic fuelled by export restrictions were the main forces behind the 140 per cent increase in world rice prices in 2007-08.



The WFP purchased US\$ 540 million, or 1.2 million tonnes of food in Asia for humanitarian purposes. Pakistan was at the top of the charts for food purchases by WFP. This food was used primarily for emergencies in the South Asia region. In fact, WFP bought food in Pakistan for Pakistan in response to the devastating floods that hit that country last year. However, rising food prices impact on the WFP budget. For example, WFP had to halve the reach in Afghanistan to US\$ 3.8 million from US\$ 7 million due to price volatility.

(e) Mr Vijay Kalantri, Vice Chairman, World Trade Centre Mumbai; Board Director, World Trade Centers Association, New York; President, All India Association of Industries, Mumbai

Mr Kalantri welcomed the speakers and the audience on behalf of the World Trade Centre, Mumbai. He said that the WTC has worked on the subject of WTO and world trade consistently for the last 15 years and has published research and information to a wide audience on these subjects.

South Asia is particularly concerned to give priority to feeding the poor in countries in the region. Mr Kalantri said that developing countries do not have a level playing field in terms of world trade. Developing countries are asked to remove trade barriers for their imports but their exported goods face trade barriers when they reach the borders of developed countries. He cited the export of Indian grapes to Europe, where the whole shipment was refused entry even though only one container contained pests.

World food prices are up 50 per cent compared to ten years ago. India has surplus rice and wheat to share with the rest of the world. It produced 95 million tonnes of rice this year; after setting aside 89 million tonnes for its own population, it has 6 million tonnes surplus for the world market. The four-year ban on rice exports was lifted in September 2011. Wheat export too is free of export controls.

Referring to the state of India's infrastructure, Mr Kalantri stated that 40 per cent of India's agricultural produce does not reach the market due to lack of proper transportation. Ports, rail transport, roads, and handling documentation and facilitation must improve if supplies to the poor are to be made at the lowest transaction cost. India also needs to build adequate storage capacity. Financial assistance to develop infrastructure for movement to food deficit countries is required. Offers of grants during the early days of the WTO for capacity building were not followed by actual disbursement, he complained.

On the issue of commodity futures, Mr Kalantri called for the control of speculation. The world food markets are integrated with the energy, finance and exchange markets, and the instability and volatility of the latter are transmitted to the food markets. Sensitive commodities like food must be taken out of the exchange since wild fluctuations in these affect the spot prices.

Finally, Mr Kalantri called for an integrated SAARC (South Asian Association for Regional Cooperation) Treaty for balanced distribution and management of food in the region.

2. Questions and comments by the audience

To Dr Ahmed, audience members responded that the rise in food prices must be seen in the context of the rising input prices of fertilizer, seed water and power. Thus, mismanagement

of the macro parameters that lead to turbulence in food prices as well as input prices, is a factor to be considered. The moderator responded that macro policies themselves could not provide the answers to food security. Regulatory interventions and emergency actions play a role too.

The audience reacted to Ms Landis' remarks on the WFP and food aid, suggesting that the multiplicity of UN agencies dealing with food and agriculture – namely FAO, IFAD and WFP – is eroding the efficiency and reach of food aid. She responded that all the three agencies are closely related and work in tandem. Audience members also suggested that the trade restrictions blocking private sector trade could be removed to allow food to flow to high demand areas in emergencies. These measures could supplement the efforts of the WFP to bring succour to the hungry.

In response to Mr Kalantri's address, a section of the audience said that many speculators have lost money on forwards. The huge spot markets cannot be controlled by futures for long. There is no evidence to suggest that food markets rise and fall on the signals of futures markets. Farmers face a certain future if they are sure of a guaranteed price before they plant their crops. Mr Kalantri replied that the poor must be protected, especially in the context of essential goods like food.

3. Conclusions

Further work is necessary with regard to the identification of barriers in the food trade with South Asia and solutions to these barriers. A thorough audit of the non-tariff barriers in the 60 food deficit countries, as well as the top ten exporters, must be carried out to lay out the ground positions in trade. Delivery-based futures and commodity exchanges must also undergo further study.



Abstract

The services sector is an increasingly integral part of global food supply chains, with the production, distribution and marketing of food products relying on logistics, infrastructural services, and financial and professional services. The GATS inclusion of “Services incidental to agriculture, hunting and forestry”, as well as services commitments in regional trade agreements, therefore has a potentially far-reaching impact on food security. Particularly in developing countries, where these services may be lacking, it is essential to better understand the linkages between services liberalization and food security.

The session attempted to address the following issues:

- How do services contribute to the cost and distribution of food products?
- Under which circumstances could deeper liberalization result in lowering costs and improving the distribution of food products?
- What implications do the current GATS negotiations have for food security?
- What are the potential risks for developing countries with respect to services liberalization incidental to agriculture?

As an area that has not received great prominence, the main focus of this session was to explore the various linkages between food security and services liberalization and lay out what the future research agenda in this area could look like.

Food security and trade in services: Risks and opportunities for developing countries

Moderator

Mr Damon Vis-Dunbar, Coordinator, the Trade Knowledge Network, International Institute for Sustainable Development

Speakers:

Mr Martin Roy, Counsellor, Trade in Services Division, WTO

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

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

Mr Alexander Chandra, Regional Coordinator, Trade Knowledge Network, International Institute for Sustainable Development (IISD)

Organized by

Trade Knowledge Network
South African Institute for International Affairs

Report written by

Ms Flavia Thomé, TKN Project Manager, IISD

Ms Vyoma Jha, Intern, IISD

1. Presentations by the panellists

(a) *Ms Sandra Rios, Director of the Centro de Estudos de Integração e Desenvolvimento (CINDES)*

The first speaker highlighted the main findings of a series of studies on food security concerns in Latin America, Africa and Asia by the Trade Knowledge Network. In the wake of the recent food crisis, policy responses have concentrated on short-term goals geared at decreasing prices. Moreover, the search for self-sufficiency resulted in protectionist measures such as subsidies for production.

Though some of these responses, such as social safety nets and compensatory policies, have proven useful, short-term responses can run counter to longer-term determinants of food security. Long-term policies could include increasing investment in agriculture and improving infrastructure for production and commercialization of food. Thus, sustainable policies to ensure food security require institutional coordination, which has so far been missing from regional policies.

Food security, therefore, provides the rationale for agriculture and trade policies in developed and developing countries. A food security policy includes two elements: food self-sufficiency, i.e. reluctance to rely on international markets and imports, and food self-reliance, i.e. market liberalization and export-oriented agriculture. The recent food crisis was a consequence of large discrepancies in national food security policies affecting trade.

Thus, policy issues around the linkages of food security and trade are likely to become important in the coming years. Lastly, Ms Rios concluded that two issues would be extremely important in relation to food security and trade – competition issues and investment rules.

(b) *Mr Martin Roy, Counsellor, Trade in Services Division, WTO*

The second speaker was of the view that the linkage of services to the agricultural sector is an important research area, although it has not been at the forefront of the services negotiations at the WTO. He provided a brief overview of the GATS negotiations and how they related to agriculture and food security.

He noted that a plurilateral request on services related to agriculture has been made in the GATS negotiations. The rationale, he explained, is to improve the competitiveness and quality of agricultural production thus benefitting producers and consumers worldwide.

The most essential liberalization is required in agricultural distribution services. Key points for a research agenda include the impact of liberalizing distribution services, and the potential of trade in services to incite local producers to upgrade production methods, improve the organization of supply chains, enhance local producers' links to international supply chains, and boost investment across the value chain in order to improve its effectiveness and reduce waste.



(c) Mr Wamkele Mene, Counsellor, Permanent Mission of South Africa to the WTO

The third speaker looked at the issue from both a multilateral and regional perspective. To start off his presentation, he put forth a question regarding what provisions of GATS offer an opportunity to advance the objective in terms of food security.

He emphasized that Article V of GATS, which allows countries to establish preferential trade agreements, facilitates the ability of regions to improve food security. Although it is not immediately obvious, many sectors have an important impact on food security, through finance, distribution, logistics and transportation.

Regional agreements can be used to ensure that people have access to food products and there is an improvement in the quality of agricultural products in that region. Though there are no assessments as to the extent to which regional agreements in SADC have led to distortions in domestic markets, such distortions will have to be managed. The ability to anchor agricultural distribution services by regulatory bodies is critical to food security. In the absence of any regulatory bodies to correct market failures in the economy, liberalization in agricultural services might lead to dangerous consequences for food security.

(d) Mr Alexander Chandra, Regional Coordinator, Trade Knowledge Network, International Institute for Sustainable Development

The final speaker addressed the issue from an ASEAN perspective and presented a case study on the role of logistical services in Indonesia.

Food security remains a major concern among ASEAN countries given its diverse economic and agricultural conditions. For example, Viet Nam is one of the largest food-exporting nations, while the Philippines is one of the largest food-importing nation. Limited connectivity between the countries exacerbated the food crisis of 2008 in this region. Thus, there is a great need to streamline food security issues within the initiatives to accelerate ASEAN connectivity.

Citing the Indonesian example, the speaker underlined that the remoteness of certain areas is the leading cause of food insecurity in Indonesia. Thus, liberalization of services by improvements in the logistic infrastructure could provide a great impetus for increasing food security in the country.

2. Questions and comments by the audience

- It was suggested that there are certain contradictions or limitations with respect to regional integration in the agricultural services sector.
- One participant questioned the extent to which bilateral investment treaties between countries raise risks in relation to food security, especially with an increase in the incidence of land grabbing.
- It was pointed out that poverty is an important factor in food security. While demanding local content is often important for developing countries to create jobs, it was questioned whether liberalization in GATS leads to less local content requirements and more land grabbing.

- It was suggested that infrastructure development was essential in many developing countries, as 40-50 per cent of the food costs are freight costs.
- A concern raised by one participant was whether the WTO has a solution for transferring food from the plentiful areas to the needy areas under some arrangement.
- One participant raised a particular question regarding the liberalization of financial services under GATS and the extent to which it would help small farmers to get loans and other benefits or whether it would only benefit commercial farmers.
- An interesting example was given from Latin America, where some countries import food products that they also produce locally. The concern raised was whether the WTO Rules Mechanism has any solutions for this particular kind of trade deficit.

3. Conclusions

The session concluded with various views on the question that had started the session: the impact of trade in services on food security. There were many useful thoughts on what a future research agenda on this topic might look like.

The presentations of the four speakers touched upon various situations on a domestic, regional and multilateral level. Country-specific examples gave us an insight into the problems of infrastructure, logistics, finance and transportation faced in the agricultural sectors. Liberalization of trade in services can be an important starting point for correcting these distortions, thereby ensuring greater food security.

On a regional level, countries need to move away from protectionist measures. There is a need to strengthen regional cooperation through confidence-building measures in order to ensure food security. Technical cooperation is also important, which can be provided through capacity building and technical assistance in terms of food production and distribution.

It was concluded that sound domestic policies and greater regional cooperation to ensure food security were needed in order for this issue to become an important discussion at the multilateral negotiations.



Abstract

The session focused on the question of how international trade and investment and the multilateral framework can contribute to more food security at a global, regional, national and household level. With growing food demand and future food supply uncertainties, the trade system has to play a critical role in managing both short-term and long-term imbalances. This requires multilateral policy coordination.

Several dimensions of the current policy status and future needs were assessed. First, compliance with the domestic support commitments under the Agreement on Agriculture was examined and an evaluation was made of what is needed to improve the support policy environment to contribute to global food security. Second, the impact of the recent food price increases on agricultural trade policies and trade flows was reviewed, and consideration was given to how to ensure stable world markets that provide incentives for countries to incorporate trade fully into their food security strategies. Three discussants elaborated on the challenges facing the trade system in contributing to food security.

Achieving food security through world markets

Moderator

Dr Christian Häberli, Senior Research Fellow, World Trade Institute, Bern University; former Chair of the WTO Committee on Agriculture (Regular Session)

Speakers

Dr David Orden, Senior Research Fellow, IFPRI

Dr David Laborde, Senior Research Fellow, IFPRI

Dr Josef Schmidhuber, Senior Economist, Head of Global Perspective Studies Unit, FAO Liaison Office, Geneva

Dr Frank van Tongeren, Trade and Agriculture Directorate, OECD

Dr Maximo Torero, Division Director of the Markets, Trade and Institution Division, IFPRI

Organized by

International Food Policy Research Institute (IFPRI)

Report written by

Dr Christian Häberli, Senior Research Fellow, World Trade Institute, Bern University; former Chair of the WTO Committee on Agriculture (Regular Session)

Dr David Orden, Senior Research Fellow, IFPRI

Dr David Laborde, Senior Research Fellow, IFPRI

Dr Josef Schmidhuber, Senior Economist, Head of Global Perspective Studies Unit, FAO Liaison Office, Geneva

Dr Frank van Tongeren, Trade and Agriculture Directorate, OECD

Dr Maximo Torero, Division Director of the Markets, Trade and Institution Division, IFPRI

1. Presentations by the panellists

(a) *Dr David Orden, Senior Research Fellow, IFPRI*

Dr Orden presented the key conclusions of his recent book (co-edited with D. Blandford and T. Josling), *WTO Disciplines on Agricultural Support* (Cambridge University Press, 2011). He argued that disciplines on domestic support are vital to food security in two ways. First, green box measures allow unrestricted expenditure for many productivity-enhancing and distributive policies. Second, high, middle and low-income countries still face internal pressure to increase subsidies, while food security is best achieved by reducing distortion to production worldwide.

Dr Orden reviewed the intricacies of the WTO support rules and illustrated how major developed and developing countries have interpreted these rules to notify their support. He showed that WTO definitions have a significant impact on the level of support and the way in which it is notified to the WTO, and that real support as measured by economists and by the OECD often differs from WTO notified levels. The Doha Development Agenda (DDA) would tighten the constraints on developed countries that have provided the most support in the past, but loopholes would remain. The US level of support remains highly dependent on prices and the design of such policies would be affected by a DDA along the lines of the December 2008 draft modalities. Green box support to enhance agricultural productivity remains low in three countries examined (Brazil, India and the Philippines) but has increased in China.

(b) *Dr David Laborde, Senior Research Fellow, IFPRI*

Dr Laborde reminded the attendees that food security is a public good. Trade enables welfare, inexpensive food, a stable food supply and productivity gains, all of which are elements that contribute to food security. However, not enough food is available to the poorest, and this is an issue of affordability. Concluding the DDA would have positive consequences, such as reduced agricultural protection and improved trade facilitation to ensure market access for producers. However, WTO rules to mitigate unfair competition (subsidies, dumping), tariffs (taxing the hungry), and export restrictions (exacerbating price spikes) should be tightened. High tariffs are not an effective tool against hunger, Dr Laborde argued, but they are a disincentive for export markets to invest. To limit the negative externalities of unilateral policies on small, vulnerable economies (SVE), and in particular export taxes that may be difficult to ban in the short run, and to limit the use of such policies by large countries and generate income to help vulnerable importers to manage the price surge period, a system of "permits to tax" could be implemented. Free trade is necessary to achieve food security, but food security is also necessary to achieve support for free trade in the long run.

2. Comments by discussants

(c) *Dr Josef Schmidhuber, Senior Economist, Head of Global Perspective Studies Unit, FAO Liaison Office, Geneva*

Dr Schmidhuber described the drastic change in the overall food market environment since 2007, shifting from a situation of structural surpluses, export competition, import



protection and high domestic support to one of structural and acute deficits, export restrictions, import subsidies and a proliferation of other “demand-augmenting measures”, such as subsidies for biofuels. Existing trade rules and disciplines offer little to ensure that trade remains conducive to food security under this new market environment, and they have to be adapted accordingly. Empirical analysis shows that different countries and regions suffered differently from the food price spike in 2007/08. Trade restrictions played a pivotal role for this differential outcome. While countries in developing Asia managed to insulate themselves from the price hike through export restrictions and “aggressive buying”, many countries in Sub-Saharan Africa experienced a sharp food price increase and had to bear the brunt of the price hike, with a marked increase in undernourishment.

Dr Schmidhuber suggested that, as a first step, current disciplines – notably those of Article 12 of the Agreement on Agriculture – need to be revisited, defined more clearly and enforced more strictly. If these are insufficient, tighter disciplines on export restrictions and “demand-augmenting measures” need to be envisaged in a second step. Over and above improving the trade disciplines, he suggested promoting public investment in agriculture and food safety nets.

(d) Dr Frank van Tongeren, Trade and Agriculture Directorate, OECD

Dr van Tongeren agreed with the previous panellists, especially on the need for WTO members to improve the way they support both developed and developing countries, to reorient the focus of current agricultural rules, and to diversify food supply. A well-functioning international trade system is all the more important in the context of increasing pressures on natural resources, especially land and water, and with the expectation of climate change affecting production potentials differently in different regions of the world. Dr van Tongeren considered that the present external economic, financial and fiscal environment was a good basis for further agricultural reforms.

(e) Dr Maximo Torero, Division Director of the Markets, Trade and Institution Division, IFPRI

Dr Torero noted that trade is necessary but not sufficient to ensure food security. The key staples commodity markets are characterized by: (a) market concentration (the top five exporters of wheat, corn and broken rice represent 84 per cent, 63 per cent and 80 per cent of world exports respectively); (b) biofuel production, which has opened a new source of demand and competition for water and land – for example, 35 per cent of US maize production is used for biofuels; (c) a significant increase in financial activity in the futures market for these commodities – for example, for corn, the volume traded annually on exchanges (front contracts) is more than three times that of global production; (d) volatility, which is reinforced by climate change; and (e) historically low stock to use ratios. All these characteristics result in increased price volatility, which is historically high.

Under these conditions, trade plays a crucial role. We know changes in trade policies contributed substantially to the increases in world prices both in 1974 (an earlier period of sharp price increases) and 2008. In 2007-08, insulating policies in the rice market accounted for almost 40 per cent of the increase in the world market price. If export taxes in a big agricultural country are raised, this pushes up world prices and this is bad for small net food importing countries. Reductions in import duties have the same effect. Trade needs to be looked at as an international public good, which means that cooperation and discipline are needed, and requires countries to not think and act selfishly. Symmetry between information and cooperation is needed. Trade does not solve all problems and

trade liberalization is tied to adjustment costs. Therefore significant investments are needed in agriculture, research and development, and infrastructure in order to reduce volatility and satisfy future demand.

3. Questions and comments by the audience

A number of perspectives emerged in the general discussion. Several participants noted the failure of world markets to provide food security: for example, one participant noted that Mexico had turned to the US corn market as a source of supply, only to find biofuels policies driving up prices and reducing food security through this source.

Some participants highlighted resource constraints (limited land per person, growing population) as the “elephant in the room” posing fundamental challenges to food security.

Others questioned technical points made by the panellists: one argued that the WTO notifications badly understate the domestic support that should be notified; another questioned the assertion that tariffs show no correlation with food security as measured in the Global Hunger Index and thus were demonstrated to be an ineffective tool for this objective. The need for adequate nutrition policies was emphasized, which brought in the role of tariff revenue as a source of government finance. Several participants highlighted the need for coordinated policies – taking into account the commitments made under the “Right to Food” – and greater transparency.

4. Conclusions

In their concluding remarks, the panellists noted that available studies and data clearly show the state of food (in)security. Concluding the DDA would reduce the tariff overhang (reducing uncertainty about market access for farmers) and lower the scope for domestic policy support to agriculture, especially in rich countries. These steps would increase the prospects for achieving global food security with more efficient resource use, but serious regulatory gaps would remain for export restrictions, (non-genuine) food aid, and other market power asymmetries (e.g. for FDI regulations). Increasing productivity and investment (and appropriate policies thereon) are key to many of the problems addressed in the discussion.

Dr Häberli summarized the session in three conclusions: a widespread call for more disciplines, recognition that the present WTO rules largely address an older policy agenda, and concern that even with a DDA, a lot of food security issues will remain. The lively debate at the end of the session and follow-up talks after the session between participants and panellists showed the need to improve understanding of the topics involved.



II. Trade in natural resources



Trade in natural resources – curse or blessing? A parliamentary perspective

Moderator

Mr Ram Etwareea, Journalist, *Le Temps*

Speakers

Ms Roberta Piermartini, Senior Economist,
Economic Research and Statistics
Division, WTO

Mr Piet van der Walt, Member of
Parliament, Namibia

Mr Jörg Leichtfried, Member of the
European Parliament

Mr P.C. Chako, Member of Parliament,
India

Organized by

The Inter-Parliamentary Union

The European Parliament

Report written by

Mr Adriano José Timossi

Mr Serguei Tchelnokov

Abstract

The world is faced with the challenge of how to make the best use of the remaining natural resources while respecting the overarching environmental imperative. With the global population expected to reach 9 billion by 2050, demand for natural resources will continue to grow, thus rendering current practices of over-exploitation and environmental degradation no longer tenable.

About half of the world's natural resources are found in the poorest countries. These natural resources could be a powerful engine of development for them if they adopted the right policies. At the same time, countries whose economies are dominated by the extraction and export of natural resources run the risk of the "resource curse". Not only can access to natural resources be a source of political tension, but volatile prices can result in economic instability and social unrest.

Parliamentarians are regularly faced with the dilemma of making balanced policy choices. This is why the issue of trade in natural resources seemed a logical choice of theme for the parliamentary panel held in the framework of the WTO Public Forum 2011. Organized by the Inter-Parliamentary Union and the European Parliament, the panel was designed to consider policy options that would take into account the particularities of natural resource markets. The panel formed part of a continuous process known as the Parliamentary Conference on the WTO – a mechanism of parliamentary interaction with the WTO, which has become its de facto parliamentary dimension.



1. Presentations by panellists

(a) *Mr Ram Etwareea, Journalist, Le Temps*

In his introductory remarks, the moderator of the panel, Mr Etwareea, shared his personal experience of visits to a few resource-rich countries. In some of them, the abundance of natural resources contrasted starkly with widespread poverty, inequality, social and political unrest, environmental degradation and biodiversity loss. Nonetheless, most people were convinced that access to natural resources was the most important single determining factor in their chances for improved living standards. A completely different example was Norway – a country marked by important human development achievements.

The first question that the moderator asked the panellists was: If natural resources were a blessing for Norway, why are they a curse for some other countries?

(b) *Ms Roberta Piermartini, Senior Economist, Economic Research and Statistics Division, WTO*

Ms Piermartini singled out five features that made natural resources special from the point of view of their place in the economy in general and in trade in particular.

- **Exhaustibility:** Whether renewable or non-renewable, natural resources are exhausted if the rate of extraction is higher than the rate of renewal. Trade may play a dual role in this regard: it can worsen the situation by exhausting the stock if demand is too high, or improve the situation by disseminating technologies capable of boosting sustainable production.
- **Uneven geographical distribution:** Most natural resources are concentrated in just a few countries, and this creates imbalances, as, unlike technology or goods manufacturing, natural resources cannot be produced. Trade helps to alleviate the disparities but it can also be a source of conflict.
- **Dominance:** Natural resources traditionally account for a large proportion of both trade and GDP in countries that have these resources in abundance and that use them as a comparative advantage. However, the manufacturing sector in such countries is often underdeveloped. This requires macro-economic rebalancing.
- **Externalities:** Exploration of natural resources, and in particular their extraction, is accompanied by negative effects, such as pollution. To address these issues, countries need appropriate regulation and properly defined property rights.
- **Price volatility:** The natural resources market tends to be volatile. To reduce volatility, coordinated trade policies should be put in place.

(c) Mr Piet van der Walt, Member of Parliament, Namibia

Responding to the moderator's question, Mr van der Walt said that Namibia, as a fledging state, is still fine-tuning its institutions and policies. Key development components, including skilled labour and investments, are lacking. This is why, for example, over 20 per cent of Namibia's GDP is currently allocated to education.

Quoting figures from the *World Trade Report 2010*, the panellist said that trade in natural resources had increased six-fold between 1998 and 2008, currently representing nearly a quarter of world merchandise trade. However, this was largely due to an increase in fuel and mineral prices. It is feared that price volatility, population growth and scarce resources could lead to tensions between producing and consuming nations. A strong system of global governance is therefore needed to deal with these challenges. In recent years, Namibia has achieved considerable progress in terms of more effective exploitation of its natural resources.

(d) Mr Jörg Leichtfried, Member of the European Parliament

Mr Leichtfried started his presentation by pointing out that, in the case of Norway, wealth generated by oil and gas revenues helped to create an exemplary welfare state but did not help develop the country's industrial capacity. In this respect, Norway is different from other Nordic countries.

He underscored that issues relating to price regulation should be kept under close scrutiny by parliamentarians. Market fundamentals, such as the supply-demand equation, cannot be questioned. However, three specific issues require full attention. The first one is democracy. In countries with a democratic deficit, only a small élite stands to benefit from revenues generated by natural resources. This results in social unrest and can occasionally lead to civil wars. The second aspect is social. From the European perspective, it is difficult to overestimate the importance of social and environmental rights.

Last but not least is the problem of speculation in raw materials. The panellist was in favour of using transaction taxes as a means of preventing speculation but recognized that this approach was not popular with some governments. The European Parliament was leading the way on this issue, having succeeded in getting the European Commission to place it on its agenda. Mr Leichtfried concluded by suggesting that natural resources were neither a curse nor a blessing, and should be used wisely, without falling into the trap of dependency.

2. Debate

Responding to a direct question about problems for foreign companies in accessing natural resources that are nominally in the possession of poor countries, Mr Leichtfried agreed that the problem existed. He suggested that the issue should not escape parliamentary scrutiny. A well-functioning legal system should be in place, driving the business to work in a sustainable manner, with minimum environmental impact. Mr Leichtfried added that every country should be free to decide whether it wishes to exploit its natural resources now or leave them for future generations. However, the issue of national sovereignty over natural resources is a sensitive one, as evidenced by some of the disputes currently under consideration in the WTO.



Ms Piermartini pointed out that export tariff restrictions are twice as high for natural resources as for other sectors, while applicable WTO rules are not binding. Environmental and social concerns are also an issue.

For his part, Mr van der Walt referred to Article XX of the GATT concerning the right of members to restrict trade in natural resources, particularly when exhaustible raw materials are concerned, albeit without unjustifiable discrimination with regard to other Members.

The ensuing debate focused inter alia on the issue of corruption linked to trade in natural resources. It was pointed out that both production and supply sides were implicated in such problems. The absence of effective international mechanisms to deal with the phenomenon was regretted. Another important problem is money laundering. Parliamentary supervision and monitoring are important and greater transparency is needed for both governments and private companies involved in this business. It was suggested that democracy is the only effective way to ensure the sustainable use of natural resources and the fair distribution of their benefits.

A proposal was made to the Inter-Parliamentary Union (IPU) to establish closer coordination with regional parliamentary assemblies, such as the African Parliamentary Union, with a view to assisting resource-rich developing countries in making the best use of their potential for the benefit of the entire population, not just the privileged few. It was also suggested that parliaments of the countries concerned should be constantly monitoring the social and environmental impacts of the exploitation of natural resources, paying special attention to diversification and the use of environment-friendly technologies.

The issue of the exhaustibility of resources was a recurring theme in the debate. Particular mention was made of water resources and the over-exploitation of forests. Ecuador was mentioned as an example of a country where a bold decision has recently been taken not to extract oil in the Amazon region due to environmental considerations and because of concerns for the rights of indigenous people. Time and again it was said in the debate that clean technologies and know-how were key to achieving success.

One member of the public pointed out that all WTO members should be accorded equal treatment with regard to their right to exploit raw materials. This is reportedly not the case for some of the recently accepted members, who are subject to additional conditions unfairly imposed on them during accessions talks.

A number of interventions by parliamentarians from African countries focused on the plight of their continent which, although exceptionally rich in natural resources, is faced with development problems, aggravated by corruption and weak democratic institutions. Not all of these problems can be explained by the historical context or by continued manipulation by external forces. Clearly, the lack of strong regulatory frameworks and implementation mechanisms as well as the uneven distribution of natural resources also played a role. Companies interested in African natural resources should be encouraged to invest in value-added production, job creation and the development of skills locally.

3. Conclusions

The Parliamentary Panel within the framework was a valuable addition to the programme of the WTO Public Forum. Not only did it attract parliamentarians from many countries, but the debate was very interactive and rich. Participants acquired a great deal of additional information on concepts such as fair trade, value sharing, transparency and effective parliamentary oversight. Parliament's success or failure in dealing with these issues will affect whether natural resources are a blessing or a curse.



Abstract

Current approaches to greenhouse gas (GHG) emissions reduction are based on the assumption that emissions are the responsibility of the producers. However, an alternative view is that the responsibility for GHG emissions lies not with the producer, but with the final consumer of the products. This point of view could open up new opportunities for developing policies and activities to minimize supply chain GHG emissions. In addition, there is increasing interest in the implications of embodied carbon flows on domestic environmental policy.

International carbon flows: Sustainability, trade and climate change

Moderator

Dr Graham Sinden, Senior Strategy
Manager, the Carbon Trust,
United Kingdom

Speakers

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

Ms Diane Simiu, Head of the Carbon
Markets Division, Directorate General for
Energy and Climate/Ministry for Ecology,
Sustainable Development, Transport and
Housing, France

Mr Thierry Berthoud, Managing Director,
Energy and Climate, World Business
Council for Sustainable Development
(WBCSD)

Mr Vicente Yu, Programme Coordinator,
Global Governance for Development,
South Centre

Organized by

The Carbon Trust

Report written by

Dr Graham Sinden, Senior Strategy
Manager, Carbon Trust

Tuesday, 20 September 2011,
16.15 - 18.15

1. Presentations by the panellists

(a) *Dr Graham Sinden, Senior Strategy Manager, Carbon Trust*

Dr Sinden began by introducing the topic. The world currently views CO₂ emissions from a production perspective, meaning that responsibility for emissions lies with the country that produced the emissions. This is the approach taken by most national emissions assessment processes, and by international frameworks such as the Kyoto Protocol, the UN Framework Convention on Climate Change, and the European Union Emissions Trading System (EU ETS). However, by taking a consumption perspective, responsibility for emissions arising from the manufacture of products is allocated to the countries that ultimately consume the goods and services.

Dr Sinden went on to say that the link between these two viewpoints is the trade in goods and services that occurs between countries, and the carbon intensity of that trade. The emissions that occur during production are "embodied" in goods and services that are traded internationally. Around 25 per cent of global CO₂ emissions arise from the flow of goods and services across international borders for consumption in a different region.

For some countries and regions, the viewpoint chosen can a significant difference to measurement of its national emissions. For the United Kingdom, an assessment of emissions based on consumption is 34 per cent higher than when based on production, while a consumption view of EU emissions is around 23 per cent higher than the production view on which the EU ETS is based. Other countries tend to be net exporters of emissions embodied in trade: the net export of emissions from China is equal to around 23 per cent of the annual emissions produced within China. Overall, there is a tendency for developed countries to be net importers of emissions and for developing countries to be exporters.

In a world of universal emissions pricing, these flows might not cause concern. Indeed, they may even be beneficial, as trade patterns would in part reflect the different emissions intensities of production in different regions, particularly for emissions-intensive goods. However, the world does not currently have a universal emissions pricing system, and for regions such as the EU that are seeking to reduce emissions through pricing mechanisms, current production-based approaches to emissions assessment limit their ability to address emissions. Because of this, additional mechanisms are being considered. In the absence of a "global deal" on emissions pricing, the practicality of such responses and their impact on emissions are likely to be a focus for the evolution of emissions pricing schemes.

(b) *Ms Doaa Abdel Motaal, Counsellor, Office of the Director-General, WTO*

Ms Motaal argued that every once in a while, in any debate, new evidence emerges to challenge our thinking, and it can even provoke a turning point in the debate. This is the point that the debate on trade and climate change has reached with the new evidence presented by Peters and Hertwich (Peters, G.P. and Hertwich, E.G., 2008. *CO₂ Embodied in International Trade With Implications for Global Climate Policy*. 42 *Environ Sci Technol*, p1401-1407) and Caldeira and Davis (Caldeira, K. and Davis, S., 2011. *Accounting for Carbon Dioxide Emissions: A Matter of Time*. PNAS Early Edition, available at www.pnas.org/). By looking at emissions consumed rather than emissions produced, these authors discover that the developed world has actually increased its emissions in the past couple of decades instead of reducing them.



Ms Motaal explained that this research demonstrates that the reductions called for by the Kyoto Protocol have found themselves negated by the emissions that the developed world has imported from other regions. While unilateral trade measures in the developed world have been held back, so far, on the grounds that no evidence has yet emerged of carbon leakage, the evidence advanced by Hertwich, Peters and others demonstrates that the world may have engaged in no more than a process of “emissions offshoring”. This evidence needed to be brought to the attention of trade negotiators, and to be contextualized in the realm of the ongoing trade and climate change debate. It could very well change the discourse on the need for border adjustment measures, with such measures becoming necessary to secure the integrity of the emissions reductions that the developed world makes – a change in the discourse which Ms Motaal argued that the developing world needs to heed.

Ms Motaal concluded that, while there may never be a perfect methodology for measuring the emissions embodied in imports, a way must be found to apply border measures if this is the only way to secure meaningful action on climate change.

(c) Ms Diane Simiu, Head of the Carbon Markets Division, Directorate General for Energy and Climate/Ministry for Ecology, Sustainable Development, Transport and Housing, France

The European Union Emissions Trading System seeks to reduce greenhouse gas emissions by applying a cost of CO₂ for domestic emitters. In the absence of comparable efforts by other countries, this focus on domestic emissions risks undermining the environmental benefits arising from a reduction in European emissions, as it does not account for the emissions in goods imported into Europe. The additional costs for domestic European producers may also lead to the relocation of some production to other countries where emissions pricing is absent.

The EU Emissions Trading System Directive provides the possibility of introducing a Carbon Inclusion Mechanism (CIM). Its aim is to prevent carbon leakage by ensuring that installations located within the EU remain on an equal footing with those in third-party countries, thereby preserving the environmental integrity of EU efforts. The CIM proposed by France is based on the principle that the importer surrenders a volume of allowances equivalent to that which a European manufacturer has to acquire on the market for the same quantity of product. If no information is available on the carbon intensity of an imported product, a default approach could be adopted, whereby the amount of allowances to be surrendered by the importer would be the same as that which the average European producer would have had to purchase on the market. Importers would have to provide proof that products sold in Europe are more carbon-efficient than the European average and would then only surrender a volume of allowances proportional to the differences between their specific emissions and the European benchmark.

At EU borders, customs services can process the CIM using the information entered in the Single Administrative Document (SAD), the harmonized customs declaration common to all member states. The CIM would not require importers to complete any additional customs formalities.

Satisfactory sectoral agreements are the best way to avoid carbon leakage. If it is not possible to conclude such agreements, or if a country refuses to participate in them, then the CIM will aim to preserve the environmental integrity of the EU's emission reduction

efforts by creating incentives for importers to reduce their carbon intensity, while ensuring equal treatment between EU producers and importers. It may not be appropriate for all sectors, but can fit alongside other tools to combat carbon leakage.

(d) Mr Thierry Berthoud, Managing Director, Energy and Climate, World Business Council for Sustainable Development (WBCSD)

If the same price was applied globally to CO₂ emissions, international carbon flow could simply be part of the flow of raw materials and goods traded, without creating a trade distortion. The most common representation of a carbon price is the market price of carbon in systems such as the EU ETS. The main global mechanisms leading to an explicit carbon price are cap and trade regime, carbon taxes, baseline and credit approaches, and project mechanisms. Implicit carbon prices derive from alternative energy standards, emission performance standards, efficiency standards, and social commitments to reduce emissions. Within countries, and from country to country, all these mechanisms interact with each other.

Markets also play a key role in homogenizing the price of carbon. However, it appears that, over time, the various national policy approaches are likely to create a global price on carbon. Some argue that the disparity in carbon prices in the various parts of the world is creating international trade distortions. If so, recourse could be made to existing tools such as anti-dumping provisions. However, developing specific means to regulate the flow of GHG emissions embedded in the flow of raw materials, manufactured products and services is likely to add a new layer of constraints which will significantly distort the free trade of goods.

A global level playing field for carbon should not be based on new trade barriers but on the proactive will of policy-makers to put in place the policy frameworks to allow competitive markets to deliver goods as well as CO₂ reductions at the economic optimum.

(e) Mr Vicente Yu, Programme Coordinator, Global Governance for Development, South Centre

Using consumption-based emissions accounting could be a more accurate and fairer way of determining the responsibility for greenhouse gas emissions globally, as at the root of the issue lie the current unsustainable levels of consumption of carbon-embedded goods globally and the ways of distributing this consumption among countries. A consumption-based framework shows that the consumption in developed countries of carbon-embedded products is a major drivers of increased emissions in developing countries, which manufacture these products for export to developed countries. The stabilization or decrease of emissions produced within developed countries can be correlated quite closely to the increase of exported emissions from developing countries, implying an outsourcing of emissions from developed to developing countries.

In order to address the trend of globally rising emissions, developed countries need to reduce their carbon consumption. However, this could have adverse implications for developing countries that depend on exports to developed countries. More research needs to be undertaken on these adverse implications; to address them, international cooperation arrangements would be necessary to support a shift in developing countries, away from producing carbon-intensive products for export to developed countries, and towards more diversified production using less carbon-intensive processes to cater to domestic and regional consumption.



2. Questions and comments by the audience

Q: Is it fair for producers in developing countries to bear the burden for emissions associated with manufacturing products consumed in industrialized countries?

A: By allowing European producers and importers to pass through the cost of carbon allowances in the price of their products, it is European consumers that pay for the environmental externalities with the manufacture of all the goods they consume, whether the goods are produced in Europe or elsewhere.

Q: Is the verifier role dominated by Western businesses?

A: There are a number of large companies in this space, but many of these have operations in developing countries associated with the Clean Development Mechanism.

Q: How is border pricing for complex finished goods implemented?

A: As the EU ETS does not attach a price to the production of complex goods, their importation at the border could be outside the scope of a border mechanism. However, domestic European producers of complex goods would still experience a carbon price for the European raw materials and electricity they use.

Q: Are there any studies on the long-term effects of such border measures on the producers of these traded goods, such as China?

A: The long-term effects depend on the product, the sector, and how important this sector is to the exporting country. There are studies that have looked into this question for specific sectors such as steel.

Q: Could an international carbon price compensate for a lack of commitment by countries to reducing emissions?

A: Today there are many carbon prices, arising through direct carbon pricing, policy, regulation and non-carbon taxes. A wide range of actions can contribute to carbon pricing.

Q: Does the carbon flows concept fairly represent the exported emissions from a country?

A: The data presented here provide a carbon value added perspective – they represent the emissions produced and consumed in each country, including in intermediate countries.

Q: We need to change how we live our lives, and how we can live our lives with less emissions: the accounting question only addresses the second issue.

A: Correct accounting is necessary to ensure that the action being taken is actually delivering emissions reduction: without a consumption accounting perspective, it is not possible to determine the overall impact of national actions.

3. Conclusions

The session covered a wide range of issues associated with embodied emissions in trade, including the significance of international flows of emissions between producer and consumer countries, and the policy and pricing issues related to addressing global and country-level emissions that this raises. Border adjustment measures were a focus of the discussion, and while they were generally not viewed as an optimal solution to addressing different emissions pricing approaches, in the absence of a global approach they are likely to be considered further. At the same time, it was argued that some wider regulatory actions create an implied cost of emissions.



Abstract

The distinctive features of energy raise the question of whether energy trade and investment can be effectively regulated by a general international legal framework or whether a more specialized framework is needed.

The aim of the session was to discuss ways of addressing challenges related to energy trade, taking into consideration the distinctive features of energy commodities. The session focused on the international regulation of energy trade by WTO Agreements and the Energy Charter Treaty (ECT), and provided an opportunity to discuss complementarities between the general WTO framework and the more specialized ECT framework, which is based on the WTO framework but contains additional rules relevant for the energy sector. The ECT is applicable for energy trade with and among ECT states that are still outside the WTO.

International governance of the energy trade: WTO and the Energy Charter Treaty (ECT)

Moderator

Mr Roderick Abbott, Member of the
European Centre for International Political
Economy (ECIPE) Advisory Board

Speakers

H.E. Mr. André Mernier, Secretary General
of the Energy Charter Secretariat

Professor Gabrielle Marceau, Counsellor,
Legal Division, WTO

Professor Thomas Cottier, Managing
Director of the World Trade Institute and
the Institute of European and International
Economic Law

Professor Peter Cameron, Director of the
Centre for Energy, Petroleum and Mineral
Law and Policy; Professor of International
Energy Law at the University of Dundee

Organized by

Energy Charter Secretariat

Report written by

Dr Yulia Selivanova, Energy Charter
Secretariat

1. Presentations by the panellists

(a) *H.E. Mr. André Mernier, Secretary General of the Energy Charter Secretariat*

The present trends towards tighter supply to energy markets and the emergence of new consumers require a reliable framework for trade and investment in oil and gas.

The WTO rules that govern international trade are applicable to trade in energy and energy products. There is a perception that WTO rules entail a bias towards market access and do not sufficiently address the issues of export restrictions and investment protection, commonly regarded as the most crucial challenges in oil and gas trade. Trade-restrictive practices related to energy are mainly found on the exports side, and the multilateral trade rules were devised to address import barriers to a larger extent than export barriers.

The most important challenges are related to the fact that a significant part of international energy trade is linked to fixed infrastructure, built specifically for the purpose of carrying hydrocarbons or electricity. The right of transit through the territory of other states has a significant impact on cross-border trade in energy.

These issues are of specific relevance to energy trade and are addressed by the ECT, the only energy-specific multilateral agreement that covers all major aspects of international energy turnover, including trade, transit, investment and energy efficiency. ECT binding provisions are strengthened by dispute settlement, covering both state-to-state arbitration and investor-state dispute settlement. The ECT provides useful value added to the existing general WTO framework, which covers a much larger constituency. The investment framework and more elaborate transit rules are features of the ECT that have not been negotiated in a detailed manner within the WTO. The cornerstone of the ECT is non-derogation from the WTO. The ECT incorporates WTO rules on energy trade and extends them to non-WTO ECT countries. The ECT and WTO frameworks complement each other, creating synergies without unnecessary duplications.

In addressing trade-related rules in the energy sector, some politically sensitive areas are likely to be encountered, including questions of state sovereignty over natural resources. The principle of sovereignty over energy resources is enshrined in the ECT. Decisions on depletion policy are matters for resource-owning governments. International regulation is unlikely to succeed if it tries to encroach on these national prerogatives.

(b) *Professor Gabrielle Marceau, Counsellor, Legal Division, WTO*

WTO rules apply to trade in energy and include non-discrimination principles, such as national treatment and most-favoured nation (MFN) principles, and prohibition of quantitative restrictions under Article XI. There are numerous questions as to how exactly these general principles and rules can be applied to trade in natural resources and, in particular, to energy. Several WTO dispute issues have arisen on the application of existing general WTO rules and these could have ramifications for the energy trade.

The main goal of the WTO is to prohibit protectionism. In the energy trade, export restrictions represent a more important concern than import barriers.



Disciplines on state trading are important in the area of energy, given that the sector is dominated by large state-controlled enterprises. The General Agreement on Tariffs and Trade (GATT) Article XVII provides little guidance on the issue, as it only says that state trading enterprises (STEs) should behave commercially.

The energy sector is heavily subsidized, therefore the disciplines on subsidies are also very important. It is unclear how subsidies given to public enterprises should be dealt with compared to those given to private ones. Different rules apply to energy subsidies because some energy products are considered industrial and are regulated by the WTO Subsidies and Countervailing Measures (SCM) Agreement, while other energy products are considered to be governed by the Agreement on Agriculture.

Moreover, it is important to think about the ramifications of regional trade agreements (RTAs) for energy trade. How can RTAs allow for positive discrimination and rules on freedom of transit? It is unclear whether GATT Article XXIV can serve as justification for the violation of the freedom of transit enshrined in Article V.

With respect to the Generalized System of Preferences (GSP), the Appellate Body has said that preferences can be conditioned on criteria that are development-related. How can it be distinguished whether these criteria are development-related or linked to self-interest? For instance, can a donor give preferences to developing countries on the condition that they pursue certain energy-related policies?

Another difficulty lies in having rules on energy in accession protocols, meaning that members are treated differently depending on the terms of their accession. It is difficult to deal within the multilateral system with countries that have different obligations. It would be much better if the applicable rules were harmonized.

Finally, it is unclear how the WTO would deal with disputes between two WTO members who also participate in other agreements on energy, such as the ECT, which has more detailed rules on issues such as energy transit.

In conclusion, WTO members need to deal with these issues to make sure that rules are applied correctly and new rules created if needed. Civil and academic society also needs to reflect on these issues.

(c) Professor Thomas Cottier, Managing Director of the World Trade Institute and the Institute of European and International Economic Law

The issues related to energy trade have not been the focus of GATT and WTO debate because many oil-producing countries are not part of the organization. Studies indicate that the energy industry shows no real WTO awareness. One reason that the energy debate has recently received attention in the trade forum is due to the implications of energy production for climate change.

The reduction of greenhouse gases depends on the increased use of renewables and energy efficiency. This raises the question of how to create incentives in research on renewable energy and what the WTO should do about this. With respect to subsidies, 90 per cent of energy subsidies benefit non-renewable energy sources, but need to be reduced if climate change is to be mitigated. Existing WTO disciplines do not distinguish between subsidies for renewable and non-renewable energy sources. Should we review subsidies rules, reviving non-actionable subsidies and research and development subsidies?

The development of renewable sources of energy means there would be an increase of cross-border trade over long distances. This raises the question of security of transport and transit. Should we move towards special rules on transit or enhance existing WTO rules?

For dealing with energy trade at a multilateral level, are special rules or general rules more effective? There are strong arguments in favour of special rules. Energy requires an integrated approach:

- All forms of energy should, in principle, be subject to the same rules and conditions of competition.
- The production and transmission of energy is a complex operation, often involving both goods and services.
- It also entails technology and is affected by intellectual property rights.
- The sector shows a high level of governmental involvement, necessitating coherent rules on competition and government procurement.

Recourse to a framework convention implies that its provisions may refer to pertinent provisions of other agreements of the WTO. These may also incorporate provisions of agreements outside the scope of the WTO, as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) did for the Paris and Berne Conventions on industrial property and copyright. Alternatively, they could allow references to other provisions without incorporating them, for example to the ECT, to a future and revised UNFCCC, or to the Kyoto Protocol. Both reference and incorporation allow the building of a comprehensive and coherent agreement on energy within the WTO subject to binding dispute settlement.

(d) Professor Peter Cameron, Director of the Centre for Energy, Petroleum and Mineral Law and Policy; Professor of International Energy Law at the University of Dundee

Energy is different from other products: in the case of hydrocarbons, we are dealing with finite non-renewable resources. These resources have historically been of strategic significance for all states, although in different ways, depending on whether a particular state is a net importer or exporter of energy. Policies on resource depletion have traditionally been viewed as sovereign matters of resource-owning countries. The principle of sovereignty over natural resources is expressed in Article 18 of the ECT.

The principal challenge linked to energy trade is the one of reconciling different interests between consuming and producing states. For consumers, availability of energy supplies is important. Energy supply security is a significant challenge for areas like China, the EU and the United States. On the supply side, resource nationalism has been associated with the development of energy resources.

The second challenge relates to the growing role of the state in the energy sector. This phenomenon is evident in the rise of national energy companies. Ninety per cent of the world's oil reserves and 70 per cent of production are controlled by governments. A similar percentage of government involvement is observed in infrastructure systems. These systems are said to be highly inefficient (with exceptions of companies like Statoil). It is important for states to rely on international frameworks. The ECT has been particularly relevant to disputes between investors and states.



The third challenge is linked to the dynamic character of energy. This is illustrated by new discoveries in the Arctic and Brazil and the development of new technologies for energy exploration and development. Consequently, more countries are involved in exploitation and extraction of energy.

The final challenge is linked to the sustainability of energy production and use, linked to oil spills, adverse effects on climate change, violations of human rights, transparency and corruption.

How is one to respond to these challenges? The non-legal role of international organizations has potential to set out common ground for dialogue. The WTO's *World Trade Report 2010* on trade in natural resources and organization of this session are both developments in the right direction. International organizations should contribute more to the debate. Cooperation between the WTO and ECT is desirable.

2. Questions and comments by the audience

Most of the discussion centred around the question of the feasibility of negotiating effective international legally binding disciplines on energy. Most commentators questioned the incentives for producing countries to adhere to such disciplines.

Whereas the WTO fosters market access, energy trade barriers are linked to difficulties in access to supplies. Energy-producing countries therefore have much more leverage than consuming countries.

Several comments cast doubt on the feasibility of reaching consensus on energy-specific rules within the multilateral framework, given the differences in the interests of consuming and producing countries. However, it was pointed out that there are already energy-producing countries in the WTO, and some proposals in the current negotiations have addressed issues related to energy. Among these were issues related to transit, energy services and liberalization of environmental goods and services.

As to the question of incentives for the energy-producing countries, it was pointed out that up to 75 per cent of the export earnings of some energy-producing states come from energy exports, which leads to the conclusion of a certain dependence of producing states on supplying external markets.

Regarding the possibility of negotiating more specific multilateral rules on energy, it was pointed out that, during previous rounds of trade negotiations, consensus had seemed to be impossible on a number of issues, and yet agreements were finally reached. A proposition was made to integrate the ECT disciplines into the WTO framework in the form of a plurilateral agreement.

Issues of interest for many energy-producing countries include technology. Moreover many energy companies from energy-producing states are becoming more interested in investing abroad. The perception of investment rules by producing states may be changing. Since, with the development of renewable energy sources, demand on fossil fuels may decline, the position of energy-producing countries may also change.

The development of renewable energy sources has faced difficulties due to extensive subsidies for fossil fuels. However, many subsidies for renewable energy, such as feed-in tariffs, are inefficient and insufficient. More support should be given to the research and development of new low-carbon technologies.

3. Conclusions

Energy trade is different from trade in manufactured products. In addressing trade-related rules in the energy sector, politically sensitive areas are likely to be encountered, including questions about state sovereignty over natural resources. Despite clear interdependence, the interests of energy-consuming and -producing countries differ significantly and this makes the negotiation of international binding rules covering energy very difficult.

While rules contained in WTO Agreements cover trade in energy products, they are not designed to tackle problems that arise in the field of energy trade. While the WTO protects market access, problems in energy trade are related to access to supplies rather than market access. Investment, and possibly competition rules, are needed. While the WTO does not have an investment framework, the ECT provides additional value added. The investment framework and transit rules are valuable features of the ECT that have not been negotiated in a detailed manner within the WTO. The ECT incorporates WTO rules with respect to energy trade and extends them to non-WTO countries that are members of the ECT. Cooperation between the two organizations should be fostered.



Abstract

With the Rio 2012 meeting coming up less than a year after the WTO Public Forum, ICTSD organized this session with the aim of generating a broader and deeper understanding of green economy issues as they relate to trade. Up until now, the preparatory process for Rio 2012 has hit obstacles due to anxiety or unease among some parties with regard to the green economy concept, specifically due to trade-related concerns and fears of green protectionism.

These issues merit more nuanced exploration and input from the trade community, as the debate so far has been limited mainly to the environment community.

Forging coherence between wider issues of trade, sustainable development, and the nexus between trade and sustainable development governance will be of key importance to the future of the trade system – and a challenge to it. The session sought to contribute to a better understanding of the linkages between trade and the sustainability issues which will be addressed at the Rio 2012 conference.

Preparing for Rio 2012: Trade opportunities and challenges in a green economy

Moderator

Ms Deborah Vorhies, Managing Director-
Director of Operation, International Centre
for Trade and Sustainable Development
(ICTSD)

Speakers

Mr Mark Halle, Executive Director,
International Institute for Sustainable
Development (IISD)

Mr Guillermo Valles Galmés, Director,
Division on International Trade in Goods
and Services and Commodities, UNCTAD

H.E. Mr Manuel A.J. Teehankee, Former
Ambassador of the Philippines to the WTO

Mr Ahmed Abdel Latif, Intellectual
Property and Technology Senior
Programme Manager, ICTSD

Organized by

ICTSD

Report written by

Ms Malena Sell, Senior Programme
Officer, Environment and Natural
Resources at ICTSD

1. Presentations by the panellists

The session was opened by Ms Vorhies. She noted that, since Rio, the international policy community has achieved a more nuanced understanding of the integrated sustainable development issues the world is facing. While some issues have been resolved over the last 20 years, many have not. Today, looking towards Rio+20, attention has tended to be crowded out by other important topics, especially those related to the current macroeconomic climate. Fresh thinking on the role and opportunities of trade is needed, especially regarding how to integrate the concepts of a green economy and of green growth.

(a) Mr Mark Halle, Executive Director, International Institute for Sustainable Development (IISD)

Mr Halle focused his presentation on the green economy concept, stressing the need for the trade community to engage with the topic, which may otherwise create considerable friction. When the concept was launched, it appeared to prioritize “greenness” over other aspects, such as social ones, which complicated the politics surrounding it. Defining the green economy remains challenging; there is no single definition. Overall, it refers to an economy that functions differently and more broadly, based on an idea similar to that of sustainable development. However, there is a key difference: until recently, the economy was seen as a fixed element into which the environment had to be mainstreamed. Since the 2008 financial crisis, a fundamentally different understanding has emerged. It underscores that the nature of economic organization needs to be fixed, because mainstreaming sustainability has failed. The genius of the green economy is that, if it is organized properly, by its very functioning it delivers employment, social progress, and sustainable natural resource management. This is why the green economy represents an important re-evaluation of environmental thinking.

However, there is little traction at the political level. A number of fears related to the green economy are directly linked to trade. Among these are standards and technical regulations, which could potentially be used for protectionist purposes. Second, massive technological transformation and accompanying investment are required, and these would be vulnerable to challenges. Third, with regard to action on climate change, where countries move at different speeds, border carbon adjustments are a risk. Overall, unless carefully crafted, green economy measures risk becoming a strain on the trade system and the Dispute Settlement Understanding (DSU) in particular.

The challenge is to work out a path towards a green economy that delivers for human beings and entails minimum disturbance. Fundamentally, a fairness agenda is needed. There will be no forward movement if current privileges are maintained. This is what we need to understand in Rio.

(b) Mr Guillermo Valles Galmés, Director, Division of International Trade in Goods and Services and Commodities, UNCTAD

Ambassador Valles highlighted the history of the engagement of the trade community in the environment and in sustainable development, which dates back to the Stockholm Conference in 1972. On the green economy, he stressed that the concept is embedded within sustainable development. It cannot be seen as curtailing economic growth, otherwise it will fail. Rather, the green economy must be about green growth, equity and inclusiveness.



There are common goals that make sense: using less natural resources, having a less carbon-intensive production system, and finding a more equitable path to economic development. Governments, consumers and civil society will all be the actors of the green economy, creating their own conception of that economy by accessing different products and services. To move towards a green economy, there are three steps to be taken: identifying new sources of funding; creating an enabling environment for private investment in funding the transition; and seeing trade clearly as advantageous to promote the change needed. One cannot get to the green economy with less open trade.

The transition to a green economy is already happening on the ground. For example, private sector initiatives on corporate social responsibility have grown exponentially – in developing countries as well – and there are now more than 200,000 ISO 1400-certified companies in 250 countries. Governments will need to enable more such transitions.

There are challenges as well, related to government interventions, such as subsidies, taxes and standards that distort the playing field for developing countries with less capacity to adjust and compete. The issues need to be debated, and UNCTAD could provide a forum for all stakeholders to do so, as well as provide the information and space for neutral fact-based debate. This could take pressure off the DSU, preventing potential disputes at the WTO and overloading the system. As different actors play different roles, UNCTAD will undertake initiatives to bring coherence to the system.

(c) H.E. Mr Manuel A.J. Teehankee, Former Ambassador of the Philippines to the WTO

Ambassador Teehankee stressed that trade and sustainable development can support a triple-win strategy. However, to move forward, unity and cooperation are needed. He stressed the need for cooperative consensus on core goals, based on shared values, in order to best deliver for the global community and the global poor. Processes such as Rio and Rio+20 have generated the concepts of sustainable development and the green economy. In the end, we arrive at a triple win, with trade and investment gains as well as environmental gains and gains from sustainable development. The WTO negotiations could potentially provide a contribution to this.

Ambassador Teehankee provided an account of the aims and state of play of the negotiations process under the Doha mandate on trade and environment. He noted that much progress has been made, but that unresolved issues still remain, and he said this is part of a growing-up progress. He highlighted the need for balanced regulation, as it is the first time in history that these trade, environment and development goals are being integrated. He said that governments need to provide an enabling environment for the goals of a green economy. Governments do need to regulate, he said, highlighting a paradigm shift in this regard in 2008 with the financial crises.

Ambassador Teehankee said that the Committee on Trade and Environment in Special Session does have a deliverable, in the form of a draft ministerial decision. However, the section on environmental goods and services (EGS) in particular needs much more work. Meanwhile, the world is not standing still, and exports in EGS have grown to a value of trillions of US dollars annually. The EU and China are the main exporters as well as importers in the area. However, the picture is much more diverse, with many other smaller actors also playing important roles. In response to a question on the importance of the Doha Round for environmental cooperation, Ambassador Teehankee stressed that an international agreement would allow for the spread of best practices – especially beyond the main players – and the release of much-needed cooperative energy.

(d) Mr Ahmed Abdel Latif, Intellectual Property and Technology Senior Programme Manager, ICTSD

Mr Abdel Latif noted the key role that technology plays, both as a catalyst and engine, in the transition to the green economy. This was recognised at UNCED in Rio in 1992. Indeed, Agenda 21 contains a chapter on technology transfer and many of the multilateral environmental agreements (MEAs) that came out of Rio contain technology transfer provisions. However, implementation – the role of markets, enabling environments, funding for developing countries – has been a challenge. The MEA secretariats have carried out needs assessments, but struggled to move forward. In the area of climate change, therefore, a new technology mechanism was agreed at Cancun with the aim of operationalizing technology transfer.

Today, negotiating positions on technology transfer are becoming less flexible. This is due to the growing importance of the knowledge economy and intellectual property (IP) assets. There has been a paradigm shift, and innovation now tops the policy agenda, with a focus not only on science or technology, but on bringing new products to market. The new UNFCCC technology mechanism provides a good example. It focuses on building networks of innovation centres in developing countries.

Green innovation tops the innovation agenda. Emerging economies are now playing important roles, and patent filing trends reflect this new reality. Today, greater empirical evidence is available on what drives technology diffusion. For example, there is evidence of the importance of the Kyoto Protocol and the signals it sent in the area of climate technology, as demonstrated by research carried out by ICTSD, the United Nations Environment Programme (UNEP) and the European Patent Office (EPO). New ways to improve technology transfer include fast-tracking green tech patent applications, open innovation, green patents commons and green tech exchange platforms. On the diffusion side, least-developed countries (LDCs) are lagging behind other countries, and for them licensing in particular would need to be improved.

Overall, bilateral and regional cooperation on green technology is growing in importance. The focus is not just on North-South partnerships, but on South-South partnerships. Rio+20 could provide an opportunity to capture some of the positive experiences from the last 20 years of learning.

2. Questions and comments by the audience

During the discussion, participants touched on the huge efforts needed to make the transition to a green economy, and the need for political will and inclusiveness to mainstream all stakeholders into the political debate. In the same vein, inclusiveness and balance are needed to quell the very real fear of green protectionism. Concrete and genuine experiences could also show the way forward. Some felt that the green economy concept does not go far enough, as our resource consumption and population growth need to radically diminish in real terms.

In terms of the necessary investments, the private sector is not going ahead despite huge opportunities, due to risks inherent in current investment frameworks, which have a chilling effect. As such, we should be open to revising trade and investment agreements in order to make them supportive of the transition to a green economy, opined some participants.



One speaker from the floor stressed the need to exploit synergies among trade and green agricultural practices, as this is necessary to feed a growing global population. Others talked about green technology, noting that the technology is owned by companies, not countries. Looking towards Rio+20, the meeting could provide an important signal on operationalizing technology transfer, while recognising that one size does not fit all across sectors and countries.

During the closing of the meeting, the WTO ministerial coming up in December was also mentioned, and the need to ensure it does not become a lost opportunity for the environment on the road to Rio.

Africa, emerging economies and trade in natural resources

Abstract

This session aimed to assess the importance of trade in natural resources for the economic development of Africa and emerging economies. The assessment was made by exploring how natural-resource-based commodity trade can work to Africa's advantage through new strategic, re-engaged, reformulated partnerships with emerging economies.

Key elements of such partnerships would deal with well-designed taxation systems, to help communities and manage natural resources. Aid investments from emerging economies to Africa would play an important role in these strategic partnerships and would need to be designed and disbursed in an effective, fair manner. Moreover, in such partnerships, emerging economies could share their experiences with African countries. Investments made as part of these partnerships would have to take into account the livelihoods of people owning natural resources. Measures could be implemented only in the presence of sensitive, coherent, inclusive policies and effective governance and leadership regimes at the local and global level.

Moderator

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

Speakers

Ms Phelisa Nkomo, Black Sash,
South Africa

Ms Netsanet Kibret, PR and
Communications Head, Horn of Africa
Regional Environment Centre & Network,
Ethiopia

Mr Nitya Nanda, The Energy and
Resources Institute (TERI), India

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Report written by

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TERI



1. Presentations by panellists

The panel discussion started with an introductory speech by Ambassador Dasgupta. He emphasized the need to develop partnerships between emerging economies and Africa to create a win-win situation for both. In this context, he described the role, effectiveness and the changing nature of aid, and its importance in establishing a win-win situation for partnering countries of Africa and emerging economies.

(a) *Ms Phelisa Nkomo, Black Sash, South Africa*

Ms Nkomo mentioned the importance of strategic, reformulated partnerships between Africa and emerging economies in order to trade in natural resources. To give sustained longevity to this partnership, the comparative advantage of Africa in the natural resources sector has to be harnessed. Simultaneously, focused growth in manufacturing industries must be encouraged. Revenue from these sectors has to be directed to support the social and economic infrastructure and livelihood development of communities in Africa. An integrated trade, social and economic policy regime has to support this development across these countries, complemented by efficient governance mechanisms.

This strategic partnership has to be launched through treating partners from Africa with dignity and consideration of the challenges faced by them in coming out of special adjustment programmes. Technology and skill transfers between economies have to be an integral part of this partnership, and it must include investment in natural resources. Investment should not only be linked to extractive industries, but must also emphasize the development of new, subsidiary, downstream and processing industries as well. Investment from emerging economies in natural resources has to ensure that local communities in resource-rich regions of Africa are taken along in developing the partnership. Industries in emerging economies that become involved through this investment have to safeguard community interests and ensure the transfer of revenue to communities. Such transfers can be achieved through implementation of well-designed taxation systems and the reformulation of fiscal devolution mechanisms to enable revenue to trickle down to local levels.

(b) *Ms Netsanet Kibret, PR and Communications Head, Horn of Africa Regional Environment Centre & Network, Ethiopia*

Ms Kibret mentioned the need to manage natural resource degradation through participatory land management before developing partnerships with emerging countries. She highlighted the need to enhance intraregional trade between African countries to strengthen African macro-economies. Currently, intra-regional trade is very low within Africa, and most exports belong to the natural resource sector and are directed towards Continental Europe, followed by North America, Asia and South America. Revenue from broader intra-regional trade can help African countries to be in a better bargaining position before delving into partnerships with emerging economies. Once domestic strength on natural resource governance and intra-regional trade is developed, it could pave the way for African countries to negotiate better in trade negotiations and to obtain broader market access when partnering with countries in the global South.

South-South trade in natural resources between Africa and emerging economies has happened largely as a result of long-term bilateral contracts between host governments and private firms, and has been punctuated by land acquisition by private firms in host countries like Ethiopia. It now has to focus on the objective of developing strong

manufacturing industries facilitated through South-South trade. Along with nurturing these industries through trade relationships, development and the integration of renewable energy, technologies in these industries can be sought for through fiscal incentives within the host countries. An overseeing body needs to be developed to supervise the nature of the investments made as a part of South-South trade. Strict regulatory measures and accountable governance mechanisms, supported politically, should assess every new investment and find out the impact of such investments on the environment and on ecosystems.

(c) Mr Nitya Nanda, The Energy and Resources Institute (TERI), India

Mr Nanda pointed out that debates related to export restrictions and resource access became prominent after the arrival of emerging economies on the world stage. Globally, trade in primary products has been dominated by just a few companies, and they control buyers and sellers. However, the number of buyers in the primary commodities market has increased over the years in comparison to suppliers. The commodities market has become competitive, and as a result, suppliers have started to get relatively better prices.

Mr Nanda mentioned that emerging economies like China have faced the allegation of not participating in global markets. Instead of participating in the global market, China has brokered deals with national governments and local companies, and it is trading with African countries while bypassing the global market. Mr Nanda raised the fundamental question, in what way and by whom are prices of traded primary commodities determined? The price of these commodities and their determination process is important for African countries, as they are highly dependent on export revenues earned from these traded primary commodities. Moreover, these prices are determined by speculative actions in commodity exchanges such as NYMEX (New York Metal Exchange). Speculative trading has increased the prices of primary commodities, but the gains from market speculation do not trickle down to poor communities engaged in their production. Partnerships between emerging economies and Africa have to be designed in such a way as to correct this imbalance through governance regimes, and have to involve fair means of aid disbursement. Further, they should be guided by mutual exchange and sharing of learning experiences.

In the relationship between an emerging economy and an African country, importance has to be given to policies that are sensitive to people who own natural resources. The success of Botswana is an example; the role of government in this success story is very important. In the past, most African countries chose natural resource sector privatization without safeguarding the people owning the resources. Often, concessions were given to private players who took the mining assets and earned profits, while the people who owned the resources suffered.

(d) Professor J. George, Institute of Economic Growth, University of Delhi, India

Professor George criticized the viewpoint that the economic growth of countries relying on extracted natural resources as inputs for goods production should be sustained. African countries have taken this path and it is leading to natural resource degradation. The growth of natural resource-based oligarchic business models with a drive for productivity enhancement has created adverse consequences for small and marginal farmers' livelihood and has impinged on food security. It is important to consider the livelihood security of people managing natural resources in any partnership between



emerging economies and countries of Africa. It is essential that small and marginal farmers should be aligned and linked to the market for the enhancement of their income and for livelihood gains, which can only be obtained through new regimes of political and business leadership.

2. Questions and comments by the audience

Following the panel discussion, questions were raised from the floor. A brief synopsis of the questions from participants and the corresponding responses to those questions by speakers are summarized below.

Q: What is the role of political will in creating win-win strategic partnerships between emerging economies and Africa?

A: The speakers responded that any strategic partnership has to be done in an equitable, fair way. Partners should share learning experiences in order to sustain such an alliance. Local governance has to be strong and challenges faced by communities have to be solved at local level. A strong political will has to be formulated through such discussions in order to address them in the context of engagement between emerging economies and Africa.

Q: Can the WTO ensure that partnerships between Africa and emerging countries will be able to secure a sustainable trade in natural resources?

A: Ms Nkomo answered this question, saying that it is important to recognize the WTO's historical achievements before commenting on its future role in securing sustainable trade in natural resources. It is also critical to strengthen national level initiatives and bilateral partnerships, so there is a need to revisit existing WTO rules.

Q: What are the possible impacts of new legislations concerning not buying resources from conflict areas for the people and for potential associations between emerging economies and Africa countries?

A: Implementation of this type of legislation has to take into account the causal factors behind a conflict in any particular area. Once these causal factors have been determined and analysed, investments and the purchase of resources have to be decided on the basis of transparent mechanisms that can assure communities that they will receive a dividend from the trade of the natural resources. Ms Kibret underlined that investments in conflict areas have to be dealt with on a case-specific basis before the effects of this legislation on investments and emerging economies' partnerships with Africa are assessed.

Q: How much policy space exists for an African WTO member country to ensure the development of downstream domestic industries in the context of China's rising acquisitions of natural resources from Africa?

A: Ms Nkomo and Ms Kibret answered this question by noting that African countries need to have strong domestic negotiation policies to ensure that they negotiate and oblige investors to develop domestic downstream industries when they come to acquire resources in African countries. So policy space creation has to be a domestic initiative rather than come from WTO. Mr Nanda added that if the WTO gets involved in this "space" issue, as in Dispute DS394 "China – Measures Related to the Exportation of Various Raw Materials", it could give the wrong message to other resource-rich countries. Incidentally, this decision was effective only for China, due to its accession conditions, but it would not be effective for other members.

3. Conclusions

Active discussion between speakers and participants from Africa, South East Asia and South Asia suggested that a strategic, reformulated partnership between emerging economies and Africa, political leadership and governance regime has to be evolving over time and needs to be managed well. The focus of such partnerships should be to reduce the suffering of the communities who own these natural resources. Responses from speakers and discussions between participants and panellists brought out a sense of optimism regarding such partnerships. It was recognized that these partnerships can only be sustained through more sensitive, coherent and inclusive policies, strong governance and leadership regimes at the local and global level.



III. Made in the World and value-added trade



Made in the World: Facts and implications for trade

Moderator

Professor William Milberg, Department of Economics, New School for Social Research, New York

Speakers

Mr Lucian Cernat, Chief Economist/Head of Unit, DG Trade, European Commission

Mr Henrik Isakson, Senior Advisor, National Board of Trade, Sweden

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

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

Organized by

Economic Research and Statistics Division, WTO

Report written by

Ms. Yenny Llanos, Economic Research and Statistics Division, WTO

Abstract

Global production networks (GPNs) or global value chains (GVCs) have changed international trade patterns. Contributing factors were new technologies, low transportation and communication costs, services liberalization, more open markets and new business strategies.

Conventional merchandise trade statistics do not describe the current reality of trade accurately. It is more informative to measure trade flows in terms of the value added accruing during the production of a product according to the industrial sectors of the countries in which it was produced. However, GVCs do not only impact on trade but also on related topics such as investment and employment and their respective regulatory frameworks.

The purpose of this session, organized as part of the "Made in the World Initiative" (MIWI) as promoted by the WTO, was to present and analyse implications and consequences of GVCs on development and trade policy at national, regional and multilateral level.



1. Presentation by panellists

Mr Milberg opened the session by pointing out that more than 50 per cent of trade takes place within GVCs, which has enormous implications for development.

(a) Mr Lucian Cernat, Chief Economist/Head of Unit, DG Trade, European Commission.

Mr Cernat highlighted that the “Made in the World Initiative’ must be an idea from a beautiful mind”. It is, however, important to translate this awareness into concrete policy, and this requires a global database on trade in value added for bridging the gap between numbers and policies. He noted that in order to reconcile trade, jobs and value chains, related policies need to be coherent.

Mr Cernat emphasized that Europe has remained a very strong player in the global market. Nevertheless, it faces important challenges. Trade and investment policies have to be in tune with the ability to create jobs and boost economic growth, which are the main concerns of the European citizens.

GVCs are often fairly short. Based on preliminary findings, Mr Cernat pointed out that, on average, 87 per cent of the EU’s exports measured in value added terms are absorbed by the first trading partner. Around 11 per cent are re-exported to a third country; a small proportion of these exports in value added are “re-imported” back to the EU. Trade balances in value added terms paint different outcomes for most bilateral EU relations.

In conclusion, Mr Cernat highlighted that GVCs show that rules of origin may not be adequate in today’s trade environment and that they impact on a number of aspects such as bilateral trade balances or exchange rate policy. He emphasized the need for a policy-related discussion in WTO.

(b) Mr Henrik Isakson, Senior Advisor, National Board of Trade, Sweden

Mr Isakson presented a study on products that are “Made in Sweden”. He stressed that only two-thirds of a product that is marked as “Made in Sweden” has really been made entirely in Sweden. Despite this, exports have become more profitable because of Swedish firms taking advantage of the international division of labour in tasks. He also noted the relevance of services in Sweden’s exports.

Mr Isakson highlighted that tariffs on Swedish imports are not only affecting finished goods but that in fact 50 per cent of all tariffs on Swedish imports are imposed on input, or intermediate, goods. Thus, trade protection ultimately hurts Swedish businesses.

According to Mr Isakson, any “Made in” label is very misleading. It is therefore important to better inform media, politicians, general public and business communities on trade in value added which would result in less support for protectionism. He suggested a review of trade policies at the EU level, for example, focusing on import promotion instead of export promotion, elimination of tariffs for important inputs, and more liberal rules of origin. Another important result of trade in value added is “servicification”: trade in services is gaining an importance which should be taken into account in negotiations.

(c) H.E. Ms Anabel González, Minister of Foreign Trade, Costa Rica

Ms González talked about GVCs in the context of Costa Rica. Latin America has a marginal presence in this development, and some Central American countries do participate in low-value GVCs, but very few countries in the region participate in GVCs with high technological content. However, Costa Rica is one of them thanks to its strategic vision, business environment, solid export platform, educated workforce and privileged geographical location close to the US market. She pointed out that the next step is to diversify, strengthen and upgrade GVCs in order to take advantage of key opportunities, such as increasing the link between Asia and Latin America, and expanding GVCs to other areas of manufacturing and to services offshoring. However, in the absence of regional production systems, it is difficult for Costa Rica to participate in GVCs or to re-orient production to emerging markets while ensuring trade growth with the United States. These challenges are being addressed as part of the national agenda for trade liberalization.

Ms González concluded by saying that trade policy has an important role in enhancing Costa Rica's participation in GVCs. Relevant areas to bear in mind in GVCs are trade liberalization, trade facilitation and the protection of intellectual property rights. Ms González stressed that GVCs are an important instrument for fostering developing countries' participation in world trade. Countries may build capacities to involve themselves in GVCs and trade policy and WTO rules must facilitate this participation.

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

Mr Escaith summarized the facts and implications for trade policy in a "Made in the World" context. He highlighted that, when trade is measured in value added, bilateral trade imbalances are usually reduced, while the global trade balance of an economy is not. The WTO is working closely with the EU and other organizations such as the OECD in improving the statistical information available.

(He emphasized the importance of services such as logistics or the private-public partnership for improving the GVC infrastructure, facilitate trade and boost export competitiveness in developing countries. For industrialized countries, measuring trade in value added reveals the crucial role of services embedded in exported industrial goods.

Based on the *World Trade Report 2011*, Mr Hubert Escaith stressed that one of the main motivations for countries to get into preferential trade agreements (bilateral or regional) is often more about harmonizing national regulations in order to promote investment and global production chains than lowering tariffs. He highlighted that production and employment depends not only on the country's respective policies but also on developments in the rest of the world. It has become counter-productive to think that a single country can get out of any macroeconomic problems on its own. Therefore, to deal with macroeconomic imbalances in an interdependent world, it is necessary to have global policies and promote global solutions.



2. Questions and comments by the audience

A participant from Mexico commented that Mexico has bilateral agreements with Guatemala, Honduras, El Salvador and Costa Rica, and asked whether harmonized rules of origin would help the region and in particular Costa Rica, and whether the label “Made in Mesoamerica” should exist in the future. In response, Ms González took the floor to say that one of the problems with the development of GVCs in Latin America is the lack of an integrated regional production system as it exists in South-East Asia. Efforts being made by the Central American countries and Mexico to ensure convergence of these agreements to create an enlarged economic space. A scheme like this could contribute to developing a higher level of integration among countries and provide the foundations for developing a regional framework that facilitates the participation of countries in GVC.

A question was asked concerning the difference between intra- and inter-industry trade, export processing zones and the new concept called “Made in the World”, specifically, what is new and what the key items and fundamentals are, as, for the questioner, the most fascinating part of “Made in the World” is who organizes this kind of world production. The questioner recommended that the WTO have another round on the subject next year and invite business people. Mr Escaith answered that in fact “Made in the World” is not a new concept but international fragmentation of production has intensified in the last years and has become a prominent feature of international trade. It is now very important for policy-makers and politicians to fully take GVCs into consideration. The OECD, World Bank and WTO, as well as other national or regional initiatives such as IDE-JETRO, US ITC and WIOD projects, have joined forces to explore methodologies to measure trade in value added and to analyse the impact of GVCs on trade policy and the trade and employment link. Mr Escaith also spoke about export processing zones (EPZ). Although there are risks from a multilateral perspective – for example, hidden subsidies to export-oriented firms – in developing countries, EPZs often are the only way for governments to enter the level-playing field.

A participant from the agriculture food council asked how GVCs correspond to the existing regime of the EU with its legislation of rules of origin and labelling. In replying, Mr Cernat invited those involved in very specific policy areas to look at the bigger picture. Reliable indicators on trade in value added are needed and would provide a good basis for future policy initiatives. He concluded by mentioning that the EU is on the right track, but still needs to remain engaged to reach the level where policy decisions can be taken based on new statistics. He said “It is probably time to change the traditional trade policy”.

A participant from the Asian Development Bank was interested in the practical use of measuring trade in value added. He commented that while it is a good idea it seems to be more difficult in terms of collecting data than the traditional method. Mr Escaith confirmed that this was the case. However, the international statistical community has been working on this issue. Projects focus on developing world input output databases (WIOD) as sponsored by the EU, or on harmonizing input-output tables within OECD's data stock. The OECD and WTO are working on identifying the best practices for the methodology to estimate trade in value added. Another avenue followed by official statistics is to link business statistics to trade statistics by merging trade and business registers. This allows tracing of the imports of inputs, the process of production, and whether products are domestically absorbed or exported. By linking this information with the ownership structure and the number of employees, income and the effects of employment can be analysed.

3. Conclusions

The panel showed the complexity of trade in value added in the context of trade statistics and trade policy. Trade policy requires solid indicators and the statistical community is working on improving this situation. The quality of imports, competitiveness of suppliers, services, and governance through appropriate policies all impact on GVCs and export competitiveness. For example, having more and better imports can boost the value added of exports, but a protectionist policy can hurt own exports.

GVCs can be an effective tool for boosting trade, growth and jobs, in particular for small economies in developing countries. However, this success depends on having the right mix of policies (investment, trade, infrastructure, etc.). Costa Rica is a good example of this. Key factors that require consideration for effective GVCs are rules of origin, import tariffs, import/export promotion and trade liberalization. It is also important to look at preferential trade agreements as an effective way of harmonizing regulations in order to provide higher integration to facilitate the countries' participation in GVCs.

Finally, in an interdependent world, only global solutions are effective. Governments, policy-makers, academic and business sectors need to work together to develop the most appropriate global solutions.



Abstract

This panel explored the implementation of the current trading and investment rules in light of today's global trading patterns. In particular, the panel considered standards established under the General Agreement on Tariffs and Trade (GATT), the Agreement on Customs Valuation, the WTO Agreement on Rules of Origin, the World Customs Organization and the international investment law regime. Despite the increasingly complex and diversified sourcing realities today, the rules that govern trade and investment are based on outdated trading patterns of the 19th and early 20th century in which trade flows were linear and supply chains were not very diversified, if at all. Today, however, there is a very different picture. Production processes, through economies of scale and intermediate input trade, depend on increased outsourcing. Unlike the pre-World War II period, when vertical integration of the production in one country, with few if any intermediate inputs, was commonplace, today fragmentation in the production process characterizes global supply chains. Importers now source from multiple countries, sell in multiple countries and are themselves incorporated into multiple countries. Yet the current trading rules are premised on mono-location and a linear trade flow endemic to a mercantilist structure under which state actors compete to maximize exports while containing imports.

As a threshold matter, one can see how these evolving global supply chains challenge outmoded trading rules and exert mounting tolls within the global trading system. For example, the current trading patterns are enormously complex making it difficult for businesses to track the movement of goods through the supply chain. The current trading patterns suggest the need for businesses to make use of sophisticated systems, such as master data systems. Such systems should be available in a purportedly harmonized trading system. However, one can see many examples, particularly in relation to the classification of imported merchandise, where the implementation of the trading rules is not, in fact, harmonized. Subjectivity and discretion within national customs systems, with classification in particular, makes the use of programmes such as master data systems often unavailable as a practical matter.

Likewise, importers confront both country of origin rules and the rules relating to value that have failed to keep pace with the realities of today's trading patterns. As the WTO's "Made in the World Initiative" reflects, country of origin rules that try to identify a single source for a product are deceptive. Many products are truly multinational in origin, with value from components, labour, and intellectual property, not to mention advertising and marketing, spanning not just countries but continents. The value rules for customs purposes can conflict with value rules for tax purposes in the transfer pricing area, making valuation more complex and costly than it needs to be for related parties.

Origin and value chain fragmentation is accompanied by what many would call a broader fragmentation, that of the international trade system itself. The proliferation of preferential trade agreements through regional and bilateral trade agreements containing their own set of rules around rules of origin, for example, further blurs the effectiveness and applicability of the current multilateral trade rules and may lead to competing rules.

Likewise, an increasingly important regulatory layer is international investment law which presents a potential regulatory mismatch between trade and investment rules. Conduct which may be consistent with international trade law may be inconsistent with

The evolving international trade order: Global sourcing and new challenges to the WTO system

Moderator

Professor Elizabeth Trujillo, Suffolk University Law School

Speakers

Mr Philippe Orban, Global Trade Management Practice Leader, KPMG

Professor Claire R. Kelly, Professor of Law and Co-Director of the Dennis J. Block Center for the Study of International Law, Brooklyn Law School

Professor Jorge Viñuales, Graduate Institute of International and Development Studies, Geneva

Ms Konstantina K. Athanasakou, Associate, White & Case

Organized by

American Society of International Law (ASIL)

International Economic Law Interest Group (IECLIG)

Report written by

Claire R. Kelly, Professor of Law and Co-Director of the Dennis J. Block Center for the Study of International Law, Brooklyn Law School



international trade rules and vice versa. The potential for regulatory clashes persists in a number of sectors including the technology sector. Trade in technologies requires a great deal of capital and coordination. Many actors working across the globe are subject to various jurisdictions as well as both the trade investment regimes.

These current trading and investment rules offer fertile ground for a perverted political debate on trade and to some extent the panel explored whether the current crisis over the Doha Round negotiations is due, in part, to such misguided political debates on trade.



1. Presentations by the panellists

Professor Trujillo gave the audience an overview of the panel and noted that some of the themes discussed in the earlier session would be revisited, including Mr Pascal Lamy's discussion of the "Made in the World" label as a much more accurate reflection of the realities of today's complex global supply chains. The "Made in the World" initiative, among other things, encourages us to think about the international trade regime as a "trade in tasks paradigm" and in turn, look for specific ways that the WTO may better address value-added trade. As a result, international trade no longer functions in its specific silo of trade rules and customs control; rather, it has acquired transnational qualities by which a single territorial locus loses its importance and actors involved are more than any one national government or private national company.

(a) Mr Philippe Orban, Global Trade Management Practice Leader, KPMG

Mr Orban started the panel with a discussion of the harmonized tariff system. He provided an overview of its background, and described its significance for countries in classifying and monitoring goods in order to assess tariffs and address the challenges and proposed solutions for a fully operational harmonized system in the context of global supply chains. Significantly, Mr Orban illustrated that, despite its nature as a harmonized system, there are many components of the system where significant discretion is granted to national authorities. As a result, the system is a great deal less harmonized than is desirable.

(b) Professor Claire R. Kelly, Professor of Law and Co-Director of the Dennis J. Block Center for the Study of International Law, Brooklyn Law School

Professor Kelly discussed the reality of global supply chains today with respect to both valuation concerns and rules of origin. After describing the realities of global supply chains and noting the WTO "Made in the World" initiative, she illustrated how these realities create difficulties in terms of both value and country of origin rules. One of the difficulties discussed was that of multinational enterprises that find themselves confronted by tax authorities that assume businesses are inflating costs and customs authorities that assume businesses are deflating costs. Similar uncertainty persists with respect to country of origin determinations. The determination of the country of origin of a particular good often requires a subjective analysis. Global businesses face subjective country of origin determinations in multiple jurisdictions adding to their costs. Professor Kelly suggested that better use could be made of networks of trade professionals to find ways of mitigating some of this uncertainty.

(c) Professor Jorge Viñuales, Graduate Institute of International and Development Studies, Geneva

Professor Viñuales discussed the several regulatory layers that are part of the global supply chain system. Aside from international trade law, an increasingly important regulatory layer is international investment law. International investment law presents many differences from international trade law, three of which were raised in his presentation. First, unlike international trade law, international investment law allows private investors to sue the host State directly (instead of having to persuade their home State to bring a claim before the WTO Dispute Settlement Body) as well as to get compensation even for past effects (which is not the case of international trade law). Second, domestic measures affecting global supply chains present significant litigation risk not only from an international trade

law but also from an international investment law perspective. Third, the situation is further complicated by the potential emergence of “regulatory mismatches”, when the measure that would be WTO-consistent is potentially inconsistent with international investment law and vice versa. An example is carbon equalization measures. It has been persuasively argued that granting subsidies to local producers facing competition from exporters based in pollution havens would be better, from a WTO perspective, than import restrictions. Yet, from an international investment law perspective, such subsidies would likely be much more problematic than import restrictions, as the overwhelming majority of investment treaties do not restrain regulation of entry.

(d) Ms Konstantina K. Athanasakou, Associate, White & Case

Ms Athanasakou discussed the landscape of global supply chains. She discussed trade challenges with respect to providing access and dissemination to technologies operating on the basis of the global supply chain structure. She noted that the main challenge of promoting access and dissemination of technologies that operate on the basis of global supply chains is the involvement of large capital requirements and the presence of multiple actors across different continents. She emphasized that it is important to consider how the trade framework affects global supply chains for technologies, and, in particular, whether the trade framework helps or hinders dissemination of the technologies and whether it encourages or discourages investment.

2. Conclusions

The panel highlighted that international trade no longer functions in specific silos of trade rules, customs control, or investment rules; but rather, it has acquired transnational qualities where a single territorial locus loses its importance and actors involved are more than any one national government or private national company. International trade today is therefore no longer a function of a geographical place at any given time, but a much more fluid transnational phenomenon where various commercial and government interests may converge and translate common interests into new and modern rules.



Abstract

This session took Mexico's "spaghetti bowl" of rules of origin as an example of the consequences of the proliferation of regional or bilateral free trade agreements for private businesses that try to take advantage of trade liberalization. A multidisciplinary panel composed of representatives of global companies, private practitioners and government officials with deep knowledge in the matter, provided a good overview of the real problems businesses face at the borders and proposed a few alternatives for harmonizing rules of origin.

The difficulties that businesses face as a result of a varying set of rules of origin: Case study of Mexico

Moderator

Mr Francisco J. Cortina, Partner, Chevez, Ruiz, Zamarripa

Speakers

Mr Arturo Rodríguez Torres, International Logistics Manager, Acero Prime

Mr Douglas Garfield, Senior Director, Global Customs and Trade, PepsiCo Inc.

Mr Guillermo Sánchez Chao, Partner, Chevez, Ruiz, Zamarripa

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

Organized by

Chevez, Ruiz, Zamarripa

Report written by

Mr Eduardo Díaz Gavito, Associate, Chevez, Ruiz, Zamarripa

1. Presentations by the speakers

During this part of the session, speakers presented their views on the complexity involved in the multiplicity of rules of origin for businesses participating in the globalized world through trade. They also proposed a number of solutions to daily problems often encountered by importers and exporters in their foreign trade activities.

(a) Mr Arturo Rodríguez Torres, International Logistics Manager, Acero Prime

Mr Rodríguez Torres remarked that for a representative of a company that is essentially an importer of steel products from various parts of the world, this multiplicity of rules considerably complicates the running of the business. The fact that there are different rules of origin for one and the same product, depending on the country in which it is produced or has undergone its last substantial transformation, means that importers have to be familiar with, and ready to apply, different sets of laws and rules in their daily operations. This multiplicity of rules of origin, laws and regulations makes import transactions difficult and could turn into a real obstacle for companies.

(b) Mr Douglas Garfield, Senior Director, Global Customs and Trade, PepsiCo, Inc.

Mr Garfield said that, based on his experience in a company that makes considerable use of the free trade agreements, he would advise private companies to work very closely with their governments during the negotiation of free trade agreements, particularly when it came to drafting rules of origin. Where companies are willing to cooperate actively with the government in drafting rules of origin, they could obtain access to or protection from the markets they were interested in.

(c) Mr Guillermo Sánchez Chao, Partner, Chevez, Ruiz, Zamarripa

As a foreign trade lawyer, Mr Sánchez Chao felt that managing the multiplicity of rules of origin is an administrative burden for importing and exporting companies. With different rules of origin for the same goods, importing and exporting companies have to have a strict control system to avoid providing false information in their declarations of origin. One solution that governments have found to this problem when it came to rules of origin for preferential purposes consists of accumulating origin between different countries with free trade agreements between them. This accumulation contributes to the efficiency of trade between participating countries to the benefit of their citizens.

At the same time, with regard to the multiplicity of non preferential rules of origin, he urged members of the WTO to conclude the negotiations on rules of origin so that those rules could be approved. In his opinion, the conclusion of those negotiations would bring security and efficiency to the foreign trade operations of individual participants in world trade.

The verification of origin procedures applied by governments, Mr Sánchez Chao pointed out, is clearly defined in the free trade agreements. However, he stressed that there is no multilateral procedure for WTO members to follow when it comes to reviewing the application of non preferential rules of origin. The absence of a multilateral procedure for the review of origin means that exporters lack security and certainty when they are reviewed by the authorities of other governments. Consequently, he suggested including,



in the framework of the negotiations on rules of origin currently under way, a verification procedure that all members of the Organization could follow to ensure that exporters apply the rules of origin correctly.

Mr Sánchez Chao further mentioned that, when a government finds that an exporter has not properly applied a given rule of origin, the consequences are usually suffered by the importer in its own territory, in the form of a fine or other penalty. Rarely do governments penalize exporting companies in their territory for incorrectly determining the origin of the goods. He recommended increased communication between governments to help detect incorrect certification of origin so that the exporters guilty of such practices could be duly penalized by their governments.

(d) H.E. Mr Fernando de Mateo y Venturini, Ambassador; Permanent Representative of Mexico to the WTO

Ambassador de Mateo y Venturini pointed out that the rules of origin negotiations are extremely complex, in that not only is it necessary to reach an agreement with another country, but the negotiators also seek to prevent third parties not participating in the negotiations from taking advantage of the agreements reached. Moreover, in certain cases rules of origin become national or regional instruments of protection, which, he stressed, is not their purpose.

Ambassador de Mateo y Venturini further remarked that, while the proliferation of preferential rules of origin is viewed as a major issue, the real dimension of the problem needs to be established. According to data contained in the *World Trade Report 2011 The WTO and Preferential Trade Agreements: From coexistence to coherence*, only 16 per cent of world trade is covered by preferential tariffs, while the remaining 84 per cent applies most-favoured nation rates. These data suggest that the problem of the "spaghetti bowl" of non preferential rules of origin is not quite as big as originally thought. However, Ambassador de Mateo y Venturini recognized that the multiplicity of rules of origin does generate transaction costs for importing and exporting companies, which undermined their competitiveness.

Ambassador de Mateo y Venturini suggested that an alternative solution to the "spaghetti bowl" of rules of origin is the diagonal accumulation of origin between countries that have free trade agreements with different trading partners. Another alternative is unilateral tariff reduction on inputs, which improves the competitiveness of the country that applies the reduction.

Finally, Ambassador de Mateo y Venturini pointed out that one of the problems with the ongoing negotiation of the Agreement on Rules of Origin was that there is no consensus on the utility and applicability of the Agreement. As a result, the committee involved had only completed 50 per cent of its work.

2. Questions from the moderator and participants

In this part of the session, the moderator questioned representatives of companies on the possible importance of the disclosure of confidential information in determining the application of a rule of origin. Mr Garfield responded that the issue of confidentiality was a highly delicate one when it came to the application of rules of origin. Faced with a choice

of disclosing confidential information on a given product or foregoing a tariff preference for not complying with a rule of origin, the option would always be to safeguard the confidential information.

Participants in the meeting asked the speakers what their recommendations would be for the rules of origin negotiators, and how much importance the existence of a free trade agreement had in business and investment decisions. Mr Rodríguez Torres said that what companies were looking for in this area was simplicity. The simpler the rules of origin, the fewer the problems for exporting and importing companies and the lower the risk of their committing errors.

Messrs Garfield and Rodríguez Torres agreed that the existence of free trade agreements played an important role in company decision-making. Tariffs were always part of their business costs and many commercial and investment decisions depended on the tariff advantage they could obtain when importing a particular product from a specific origin. Moreover, even if the application of preferential rules of origin could be complicated, it was worthwhile as long as a tariff benefit could be obtained when importing products.



Abstract

In a world of increasing outsourcing and offshoring, there is a new international division of labour being spurred by trade in tasks rather than trade in goods. Driving this change is the rise of global production networks, creating new challenges in developing effective policy with respect to trade and employment. As part of the "Made in the World" sub-theme, this session presented the results of different studies on the impact of trade on jobs and labour conditions and sought answers to the policy questions that accompany the development of global production networks.

On the basis of available evidence, results are mixed. Studies indicate that overall, offshoring has had a positive impact on employment levels, but results are heterogeneous when looking at specific countries or industries. Productivity gains following offshoring are not systematically translated into higher employment or higher wages. Skill levels determine who benefits from and who is hurt by the rise of offshoring. Firms can also lean toward short-term strategies which increase shareholder earnings instead of using the productivity gains of offshoring to expand their production, and this further aggravates employment prospects.

While the panel highlighted that further analysis is needed before drawing strong conclusions, there was consensus on the fact that policies and labour market regimes have a role to play in addressing the adverse impact of global production on jobs and labour conditions. Ultimately, the new paradigm suggests that it is tasks are divided and traded, not jobs. Fears regarding the rise of global production networks are not unfounded but should not be exaggerated. The productivity gains from outsourcing, with appropriate policies, can lead to higher wages and better employment opportunities.

Global production networks: What do they mean for trade and employment?

Moderator

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

Speakers

Professor William Milberg, Professor
and Chair, Department of Economics at
the New School for Social Research,
New York

Mr Robert Stehrer, Deputy Director of
Research, Vienna Institute for International
Economic Studies

Ms Hildegunn Nordås, Senior Trade Policy
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Organized by

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1. Presentations by the panellists

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

Mr Escaith commented on fears of offshoring that tend to re-emerge in times of crisis and to drive the debate on trade and employment. As the moderator of the session, he encouraged panellists to dispel the fears and to provide reference points to inform the debate.

(b) *Professor William Milberg, Professor and Chair, Department of Economics at the New School for Social Research, New York*

Professor Milberg said that fears might not be totally unfounded and presented the results of a study on the links between offshoring, economic security, employment and growth. The increase in economic insecurity was a visible trend in the United States and other industrialized countries well before the global economic crisis which began in 2008. At the end of the 1990s, there was a clear downward trend in the labour share of value added across industrialized economies. But for the overall sample (15 OECD economies and 21 sectors) and the whole period under investigation (1990-2008), higher offshoring intensity is associated with higher labour shares. However, this result veils important variation over time and space. In the next step of the analysis, the evolution of offshoring is contrasted with labour market regimes. Offshoring has a significantly positive impact on the labour share in the "Anglo-Saxon", "Rhineland", and "Flexicurity" models, whereas the effect is significantly negative in the "Mediterranean" model. It is likely that the labour market rigidities of the Mediterranean model explain the negative effects found. Interestingly, despite evidence of a negative impact in the United States, the Anglo-Saxon model is found to have a positive impact because of the results in other economies, such as Australia.

Professor Milberg's conclusions point to a link between labour market regulations, financial market regulations and trade. Offshoring can, under certain circumstances, raise the profit share in the short run, but longer-term benefits will depend on the labour market regimes and how profits are reinvested. There is a leakage of dynamic gains from trade, and financial regulations, as well as labour market institutions, significantly affect the capture of gains from trade.

(c) *Mr Robert Stehrer, Deputy Director of Research, Vienna Institute for International Economic Studies*

Mr Stehrer first described how declines in transport and communications costs, as well as technological advances, have made possible the fragmentation of production, and how trade in intermediate inputs has increased. Using a new dataset derived from the World Input-Output Database (WIOD) project, he examined to what extent offshoring has caused the changes in relative wage and employment that can be empirically observed from the 1980s onwards. Mr. Stehrer pointed out that the data indicate that there is no clear-cut answer to whether offshoring has had a totally positive or negative impact on labour demand.

Offshoring has a productivity effect that tends to have a negative effect on labour demand but also a scale effect that tends to have a positive impact. The question of which effect



dominates is an empirical one, and outcomes vary across countries. On average, a positive link is found between offshoring and employment levels for the overall sample of countries, indicating that the positive scale effect compensates for the negative productivity effect. The total effect is, however, quite small in economic terms.

The study also examined the relationship between offshoring and relative employment across three skill categories: low-skill, medium-skill and high-skill employment. Mr Stehrer noted that most of the offshoring seems to have a higher impact on the medium-skilled workers but there is evidence in some services industries that highly-educated workers are hit. He concluded that further research on this relationship needs to be carried out.

(d) Ms Hildegunn Nordås, Senior Trade Policy Analyst, Trade and Agriculture Directorate, Organisation for Economic Co-operation and Development (OECD)

Ms Nordås asked whether deepening the division of tasks makes economic sense, and what the driving forces behind trade in tasks are. A study on the tasks performed by workers in each occupation and across industries reveals that getting and processing information are the major tasks being performed. While these offshorable tasks raise concerns that many jobs could be offshored, the analysis found that tasks are often bundled together, so that offshorable tasks tend to be associated with non-offshorable tasks. Global production networks favour a division of tasks that follows a Toyotist approach rather than a Taylorist one, and thus one should not confuse division of tasks with division of labour.

Moreover, the study finds that import penetration in services has a small, but positive effect on the share of tasks related to getting and processing information being performed in the local economy. In other words, offshoring complements rather than replaces local information processing. The effect is also small when looking at how trade impacts the allocation of tasks among industries. Import penetration in capital-intensive industries is found to shift tasks directly related to production to more information-based activities.

Ms Nordås concluded that the fragmentation of production does not lead to the fragmentation of tasks, this explains why empirical studies do not find a strong impact of global production networks on jobs and wages. Trade in tasks is similar to trade in intermediate goods and services in that it improves productivity.

(e) Ms Esther Busser, Deputy Director, ITUC-CSI Geneva Office

Ms Busser raised several concerns surrounding global production networks, focusing on what trade in tasks has done to working conditions. Through increased competition, trade in tasks can increase the pressure on workers and wages, reducing their bargaining power when the production is shifted to other countries. The first concern relates to job insecurity and risks of unemployment which might be exacerbated in the context of export processing zones (EPZs) or sub-contracting. Ms. Busser reported cases of repression of trade union rights, migration workers sleeping in compounds and other examples of deterioration of workers' conditions.

The second concern related to income and wages, in particular in developing countries. Technological spillovers and learning effects might be questionable when it comes to trade in tasks and it is not clear that specializing in certain tasks is sufficient to raise income. Industrial and development policies might be needed, as well as strategies giving

a strong role to governments. The results of a recent WTO publication on global value chains in East Asia suggest that some countries may remain specialized in low value added products, for example in agriculture. Low-skill jobs remain in China, while high-skill jobs are sent to Japan and the Republic of Korea. One can ask whether specialization in tasks contributes to industrial development or whether previous full-fledged industrial policies are not a better option.

The last concern highlighted by Ms Busser was that multinationals and foreign direct investment (FDI) might put pressure on governments to implement weaker labour legislation and higher investor protection. Does the local economy really benefit when low value added activities are offshored? There is a whole range of questions and concerns related to FDI that need to be addressed when looking at the impact of global production networks on employment.

2. Questions and comments by the audience

Questions and comments from the floor revolved around the financial crisis and specific difficulties in the context of the year 2011. The audience was interested in knowing the potential impact of the European and US debts and banking crisis on world demand and employment. The link between macroeconomic imbalances, trade and global production networks was seen as a new field to explore. More coordination between international organizations was deemed important to make sure that the situation was not deteriorating. With regard to global production networks, another concern that was identified was that some countries might be locked in low value added activities and some participants were interested in the experience of some countries that may face such situations.

Another question from the audience dealt with the role of foreign direct investment and EPZs in fostering development and improving wages in developing countries. While Ms Busser had emphasized the negative impact of FDI on workers' conditions in the context of EPZs, the question was whether there was really evidence of such negative impact when one could think that, through exports and foreign investment, many emerging countries have in fact reduced poverty and increased the income of workers.

3. Conclusions

To conclude the session, Mr Escaith asked the speakers to look at the issue from the perspective of a developing country and asked for views on how globalization of value chains could promote development. The panellists noted that there had been success stories, especially in Eastern Europe and Asia, of countries that have gained from engaging in global value chains. But not all countries have been able to seize the opportunities offered by global production networks, and this suggests that a one-size-fits-all approach cannot be applied.

Mr Escaith thanked the panellists and noted that one of the nice things about global value chains was that they encouraged various approaches and a multi-disciplinary perspective on the issues.



Abstract

The sports industry contributes to global health by promoting access to and encouraging physically active lifestyles. As the costs of healthcare continue to skyrocket and governments struggle to manage, sports and fitness activity is a universal, low-cost and high-benefit part of the solution.

While investment in sports competitions forms the basis of the industry, companies have evolved and formed their business models around it, providing workplaces for hundreds of thousands of employees. Nevertheless, the global sporting goods industry is faced with the highest tariffs and trade-defence measures worldwide. The World Federation of Sporting Goods Industry (WFSGI) is in favour of pursuing freer and fairer global trade, and seeks to highlight the benefits of more open markets.

The challenges for governments in the WTO negotiations were outlined in this session, as well as the contribution that the industry can make to help move the negotiations towards a beneficial conclusion.

Increasing public access to sport through more open markets for sporting goods

Moderator

Mr Robbert de Kock, Secretary General,
World Federation of the Sporting Goods
Industry (WFSGI)

Speakers

Mr Frank Dassler, General Counsel, adidas
Group; President of the Federation of the
European Sporting Goods Industry (FESI)

Mr Tom Cove, President, Sporting Goods
Manufacturers Association (USA)

Mr Edwin Vermulst, Trade Counsel,
WFSGI; Partner, Vermulst Verhaeghe
Graafsma & Bronckers

Mr Yi-fu Lin, Permanent Representative,
Permanent Mission of Taiwan, Penghu,
Kinmen and Matsu (Chinese Taipei) to the
WTO

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World Federation of the Sporting Goods
Industry (WFSGI)

Report written by

WFSGI



1. Presentations by the panellists

(a) Mr Frank Dassler, General Counsel, adidas Group; President of the Federation of the European Sporting Goods Industry (FESI)

For Mr Dassler, sport stands for activity, competition, matches and tournaments. The positive effects, in terms of preventing diseases and promoting health, are demonstrable and are evident in people of all ages and from all walks of life. Sport can be practised regardless of gender, age and location. Competitions are at the heart of the sports industry; companies have developed their business models around these and now the industry provides jobs for hundreds of thousands of employees, in communications, sponsoring, events, facility management, tournament organization, innovation and research, as well as for athletes and in sports federations.

The attractiveness of sports competitions and the acceptance of the positive effects of both individual and collective sport activities form the basis for the sporting goods industry. Nevertheless, the industry is faced with high tariffs and trade-defence measures globally. If the positive effects of sport are to be increased and taken to new levels, sporting goods as a prerequisite for an active sports movement must no longer be treated negatively.

(b) Mr Tom Cove, President, Sporting Goods Manufacturers Association (USA)

Mr Cove suggested that the sports industry can make a positive contribution to global health by encouraging physically active lifestyles. According to a recent survey by the World Health Organization (WHO), physical inactivity is the fourth-largest cause of death globally, and 1.5 billion adults are insufficiently active. The threat is growing: the statistics on the increase in levels of obesity in developing economies are alarming; apparently, development is too often accompanied by regrettably high rates of inactivity.

Much of this is preventable. Regular participation in sports and fitness activities results in improved individual health, reduced health care expenses, increased productivity, and enhanced quality of life. The economic benefits are also dramatic. A WHO report states that investing in physical activity programmes will lead to economic savings: in the United States, for example, an investment of US\$ 1.00 in physical activity (including time and equipment) leads to US\$ 3.20 in medical cost savings.

Most importantly, sports and fitness can be accessible to all, with relatively few barriers to participation. People of all ages and from all economic strata can become physically active, and society would reap dividends from this activity. Sports activities are a universal, low-cost, high-benefit part of the solution to rising healthcare costs. Global trade policy should not limit access to sports and sports products.

(c) Mr Edwin Vermulst, Trade Counsel, WFSGI; Partner, Vermulst Verhaeghe Graafsma & Bronckers

Mr Vermulst presented an overview of the existing trade-restrictive measures in the sporting goods sector, focusing on footwear and apparel. As the sporting goods industry is at the forefront of globalization, and sporting footwear and apparel are very much "made in the world", such measures run the risk of backfiring. One way to minimize such risks



would be to have a plurilateral zero for zero agreement in place for sporting goods, similar to the WTO Ministerial Declaration on Trade in Information Technology Products (ITA).

(d) Mr Yi-fu Lin, Permanent Representative, Permanent Mission of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) to the WTO

Mr Yi-fu focused on what the Government of Chinese Taipei, together with the industry collectively, can do to help bring the Doha Development Agenda negotiations to a successful and beneficial outcome, and gave a general overview of production, trade and tariffs in sporting goods. He also pointed out the sectoral proposals made in the NAMA negotiations on the liberalization of trade in sporting goods.

Mr Yi-fu considered the challenges for government and industry to help move the negotiations towards a successful outcome. He said that governments must recognize that more global trade would contribute to economic and social development. He suggested that governments should demonstrate their willingness to engage by fulfilling the mandate of the WTO, including through their work on the Doha Round negotiations. Conversely, the industry should urge governments to participate positively in the Doha Round negotiations.

2. Questions and comments by the audience

Participants wanted to know why the sporting goods industry is subject to high trade tariffs. Mr Dassler explained that the industry is quite small compared to other industries. Therefore it is a target when governments set trade tariffs. The fact that it is a globalized industry and is sourcing products from all over the world also predisposes the industry to trade measures. Furthermore, Mr de Kock stressed that the lobbying capacities of the sporting goods industry are not on the same level as bigger, more powerful industries, since the same financial power is not available.

Another participant asked for clarification on the target group the sporting goods industry wants to reach with its health campaigns, the role of sport in schools, and the age of the people the industry is trying to motivate to engage in physical activity. Mr Cove explained that many stakeholders should be involved. Not only education systems, but also governments and the private sector have to take action.

One participant, a representative of a mission, talked about the danger to health of physical inactivity and asked how important an impact government policies have on this issue. For example, children often have no time after school for sport since they have a tremendous amount of homework. The participant asked what role the WFSGI could play in this regard in the future. Mr Cove stated that the sporting goods industry is committed to collaborating more with partners, such as NGOs, governments, other industries and foundations. He said that sporting goods companies have done a lot individually but that, as an industry, the whole sector is currently looking at how it can take a broader approach. Mr de Kock also mentioned that there have been examples of joint efforts in the past. The WFSGI, for example, collaborates with the WHO and hopes that its support can help here. He said that it is important that the sporting goods industry evaluates how it can give its support. However, ultimately the industry also needs to ensure that it obtains access to the markets so that people can access sport products.

A participant from the WTO said that the sporting goods industry is an outstanding example of a global sourcing industry due to its labour-intensive production, and that there should be no reason to implement tariffs as long as companies are not responsible for any damage caused in the importing country. The participant asked what the reasons might be for implementing trade measures in any case. Mr Vermulst explained that in one WTO anti-dumping case, for example, there was a conflict of interests between globalized brands, which are produced in the world for the world, and local producers from Spain, Italy, and other countries, who are still producing for the local market. The latter had an interest in minimizing third-country imports, notably from China and Viet Nam. Mr de Kock added that in Europe, the trade measures apply to all kinds of shoes with leather uppers, with the exception of special technology athletic footwear. The sporting goods industry fought very hard to have technical sport shoes of this type excluded from trade measures because they are not manufactured in the local market.

A further question focused on the non-tariff trade barriers affecting the sporting goods industry. Mr Vermulst listed two kinds of such measures:

- non-automatic import licensing procedures, which delay the actual import of products.
- rules supposedly set up to combat possible customs fraud. Under certain regimes, these temporarily stop the import procedure until certain specific information about the product is provided.

Representatives from a mission listed further trade barriers such as technical barriers, minimum prices and rule of origin, and pointed out that such trade barriers, among others, are justified by governments by the current situation surrounding the problems caused by fluctuating currency rates. They asked what the sporting goods industry's point of view on this was. Mr Vermulst repeated that there are many other types of trade barriers. Such measures – as well as rules of origin – are not allowed to stop the imports, although further information may be requested. The WTO exists to deal with these issues and prevent governments from abusing legitimate policy measures.

The participants wanted to know if there is any reason that emerging economies in particular have trade measures like those previously mentioned in place. Mr Vermulst thought that a snowball effect was the reason. The EU started with measures against footwear and was followed by Brazil, Chinese Taipei and others. If a big market such as the EU or the United States limits imports, the volume of goods does not decrease, but rather moves into other markets, which then take similar actions to protect their industries.

3. Conclusions

The WFSGI urged governments to avoid trading off the sporting goods industry in favour of other industries. Governments have to distinguish explicitly between regular apparel and generic footwear, on the one hand, and sporting goods on the other. If tariff and non-tariff barriers to trade were eliminated, the cost savings for manufacturers, brands, consumers and society alike would be significant. Increased participation in sport would be a “win-win” situation, for society in terms of public health, and for the industry in terms of economics



IV. What next for the trading system



Lessons learned from regional and bilateral FTAs: Assessing economic impacts and whether stronger IP rules stimulate innovation

Moderator

Mr Aaron Smethurst, Director, International IP (Multilateral), Global Intellectual Property Center, US Chamber of Commerce

Speakers

Mr Cesar Parga, Senior Specialist, Department of Economic Development, Trade and Tourism, Executive Secretariat for Integral Development (SEDI), Organization of American States

Mr Alexander Koff, Senior Consultant at IIPi; Partner and Chair of the global practice of Whiteford, Taylor & Preston L.L.C.

Organized by

Global Intellectual Property Center (GIPC)

Report written by

Mr Aaron Smethurst, Director, International IP (Multilateral), Global Intellectual Property Center, US Chamber of Commerce

Abstract

Regional and bilateral free trade agreements (FTAs) constitute active efforts to liberalize international trade. Many of these agreements include provisions to supplement the protection of intellectual property rights established in the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property (TRIPS) Agreement. The session explored how changing intellectual property rules have affected the flow of new products and ideas in the global marketplace. It addressed the following issues:

- Has increased intellectual property (IP) protection been a boon or a barrier for domestic industry and for development?
- What policies and regulatory environments are most conducive to stimulating innovation and to bringing new products to market?
- What are the main challenges and opportunities for developing countries wishing to benefit from IP rules in recent FTAs?
- What policies help the global economy to grow and how can trade contribute to spurring innovation and to delivering more products to more people?
- What can developed and developing countries do in the context of the multilateral system to advance innovation-enabling IP policies?



1. Presentations by the panellists

Both panellists discussed the economic and practical benefits of strengthened intellectual property provisions in developing economies.

(a) *Mr Cesar Parga, Senior Specialist, Department of Economic Development, Trade and Tourism, Executive Secretariat for Integral Development (SEDI), Organization of American States (OAS)*

Mr Parga provided both an overview of the current free trade agreement (FTA) environment and detailed experiences of small and medium-sized innovators in Latin America who have leveraged increased IP protection in their domestic economies to increase their global competitiveness.

Mr Parga based his presentation on success stories from small and medium-sized enterprises in different countries (such as Brazil, Chile, Mexico and Peru) to emphasize the benefits of IP protection on innovation and trade. He stressed that innovation was key to development, to generate a sustainable comparative advantage, as well as a better quality of life.

His examples demonstrated that local companies are not threatened by an increase in IP protection, but, rather, can thrive when they have access to the right tools. He pointed to the lack of resources in developing countries and stressed the need for technical assistance and best practices to help developing countries benefit from IP rights.

Mr Parga concluded that IP was a means to enhance innovation and trade, but not an end in itself.

(b) *Mr Alexander Koff, Senior Consultant at IIPi; Partner and Chair of the global practice of Whiteford, Taylor & Preston L.L.C.*

Mr Koff presented the results of a recent "Study on the Economic Impact of 'TRIPS Plus' Free Trade Agreement" (published 10 August, 2011). The study examined the "TRIPS-Plus" provisions of the 14 free trade agreements signed and implemented by the United States since the start of the WTO in 1995. Mr Koff's presentation highlighted the lessons learned from regional and bilateral FTAs and assessed economic impacts as well as whether stronger rules on IP rights stimulate innovation. The study's recommendations generated discussion among non-governmental organizations and government negotiators, particularly those focused on the Trans-Pacific Partnership negotiations.

2. Questions and comments by the audience

The presenters' points were reinforced by a member of the audience from Jordan, who pointed out how Jordan has benefited economically (particularly in the pharmaceutical sector) from the implementation of the US-Jordan FTA. Another participant asked Mr Koff about the research in the study he presented.

3. Conclusions

The session demonstrated the positive economic and practical implications of strengthened intellectual property provisions in developing economies. It also highlighted how small and medium-sized entrepreneurs can take advantage of IP protection.



Abstract

Both from the viewpoint of climate change and of energy security, the sustainable supply of energy is a critical issue. However, the regulation of energy is currently highly fragmented, including within the WTO.

The purpose of this session was to get a sense of the challenges that the development of a sustainable energy supply are likely raise in terms of WTO rules, to raise awareness of these issues with the trade community in and beyond Geneva, and to acquire input in order to move forward with an integrated framework for sustainable energy in the WTO.

The event featured clean energy experts and representatives from the private sector, academia, and not-for-profit organizations on the state of play of clean energy support (including production subsidies and feed-in tariffs), climate-friendly goods and services, and other issues involved in the development of a sustainable energy supply. The aim was to fuel creative thinking on potential multilateral responses to existing challenges regarding the issue of energy in the WTO. The session focused on the dialogue between energy and trade policy, as well as the prospective receptiveness of WTO rules for a framework agreement on energy, converging on the inappropriateness of the existing setting to foster the debate and move towards renewable energy.

The following questions were raised:

- Are current WTO rules supportive of clean energy development?
- How can current and future trade regulation encourage clean energy development?
- How would a framework agreement on energy in the WTO fit with other WTO agreements?
- How do current WTO disputes on renewable energy support influence the political economy of negotiations on this topic?

A WTO framework agreement for sustainable energy

Moderator

Ms Laurence Tubiana, Director, Institute for Sustainable Development and International Relations (Institut du développement durable et des relations internationales – IDDR)

Speakers

Mr Nitya Nanda, Fellow, Centre for Global Agreements, Legislation and Trade, The Energy and Resources Institute (TERI)

Mr Jens Alsbrink, Manager, Market Access, VESTAS Wind Systems A/S

Mr Emmanuel Guérin, Director, Climate Programme, IDDR

Mr Ricardo Melendez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)

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Institute for Sustainable Development and International Relations (Institut du développement durable et des relations internationales – IDDR)

International Centre for Trade and Sustainable Development (ICTSD)



1. Presentations by the panellists

(a) Mr Nitya Nanda, Fellow, Centre for Global Agreements, Legislation and Trade, The Energy and Resources Institute (TERI)

Mr Nanda noted that global energy governance is hindered by gaps in regulation and the resistance from developing countries, especially towards accession to the Energy Charter Treaty, due to the standing granted to private parties in its dispute resolution system. In that regard, he particularly noted the comparative advantage of the WTO dispute settlement system. Conversely, the absence of some important energy supplying countries among the WTO membership may prevent bringing the issues to the organization. He also argued that, in addition to modern energies, transitional types of energy would also benefit from regulation, since transition will not happen in the space of a day.

(b) Mr Jens Alsbrink, Manager, Market Access, VESTAS Wind Systems A/S

Mr Alsbrink noted that tariff barriers remain a significant, although not the dominant, challenge for the wind industry, as local content requirements are the top concern. In spite of the industry's existing excess capacity, these barriers prevent it from operating at full capacity, impeding economies of scale and preventing the reduction of the costs of wind energy. In order to achieve trade liberalization in energy, he suggested that, instead of the Doha Round, an all-encompassing cross-industry initiative and sectoral approach such as the one used in the Information Technology Agreement (ITA) 1996, would be more promising for green energy.

(c) Mr Emmanuel Guérin, Director, Climate Programme, IDDRI

Mr Guérin discussed the ambivalent role trade can perform in promoting green energy, depending on whether trade and climate policies are coordinated. He distinguished demand-pull and technology-push policies, showing how countries distributed policy differently between both models and its effectiveness in achieving desired goals.

(d) Mr Ricardo Melendez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development (ICTSD)

Mr Melendez-Ortiz, Chief Executive of ICTSD, touched upon the problem of access to modern forms of energy and the importance of trade in providing it. In order to scale up the use of renewable energy, he said that policies would need to foster green technology and increase its manufacturing capacity, by means of subsidies, technical standards, local-content requirements and technology transfer. Finally, he commented on the different possibilities for a framework agreement for energy proposed by the ICTSD, following either an ITA-type or Global Trade Alert-type agreement within the WTO framework, or a plurilateral agreement outside the WTO framework, with different consequences on membership and benefit sharing.



2. Conclusions

Ms Tubiana concluded the session by stressing the convergence of the speakers on the fact that the actual framework does not provide sufficient support to the move towards renewable energy. She underlined that countries need a forum to discuss and converge to clean energy, through which every country can engage without the fear of trade sanctions.



State aid, subsidies and competition policy: What future role for the WTO?

Moderator

Professor Dr Reinhard Quick, Head of Brussels office, German Chemical Industry Association; Chairman, BUSINESSEUROPE FTA Working Group; Vice-Chairman, BUSINESSEUROPE WTO working group

Speakers

Professor Jacques Bourgeois, Consultant, WilmerHale; Former Principal Legal Adviser of the European Commission

H.E. Mr Angelos Pangratis, Ambassador, Permanent Representative of the European Union to the WTO

H.E. Ms Hong Zhao, Minister Counsellor, Acting Deputy Representative of the People's Republic of China to the WTO

H.E. Mr Alejandro Jara, Deputy Director-General, WTO

Professor Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO

Professor Marco Bronckers, Partner, Vermulst Verhaeghe Graafsma & Bronckers; Former Member of the WTO Permanent Group of Experts on Subsidies

Organized by

BUSINESSEUROPE

Report written by

Mr Carsten Dannöhl, Senior Adviser, International Relations Department, BUSINESSEUROPE

Abstract

Multilateral and national rules on competition policy, state aid and subsidies are a logical complement to trade and investment liberalization, as markets opened by WTO disciplines can be closed off to foreign competition by anti-competitive practices. Establishing rules in these fields contributes to establishing healthy structures in domestic and international economies, and this is beneficial both to developed and to developing countries.

With Doha Round negotiations advancing painfully slowly, individual countries may shift their focus away from the multilateral approach. This session focused on the issues of state aid, subsidies and competition policy. The panellists discussed the consequences of turning away from the creation of global rules, different viewpoints on the benefits and challenges linked to the creation of multilateral rules on competition policy, and the role the WTO should play.



1. Presentations by the panellists

(a) Professor Dr Reinhard Quick, Head of Brussels office, German Chemical Industry Association; Chairman, *BUSINESSEUROPE* FTA Working Group; Vice-Chairman, *BUSINESSEUROPE* WTO working group

The session was opened by Professor Dr Quick, who introduced the panellists and raised a number of important issues and questions linked to state aid, subsidies and competition policy:

- Is there a discernible pattern showing that, during the financial crisis, governments used subsidies/state aids which could be seen as being in conflict with WTO rules?
- How should government interventions in the markets be approached? To what extent are bank loans to companies guaranteed by governments' actionable subsidies? Is there a need for stricter rules with respect to state trading companies? To what extent are domestic climate change regulations subject to the subsidies provisions of the WTO?
- Could subsidy issues be effectively dealt with in free trade agreements (FTAs)? Are the existing WTO rules sufficient or are changes necessary, and what, ideally, should the WTO rules look like?
- The draft ITO already had competition rules. At the Cancún Ministerial Meeting, three of the four Singapore issues were struck off the Doha Development Agenda (DDA). Looking at a future WTO, should the WTO not at least have a competition chapter?
- Should multilateral competition rules also apply to states if they act in the market? For example, if a state has a dominant position with respect to a product/resource, could this state be held responsible if it is proved that this dominant position was abused?
- Will competition policy be an issue for bilateral trade agreements? Can they be dealt with effectively in FTAs? Is there a need for multilateral guidance?
- What would happen to the WTO's anti-dumping rules if a competition chapter was added to the WTO? Given the history of the DDA, would it be wise to press for WTO competition rules? Are there other multilateral fora to deal with competition?

(b) Professor Jacques Bourgeois, Consultant, WilmerHale; Former Principal Legal Adviser of the European Commission

The WTO has a rule-making function on subsidies and competition, both through political negotiations and dispute settlement. There must also be the possibility to sanction WTO members in case they do not comply with those rules. As the dispute settlement function does not apply retroactively, there is a problematic delay between the moment the measure is introduced and when it is sanctioned.

Multilateral rules exist on subsidies, but not on competition, and negotiations thereon have been abandoned from the DDA. A World Bank report has estimated that the impact of having no competition rules is more negative than the EU common agricultural policy.

The WTO Agreement on Subsidies and Countervailing Measures contains provisions for state-owned enterprises (SOEs), and also applies to companies that do business under government influence. China in particular has a number of SOEs that are competing increasingly on a global scale. It is also important to distinguish between a state as either an actor or a regulator.

(c) H.E. Mr Angelos Pangratis, Ambassador, Permanent Representative of the European Union to the WTO

The EU's major concerns on state aid and subsidies relate firstly to below-cost financing, which is very difficult to address under the current WTO provisions. This problem should be tackled through systematic and generalized measures. Secondly, dual pricing policies on energy or critical raw materials are very harmful. Anti-dumping or anti-subsidy rules are possible avenues to tackle this problem. It should be noted, however, that anti-subsidy procedures are more difficult in practice than anti-dumping as they target a state.

WTO members should be more transparent when notifying the WTO about their subsidies. Often the notification is insufficient. With the gradual reduction of tariffs or non-tariff barriers, the anti-competitive behaviour of companies becomes more important and distortive. Rules in this area would also have to deal with investment.

(d) H.E. Ms Hong Zhao, Minister Counsellor, Acting Deputy Representative of the People's Republic of China to the WTO

It could be argued that all WTO rules belong to competition. Rules relate to competition in a narrow sense, dealing with anti-monopoly, anti-trust or anti-competitive behaviour. However, international cooperation on competition policy lags behind. Many developing countries do not have domestic competition law. This issue is only dealt with in FTAs between developed countries.

The WTO subsidies agreement provides some basic principles and disciplines on subsidies, focusing on dominant market position and anti-trust. It is important that WTO members comply with these rules. However, in many developing countries there is not a similar link between competition and subsidy rules, as for example there is in the EU. Therefore it is unlikely that these countries would support negotiations on these issues.

SOEs also exist in other countries, not only in China. A fair debate on Chinese SOEs should take into account their equity structures. All of them have mixed equity, sometimes even with foreign investment. Discussion should not be based only on ownership.

(e) H.E. Mr Alejandro Jara, Deputy Director-General, WTO

The underlying question is how to keep markets working competitively and smoothly. The majority of state spending is in subsidies, either directly or indirectly. Examples are education, health, agriculture, justice and defence. If a market exists, all these subsidies have a trade-distorting effect.



The WTO regulates some but not all subsidies. For example, services subsidies are not covered. There are also different rules on agriculture and on industrial goods. Some subsidies are dealt with in other fora (e.g. export credits in the OECD). There are also different forms of subsidies, such as preferences given to local suppliers in public procurement, bail-outs, or buying local provisions. It is questionable how far WTO rules and disciplines apply in those fields. Exchange rates, SOEs, and public and private measures to combat climate change will be future challenges for the WTO.

A shift from multilateral to bilateral rules does not make sense, as some issues (e.g. competition, agriculture, or fisheries) can only be effectively dealt with at a multilateral level. Only the WTO can establish such binding rules. There is also a need for more transparency; the existing system should be improved, as WTO members often do not sufficiently notify about their subsidies.

(f) Professor Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO

More multilateral competition rules would allow subsidies and the state to be tackled more easily. However, it is not necessary to make a distinction between the state as a regulator and the state as an actor. The concept of “competitive neutrality” is an interesting approach, and it could be discussed if this is the goal of having rules in the area of competition and subsidies.

It is difficult to tackle trade in natural resources without tackling state trading. However, state trading is of particular importance for developing countries. It is positive to establish new rules on state aid, subsidies and competition through bilateral agreements as this gives an opportunity to test them. At the multilateral level, these new rules could be negotiated in parallel and not necessarily in the framework of the DDA.

(g) Professor Marco Bronckers, Partner, Vermulst Verhaeghe Graafsma & Bronckers; Former Member of the WTO Permanent Group of Experts on Subsidies

WTO members have turned towards FTAs rather than towards the multilateral system in order to deal with competition, state aid and subsidies. In quantitative terms, a lot of bilateral agreements deal with these issues, as described by the *World Trade Report 2011*. The EU may attempt to impose its own rules on other countries, which is not problematic in the case of countries that wish to accede to the EU. It is more difficult, however, when the EU negotiates with other countries. The EU has a number of agreements which attempt to include WTO+ provisions.

The most ambitious European agreement – the EU-Korea FTA – contains chapters on both subsidies and competition. However, looking at the details it shows that, for example the provision on prohibited subsidies only covers actionable subsidies, so is this particularly different from the WTO Agreement on Subsidies and Countervailing Measures? On enforcement, it is doubtful that the signatories of the FTA would make a bilateral dispute settlement instead of going to the WTO. There is some positive language on transparency, but overall the Agreement will not lead to a sea change in the subsidies area. On competition, the EU-Korea FTA basically restates the most basic concepts. However, nothing in it is subject to dispute settlement. This also means that the competition provisions do not have any operational effects in the practice of law.

Considering all the EU's bilateral agreements, none of them has significant new rules on competition, state aid or subsidies. On a general note, although FTAs might have some positive effects, the experience shows that new provisions are best dealt with multilaterally.

2. Conclusions

The subsequent discussion mainly focused on the role of state-owned enterprises and the need for improved transparency, as well as rules on subsidies and competition. Panellists agreed that multilateral rules would be the best way forward, but also recognised the challenges associated with this, as not all WTO members would be coming from the same basis. Bilateral agreements could increase cooperation but would not replace the multilateral approach.



Abstract

The session sought answers for meeting the treatment needs of people living with HIV in the face of twin challenges: dwindling health budgets, and changing intellectual property (IP) norms, which could make the production of the cheap generic drugs that have been the main source of medicines for HIV in the developing world more difficult.

The growing need for newer medicines now recommended by the World Health Organization – which are increasingly being patented – could cause treatment costs to skyrocket to levels that would cripple developing country health budgets or place an unbearable burden on the donor nations providing funding. A solution must be found for the over 33 million people living with HIV who need medicines to stay alive, at a price that they can afford. At the same time, pharmaceutical company business models currently rely on the intellectual property system to make life-saving drugs.

The session brought together experts from a variety of areas – communities of people living with HIV, treatment providers, academics and international civil servants – to discuss the role of the Medicines Patent Pool in increasing access to affordable, appropriate medicines for HIV, how the Pool complements existing flexibilities in the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and what additional solutions are needed in parallel to ensure countries can meet the HIV treatment needs of their people.

Averting the coming treatment crisis in a changing intellectual property landscape

Moderator

Mr Antony Taubman, Director, Intellectual Property Division, WTO

Speakers

Mr Nelson Otwoma, National Coordinator/ CEO, National Empowerment Network of People Living with HIV/AIDS in Kenya (NEPHAK); UNITAID Board Member

Ms Michelle Childs, Director of Policy and Advocacy, Campaign for Access to Essential Medicines at Médecins Sans Frontières (MSF)

Ms Ellen 't Hoen, Executive Director, Medicines Patent Pool

Mr Carlos Correa, Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics Law, University of Buenos Aires

Commentator

Mr Peter Beyer, Senior Adviser, Department of Public Health, Innovation and Intellectual Property, World Health Organization (WHO)

Organized by

Medicines Patent Pool

Report written by

Ms Kaitlin Mara, Communications Manager, Medicines Patent Pool

1. Presentations by the panellists

(a) Mr Nelson Otwoma, National Coordinator/CEO, National Empowerment Network of People Living with HIV/AIDS in Kenya (NEPHAK); UNITAID Board Member

Mr Otwoma started the session by describing the situation of people living with HIV in Kenya. He said that in Kenya, there are 1.4 million people diagnosed with HIV, 800,000 who need treatment, and resources to treat just 400,000. Only 15 per cent of children with HIV have access to medicines. The few people who are on treatment are on it because the Kenyan government is able to import generic antiretroviral drugs (ARVs). In a dream world, there would be no patents interfering with access to medicine, but since this world is not likely to be realised in our lifetime, it is necessary to strike a balance: profit can be made, but public health has to be expanded and lives saved.

Mr Otwoma stated that initiatives like the Patent Pool are important because they allow for the managing of patents so that public health goals are still achieved. "We are talking about striking a compromise, so that those who want no patents can talk to the people who want patents to maximize profits."

(b) Ms Michelle Childs, Director of Policy and Advocacy, Campaign for Access to Essential Medicines at Médecins Sans Frontières (MSF)

Ms Childs provided the perspective of MSF as a key provider of ARV treatment throughout the developing world.

"Over the past decade, we have witnessed time and again that treatment not only improves the lives of people living with HIV but also makes them less vulnerable to HIV", Ms Childs said. Over the past decade, generic competition has driven the price of first line treatment from US\$ 10,000 per patient per year down to around US\$ 60 in some countries.

However, intellectual property laws "are beginning to bite". MSF gets 80 per cent of its ARVs from India, but thanks to changing intellectual property laws, India may no longer be the pharmacy of the developing world, Ms Childs said.

Further, new WHO recommendations suggest moving away from first line treatments to less toxic drugs. However, in lower middle-income countries where patent barriers exist, the price of less toxic variations is nearly six times the cost of earlier formulations, and salvage regimens on people who are failing second line treatment, can be 20 times more expensive. If people cannot get access to these drugs, they will die.

Because there are patents, generic competition needs to involve either voluntary or compulsory licensing. MSF supports the right of countries to issue compulsory licences, Ms Childs said, but bilateral free trade agreements make it more difficult.

Voluntary licences are not new; what is different about the Pool is the public health focus. The Pool faces real challenges, including the need to expand the geographical scope of its licences and make sure that ARVs can be produced outside India. For the Pool to overcome these barriers, Ms Childs underlined that pharmaceutical companies will need to think about doing business differently. "The focus has to go back on treatment – low



cost, at scale in countries everywhere – if we are going to have the opportunity, which is within our grasp, to break the back of HIV epidemic.”

(c) Ms Ellen 't Hoen, Executive Director, Medicines Patent Pool

Ms 't Hoen introduced the Patent Pool and gave details on how it works. She said that the availability of low-cost generic medicines has been critical in spreading access to medicines. This has been not just a matter of price, but also a matter of developing and bringing to market adapted formulations. Indian manufacturers brought the first fixed dose combinations (combined three-in-one pills) to market and Ms 't Hoen stated that this has been absolutely key in the massive scale-up that has been seen in the last decade.

Most people in the developing world that have access to medicine only have access to medicines for which the patents have expired or which were just never patented in India, where most of the drugs were made. However, that situation is changing rapidly as more recommended treatments are patented in key generic producing countries. The need for a deliberate intervention was already recognised by the WTO in the Doha Declaration of 2001, which looked at measures countries could take to increase access to medicines.

Ms 't Hoen explained that the objective of the Pool is to bring prices down more rapidly than if it was necessary to wait for the life of the patent term to end, and also to ensure that the intellectual property to make appropriate formulations – such as fixed-dose combinations and paediatric formulations – is assured.

A key feature of the Pool is that it is voluntary, so it requires the cooperation of patent holders. In exchange for their cooperation, they receive royalty payments. Pool licences are a negotiated result, and while the scope of the Pool's work is low- and middle-income countries, it is not in a position to dictate terms and conditions to licensors. Ms 't Hoen said that the Pool's chances of success directly depend on how strong the external support is, and that, until now, it has been quite strong and helpful. The Pool also has a very particular and well-defined focus on intellectual property issues, i.e. other initiatives that need to be in place in order for people with HIV to get treatment.

An absolutely key success factor is the continued availability of global funding for HIV, as well as continued existence of markets for the players (such as generic producers) involved in making HIV medicines, Ms 't Hoen said.

(d) Mr Carlos Correa, Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics Law, University of Buenos Aires

Mr Correa discussed the Patent Pool mechanism in the context of other measures that can be taken in order to promote access to drugs. “By its very design, the Pool cannot be the [sole] solution to the global problem of access to drugs,” he said. The scope of the Pool is limited by the willingness of companies to grant voluntary licences, and it is important to ask what else can be done to make the Pool more useful.

Mr Correa suggested that there are three main issues in access and intellectual property. First, there are patentability standards. In some countries, patents are granted without examination; in other jurisdictions, patentability standards as applied are very low. South Africa, for example, granted more than 2,400 patents in pharmaceuticals over the course of one year as compared to Brazil, which, between 2002 and 2007, granted only 278 patents in pharmaceuticals.

Mr Correa said that governments have a major responsibility to address this issue, in order to stop the proliferation of low quality patents, and also to stop evergreening. The activity of the Patent Pool would become much easier if governments would grant patents only when there is justification for receiving the award of a monopoly.

The second issue is compulsory licences. Since the TRIPS agreement entered into force for developing countries, only about ten have issued compulsory licences or used a government use authorization; Mr Correa said that most of those that have been issued have been on ARVs. This is something else for which governments should be responsible. Mr Correa pointed out that generic companies and civil society can also be active in requesting compulsory licences or in filing oppositions in the case of low-quality patents.

Finally, he said that there is a paradoxical situation in which the patent system has been extended through the TRIPS agreement to encompass almost the whole world, but innovation in pharmaceuticals is declining. This "crisis in innovation" perhaps indicates that new models are needed to spark innovation that will address the global disease burden. Mr Correa suggested that there also needs to be thinking on models to make sure that new drugs are not only available but also affordable.

(e) *Mr Peter Beyer, Senior Adviser, Department of Public Health, Innovation and Intellectual Property, World Health Organization (WHO)*

Mr Beyer provided commentary from the WHO perspective. The WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property mentions the concept of patent pools, and an expert working group names the Medicines Patent Pool as a promising tool. This means that member states of the WHO have endorsed the Patent Pool. The WHO has also provided the Pool with technical assistance, such as by helping to identify missing medicines and formulations. "The WHO is supporting the objectives pursued by the Pool and will continue to provide technical support," said Mr Beyer.

Now that the Pool is starting to take shape, there has also been a parallel increase in voluntary licensing from companies. Mr Beyer suggested that it is partly due to the existence of the Pool that companies feel the need to further investigate sharing their IP for increased access.

From a public health perspective, the WHO thinks the Pool can be a driving force in making sure that public health is taken into account in these licences. This is a difficult role to play, as voluntary licences are, of course, voluntary. What was achieved with the Gilead licences was good, but should be a basis and not a ceiling, suggested Mr Beyer.

The WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property has more than 100 different actions, just one of which is addressing the idea of patent pools. The Pool is clearly "one part of the solution, but not the solution to the whole problem".



Abstract

The objective of the panel was to assess the impact of the proliferation of preferential trade agreements (PTAs) on the rules-based multilateral trading system and to examine their implications upon the future evolution of the global trading system.

The session addressed the following issues:

- 21st-century regionalism and the emerging determinants of international trade policy
- the role PTAs play in conjunction with the multilateral trading system
- efforts to make relevant WTO provisions more explicit and comprehensive with regard to PTAs
- effective ways for both governments and businesses to ensure complementary multilateral and preferential trade rules.

A world business perspective on the rules-based multilateral trading system and the role of preferential trade agreements (PTAs)

Moderator

Ms Nicole Graugnard, Trade and Investment Policy Manager, Department of Policy and Business Practices, ICC International Secretariat, France

Speakers

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

Dr Jan Atteslander, Member, ICC Commission on Trade and Investment Policy; Member of the Executive Board, Economiesuisse, Switzerland

Mr Knut Sørli, Member, ICC Commission on Trade and Investment Policy; Assistant Director of International Affairs and Trade Policy, Confederation of Norwegian Enterprise, Norway

Mr Stuart Harbinson, Member, ICC Commission on Trade and Investment Policy; Senior Trade Policy Advisor, Sidley Austin LLP, Switzerland

Organized by

International Chamber of Commerce (ICC)

Report written by

Ms Nicole Graugnard, Trade and Investment Policy Manager, Department of Policy and Business Practices, ICC International Secretariat, France

1. Presentations by the panellists

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

The business community has witnessed three significant trends involving PTAs over the past several decades: the increasing use of PTAs; the deepening and expansion in PTA scope; and the departure from strictly regional PTAs to those that involve distant trading partners reflecting the global trading patterns of the business community. It was noted that PTAs appeared better equipped to provide a number of advantages required by businesses than the multilateral system in the short term. PTAs allow countries to go deeper at both the tariff and non-tariff barrier level with like-minded partners and faster than what was currently feasible in the multilateral system. However, the point was made that PTAs do not always fully liberalize. Products that are considered sensitive and difficult to liberalize in the WTO context remained difficult to liberalize through PTAs. For example, 66 per cent of tariff lines with most-favoured nation (MFN) rates above 15 per cent had not been reduced in PTAs.

In general, businesses recognized the negative consequences of the PTA trend, one being the inherent exclusionary bias in PTAs favouring certain competitors. From a business perspective, the most acknowledged concerns regarding PTAs were the increased complexity created and the potential confusion caused in the international trading system. The sheer variety of rules arising from PTAs, even with similar regimes, was costly for business to understand and comply with, both in terms of time and money, and created a tangible economic loss.

Mr Sosnow stated that the WTO needed to decide whether to use existing GATT Article XXIV rules to actively monitor, question and evaluate PTAs for deviation from WTO rules. He suggested that the WTO could advance the policy agenda for deeper multilateral liberalization by encouraging members to multilateralize PTAs and by acting as a catalyst and a forum for these endeavours.

Mr Sosnow concluded that the WTO could exercise positive leadership in this area of PTAs by strengthening the oversight function built into GATT Article XXIV, establishing best-practices guidelines to reduce complexity and variance from the WTO agreements, and promoting multilateralization through plurilateral agreements.

(b) *Dr Jan Atteslander, Member, ICC Commission on Trade and Investment Policy; Member of the Executive Board, Economiesuisse, Switzerland*

For Switzerland, trade policy is based on three pillars: multilaterals, regional trade agreements and free trade agreements. Mostly through EFTA, Switzerland is part of 24 PTAs, a relatively large number for such a small market. Switzerland is also currently in trade negotiations with China, India and the Russian Federation. This global network of Swiss PTAs reflects the changed dynamics of the world economy, including the increased importance of emerging countries and the globalization of supply chains. Over 85 per cent of global Swiss trade occurs under PTAs.



However, with all Swiss PTAs based on WTO rules, the complementary aspects of PTAs for the multilateral trading system are numerous. Swiss trade policy does not view PTAs as a substitute for the WTO and appreciates the limitations of PTAs. The administrative costs to businesses with respect to differing Rules of Origin are the most apparent limitation. While large multinational enterprises have teams dedicated to the strategic use of PTA Rules of Origin, a recent survey of Swiss firms found that most small to medium-sized enterprises do not possess sufficient resources to dedicate to understanding and utilizing this complex network.

Another limitation of PTAs is that of scope; PTAs do not change domestic *erga omnes* rules, such as heavy custom procedures. Dr Atesslander recommended that the WTO use GATT Article XXIV to analyse PTAs. He also called for that establishment of PTA Guidelines for best practices on rules and policy. Dr Atesslander concluded by suggesting that the multilateralization of generally accepted PTA rules into WTO rules should be considered in the long run.

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

One of the world's top 25 trading countries trade-wise, if Europe is considered as a single entity, Norway ranks 21st as an exporter of goods and 25th as a service exporter and importer. Via the European Free Trade Association (EFTA), Norway is part of 22 PTAs and is currently conducting negotiations with big economies like India, Russia, Indonesia and China. Given the impasse of the Doha Development Agenda (DDA) negotiations, the WTO has not provided any new market access over the last 10 or 11 years. The only market opening that has taken place was a result of unilateral liberalization or accession to the WTO. PTAs are thus beneficial as a supplement, not a substitute, to the WTO.

According to WTO statistics, every member participates in 13 PTAs on average. Mr Sørli stated that PTAs are a *de facto* priority for companies because they produce concrete results and benefits relatively rapidly. PTAs have gone further in real trade liberalization (WTO+), not only in terms of market access but also in terms of rules, such as the EFTA agreements that restrict the use of antidumping or safeguard measures.

Another trend witnessed is the addition of other disciplines within the PTAs, such as competition rules, government procurement, environmental rules, labour standards and investment rules. The most successful example, deep integration, is a development of the EU and the single market as well as the European Economic Area (EEA) Agreement, of which Norway is a part. This model of deep regional integration could serve as an example for other parts of the world. However, PTAs create a "spaghetti bowl" problem because of the different Rules of Origin involved. PTA negotiations can distract countries' attention from unilateral liberalization and domestic trade/investment reforms.

Mr Sørli concluded by calling for a work programme to be agreed upon at the forthcoming WTO Ministerial Conference in December 2011 on the relationship between the WTO and PTAs, which would provide for greater discipline and monitoring.

(d) Mr Stuart Harbinson, Member, ICC Commission on Trade and Investment Policy; Senior Trade Policy Advisor, Sidley Austin LLP, Switzerland

A recent WTO study concluded that about one-half of world merchandise trade takes place among PTA members. However, due to zero duty MFN rates and product exclusions in PTAs, only 16 per cent of world trade is eligible for preferential tariffs and less than 2 per cent is eligible to receive preferences with margins above 10 per cent. Furthermore, the costs related to compliance with preferential rules, such as rules of origin, meant that the actual use of preferences is below what is eligible.

For services, the overall picture is even less clear. A 2006 WTO study found that PTAs provided significantly more liberalization than GATS schedules. More worryingly, they were also well ahead of GATS offers in the Doha Round. Mr Harbinson addressed the new era of so-called "21st century" PTAs. This type of PTA goes beyond goods and services and contains chapters on competition, government procurement, payments and capital movements as well as "cross-cutting" issues like supply chain management, regulatory coherence, labour and environment. Unfortunately, there is no longer any "examination" of PTAs because the 1994 Understanding on the interpretation of GATT Article XXIV has been sidelined. Instead, since 2007, a "transparency mechanism" on a provisional basis has been in place to provide for early announcements of PTA negotiations and provision for notification.

Given these trends, businesses have either embraced or gone along with the PTA bandwagon out of pragmatism. But such pragmatism does not mean that companies operating on a global basis would not prefer a global playing field that is the same for all players. Mr Harbinson concluded by calling for a coherent, long-term, dovetailed strategy for the WTO and PTAs. However, he noted that such coherence is rarely seen at present, and that this is the cause for the current concern about the health of the multilateral trading system. Global business wants to see a healthier global trading system. Had the Doha Round been concluded, this would have provided a good trade basis for moving on to fresh challenges.

2. Questions and comments by the audience

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

While for Swiss companies the existence of bilateral investment treaties is an important factor when considering where to invest, a recent study showed that it was not the case for US companies, where the main determinants are, for example, market size, infrastructure, existence of natural resources, cost of labour and human capital.

The fact that many PTAs appear to lack coverage for certain products, such as agricultural ones, which in turn create domestic constituencies not in favour of multilateralism, was discussed. Also addressed was the question of how trade politics within each country affect overall efforts by global business to support the multilateral approach.

It was suggested that businesses could take advantage of labour markets as means to reduce costs through labour market liberalization.



3. Conclusions

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



The Post-TRIPS world

Moderator

Mr Ahmed Abdel Latif, Senior Programme Manager for Intellectual Property and Technology, International Centre for Trade and Sustainable Development (ICTSD)

Speakers

Ms Annette Kur, Max Planck Institute, Munich

Mr Carsten Fink, Chief Economist, Economic Studies, Statistics and Analysis Division, World Intellectual Property Organization (WIPO)

Ms Nandini Kotthapally, Counsellor, Permanent Mission of India to the UN

Ms Victoria Whitford OBE, Deputy Director of International Policy, UN Intellectual Property Office

Ms Zhao Hong, Minister Counsellor, Permanent Mission of the People's Republic of China to the WTO

Mr Pedro Roffe, Senior Fellow, ICTSD

Organized by

Max Planck Institute for Intellectual Property and Competition Law (MPI)

International Centre for Trade and Sustainable Development (ICTSD)

Report written by

Mr Harsh Hiroo Gursahani, Programme Assistant, Innovation, Technology and IP Programme, ICTSD

Ms Daniella Allam, Junior Programme Officer, Innovation, Technology and IP Programme, ICTSD

Abstract

This session, co-organized by the International Centre for Trade and Sustainable Development (ICTSD) and the Max Planck Institute, discussed the issues and developments in intellectual property (IP) 16 years after the Agreement on Trade Related Aspects Intellectual Property Rights (TRIPS) was adopted and the future of the IP regime within that context. Panellists touched upon the inherent potential of the TRIPS agreement and the ways it can be enhanced so as to offer a sound and resilient framework encompassing a range of interests.

Panellists also addressed the impact of TRIPS on innovation, technology transfer and the flow of foreign direct investment (FDI), paying particular attention to empirical research conducted recently. They also addressed issues in the "Post-TRIPS" world, including the role of WIPO and free trade agreements (FTAs) in shaping the international IP regime. They discussed various approaches followed by individual countries and collectively in international organisations to balance IP protection and development.

The panel heard examples from the developing countries, namely China and India, which touched upon the changes in the geography of innovation. The discussion centred on the delicate rebalancing of the IP regime, and roles that different organisations have played, and are playing, to achieve it.



1. Presentations by the panellists

(a) Mr Ahmed Abdel Latif, Senior Programme Manager for Intellectual Property and Technology, ICTSD

Mr Abdel Latif introduced the panellists and explained the importance of assessing the challenges facing IP in the post-TRIPS world in the context of a rapidly changing global innovation and technology landscape. He explained that after 16 years of TRIPS being into force, ten of those for developing countries, the international community continues to grapple with challenges relating to the role of IP in promoting innovation and to the integration of IP with public interest and development concerns.

(b) Dr Annette Kur, Max Planck Institute, Munich

Dr Kur presented a project led by the Max Planck Institute in the area of TRIPS reform. The research project was undertaken to assess areas where the TRIPS agreement was lacking and proposals to address these issues. The research presents options to amend TRIPS in order to recalibrate it into a more balanced agreement.

The proposals included draft language for a series of modifications in Part I and Part II of TRIPS that aimed at widening the scope of the Agreement beyond innovation and technology transfer. Specifically, suggestions included placing the emphasis on obligations under Article 8, changing the current structure of Article 8 to place the burden of proving a violation of TRIPS on the party alleging the violation, and including a provision regarding the interface of IP and competition. The proposal also included changing the three-step test in Article 13 with internationally monitored mandatory exceptions for protection, without compromising the ability of countries to experiment with limitations and exceptions.

(c) Mr Carsten Fink, Chief Economist, Economic Studies, Statistics and Analysis Division, WIPO

Mr Fink presented an economic perspective on the impact of TRIPS on innovation and technology transfer, and highlighted the effects of IP protection on the flow of FDI and on the relocation of research and development facilities. Mr Fink highlighted two major effects of TRIPS: the creation of changes in domestic legislation, and more credibility for countries that have bound their domestic IP policy under international law. He pointed out that it is difficult to measure the economic performance of the TRIPS Agreement per se, as changes in domestic laws may be driven by a large number of internal and external factors. Studies examining FDI flows show that IP protection is important but empirically the effects were rather small. Investors may overlook IP protection when other market conditions are favourable, Mr Fink noted. Before concluding, Mr Fink suggested a few areas where more research is needed: IP protection and innovation in developing countries, disclosure value of patents, and the effects of the increased vertical disintegration of innovation processes, with possible new opportunities for developing countries.

(d) Mrs Nandini Kotthapally, Counsellor, Permanent Mission of India to the UN

Mrs Kotthapally spoke on the role played in recent years by developing countries in the different programmes and activities of WIPO. She paid special attention to the WIPO Development Agenda (DA), which was adopted in 2007 and includes 45 recommendations to mainstream the development dimension in WIPO's work. She argued that even though WIPO has been lagging behind in IP rulemaking, it has been involved in "a delicate rebalancing" of the intellectual property regime.

She explained that the DA constituted a paradigm shift that overturned the existing notion of IP as a "rich man's club" and placed IP firmly in the context of development. Mrs Kotthapally said that this is now an accepted credo in WIPO and beyond, and has been put into concrete practice by the WIPO Committee on Development and Intellectual Property (CDIP). She noted that the DA had shifted the focus from protecting IP to norm setting for limitations and exceptions, including the proposed copyright exception for the visually impaired, for libraries and for research.

Mrs Kotthapally concluded by saying that filing under PCT in 2010 has shown that China, India and the Republic of Korea are leading the charts in filing for patents and challenging the traditional predominance of the United States and Europe as the main innovative regions, leading to a shift in the "geography of innovation".

(e) Ms Victoria Whitford OBE, Deputy Director of International Policy, UK Intellectual Property Office

Ms Whitford discussed the United Kingdom's approach to IP and development informed by the recent government-commissioned review on "Intellectual Property and Growth" by Professor Ian Hargreaves. With that in mind, the United Kingdom's approach to the IP regime is that it should aid in tackling global challenges, be based on economic evidence rather than politics, and support innovation in a manner that helps developing countries achieve their growth objectives.

Ms Whitford explained that the Hargreaves Review showed that stronger IP protection only led to increased growth in high-income countries while the effect was lower in middle-income countries and had no effect or a negative effect in low-income countries. In this context, she stressed the need for more research and stated that in order to have positive growth through IP protection, approaches have to balance different interests and be tailored to each country's needs.

Against this background, she argued that the TRIPS Agreement, with its different transition periods for least-developed countries, was already a "tailored approach". However, this approach should also take into account economic evidence, which is why her government supports extending the LDCs transition period expiring in 1 July 2013 to aid the growth and development in these countries.

(f) Ms Zhao Hong, Minister Counsellor, Permanent Mission of the People's Republic of China to the WTO

Ms Hong stated that China has benefited greatly from TRIPS and highlighted China's legislative and infrastructural efforts to become TRIPS-compliant. She affirmed that China has experienced an unprecedented increase in registered rights and while some



IP protection challenges remain, China's trading partners have recognised its increasing efforts, particularly in the area of enforcement.

She also emphasized the balance between IP protection and the public interest. Ms Hong underscored that transparency measures in patent applications should include disclosure requirements for the origin of genetic resources. She concluded by suggesting that private sector should have the leading responsibility in ensuring IP enforcement.

(g) Mr Pedro Roffe, Senior Fellow, ICTSD

Mr Roffe drew attention to free trade agreements (FTAs), gauging their impact on the multilateral system and examining why FTAs are controversial. Mr Roffe stated that FTAs were legitimate offspring of the TRIPS agreement, but at the same time were also an acknowledgment of the failure of multilateral system to tackle the complexities of lawmaking in this area. Most-favoured nation and national treatment principles embodied in TRIPS have enlarged the coverage of IP chapters that were included in FTAs to address major industry interests. Mr Roffe said that FTAs are asymmetric by nature, exporting IP regimes to trading partners, and have the effect of aligning regulatory regimes to those of the more advanced economies.

In essence, the multilateral system has deepened the harmonization of IP laws by expanding TRIPS obligations in FTAs. Mr Roffe concluded by saying that the impact of FTAs, as well as their place in the multilateral system should be monitored. FTAs should take into account the principles of the WIPO Development Agenda.

2. Questions and comments by the audience

The panel took questions from the public before concluding. While answering the questions, Ms Whitford asserted that extending the transition period of LDCs was the official position of the UK government. Answering a question on whether IP issues could be better addressed along sectoral rather than national lines, Ms Kotthapally suggested that specialized sectoral agreements might indeed be the way forward, citing the proposed treaties on copyright exceptions and limitations for the visually impaired, libraries and research.

At the end of the session, Mr Abdel Latif thanked the panellists and the audience for an informative and fruitful dialogue.

The future of trade in
financial services:
Safeguarding stability

Abstract

This session explored questions emerging among government regulators, civil society organizations, and trade and finance experts about WTO financial services rules in the context of the global trend towards enhanced financial regulation.

Moderator

Mr Daniel Owoko, Counsellor - Trade,
Permanent Mission of Kenya to the WTO

Speakers

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

Mr Andrés Arauz, General Banking
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Organized by

Our World Is Not For Sale (OWINFS)

Report written by

Ms Melinda St. Louis, Public Citizen's
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1. Presentations by the panellists

(a) *Ms Lori Wallach, Director, Public Citizen's Global Trade Watch*

Increasingly, government officials and trade and finance experts are questioning whether the General Agreement on Trade in Services (GATS) rules and financial services commitments negotiated in the 1990s pose obstacles to post-financial crisis efforts to enhance regulation underway, both domestically and internationally.

More than 100 countries have GATS financial services commitments, including 40 developing countries with Mode 3 commitments, 26 with unlimited commitments and 22 with significant Mode 1 commitments. Countries that did not schedule exceptions (and that now, following the financial crisis, seek to re-regulate in committed sectors using mechanisms prohibited by GATS rules) could face a WTO challenge, choose not to institute a necessary regulatory tool to avoid a threatened challenge, or be required to negotiate compensation terms with affected member states to alter their commitments, which may be unfeasible, especially for developing countries.

Four main concerns were raised.

The first was the GATS market access rules (Article XVI(2)), under which countries made liberalization commitments prohibit the maintenance or establishment of specific types of non-discriminatory regulation in committed sectors. The Appellate Body ruling in Antigua and Barbuda's challenge of the US internet gambling ban established that a ban is an Article XVI(2)-forbidden "zero quota". This poses threats to countries' bans of risky financial practices or instruments in a committed sector. Provisions forbidding limits on size and legal entity are ambiguous, leading some countries to schedule limitations for the right to address firm-specific regulation or to firewall cross-sectoral risk. Many others, however, did not schedule these limitations and may face GATS constraints on their ability to address too-big-to-fail banks.

Second, GATS rules forbidding limits on capital and current account flows could undermine developing countries' use of macro-prudential measures, such as capital controls. Also implicated, as noted in a European Commission staff paper, is the GATS compatibility of financial transaction taxes. A footnote to GATS Article XVI(2) requires that countries with Mode 1 commitments allow unrestricted capital flows in and out, and that countries with Mode 3 commitments allow unrestricted capital flows in. GATS Article XI "Payments and Transfers" requires countries to allow capital flows in committed sectors. These rules apply to all GATS-committed sectors and no exceptions may be scheduled. They pose unique risks when applied to financial services, where capital flows are not merely incidental to provision of a service, but rather large, potentially destabilizing movements of capital. GATS Article XII provides a limited exception for short-term limits on flows with IMF approval in a balance of payments emergency. However, this exception does not provide for the use of standing restrictions on in-flows as a prophylaxis against crises. The IMF has written favourably about the growing use of such mechanisms by countries to avoid destabilizing capital flows. But countries that committed to liberalize financial sectors under GATS may face constraints on their use.

Third, Article VI "Domestic Regulations" subjects non-discriminatory technical qualifications, licensing, permissions, and other commonly used policies to review and challenge. Ms Wallach questioned why the Working Party on Domestic Regulation

would continue seeking to establish disciplines that further constrain domestic financial regulation, especially in the post-crisis era.

A fourth concern relates to the GATS Annex on Financial Services Article II(a). The first sentence provides a defence for a range of prudential measures, but the second sentence states that a country cannot use such measures to avoid their GATS commitments. Some argue this defence is self-cancelling, and everyone agrees that it is ambiguous. Numerous scholars, including WTO panellists, have discussed the need for clarification. This provision is not a carve-out that forbids challenges of countries' prudential financial policies. A review of GATS negotiating history shows that a bloc of Asian countries proposed a true prudential carve-out, but this was rejected. Five defence provisions were proposed, with the weakest version ultimately adopted.

To date, preliminary discussions held at the request of member countries have reviewed the trade impact of measures taken after the crisis. A critical next step is a review of WTO rules with respect to their compatibility with regulatory proposals now being discussed at other global fora, and also with members' general need for the policy space to regulate for enhanced stability. During the previous era in which financial deregulation was in favour, WTO challenges of financial regulation did not arise. However, now that countries are beginning to re-regulate, conflicts are emerging with some member countries questioning whether others' financial reregulation violates GATS commitments.

(b) Mr Andrés Arauz, General Banking Director, Central Bank of Ecuador

Mr Arauz commented that the legal analysis related to the GATS and the related annexes must include the historical context of the international financial system and the current juncture in which we find ourselves since the global financial crisis, given that the G20, the UN Commission of Experts and others are proposing reforms to the international financial system.

The reason Ecuador, along with other countries, has been highlighting the need to rethink WTO rules in the wake of the crisis is that there is an emerging consensus that the financial crisis was due in large part to financial deregulation. The Bank of International Settlements reported that conventional theory was not sufficient to understand what was happening during the financial crisis; there was a lack of understanding of system-wide risk. In the context of a regulatory vacuum, excessive risk-taking before the crisis created a shadow banking system, where companies established offshore subsidiaries, taking advantage of countries' mode 1 commitments to engage in "regulatory arbitrage". The G20 is now calling for regulation of offshore financial centres, but prohibiting banks from setting up subsidiaries in these tax havens could contradict some countries' GATS commitments.

The BIS also pointed to financial "innovation" as a contributor to the crisis. In the 1990s, when countries made GATS financial service commitments, governments could not have foreseen such "innovations." The book values of derivatives, interest rate swaps, etc. are ten times larger than the size of the real economy, which can create bubbles and instability. It would be wise to regulate these derivatives markets without worrying about conflicts with GATS agreements.

Ecuador and other countries advanced a conversation about the measures taken after the financial crisis by developed countries and the asymmetries involved between developed

and developing countries, related to transparency, fiscal space and privileges with respect to issuing reserve currencies.

Director-General Lamy has rightly supported the need for more and better regulation. For this re-regulation to be successful, there must be much better communication and coordination between regulators and trade negotiators. Crises can be avoided with adequate regulation, and avoiding crises helps to avoid trade distorting measures. Therefore, Mr Arauz suggested that the WTO should monitor the impacts of the crisis and measures taken and ensure the public policy space for regulation.

(c) Ms Sanya Reid Smith, Senior Researcher, Third World Network

Ms Smith shared research on the successful use of capital management techniques in the Asian context, summarizing a Third World Network study directed by a former chief economist at UNCTAD in cooperation with eminent local economists in each country.

Capital management techniques are important because large capital flows help facilitate the spread of the crisis to developing countries. Since the crisis, there has been an emerging consensus that capital management techniques should be available as a tool to help developing countries avoid incipient crises and help them get out of crises when they occur.

Ms Smith described in some detail how China, Malaysia and Thailand have successfully used capital controls, according to the study. In contrast, careless capital account liberalization in the Republic of Korea led to severe damage from the Asian financial crisis. After the recent crisis, the Republic of Korea's use of capital controls helped to stabilize the Korean economy. Some observers have noted that the Republic of Korea's recent capital controls would not have been permitted under the Free Trade Agreements negotiated by the Republic of Korea with the United States and EU if these pacts had been in force at the time.

(d) Mr Etienne Vlok, Director of South African Labour Research Institute (SALRI); Teselico Convenor for the Congress of South African Trade Unions (COSATU)

A lack of regulation of speculative activity and the rise of "innovative" financial instruments intensified volatility in the financial system, increasing inequality and leading to financial crises and unemployment. Mr Vlok described unionists' concerns that the current global "trade" rules do not provide the domestic policy space needed for re-regulation based on the specific contexts each country faces. South Africa's measures to protect consumers from reckless lending practices and pro-active steps to reduce potential risks in the financial sector were possible because South Africa took limited Uruguay Round financial services commitments. However, workers are concerned that much of this space would be eroded were South Africa's Doha Round offers to become new binding WTO commitments.

Mr Vlok highlighted South Africa's Doha Round offer on derivatives, made in 2006, before the crisis demonstrated the dangers of an unregulated derivatives market. The use of speculative financial instruments covering key food commodities contributed to a staggering increase in food prices in South Africa, where inflation in food prices reached 20 per cent in 2008. This has devastated the poorest families, for whom one-third of income is spent on food. Policy-makers, civic organizations, unions, and others in civil

society in South Africa have called for more regulation of food commodity derivatives and perhaps even bans on some risky instruments. Mr Vlok warned that the South African Doha Round offer now on the table would hinder the country's ability to implement the range of policy options needed to counter damaging derivatives trading.

In closing, Mr Vlok noted that countries are told not to be concerned about potential WTO challenges because there has not been a WTO challenge in this area to date. However, he noted that the policy constraints imposed by GATS could have a damaging, chilling effect without recourse to formal dispute resolution. When Walmart attempted to purchase a South African retailer, both workers and government attempted to condition Walmart's entry into South Africa on its meeting local procurement terms that could promote the domestic manufacturing sector. During the hearing process, Walmart's lawyers warned that those conditions might conflict with South Africa's GATS commitments in retail trades. The result was that the merger went forward without the procurement conditions, and the threat of a potential GATS challenge was certainly a contributing factor in freezing the pro-development, pro-jobs policy.

2. Questions

A representative from Permanent Mission of Pakistan to the WTO asked: Given the inverse relationship between the risk-taking of financial service institutions and the level of regulation, did the panellists think regulation was a good idea?

A representative from Kenyan Parliament asked: What is the intersection between the WTO and other institutions such as IMF, World Bank, BIS and Basel in relation to the international financial system?

Mr Alfredo Calacagno of UNCTAD said that in UNCTAD's 2011 Trade and Development report, they had mentioned the necessity of capital controls and of re-regulation of the financial system, and they shared the analysis that there could be possible contradictions between GATS and bilateral investment treaties and this need for re-regulation. He asked what the panellists thought the solution was.

3. Conclusions

Ms Wallach's final comments were that WTO rules clearly affect financial regulation and they reflect the deregulatory period in the past when the current rules and commitments were made. While these WTO rules remain static, other institutions, such as the IMF, are responding to recent crisis' lessons. The crux of the question is, how can the WTO support the global agenda of reregulation by ensuring that its rules from the 1990s are not a hindrance?

Mr Arauz said that if risk-taking puts the entire financial system at risk, then strong regulatory measures are needed to dissuade that behaviour. Every regulator in every country must assess that balance of what risk contributes to systemic risk.

Mr Vlok summed up by saying that it is important to add that, in the negotiations on domestic regulations, the limitations could be made much worse.



Abstract

Mr Halle framed the session around the dilemma of the Doha Round of trade negotiations. Although the initial decision to include talks around the environment seemed to represent progress, the subsequent inertia and lack of genuine breakthroughs have left us asking, "Whatever happens to the Doha negotiations, how do we come to grips with overlapping legal regimes on trade and the environment?" As Rio+20 approaches and we consider what a climate regime might look like, it is clear that, one way or another, compatibility between environmental policies and global trade rules needs to be ensured.

The panellists considered a number of mechanisms for rapprochement: the increased use of transparency and accountability mechanisms; a "change of mindset" in interpreting WTO law, through certain international legal principles; the integration of trade and environment agreements as part of the enabling framework for a green economy; and options for taking talks on the environment forward, independently of the Doha process.

The panellists offered diverging viewpoints on the current impasse. On the one hand, it may be seen as an opportunity, encouraging exploration of new ways of operating. On the other hand, over-reliance on non-negotiated solutions may reduce the WTO's legitimacy, and, in the long term, endanger the integrity of the system.

Advancing trade and environment in the absence of negotiations

Moderator

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

Speakers

Professor Robert Wolfe, Queen's University, Canada

Professor Jorge Viñuales, Graduate Institute of International and Development Studies, Geneva

Dr Katharina Kummer Peiry, Executive Secretary, Secretariat of the Basel Convention

H.E. Mr Mario Matus, Ambassador, Permanent Representative of Chile to the WTO

Organized by

International Institute for Sustainable Development (IISD)

Report written by

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1. Presentations by the panellists

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

Professor Wolfe explained that there are three modes of action for addressing the relationship between trade and environment at the WTO:

- negotiating new or revised rules
- dispute settlement
- transparency and accountability mechanisms.

Doha has failed to succeed at the first of these and, while the dispute settlement to date has had less impact on environmental policy making than some feared, "gap-filling" by the Appellate Body is a risk to be avoided. The alternative – transparency and accountability mechanisms – offers potential.

The basic WTO approach to transparency is notification, although compliance is uneven, and information is not necessarily available in a useful form. There is also the WTO's peer review mechanism, which performs better with some agreements than others.

On accountability, the most interesting angle is commitment: if you promise something, do you follow through? There is horizontal accountability, whereby governments and IGOs are accountable to each other, and vertical accountability, which is usually mediated by civil society and can either add information to the horizontal process or transmit it to citizens, affecting domestic politics. The WTO's monitoring of protectionist measures following the financial crisis is an excellent example of the latter accountability mechanism at work.

Could such a process work in new areas? One possibility would be carbon labels. The Technical Barriers to Trade (TBT) Agreement could be extended, and the Secretariat could increase engagement with labelling bodies and make information available to users. The WTO Agreement on Sanitary and Phytosanitary (SPS) Measures and its interactions with the Codex Alimentarius are a possible model. A new role for the Committee on Trade and Environment (CTE) could be envisaged. The CTE could develop as an analogue of the TBT and SPS committee systems, where members could raise concerns about the trade impacts of multilateral environmental agreements (MEAs). Members could also make better use of the trade policy review mechanism (TPRM).

(b) Professor Jorge Viñuales, Graduate Institute of International and Development Studies, Geneva

Professor Viñuales focused his presentation on the existing legal tools that could be used to address conflicts between environmental and trade regimes and on the change of mindset that needs to take place to fully exploit these tools.

Traditionally, there has been an asymmetrical interaction between the trade and environment regimes, with environment getting only as much space as the trade regime would allow. This interaction can be illustrated by mechanisms such as:



- provisions that provide for some sort of exceptions to be made on environmental grounds, such as Article XX of the GATT; and
- as far as the new generation of free trade agreements (FTAs) are concerned, the inclusion of chapters or side-agreements on environmental matters.

These mechanisms treat environment as an “immigrant” in the lands of trade, because environmental law only gets the limited space that trade law (or investment law) is ready to grant it. Yet, this asymmetry is not based on any legal reason. Rather, it is based on the – understandable – idiosyncrasy present in trade (or investment) tribunals, who tend to be somewhat rigid when it comes to giving environmental law some space in the disputes they handle. For this to change, there is no need for actual environmental tribunals. A simple change of mindset, including a more liberal interpretation and use of Article 31(3)(c) of the Vienna Convention on the Law of Treaties, or a more frequent use of the “principle of contemporaneity in the application of environmental law”, now recognized by the International Court of Justice, would be enough to go in the right direction.

Environmental law is here to stay. The sooner this is fully acknowledged by international courts and tribunals, including those focusing on trade matters, the better the relationship between trade and environmental considerations will be.

(c) Dr Katharina Kummer Peiry, Executive Secretary, Secretariat of the Basel Convention

Dr Kummer Peiry discussed the Basel Convention, an MEA that is also a trade agreement, set up to address the trans-boundary movement and environmentally sound management of hazardous waste. She posited that the failure of the Doha Round and the lack of an alternative negotiating framework is not a problem but an opportunity to consider new approaches.

One of these would be to establish a new policy framework that supports concerns about both trade and the environment. Traditionally, the trade of waste has been restricted and prohibited, but this entails significant problems. Enforcement is difficult and costly, and trade continues to take place clandestinely. A new framework could require trade in wastes with an economic value (e-wastes are a prominent example) to be environmentally and socially sound. Countries complying with such obligations would become more economically attractive and the trade would create green business opportunities and jobs. Creating legal opportunities for trade in economically valuable wastes could help prevent illegal trade and recover secondary materials more efficiently. This approach would work for any waste stream with an economic value, and possibly also for other products, such as timber or animal products. It would not work for substances without legitimate value.

This approach will be considered at the Basel Convention’s 10th Conference of the Parties. There is a proposal to develop standards and certification schemes. Could this be an opportunity for the WTO, the Basel Convention and standards organizations to set up a working group to develop such standards?

(d) H.E. Mr Mario Matus, Ambassador, Permanent Representative of Chile to the WTO

Ambassador Matus focused his presentation on his experience as the chair of the environmental negotiations in the Doha Round and his current role as chair of the WTO



Trade Policy Review Body. He explained that the Doha mandate on the environment includes three elements:

- developing rules between WTO and MEA Secretariats
- developing rules for some sort of substantive connection between international trade and environmental law, through the dispute settlement mechanism
- liberalizing trade in environmental goods and services.

Although progress has been reached with the first two, little has been achieved with respect to liberalization. Looking forward to the WTO's 8th Ministerial Meeting in December 2011, the best scenario would be recognition that the Doha Development Agenda, as originally envisaged, is no longer achievable, and that specific work programmes need to identify where agreement is possible. On some environmental areas there is a common view; and the discussion now is just how to get there. This requires flexibility about the requirement for a "single undertaking", which currently prevents the conclusion of one agreement until the others are also agreed.

It is to be hoped that an environmental work programme would also include a list of issues to be discussed, both traditional – such as competition policy and government procurement, investment, process and product methods (PPMs) and standards as a whole – and new, such as green growth and climate change.

Ambassador Matus expressed his belief that the environment will remain a crucial issue. There are many areas where trade rules do not reflect environmental realities, such as subsidies and border measures. He cautioned relying on dispute settlement alone. If these rules are not negotiated, they may be considered illegitimate by members, and, in the long run, we risk breaking the entire system.

2. Questions and comments by the audience

One attendee argued that environmental constraints cannot be changed, so trade rules, which are human, must come second. Professor Viñuales acknowledged the speaker's point but responded that environmental law does not currently prevail as *lex superior* over any other field of law, and that one needs to be realistic.

Etienne Mach, a student at Lausanne University, asked whether there a *jus cogens* rule on the environment today that the WTO respects, and whether participants believe that the Energy Charter Treaty offers a good model on how to reconcile rules on trade and energy. Professor Viñuales considers that there is currently no environmental principle with a *jus cogens* status. Although such an idea is supported by Article 19 of the previous draft articles on State Responsibility, it has been overwhelmingly rejected by states. It is possible to give some environmental norms the status of obligations *erga omnes*, but that is not the same as *jus cogens*. With respect to the Energy Charter Treaty, he noted that, although its environmental protocol is still not in force, the main point – that free trade agreements (FTAs) can be completed by a sort of side environmental agreement – is a good one, and it has been used in cases such as the NAFTA with the North American Agreement on Environmental Cooperation (NAAEC).



Mats Hellström, of the Global Subsidies Initiative, questioned whether the absence of negotiation is really an opportunity. He argued that, in order to work, the dispute settlement mechanism requires rules that are relevant and up-to-date. This is why the environment must be addressed through negotiations. Ambassador Matus agreed with this assessment, arguing that this is the core of a legitimate process. Professor Viñuales commented that this is the reason that interpretation principles exist. Many pieces of important legislation remain fixed, but need to evolve through interpretation. Professor Wolfe argued that, above all, the WTO is a conflict management system. Conflict can be avoided by negotiating new rules; if this does not work, it is better to resolve the conflict through discussion and trying to understand each other than by resorting to the dispute settlement system.

Mr David Luff, a lawyer and professor of trade law, questioned whether or not this was a question of reinventing the wheel. The nexus between trade and sustainable development had been identified very clearly in Agenda 21. He suggested that what was lacking was political resolve around conclusions that have already been agreed. Professor Viñuales responded that the green economy represents a new way of relating the environment to development, as illustrated by Dr Kummer Peiry.

Professor Elizabeth Trujillo, Suffolk University Law School in Boston, expressed the view that eco-labelling schemes are an interesting interface between trade and environment. She asked the panellists what they thought about vertical and horizontal accountability, when many private standards are not following the rules as set out in the TBT. Mr Ronald Steenblik from the OECD asked the panel what they thought would be an appropriate list of questions on process and product methods in a future work programme. Professor Wolfe responded that if a carbon label is thought to be an effective climate change policy tool, then, using the principles of the TBT Code of Good Practice, members could ensure that such private standards are developed in a transparent manner. The TBT and CTE committees could develop a notification procedure allowing members to raise questions about whether the national implementation of such labels harms trade. Mr Halle added that the environmental community ought to consider developing an analogue of the Codex Alimentarius process for ensuring wide participation in the development of such standards.

Ms Alicia Natalia Zamudio asked Dr Kummer Peiry how the Basel Convention hopes to enforce new standards related to the dumping of wastes and e-wastes. Dr Kummer Peiry agreed that enforcement is the main problem of the Basel Convention. She also noted that the picture is becoming more complex as countries develop. There is an increasing south-south movement of hazardous wastes, and, as the Ban Amendment's existing criteria focus on movement from OECD to non-OECD countries, it does not cover such movement. There may be merit in developing objective criteria in the future.

3. Conclusions

Mr Halle concluded the session with the suggestion that, although initial hostility to considering environment in the trade regime has dissipated, there are still some tricky items on the agenda. Rio+20 may challenge the economic system in a way that it has never been challenged before. Measures to ensure the economy is really green will risk falling foul of the trading system, so the more dialogue there is, the less likely it is that there will be conflict. He recommended heeding Ambassador Matus' final warning: that relying on dispute settlement to resolve everything could overstress the system and put it in danger, which is in no-one's interests.

What happens to development after Doha?

Moderator

Professor Jean-Pierre Lehmann,
Professor of International Political
Economy at IMD; Founding Director of
The Evian Group @ IMD; Senior Fellow,
Fung Global Institute

Speakers

Mr Manzoor Ahmad, Independent
Consultant; Former Director of the Food
and Agriculture Organization Liaison
Office; Former Ambassador of Pakistan to
the WTO

Ms Michaela Dodini, First Secretary -
Trade and Development, Permanent
Delegation of the European Union to
the WTO

Dr Debapriya Bhattacharya, Distinguished
Fellow, Centre for Policy Dialogue; Former
Ambassador of Bangladesh to the WTO

Mr Franklin Cudjoe, Founding Director,
IMANI: Centre for Policy and Education
(unable to attend)

Organized by

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Abstract

The global multilateral rules-based trading system is at risk with the demise of the Doha Development Agenda (DDA). The challenges now are to secure the system in order to prevent the rise of protectionism; to prevent discrimination against poorer countries and better integrate them into the system; and to secure worldwide economic, political and social stability and development. It is therefore crucial to ask how best to do this. In this context, the questions proposed for discussion were the following:

- With Doha moribund, what happens to the second “D” of the DDA?
- How can poor countries and enterprises be integrated in the global supply chain?
- How can the business community be best involved in a multilateral trading order that can work in favour of poor countries?
- How can equity and justice be integrated in the trade policy agenda and system?
- What legacies will the current trade regime bequeath to the next generation?



1. Presentations by the panellists

(a) Professor Jean-Pierre Lehmann, Professor of International Political Economy at IMD; Founding Director of The Evian Group @ IMD; Senior Fellow, Fung Global Institute, Hong Kong

"What's wrong with the world?" asked Professor Lehmann when he opened the session. Mr Cudjoe, who was due to be a panellist on this session, was not allowed to board his plane from Accra, Ghana because of a missing British transit visa for his journey to Switzerland. Professor Lehmann asserted that the barriers erected in this era of globalization demonstrate how unfair and insensitive our world is.

Professor Lehmann mentioned that during a 1998 Evian meeting, Mr Morris Tabaksblat – then Chairman of Unilever – envisioned a round that would be short, ambitious, manageable and focused on market access for developing countries. He believed that opening up markets to developing economies was pure business logic as their prosperity meant bigger markets for the developed economies. However, in 2011, the DDA is moribund even though the demographic trends and the GDP of emerging economies, representing 50 per cent of the global GDP, show how many opportunities are being missed.

In spite of the comatose status of the DDA, development is happening. In developing economies, 100 million people enter the middle-income class every year. There is a dramatic shift from subsistence to consumption and an unprecedented rise of prosperity and aspiring classes entering the middle-income range. Therefore, is the WTO an obstacle or a vehicle to development? What are the changes that are needed in terms of governance at the WTO? What will happen to development in a post-DDA environment? The DDA should have levelled the playing field and brought to an end pernicious obstacles and subsidies in rich country markets. It has failed to do so.

(b) Mr Manzoor Ahmad, Independent Consultant; Former Director of the Food and Agriculture Organization Liaison Office; Former Ambassador of Pakistan to the WTO

Ambassador Ahmad raised three points on the two interlinked issues of "What next for the multilateral trading system" and "What happens to development after Doha?":

First of all, a successful Doha Round would have corrected the current imbalance in trade rules. The tariff rates currently applied on imports of industrial goods are 1.6 per cent on average for industrialized countries. They are more than 10 per cent on average for developing countries. The DDA's projected goal was to lower the tariffs to less than 5 per cent multilaterally. In agriculture, tariffs rise to more than 100 per cent in many cases. Additionally, huge trade-distorting subsidies provided by the rich countries create unfair competition for developing countries. The DDA's aim was to ensure that, on average, there was a 54 per cent cut in tariff rates on agricultural products, that export subsidies were eliminated and that there were other cuts in trade-distorting subsidies. This would have considerably increased the competitiveness of farmers in developing countries, especially poor cotton producers in Africa, Asia and Latin America.

Ambassador Ahmad's second point was: what happens to "development" after Doha? The developing countries negotiating free trade agreements (FTAs) are those that are already

doing well: Chile and Mexico (over 90 per cent of their trade is done through FTAs), Egypt, India, the Republic of Korea, Malaysia, Singapore and South Africa. This further isolates and discriminates against countries with fragile economies. Ambassador Ahmad quoted the example of his own country, Pakistan. The EU has FTAs and other preferential schemes covering its trade with all Pakistan's neighbours including Bangladesh, India, Nepal and Sri Lanka, in addition to high-income countries such as the Chile, Republic of Korea, Mexico and Singapore, among others. This makes Pakistan's situation worse and does not help either to reduce poverty or to build up peace. A successful Doha Round would have worked against such isolation.

Finally, in response to the theme of "What next for the multilateral trading system?", Ambassador Ahmad suggested that Director-General Lamy should follow the example of a previous director-general of the WTO, Arthur Dunkel, when he concluded the Uruguay Round, by compiling all that has been agreed, proposing compromises where there are divergences. Over 80 per cent of the issues, including many difficult ones, have already been agreed. Mr Lamy could use his judgment on the remaining ones. With his reputation for integrity and impartiality, there is a good chance that his proposals would find acceptance, even if this might be grudging.

(c) Ms Michaela Dodini, First Secretary – Trade and Development, Permanent Delegation of the European Union to the WTO

Ms Dodini gave the audience the EU perspective on why and how the multilateral system should be preserved:

Although the DDA is at a very serious impasse, the EU is clearly not giving up on it. There needs to be a serious discussion on what is not working and why, as the time for "business as usual" is definitively over. The DDA holds too much in store, inter alia for least-developed countries (LDCs) and the poorer developing countries, to simply throw the "development" baby out with the bathwater of NAMA (non-agricultural market access) sectorals, or indeed other sources of impasse. Clearly, the weakest members of the system are not those that want to pull the plug, quite the opposite.

The WTO has been vital in containing protectionism, at least so far; again, it is the weakest members of the trading community that have the most to gain from the WTO as a rules-based organization that can protect their rights. A multilateral agreement including market access and trade facilitation and accompanied by substantial aid for trade is also a better way to integrate poor marginal countries in supply chains, compared to the FTA avenue from which these very countries are normally excluded.

If we give up on the DDA, we risk inflicting serious damage on the multilateral system, to the detriment of the smaller and weaker members of the WTO. If we declare the round moribund, the DDA will go away but the issues it is meant to deal with will remain.

Ms Dodini recommended that the December Ministerial should end up with a roadmap that can deliver concrete results within a meaningful timeframe. This roadmap should be looking at openings towards the future in terms of themes, notably the so-called 21st-century issues, and a possible flexibility of approaches. Results that respond to aspirations of the LDCs, without "payment", are to be encouraged.



(d) Dr Debapriya Bhattacharya, Distinguished Fellow, Centre for Policy Dialogue; Former Ambassador of Bangladesh to the WTO

Ambassador Bhattacharya said that the reason that the DDA is in a state of paralysis is twofold: there is a global issue and an intra-WTO issue. According to Ambassador Bhattacharya, the problems with which we are confronted go beyond the WTO. There is a general crisis of multilateralism in the world, reflected in the trade agenda, in the financial architecture issues and in climate discussions inter alia. The WTO is a symptom of a larger malaise.

Ambassador Bhattacharya recalled three functions of the WTO:

1. Market access, which has been equated with the Doha Round, which has been equated with the WTO. With the line of causation, if market access fails, Doha fails and the WTO fails. This is problematic as it dramatically reduces the other two main roles of the WTO.
2. Rules-making, which requires a continuous process, which is now affected by the market access paralysis. It needs to be decoupled from the latter in order to avoid a long-term comatose status.
3. Compliance: the global financial crisis demonstrated how much the Trade Policy Review and dispute settlement system were important because they bring transparency in the system.

2. Recommendations related to development

The 8th Ministerial Conference (to be held in Geneva in December) urgently needs to make a declaration which includes an LDC package. The discussions and negotiations on this issue have lost momentum and they critically need to be re-energized. The goals to be set should be kept to a minimum, in order to be simple and feasible. The question of cotton needs to be on board as it is the human face of the DDA.

The EU rules of origin scheme, as well as India and China LDC schemes, needs to be notified and broadly publicized among the WTO community. It will incite other states to act identically.

A systemic approach to helping the LDCs when crises arise needs to be embraced. The trade shocks that are coming from the global crisis are still, and increasingly, hurting the LDCs. The number of years estimated to recover from an economic shock has gone up from five to seven.

The 21st-century issues (food security, climate change, etc) need to be included in the forthcoming discussions.

An introspection group, which will bring clarity in the process and which is immune from the crossfire at the WTO, is to be created. This confessional session is to ensure discretion and confidentiality.

3. Open forum

The content of the DDA, embodied in the Doha Declaration, is unquestionably still relevant today. However, its framework and host institution, the WTO, are under question. Regarding the cotton producers in developing countries, what, apart from disillusioned hope, has the DDA brought? The rate of suicides in this fringe of the population is dramatically high. The question of "how the human being is perceived within the WTO community" was raised. There is urgent need for deliverables in this sector, one of which is the EU's duty free access to its market.

Concerns about the cost of the DDA were also highlighted; developing countries and LDCs are spending a lot of money, which is badly needed in those countries, on the DDA. It was suggested that a smaller group of negotiators should meet, do their jobs and come back with a done deal.

Mr Ahmad's proposed "Nuclear solution" was challenged. It would be extremely disappointing to abandon all of the efforts invested so far, when 80 to 90 per cent of the issues have been resolved. An interim development package, based on the 2008 negotiations, could be proposed.

A proposal related to "what next for development?" was to leverage other platforms than the WTO: the UN, with its Millennium Development Goals project (and specifically the eighth goal), could be another platform developing countries could use to adequately secure the rule of law, sound global governance and multilateralism.

The accountability process must be improved. The DDA is in a state of paralysis because the business community, as well as the community at large, did not apply pressure to achieve a deal. Who should answer for the non-delivery? It is now a question of credibility whether there can be concrete deliverables after ten years of dialogue.

4. Conclusions

One must beware of complacency. It is true that protectionism did not rise after the 2008 crisis but trade is still low on the international policy agenda. The World Economic Forum recognized deglobalization as a major risk in its annual 2011 global risk assessment. During the Cannes G20 summit, risk issues will be tackled but trade will be relegated to general irrelevance. Trade is only talked about in times of crisis, rather than addressed in order to try to prevent crises.

To conclude, Professor Lehmann stated that multilateralism is a pillar that ensures that we bequeath a robust and stable global world economy to the next generations and it therefore needs to be duly preserved and maintained.



Abstract

This session discussed the Trans-Pacific Partnership (TPP), a regional trade agreement (RTA) that is currently being negotiated by nine countries at different stages of development from four different continents in the Asia-Pacific region: Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, the United States and Viet Nam. The TPP is being promoted by the Asia-Pacific Economic Cooperation (APEC) Forum and is the highest trade priority of the United States. It is an unusual and potentially innovative RTA, heralded as a "21st-century trade agreement" that will develop new approaches to problems facing business, improve regulatory coherence, encourage the participation of small and medium-sized enterprises (SMEs) in trade and facilitate development. It aims also to advance the process of multilateralizing the "noodle bowl" of bilateral RTAs in the Asia-Pacific region and it will be open to future accessions.

The session outlined the origins of the agreement and explored what is meant by a 21st-century agreement. It analysed the core motivations of its negotiating parties and outlined the potential stumbling blocks to the agreement. It explored architectural issues and whether the TPP might serve as a bottom-up incremental approach to achieving the APEC goal of a free trade area of the Asia-Pacific. The session also explored the implications of the TPP for the multilateral trade system.

Twenty-first-century regional trade agreements: The Trans-Pacific Partnership and its implications for the multilateral trade system

Moderator

Professor Ann Capling, Professor of Political Science, University of Melbourne, Australia

Speakers

Professor Deborah Elms, Head, Temasek Foundation Centre for Trade & Negotiations, S. Rajaratnam School of International Studies, Nanyang Technological University

Professor Meredith Kolsky Lewis, Senior Lecturer in Law and Co-Director of the New Zealand Centre of International Economic Law, Victoria University, Wellington, New Zealand

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

Organized by

University of Melbourne, Australia

Economic Research and Statistics Division, World Trade Organization

Report written by

Professor Ann Capling, Professor of Political Science, University of Melbourne, Australia



1. Presentations by the panellists:

(a) *Professor Deborah Elms, Head, Temasek Foundation Centre for Trade & Negotiations, S. Rajaratnam School of International Studies, Nanyang Technological University*

Professor Elms outlined what the TPP negotiators mean by a 21st-century agreement. She noted that “older” 20th-century RTAs tended to focus on liberalizing market access in goods while excluding sensitive sectors such as agriculture and some industrial goods, whereas 20th-century “high-quality” RTAs were often WTO+ (i.e. requiring deeper levels of commitment than WTO agreements) or included commitments currently excluded from WTO agreements (e.g. competition policy, labour and environment agreements). She noted that 21st-century high-quality deals are broader in scope (e.g. including behind the border measures), deeper (e.g. limited exclusions of sensitive sectors), encompass a shared set of norms and commitments, and often extend beyond bilateral agreements to include many members, in order to address the noodle bowl problems of overlapping and conflicting RTAs.

Professor Elms noted that the TPP aspires to be “high-quality 21st-century” RTA that provides a regional solution to the many overlapping, bilateral deals that have emerged within the region in the past decade. Importantly, in a world where many trade barriers take a non-tariff form, the TPP is designed to facilitate regional and global goods and services supply chains. Thus, it aspires to achieve trans-national regulatory coherence across the whole spectrum of regulatory issues affecting trade and investment. These include improving the business climate for supply-chain production and facilitating trade for SMEs. It also seeks to innovate beyond the already extensive approach adopted in US-style PTAs towards a whole range of trade and trade-related issues, from intellectual property protection, competition rules, product standards and investment disciplines to environmental and labour issues.

(b) *Professor Ann Capling, Professor of Political Science, University of Melbourne, Australia*

Professor Capling examined the motivations of the different participants of the TPP as a way of exploring whether the TPP was an innovative platform for a new form of trade cooperation, represented the beginnings of a convergence of RTA “family types” in the Asia-Pacific, or whether it was a variation of the US hub and spoke model, designed to dictate economic terms of engagement to China. She began by noting the origins of the TPP in an earlier APEC-sponsored experiment to develop a high-quality model RTA that other members could join in the future. This development was consistent with APEC’s longstanding aim to promote open regionalism, non-discrimination, voluntary liberalization and WTO rules and disciplines.

An alternative explanation for the TPP is that it is driven primarily by US foreign policy concerns, particularly in relation to the exclusion of the United States from East Asian economic architecture and by the desire of the United States and its allies to reposition the United States as a counterweight to China’s growing influence in the region.

Professor Capling noted that the Australia, New Zealand and Singapore were especially interested in establishing the TPP as a comprehensive RTA that would advance the “multilateralization of regionalism” by replacing or harmonizing the existing bilateral PTAs



between TPP parties. This has been opposed by the United States, which wants to retain the existing bilaterals, negotiate new market access arrangements with the countries with which it does not have current bilateral PTAs, and roll these into a new TPP. This raises the question of whether the TPP will be a genuine RTA (like the North American Free Trade Agreement) or a complex web of bilateral agreements (like the Association of Southeast Asian Nations Free Trade Agreement). She noted that other aspects of the TPP architecture would support multilateralization by reinforcing WTO disciplines (e.g. Technical Barriers to Trade, Trade Remedies) and by addressing the problem of divergence of approaches to Rules of Origin regimes, which has been identified by APEC as a potential obstacle to the multilateralization of regionalism in the Asia-Pacific. She asked whether the TPP could be considered to be a new form of networked RTA, where countries at different stages of development might have different levels of commitments on rules or longer implementation times.

She concluded her presentation by noting the potential obstacles to the conclusion of the TPP negotiations: US insistence on its template, including commitments in controversial areas such as labour and the environment; blockages in the US Congress; whether Japan's domestic political environment is favourable to future Japanese participation in the TPP; and how China views the TPP.

(c) Professor Meredith Kolsky Lewis, Senior Lecturer in Law and Co-Director of the New Zealand Centre of International Economic Law, Victoria University

Professor Lewis explored the prospects for the TPP to expand into a Free Trade Agreement of the Asia-Pacific (FTAAP). She did so by first comparing the TPP to other potential models for Asian economic integration (including ASEAN + 3; ASEAN + 6; and a core East Asian free trade agreement (FTA) amongst China, Japan and the Republic of Korea), and then by identifying factors that might enhance or diminish the possibility the TPP will serve as the FTAAP model. With respect to the latter, relevant factors identified included the modalities for the commitments on reductions in tariffs on trade in goods, the scope and ambition of the TPP, and the inclusion of the United States in the agreement (in contrast to other potential Asian integration models).

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

Dr Low addressed the question of the relationship between RTAs and the multilateral trade system (an issue which was also explored in the WTO *World Trade Report 2011*, which was entitled *The WTO and preferential trade agreements: From coexistence to coherence*). In particular, he discussed two different ways for the trade system to deal with RTAs: a top-down approach through the WTO or a bottom-up approach through agreements such as the TPP.

A top-down approach could occur through the WTO Transparency Mechanism for regional trade agreements, which has been the only outcome of the Doha Round to date. One approach would be for the WTO to consolidate larger agreements where there is a high level of similarity between existing RTAs; the WTO could sponsor negotiations to consolidate agreements or negotiations to find trade-offs to bring about consolidations. A second approach would be for the WTO to monitor the potential for regulatory divergence in RTAs. Dr Low suggested that there was likely to be a greater prospect of consolidating agreements that are WTO+ rather than agreements that are WTO-X. He noted that

critical mass agreements would become relevant in this context, but that these would have to be concluded on a most-favoured nation (MFN) basis so as not to disadvantage WTO members who remained outside of such agreements.

A bottom-up approach to consolidating RTAs might come through agreements such as the TPP, or through the proposed tripartite FTA in Africa that aims to bring together three different RTAs covering 27 countries, with a view to eliminating costly wasteful criss-crossing arrangements that fulfil little purpose. He noted that the challenges with the TPP were to secure deeper commitments and geographical expansion. Failing to achieve one without the other would mean that the TPP would cease to be an interesting approach to the multilateralization of regionalism.

2. Questions and comments by the audience

Following presentations from the panel, there was a lively question and answer session with the large audience. Questions focused on the potential for other major APEC economies to join the TPP; why Canada was not included in the negotiations from the outset; and whether specific aspects of the US template (such as the Investor State Dispute Settlement mechanism) would make it difficult to achieve an agreement. One audience member expressed considerable scepticism that the TPP would achieve any significant agreement on WTO-X measures, and cited the failure of the OECD's proposed Multilateral Agreement on Investment as evidence to support his scepticism. Another audience member raised concerns about whether US negotiators were trying to use the TPP as a way of continuing to pursue "unfinished business" in several of its existing bilateral RTAs with TPP members, in controversial areas such as the domestic pricing of pharmaceuticals. She also wondered whether the United States was going to negotiate seriously on agriculture and textiles (e.g. whether it would demand the "yarn forward rule" as part of the TPP's Rules of Origin).



Abstract

Governments across the globe have put in place policies and measures to encourage environmentally friendly innovation and the deployment of environmental technologies in their efforts to enhance environmental protection and foster economic development and job creation. These measures may, for example, take the form of technical requirements or government support programmes, including support for the deployment of renewable sources of energy. Governments may also consider policies aimed at the removal of trade and other barriers to innovation.

This session discussed different ways in which policy-makers may use measures to encourage innovation and the deployment of environmental technologies, the objectives behind such policy approaches, and the relevance of the WTO within the environmental technologies arena. A panel discussion and questions from the floor provided opportunity for information-sharing and discussion on eco-innovation and environmental technologies.

Encouraging innovation and the deployment of environmental technologies

Moderator

Ms Vesile Kulacoğlu, Director, Trade and Environment Division, WTO

Speakers

Mr Xavier Leflaive, Principal Administrator, Environment Directorate, Organisation for Economic Co-operation and Development (OECD)

Professor Nicholas A. Ashford, Professor of Technology and Policy, Massachusetts Institute of Technology (MIT)

Dr Li Wanxin, Department of Public and Social Administration, City University of Hong Kong

Organized by

Trade and Environment Division, WTO



1. Presentations by the panellists

(a) Ms Vesile Kulacoğlu, Director, Trade and Environment Division, WTO

Setting the scene, Ms Kulacoğlu observed that the proliferation of green measures in the international landscape is significant, including measures such as technical requirements and government support programmes. Some governments were also considering policies aimed at the removal of trade and other barriers to innovation.

(b) Mr Xavier Leflaive, Principal Administrator, Environment Directorate, Organisation for Economic Co-operation and Development (OECD)

Mr Leflaive presented research on eco-innovation policies implemented by OECD members. He began by highlighting some broad features of eco-innovation; in particular, he explained that eco-innovation does not entail invention per se, but rather requires enhanced global diffusion of existing technologies in the short term to ensure that they reap maximum environmental benefits. He suggested that governments should intervene to promote eco-innovation in order to correct market failures related to innovation in general and for environmental pollution.

In the case of OECD members, policies to support eco-innovation have been put in place for the purposes of scientific knowledge production, industry competitiveness, business development and environmental performance. The particular policy mixes meant to achieve these objectives vary; European OECD member governments focus on supply side policies (research, development and demonstration of environmental technologies), while non-European OECD members pursue approaches including both supply and demand side policies (stimulating demand for environmental technologies). Mr Leflaive drew attention to the link between eco-innovation policies and entrepreneurship, and observed that younger firms tended to be stronger eco-innovators than incumbent firms.

With respect to OECD members' national strategies to support eco-innovation, he highlighted four features that influence the policy mix selected: the size of knowledge base of the economy, in terms of whether a country chooses to innovate domestically or to adopt innovations from abroad; the size of the domestic market for green goods and services; industry structure, with regard to both opportunities for economies of scope in research and development, and to the segmentation of markets; and the vitality and vigour of the venture capital industry, which in some cases governments may need to kick-start.

Mr Leflaive underscored the value of and the opportunities created by international cooperation in this realm. He focused on international collaborative research arrangements which can pool development risk, and on the creation of larger markets, in which the WTO would have a key role to play in reducing tariff and non-tariff barriers to trade, including through the promotion of international standards with respect to eco-innovations. Finally, he emphasized the importance of engaging and supporting developing countries in this sector, including by helping to build absorptive capacity to reap the benefits of eco-innovation.

(c) Professor Nicholas A. Ashford, Professor of Technology and Policy, Massachusetts Institute of Technology (MIT)

Professor Ashford emphasized the role of government in encouraging eco-innovation, including the need for governments not to be captured by the interests of incumbent firms



as they consider the policy mix they wish to pursue. He began by explaining how approaches to addressing environmental pollution have evolved from the dispersion of pollution, end-of-pipe control, and industrial ecology – none of which have involved fundamental changes in production technology – towards approaches prefaced on systemic technological, product or process changes aimed at preventing pollution in the first place.

Professor Ashford situated his discussion in the context of the innovation cycle, which comprises invention (the first working prototype, which need not be economically successful), innovation (the first commercially successful introduction), and diffusion (to another industry or another country). Focusing on the innovation element, he distinguished “sustaining innovation”, which improves existing technologies, from “disruptive innovation”, which departs from existing technologies and disrupts their markets. Disruptive innovation is crucial in the eco-innovation context as it holds the greatest potential for improvements in environmental performance for the lowest cost.

While incumbent firms engage in sustaining innovation, it is generally new entrants that realize disruptive innovations which replace technologies problematic to the environment. The design of environmental regulation is crucial for eliciting disruptive eco-innovation; it should be very stringent and be developed within an open political space by strong government (to prevent capture by incumbent firms).

Professor Ashford said that process changes arising from innovation have historically led industry to cut labour, and that if the transition towards a green economy is to be widely acceptable, the industrial applications of eco-innovation should result in job creation. Finally, with respect to trade barriers related to environmental requirements, Professor Ashford suggested that they may in fact assist in generating disruptive eco-innovation.

(d) Dr Li Wanxin, Department of Public and Social Administration, City University of Hong Kong

Dr Li brought insights from China’s experience with policies to promote eco-innovation. Dramatic growth in the number of polluting enterprises in China and public concern about environmental pollution were some of the reasons behind demand for environmental innovation. However, market forces do not appear to be a driver for development of environmental technology, as research suggests that the Chinese public does not in general consider the environmental performance of products when making consumer choices.

Given the limited market for environmental products and the inability of environmental regulation to promote eco-innovation, the Chinese government has responded by substantially increasing government investment in environmental research and development. This was evidenced through the growing profile of government funding for eco-innovation in China’s 11th Five Year Plan. Moreover, government funding has succeeded in leveraging significant private funding for eco-innovation, as total investment in environmental research and development has steadily grown while the government’s share has steadily decreased. In addition to public funding, Dr Li noted that China has used a number of other policy measures to promote eco-innovation, including tax instruments, differentiated pricing mechanisms, subsidies and informational incentives (e.g. publicizing environmentally friendly enterprises).

Finally, Dr Li highlighted two ongoing challenges with respect to promoting eco-innovation in China. First, she suggested that the structure of China’s government and the division of the functions and responsibilities among different government agencies have led to fragmentation in the formulation and implementation of policies for eco-innovation.

Second, she highlighted concerns regarding the relocation of polluting industry from coastal regions inland, and the development of pollution havens within China.

2. Questions and comments from the audience

Panellists provided additional insights through an interactive question and answer session. With respect to public-private partnerships for eco-innovation, Professor Ashford clarified that if the industry partners are incumbent firms, the partnership may not achieve necessary disruptive innovation. The superiority of environmental performance standards over design standards was clarified, and it was explained that most standards are in fact performance standards.

The discussion addressed the relationship between the green economy, eco-innovation and job creation. Mr Leflaive spoke of the challenges of making the labour transition to a green economy, given that the impact of green growth on job creation was uncertain, and that there was no obvious reason why green growth would be more labour intensive. This latter point was echoed by Professor Ashford, who said that green technology would not accidentally create jobs, and that labour had to be designed into green products and services.

Responding to a question on reduced value added tax rates for renewable energy generation in China, Dr Li submitted that the Chinese government had lowered preferential prices paid for wind energy due to the conclusion that such investments would otherwise not be eligible for UNFCCC CDM projects as they were not considered to be "additional".

On the topic of environmental technology transfer, the key roles of both South-South technology transfer, and South-North technology transfer were recognized. However, Mr Leflaive observed that several important climate change technologies were developed in the global North, and thus the question in this case of these technologies was how to promote North-South technology transfer.

3. Conclusions

The session concluded that national governments have a vital role to play in developing appropriate policies to promote eco-innovation, in terms of the correct mix of instruments and the correct level of stringency. In addition, the panel concluded on the importance of trade as means to diffuse and promote eco-innovation.



Abstract

One of the most significant achievements of the Uruguay Round was to make decisions by the Dispute Settlement Body binding on members and to provide for their adoption under the principle of negative consensus. In effect, a series of ad hoc arbitral decisions under the GATT moved to a functional normative environment that builds a coherent body of case law and practices, producing a volume of decisions without parallel in the realm of international law.

The Dispute Settlement Mechanism (DSM) is especially important for developing countries because, under a rules-based system, it is not the country wielding the greatest economic power that imposes its will on others, but the country with the necessary legal basis of support whose case will ultimately prevail. The DSM serves to level the playing field, particularly for those countries that are weakest in economic and political terms.

Although the DSM gives developing countries the opportunity to seek redress for their complaints, it also represents a daunting challenge when it comes to ensuring their effective participation. This raises doubts as to whether developing countries are genuinely benefiting from the rules-based WTO system. This session provided an opportunity to look into the reasons for the low level of developing country participation and to see what can be done, or is already being done, in the negotiations to remedy the situation.

Dispelling the myths of developing country participation in the dispute settlement mechanism

Moderator

Mr Raúl Torres, Counsellor, Development
Division, WTO

Speakers

H.E. Mr Ronald Saborío, Ambassador,
Permanent Representative of Costa Rica
to the WTO

Mr Hunter Nottage, Counsel, ACWL

Professor Gabrielle Marceau, Counsellor,
Legal Affairs Division, WTO

Organized by

Development Division, WTO

Advisory Centre on WTO Law (ACWL)

Report written by

Mr Raúl Torres, Counsellor, Development
Division, WTO

1. Presentations by the panellists

(a) *Mr Raúl Torres, Counsellor, Development Division, WTO*

Mr Torres noted that the Dispute Settlement Mechanism (DSM) is one of the most important achievements of the WTO. Nevertheless, participating in the WTO DSM creates challenges for developing countries. Many analysts have questioned whether developing countries are using the system as much as they could or should.

To answer that question, it is not always telling to look at absolute statistics of the numbers of disputes in which a country has participated. It is better to look at the dispute settlement statistics weighted according to a country's participation in trade. If one looks at the statistics for the number of disputes initiated, it emerges that Latin American countries are intensive users of the DSM. This could be related to the fact that 14 out of the 30 non-LDC (least-developed country) members of ACWL are Latin American. On the other hand, ASEAN and South East Asian countries are low intensity users of the DSM. Latin American countries are also more frequent targets of disputes than what their participation in world trade would indicate, and this could be related to the fact that they tend to sue each other. Some East Asian countries are very virtuous in that they have high level of participation in world trade but are not targets of WTO disputes, probably because they have very open markets. In addition, 76 countries have participated in the WTO system as third parties. This is important because participating as a third party is one of the main means to acquire expertise in the DSM.

Mr Nottage commented that dispute settlement activity is concentrated among a few main users – six countries account for 60 per cent of activity and 14 countries account for 90 per cent – so in fact most members are absent from the DSM, especially the LDCs. Furthermore, the 90 countries that have not yet initiated disputes account in aggregate for approximately 5 per cent of world trade, which is equal to the trade share of Brazil. This begs the question of why these members have been absent from the DSM.

(b) *H.E. Mr Ronald Saborío, Ambassador, Permanent Representative of Costa Rica to the WTO*

Ambassador Saborío focused on the issue of litigation capacity in developing countries. He said that several developing countries use third-party participation as a means to acquire experience in the DSM. In this context, there have been a number of proposals by the developing countries in the Dispute Settlement Understanding (DSU) review negotiations to enhance third-party rights.

Another issue of concern for developing countries is that of financing litigation expenses in the WTO. There have been a couple of proposals to address the issue. One was the creation of a dispute settlement assistance fund in the WTO to be used by developing countries. The other was the award of litigation costs in a dispute where a developing country had prevailed. However, many members raised questions about how these proposals would function together with the Advisory Centre on WTO Law (ACWL). The ACWL has significantly reduced the problem of developing countries' litigating capacity, as it provides high-quality legal advice at reduced rates.

With respect to capacity, another issue that was highlighted was the lack of retaliation power. Some of the proposals that had been tabled in the DSU review called for the ability



to apply collective retaliation, to include a reasonable period of time in the calculations of the amount of retaliation, and to apply cross-retaliation without having to justify it, as is the case under current rules.

Mr Torres commented that the establishment of the ACWL has changed the dynamics of WTO dispute settlement. This is not only because the rates are lower than those of law firms, but also because those rates are capped, which facilitates budgeting for a dispute for developing country governments.

Professor Marceau said that different developing countries have different capacity constraints. Compared to other dispute settlement fora, the WTO is more accessible to developing countries. Another issue is that countries have limited resources, which are diverted away due to proliferation of RTAs. She also said that a very important element of capacity is being able to link to the private sector and civil society to identify problems affecting trade at the ground level.

Ambassador Saborío added that a lack of capacity in the understanding of a member's own rights in the WTO, both at the private and the government level, also affects their participation in dispute settlement. This problem is made worse by the fact that some countries may ultimately decide not to bring a dispute against a large trade partner or donor for fear of the political consequences such a challenge may bring.

Mr Nottage observed that, with the creation of the ACWL in 2001, the capacity constraint had moved down one level to the identification of the trade barriers that could be brought to WTO dispute settlement.

(c) Mr Hunter Nottage, Counsellor, ACWL

Mr Nottage critically evaluated the common criticism that many developing countries are unable to enforce positive WTO rulings through retaliation due to their lack of domestic market power. He outlined the common perception that weaknesses in the WTO retaliation rules for developing countries undermine the utility of WTO dispute settlement for those countries.

He then proposed to evaluate the accuracy of that perception in practice and in reality. Mr Nottage acknowledged that, in situations where there is an asymmetry in the economic size of parties in a dispute, developing-country sanctions are unlikely to impose sufficient losses to generate the requisite pressure in the non-complying member to induce compliance. Moreover, the suspension of trade concessions may be more detrimental to the developing country than to the non-complying member. However, he queried whether these theoretical deficiencies undermined the utility of the DSM for developing countries in practice. In this regard, he noted that different studies, including a recent one from Reto Malacrida, demonstrated high rates of compliance with WTO dispute settlement rulings. This has occurred even where the successful complainant had little capacity to effectively retaliate due to its relatively small market size. Thus, DSM practice demonstrates that members that have been subject to adverse rulings have complied even in the absence of a true retaliation threat.

Therefore, a developing country contemplating taking a dispute to the WTO DSM should not be deterred simply because of a theoretical lack of retaliation capacity. In fact, defendant governments often comply for reasons other than fear of retaliation: because they see long-term value in preserving the legitimacy of the legal system for when they

may need to rely on it; because parts of the defendant government often want inconsistent measures to be removed since it is good policy; and because of shaming pressure caused by other governments wishing to preserve the legitimacy of the legal system.

So even without effective retaliation capacity, dispute settlement can still be an effective mechanism for developing countries. It is, nonetheless, undeniable that on those few occasions where the defendant is a larger economy and does not voluntarily comply with adverse rulings, the weaknesses of the WTO's retaliation rules for many developing countries are real and could undermine the utility of dispute settlement. Current DSU review proposals, as well as the potential use of cross-retaliation, deserve continuing attention from developing countries.

Professor Marceau agreed that cross-retaliation, particularly on the subject of intellectual property, is an important tool for developing countries to compel compliance with rulings disadvantageous to developed countries. In other dispute settlement systems, such as the International Court of Justice, developing countries are in a weaker position to retaliate. Moreover, the DSU also protects smaller countries from excessive retaliation by bigger countries, something that is less certain in other international dispute settlement systems.

Mr Torres noted that the Dispute Settlement Body (DSB) had authorized retaliation only in 19 cases but these really concerned nine individual measures. So there have only been nine measures that were not removed by members after the DSB found them to be inconsistent with WTO rules. Moreover, in these cases, lack of compliance was not a function of which countries were involved in the dispute but of what the inconsistent measures were about and the political difficulties of complying with the reports.

Ambassador Saborío said that, while the system has worked, some developing countries still think it is important for retaliation to be made more effective and continued to make and defend proposals on this issue in the DSU review negotiations.

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

Professor Marceau said that one reason why many developing countries do not use the DSM is because an important share of their trade is done under preferential arrangements or under regional trade agreements (RTAs). She said that preferences are not enforceable under the WTO because these are expressed on a voluntary basis by the developed country. RTAs sometimes have their own dispute settlement mechanisms, possibly even more sophisticated than those of the WTO, but they may also sometimes not work as well. Some of these RTAs also have forum exclusivity clauses. Therefore, developing countries have to be aware that, while having a dispute settlement mechanism in an RTA may be beneficial, it could come at the cost of losing the possibility of using the WTO DSM.

Ambassador Saborío also commented that Central American countries had considerable experience in RTA disputes with their neighbours; this had allowed them to build capacity in international litigation which they had used in WTO against other countries in their region. This broke the taboo of intra-developing country claims, which made sense because a neighbour is a natural market and it is important to keep this market open.



2. Questions and comments by the audience

Questions from the audience focused on whether prolonged non-compliance undermines the effectiveness of the DSM, and what can be done under the DSU review negotiations to improve its functioning. The panellists replied that, in general, they had tried to make the point that compliance in the DSM was rather good, so the system is still credible and functional. One of the improvements that could be made to the DSM from a practitioner's point of view is to accelerate the timeframes for the procedures. For businesses, the three years or more it takes to get resolution of a case in the WTO DSM may sometimes be too long. This problem is compounded by the fact that the DSM does not provide for retrospective remedies. There was also a comment on how developing countries in Asia that had barely used the DSM are mostly free traders. The panel replied that one reason that may explain this situation was that, since free trading countries are not generally sued under the WTO DSU, these countries do not have the opportunity to see how well the system works and realise how they could use the DSM to challenge market access barriers in other countries.

Ambassador Saborío commented that the fee structure of the ACWL has differentiated among the developing countries according to their particular financial capacity. This is an important and interesting feature of the ACWL, as recognizing and addressing the different capacity levels of developed and developing countries is a complicated matter that has proved difficult to solve in the context of the DSU review negotiations.

3. Conclusions

Developing countries should be encouraged to use the WTO DSM, as they paid a high price for it during their accession processes and during the Uruguay Round. The system functions very well, even for small developing countries when challenging big developed countries. Developing countries should also continue to engage actively in the DSU review negotiations to ensure the continued good functioning of the system and to make it more effective and operational for them.

Trade in an unstable environment: The impact of fragility and corruption

Moderator

Dr Matthes Buhbe, Director, Geneva
Office of the Friedrich-Ebert-Stiftung
(FES), Geneva

Speakers

Dr Elisabeth Schoendorf, Researcher,
Research Division, International Security,
Stiftung Wissenschaft und Politik

Dr Achim Wennmann, Executive
Coordinator of the Geneva Peacebuilding
Platform; Researcher, Centre on Conflict,
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Mr Jean Amat Amoros, Co-Founder,
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Organized by

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Report written by

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Abstract

Trade occurs between countries and between regions, small and big. It is affected by tariffs, non-tariff barriers, subsidies, export restrictions, and by violent conflicts. This session focused on trade in conflict areas, where trading partners are faced by violence or by the wounds that violent conflicts have left behind.

The first speaker delineated various approaches on how economic recovery can be achieved; the second speaker emphasized the opportunities that lie in instable environments, identifying specific WTO issues to unlock such economies; and the third speaker gave a practical example of a small private business active in the highly fragile region of Kabul, Afghanistan.



1. Presentations by the panellists

(a) *Dr Matthes Buhbe, Director, Geneva Office of the Friedrich-Ebert-Stiftung (FES), Geneva*

In his introductory remarks, Dr Buhbe highlighted the weaknesses of some orthodox economic models which do not take into account the specific circumstances fragile states are facing. For developing countries, the empirical evidence is alarming: not a single state in conflict has been able to achieve even one of the eight Millennium Development Goals. Dr Buhbe suggested that the session should not only provide clarification regarding the economic predicament faced by fragile states, but should also show some ray of hope for their future.

(b) *Dr Elisabeth Schöndorf, Researcher, Research Division, International Security, Stiftung Wissenschaft und Politik*

In her presentation, Dr Schöndorf stated that economy recovery is a precondition for sustainable peace. The 180 conflicts currently taking place worldwide are having a huge effect on the economic capabilities of the countries affected, the majority of which are in Africa. Dr Schöndorf argued that international aid and peacekeeping measures are important to provide short-term assistance. In particular after the most heated phase of a crisis, countries need to generate their own resources, and these require economic growth and recovery to reach long-term stability.

Dr Schöndorf argued that violent conflicts do not destroy economic activity, but violent conflict often facilitates a shift from the formal to the informal sector. Dr Schöndorf highlighted two different forms of conflict economy: the combat and the shadow economy. The combat economy is characterized by the fact that all activities are required to mobilize resources for financing military expenditure. The shadow economy, on the other hand, seizes the illicit economic "opportunities" which arise from a failing legal and property rights system.

A fragile state is considered to be a hotbed for a sustained conflict economy. In order to move away from this, several measures have to be put in place, such as sanctions of public administration, an efficient regulatory system, an enforceable rule of law, physical and technological infrastructures, the ability to target inflation and fiscal deficits, and a halt to the so-called brain drain and, last but not least, a guarantee of feasible employment and income rates.

The transformation of a conflict to a peace economy is thus a challenge which requires the collaboration of a broad range of actors on the local, national and international levels, from both the public and private sectors.

Dr Schöndorf continued by pointing out that trade and business can play an active role in economic recovery. Business, in particular, has at least two completely different scopes. First, business may be hindered by the fear of substantive damages, i.e. damage to property and material. Thus, business owners are forced to spend vast amounts of money on "private" security measures as available infrastructure is often not reliable

Second, business can also fuel conflicts. Businesses taking advantage of the fragility of a state structure during and after a conflict may not be enthusiastic about supporting

measures to solve conflicts. In the case of commodity markets, in particular, this phenomenon is frequently reported.

In fact, conflict can further specific economic activities, for instance in the area of trading commodities. Of course, these activities can cause difficulties for peace-building measures.

Dr Schöndorf emphasized that conflict economies do not and cannot exist in a vacuum but are embedded in the globalized economy.

(c) Dr Achim Wennmann, Executive Coordinator of the Geneva Peacebuilding Platform; Researcher, Centre on Conflict, Development and Peacebuilding (CCDP), Graduate Institute of International and Development Studies, Geneva

The opportunities which arise from unstable environments were at the heart of Dr Wennmann's presentation. First, he focused on the identification of these opportunities in a practical sense. Second, he highlighted the potential of WTO mechanisms that could be used to unlock these opportunities.

Concerning the first item, Dr Wennmann referred to the Global Peace Index, which ranks countries according to their peacefulness. If the peacefulness of countries worldwide were to increase by 25 per cent, US\$ 2 trillion could be freed up for investment in productive areas. According to an analysis by Oxfam, Africa lost US\$ 287 billion between 1990 and 2005 due to armed conflicts. Thus, tremendous opportunities exist for investment in productive areas, if substantial support for peacekeeping in conflict areas could be ensured.

Another immense challenge for the international community lies in providing sufficient employment opportunities for the high number of young people under the age of 20 who live in conflict areas. According to estimates by the International Labour Organization, about 400 million additional jobs would be required.

Dr Wennmann emphasized that, even in countries with conflict areas, many things continue to work. He referred to the example of Somalia, which continues to be the biggest cattle exporter for the Middle East despite its chronic instability. In fact, many exporting trading communities can initiate local peacekeeping measures. The question of what works in fragile countries and what can be built upon is of the utmost importance.

Dr Wennmann also addressed the faulty perception of the private sector in running away from countries affected by conflict. Armed violence and instability should instead be considered a side factor for business. The bigger a business, the easier it can mitigate such an environment. The private sector should be seen as core opportunity or even as an ally for recovery since it is the private sector which has the most to gain from a reduction of violence.

Concerning the second item, Dr Wennmann listed six main areas in which WTO mechanisms could help to unlock the above-mentioned opportunities in conflict-affected and fragile states:

- a) Aid for Trade
- b) trade facilitation to help countries to improve their trade performance, e.g. in landlocked countries



- c) examination of the links between customs organizations within fragile states and state building, since customs organizations are frequently a core source of corruption and fragility in these countries
- d) public procurement, especially in the immediate aftermath of a conflict, to help local economies develop in certain sectors; public procurement should be used to rebuild local industry in order to mobilize potential in that economy
- e) domestic implementation of WTO law
- f) the creation of new states: conflicts sometimes result in the creation of new states, and these may wish to become WTO members. As a number of fragile states are already members of the WTO, their experiences could be used to explore the WTO accession potential of newly created states.

In his conclusion, Dr Wennmann underlined the enormous opportunities available to unlock fragile states. He argued that these opportunities lie in closer cooperation between the peace-building, development, and trading communities, which should explore together what is really needed in practice to enable economic recovery.

(d) Mr Jean Amat Amoros, Co-Founder, Gundara – Berliner label for fair trade leather bags from Afghanistan

Mr Amoros presented the work of Gundara, a small Berlin-based company selling handmade leather bags produced in Kabul, Afghanistan. According to Mr Amoros, Gundara currently contributes to the income of ten households in the highly fragile state of Afghanistan.

Mr Amoros argued that although the general situation in Kabul is characterized by insecurity, Gundara has plenty of potential for business. All over Kabul, more and more small businesses are appearing. Mr Amoros highlighted the importance of building trust with the local partners involved and of adhering to unwritten cultural rules. He also mentioned that Gundara has easier access to the media, and thus to the public, as nobody expects to buy products such as leather bags from such a highly fragile country.

Mr Amoros furthermore described the local challenges for business in such an insecure area. For instance, the shop in which the leather bags are produced in Kabul has been destroyed twice in the past three years due to explosions in the street. Economically, such insecurity also poses problems in terms of delivery and delay, since customers in non-fragile countries are not used to waiting for two months to receive their bags. Thus, as a seller, the loss of client recommendation has to be calculated.

Mr Amoros furthermore pointed out that the creation of a long-term business plan is also difficult because of the day-to-day approach to life dominant amongst people in Kabul. Thus, long-term stock management of products is difficult. A further problem is to understand product standards. For example, customers of the online shop want to buy exactly the same bag that they see on the website, whereas local producers may find it hard to understand why the bag cannot look slightly different.

In his conclusion, Mr Amoros stated that in many cases private sector engagement starts long before state structures are functioning properly; a fact which may be underestimated in some peacekeeping debates.

2. Questions and comments by the audience

Two further items that came up during the discussion should be mentioned.

First, criticism was raised of the ambivalent behaviour of some industrialized countries which are producing and exporting weapons but are simultaneously engaged in peace-building measures.

Second, the resilience of the private sector in a highly insecure environment was emphasized. No matter what size the business might be, they often try to keep going even in violent conflict situations.

3. Conclusions

Trade is not only possible in conflict areas but takes place regardless of external circumstances. Indeed, trade can play an important part in the economic recovery of a fragile area. Specialists of peace-keeping, development, and trade policy need to cooperate much more closely in order to facilitate a fruitful economic recovery. Furthermore, it should not be forgotten that business can be part of day-to-day life long before any sort of functioning state structure has been put in place. Thus, the trade community could benefit from having a close look at how to stimulate such developments in violent conflict areas.

Neither governments nor any other actor should turn a blind eye to the illegal practices which happen every day in so-called shadow and combat economies. Raising awareness and implementing transparency in trading practices are only two simple recipes to deprive such practices of their breeding ground.



Abstract

The Doha Round of trade negotiations, which was initially intended to be completed by 2004, has now reached its 10th anniversary without any realistic prospect of a successful conclusion any time soon. This is frustrating for the world's poorest nations and small, vulnerable economies (SVEs), especially given that the Round was dubbed the "Doha Development Round" (DDA) with an expressed objective of addressing their needs and interests. Furthermore, the deadlock is being regarded by many as multilateralism under challenge, which could profoundly jeopardize the interests of poor and vulnerable countries. The Commonwealth Secretariat organized this session with the objective of developing a better appreciation of the potential implications for two disadvantaged groups of countries. The following questions were addressed:

- Given the experience of the DDA, what prospects does multilateralism hold for least-developed countries (LDCs) and SVEs?
- How well have their concerns been addressed in the Round?
- From their perspectives, what are the likely costs of a possible failure of the DDA?
- What are the implications of the rise of emerging developing countries for promoting the interests of weaker economies?
- How best can LDCs and SVEs be helped to ensure their effective participation in world trade?

The Doha Round and multilateralism: Stakes for LDCs and SVEs

Moderator:

H.E. Mr. Edwin Laurent, Advisor and
Head, International Trade and Regional
Cooperation Section, Commonwealth
Secretariat

Speakers

Professor L. Alan Winters, University of
Sussex, United Kingdom

H.E. Mr Ujal Singh Bhatia, Former
Ambassador, Permanent Representative
of India to the WTO

Mr Bonapas Onguglo, Senior Economic
Affairs Officer, Division on International
Trade in Goods and Services, and
Commodities, UNCTAD

Mr Junior Lodge, Technical Coordinator,
WTO Negotiations, CARICOM Office of
Trade Negotiations

Organized by

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Report written by

Mr Mohammad A. Razzaque, Economic
Adviser, Economic Affairs Division,
Commonwealth Secretariat



1. Presentation by the panellists

Ambassador Laurent opened the discussion with the observation that the DDA, having started with an ambitious agenda, has been going on for a decade and has degenerated into trench warfare, characterized by a lack of progress. Given the nature of the negotiations, he recognized the role of other institutions working in the area of trade and development in providing fresh perspectives and generating influence to make progress.

(a) Professor L. Alan Winters, University of Sussex

Professor Winters began by stating that small states suffer from the high cost of doing business. Countries with large domestic markets can produce many things without being as critically dependent as smaller economies on international trade; trade is incredibly important and expensive for SVEs, and any barrier to trade (e.g. import restrictions) is not in their interest. The role of policy space in SVEs should be to support their export expansion, i.e. to reduce the cost of imports, rather than providing protection to certain sectors.

Professor Winters thought that SVEs would have a strong interest in the WTO negotiations on Mode IV (temporary movement of natural persons), and thus the little progress made in this area should be a great cause for concern. He pointed out that although the DDA progress was not very encouraging, it was also not asking for a great deal of liberalization from LDCs and SVEs.

He strongly advocated preserving the rules-based multilateral trading system, pointing out that, while most LDCs and SVEs are too small to make any impact on more sizeable economies and to attract any attention to their interests, nevertheless, the WTO multilateral trading system offers a dispute settlement mechanism that allows even small countries to take on big, influential countries on trade-related issues, and the multilateral trading system allows access to global markets rather than just to regional markets.

The fact that LDCs are not undertaking any liberalization commitments in the DDA was considered by Professor Winters to be "profoundly misguided" as, according to him, it was not the right way to support a dynamic economy or to take part effectively in a multilateral system. He argued that LDCs did face significant preference erosion as global most-favoured nation tariff rates fell, but their remaining outside the "game" by not taking part in active negotiation made them powerless to influence the outcome.

As regards the rise of emerging developing economies, he noted that while the dynamics involved in dealing with them could be different from those involved when dealing with Europe and the United States, the fundamental principles of the multilateral trading system would not change much.

(b) H.E. Mr Ujal Singh Bhatia, Former Ambassador, Permanent Representative of India to the WTO

For Ambassador Bhatia, LDCs and SVEs are the real victims of the DDA impasse. He outlined five important developments for these countries: preference erosion affecting their export competitiveness; international supply chain networks bypassing them; their exclusion from the majority of preferential trade agreements; the rise of emerging economies so far benefiting only the commodity-producing LDCs and SVEs; and the viability of the "Single Undertaking" principle in multilateral negotiations to promote



development. He argued that these challenges also highlighted the critical importance of a multilateral system which would function as the antidote to the market failure exacerbated by the globalization process.

Ambassador Bhatia suggested a number of ways in which the successful completion of the DDA could help LDCs and SVEs in coping with the challenges, which included implementation of the duty-free and quota-free (DFQF) market access facilities for LDCs; provisions for preference-erosion products, tropical products and products subject to tariff escalation to assist them in maintaining their competitiveness; an ambitious outcome on the reduction of agricultural subsidies to boost the export prospects of their several agricultural products, including cotton; the special waiver in services trade being negotiated to enable LDCs obtain market access preferences.

Ambassador Bhatia rejected the idea of the abandonment of the DDA as many commentators elsewhere had suggested. He observed that non-completion of the DDA would not only have serious consequences for LDCs and SVEs, but would cause fundamental questions to be asked about what the WTO stood for.

(c) Mr Bonapas Onguglo, Senior Economic Affairs Officer, Division on International Trade in Goods and Services, and Commodities, UNCTAD

Mr Onguglo was of the view that the DDA should not be equated with the multilateral trading system, as the former is only a partial aspect of the latter. Difficulties faced in the current round should not be directly translated as the failure of multilateralism. He pointed out that multilateralism was very important for LDCs and SVEs and these countries were very open to trade, with both exports and imports contributing to their economic growth.

According to Mr Onguglo, while several issues of interest to LDCs and SVEs have been addressed in the current round, there are other important outstanding matters. Referring to the target of doubling LDCs' share in global trade by 2021, as specified in the Istanbul Programme of Action, he stressed the need to settle issues affecting the poorest countries and to provide trade-related support measures to facilitate fuller integration of SVEs into the global economy.

For Mr Onguglo, a failure of the DDA would be a missed opportunity to integrate development dimensions into the WTO-led trade discourse. The proliferation of preferential trade agreements in the backdrop of a failed DDA could be detrimental to the interests of LDCs and SVEs.

Mr Onguglo suggested undertaking a "development audit" of the impact of the DDA. While evaluations of trade and development implications are often carried out on certain broad categories of countries, country-specific assessments are required for the appreciation of different perspectives. He observed that trade rules are not binding constraints for trade expansion in LDCs and SVEs, but that productive capacity is, and he urged the WTO to work with other institutions to help build productive capacity and promote competitiveness in the world's most vulnerable economies.

(d) Mr Junior Lodge, Technical Coordinator, WTO Negotiations, CARICOM Office of Trade Negotiations

According to Mr Lodge, dissonance between global economic realities and the substance of trade talks has prevented the DDA from gaining traction. Despite the potential for

large welfare gains from small labour market openings in OECD countries, this had never been a locus for negotiations. He opined that the WTO was struggling to manage the realignment of influences between industrialized and advanced developing countries.

Referring to the Caribbean states, Mr Lodge mentioned the erosion of preferences, especially for bananas, rice, rum and sugar, as a major cause for concern. He pointed out that SVEs account for only 0.1 per cent of global fish stocks, and, as such, the implications arising from fisheries subsidies negotiations for SVEs are unreasonable.

Mr Lodge called for the reform of the WTO's dispute settlement mechanism. He informed participants that, while bananas accounted for 85 per cent of merchandise exports by St Lucia, it had been awarded only "third-party rights" in the related settlement procedures. This limited access, due to their small share in global exports, severely impaired Caribbean states' capacity to defend their interests. He added that, while Antigua and Barbuda had won its dispute settlement case involving internet gaming, the payment of compensation remained outstanding.

Mr Lodge was of the view that the DDA should not be confused with the multilateral trading system; the latter, he argued, remains robust, with other pillars such as dispute settlement mechanism, and the WTO Secretariat's role in the Enhanced Integrated Framework (EIF) and monitoring Aid for Trade flows. However, he thought that the appeal of the multilateral trading system might wane due to the failure of the DDA.

He urged the upcoming 8th WTO Ministerial Conference to conclude with two core deliverables: first, to deliver the minimum LDC package of cotton, DFQF and services waiver; and, second, to undertake a comprehensive review of the development provisions reflected in DDA drafts vis-à-vis the actual progress made. He suggested that the Doha mandate should be recalibrated to underpin the developmental thrust.

2. Questions and comments by the audience

Referring to the fact that LDCs have not made liberalization commitments, one participant enquired about the role of international financial institutions (IFIs) in promoting future autonomous liberalization. Professor Winters responded that he would not suggest any such role for IFIs. Ambassador Bhatia was of the view that, for ideological reasons, the focus for IFIs had been on liberalization, without providing for the adequate investment support required by the countries. Mr Lodge, however, acknowledged that the Caribbean region had benefitted enormously through autonomous liberalization in services, particularly in the telecommunication sector. He wondered why other countries had failed to make commitments in this sector.

A participant observed that LDCs and SVEs do not have the capacity to implement liberalization commitments, as further tariff cuts would not only hamper their domestic sectors but would affect public revenues. Another participant noted that the "round for free" should not be a concern; the main issue is whether LDCs are capable of negotiating. Professor Winters thought that the "free round" had reduced LDCs' negotiating capacity. This view was contradicted by Mr Lodge, who argued that, despite not being required to make commitments, LDCs and SVEs have been very active in the negotiation of issues in their interest.



This debate was extended further as one participant argued that by taking commitments under GATS infrastructure services, LDCs would attract foreign direct investment, while another commentator responded that taking commitments alone would not ensure investment flows. Professor Winters supported the view that attracting investment was not straightforward, but that when foreign direct investment did go to low-income countries, returns were empirically found to be higher than elsewhere.

A number of participants were of the view that, even if the DDA did not make progress, trade preferences and other support to LDCs and SVEs should continue. The panellists supported this, but Professor Winters stated that a DDA failure would not help to deliver on LDC packages.

One participant wanted to know the reasons for the high costs of doing business in SVEs. Professor Winters said that smallness, remoteness and isolation would imply small consignment size as well as high shipping costs, adding that liberalization alone would not help overcome the situation.

A number of participants raised the issue of agricultural and export subsidies from developed countries as important concerns for LDCs and SVEs. Professor Winters opined that time was being spent on export subsidies while in reality more attention should be given to other domestic support measures to ensure market access. He also reminded participants that reductions in domestic support could trigger rising food prices with adverse consequences for many poor countries. A related issue raised by another participant was on the implications of price volatility on food security. Ambassador Bhatia opined that food security was a broader issue affected by several factors including long-term underinvestment in agriculture, export restrictions and speculation in global commodity markets.

Trade liberalization and productive capacity development also came up in the interventions made by several participants. In this connection, Mr Onguglo pointed out that liberalization itself did not result in export growth, but was merely one development tool that needed to be complemented by other support measures. Professor Winters noted that the cross-border fragmentation of production could provide LDCs and SVEs with opportunities for developing production and export linkages. Ambassador Bhatia agreed, adding that integrating LDCs and SVEs into the fragmented production network should be an important issue for consideration.

3. Conclusions

Despite different perspectives on several issues, a consensus emerged in a number of areas with implications for way forward. These included: the importance of the multilateral trading system in protecting and promoting the interests of LDCs and SVEs; the successful conclusion of the DDA to deliver on promises made about development dimensions; the need to ensure continued trade support measures for LDCs and SVEs; and helping LDCs and SVEs to develop productive capacity to trigger enhanced and sustained supply responses from these economies.

A new trade barrier: Blocking the free flow of information

Moderator

Mr Ed Black, President and CEO,
Computer & Communications Industry
Association

Speakers

Mr William Echikson, Head of Free
Expression Policy and Public Relations,
EMEA, Google

Mr Hosuk Lee-Makiyama, Director,
European Centre for International Political
Economy (ECIPE)

Mr Innocenzo Genna, Council Officer
EuroISPA and Founder and Partner at
Genna Cabinet

Organized by

Google

The Computer and Communications
Industry Association (CCIA)

Report written by

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Abstract

This session explored how the blocking of cross-border data flows is becoming a significant trade barrier for information industries that depend on open networks. This includes internet companies such as Google and Facebook, but also financial services, broadcasters and virtually any business that requires access to digital data.

While there are certain legitimate forms of blocking such as those that prevent child pornography and copyright infringement, many others are unwarranted. A number of governments are establishing obscure privacy and security rules, imposing data storage requirements or planning to install surveillance tools into their IT infrastructure that could profoundly affect the way the internet operates. The number of countries engaging in such restrictions has increased tenfold since 2002, and this has led to legal uncertainty in the online environment and economic losses for affected businesses.

The panellists argued that many of those restrictions constitute a non-tariff trade barrier under WTO rules and should receive more attention from the international trade community. To address this problem, WTO members should include protection of the free flow of information in their work, and in regional and bilateral trade agreements.

This issue is only beginning to be discussed in a WTO context, but it is critical for the development of electronic commerce and the future of trade.



1. Panel introduction

(a) *Mr Ed Black, President and CEO, Computer & Communications Industry Association*

While the concept of the free flow of information is generally tied to human rights and, in particular, the right to freedom of expression and to information, it is also relevant from an economic point of view. The issue has become more important in the last few years as the internet continues to grow exponentially. The internet has enabled trade in service sectors that, until recently, were considered non-tradable by economists. It erases distances, eliminates transportation and delivery costs, and connects small businesses in remote places with a worldwide market.

It is important to remember that the internet does not only transform developed countries. The most important growth in terms of internet users in the past few years has come from the developing world. China, for example, now has more internet users than the entire population of the United States. A recent OECD report described broadband and ICT applications as having an economic impact comparable to that of the printing press, electricity and the steam engine.

Data are becoming more critical to the economy, either as part of a service, such as financial, health care, and telecommunications services, or as a means to deliver electronic goods such as digital media and software applications. Google and Facebook, two of the biggest data services on the internet, both have an estimated market value that exceeds that of Goldman Sachs, almost entirely due to their ability to make data useful to their users.

A variety of industries are increasingly dependent on cross-border data flows and the trade rules that support them, and today's trade conflicts may just as easily pertain to bits as bananas. Paradoxically, physical trade is increasingly liberalized, yet large parts of digital trade remain restricted.

2. Presentations by panellists

Some questions we need to ask today include:

- Do goods and services provided over the internet deserve the same protection as physical goods and services?
- What is the legitimate scope of national regulatory authorities when it impinges on the availability of goods and services provided over the internet?
- Can the WTO adapt to an increasingly interconnected and digital world, or will regional and bilateral trade agreements supplant the multilateral trading system as the leading vehicles to handle digital trade issues?

(b) Mr William Echikson, Head of Free Expression Policy and Public Relations, EMEA, Google

Google recently commissioned studies with BCG and McKinsey on the economic impact of the internet. The results were clear: not only has the internet become a sizeable part of our economies, it has become a real driver of economic growth. In some countries, the internet is responsible for up to 7 per cent of economic activity. While the internet promises to stimulate growth and create jobs in the coming years, governments need to understand its nature to fully realise its potential.

For Google, the free flow of information is essential on a number of levels. While Google sees this issue mostly from a human rights perspective, it also has a direct impact on Google's core mission, which is to organize the world's information and make it useful and accessible. It also has a direct impact on Google's ability to do business since it cannot deliver its services in the case of severe data flow restrictions.

Restrictions can be temporary or permanent, partial or complete, as in the case of Youtube, which is completely blocked in some countries. Google's services are restricted in more than 25 out of the 150 countries in which it operates.

The issue is not limited to blocking websites. Another important aspect concerns government requirements on the physical location of data. Some governments require businesses to store their data locally or make a copy of their data on a local server. Some even require a local presence in order to operate in a given territory. These requirements go against one of the internet's core principles, namely, to have a distributed computing infrastructure to maximize the availability of data. Local data requirements make it more difficult and expensive to develop and maintain this type of distribution network and undermine its potential benefits

Google agrees that content which violates certain ethical standards should not be available on its servers. However, in trying to strike the right balance, Google prefers to err on the side of free expression. If Google receives government requests to block content, it asks for the greatest possible specificity to limit negative effects on free speech. Different cultures have different ethical views, and it is not up to a private company to decide what is appropriate. In the absence of global standards, we should be careful not to impose broad filtering rules that stifle free speech.

(c) Mr Hosuk Lee-Makiyama, Director, European Centre for International Political Economy (ECIPE)

Statistics show that a sizeable portion of cross-border trade is enabled by ICT applications, and the internet has become a crucial factor for economic growth in developing countries. Offshoring, capacity building and the outsourcing of knowledge economy jobs are all spurred by the internet; countries like India are highly dependent on an open internet for their economic development.

The internet is also increasingly important for manufactured goods. Consumer electronic devices such as smartphones depend on applications run on the internet. While the hardware becomes increasingly generic, most of the added value comes from services. This trend can also be observed in manufacturing sectors such as the car industry. As the added value in ICT moves from hardware to software, disputes related to services are expected to surpass those related to manufactured goods in the near future.



However, most of today's trade rules date from the mid-1990s and need to be made compatible with today's trade environment, otherwise there is a risk of increased non-tariff trade barriers.

(d) Mr Innocenzo Genna, Council Officer EuroISPA; Founder and Partner at Genna Cabinet

It is important to distinguish between the two main types of internet intermediaries:

- Internet access providers supply their subscribers with the technical infrastructure to access the internet
- Hosting and service providers store and organize information and make it accessible to their users.

EU law makes a clear distinction between the two when it comes to their liability. While access providers may not be held liable for the content they transmit on their networks, hosting and service providers can be held liable for illicit content provided they were duly notified and have failed to remove it from their servers in the timeframe provided.

However, there is still a considerable amount of confusion about this distinction. Some policy-makers believe it is sensible for access providers to filter data flows. Part of this misunderstanding stems from the fact that access providers play an important role in filtering spam emails. Many governments believe that internet traffic can be filtered in the same way, but this is not possible. The spam filters used by access providers only apply to a small fraction of internet traffic. They work precisely because access providers control their own servers and because only a small amount of data is concerned. There are no privacy concerns because spam filtering is a service requested by users. This would not be the case if access providers were required to filter the entire volume of online traffic and became the de facto law enforcement agency of the internet.

Blocking techniques such as Domain Name Service (DNS) blocking and IP filtering are ineffective because for any blocking measure there is a circumvention tool available. The classic example is child pornography: some jurisdictions have imposed DNS or IP blocking measures on access providers in order to prohibit access to such websites. However, those measures only prevent internet users who are not interested in the illicit content from accessing it by accident. Paedophiles will still be able to access that content because they know how to use circumvention technology. Law enforcement agencies are aware of this problem and continue to fight illicit content with traditional instruments. The filtering of data flows provides a signal to the general public but it does not address the actual problem.

In summary, preventing access to illicit content by requesting access providers to filter the internet does not work, has a profound negative effect on the internet's infrastructure and slows down traffic. The only effective measure to prevent access to illicit content is to remove it from the actual servers where it is located.

It is unrealistic to impose automatic liability on hosting services such as Youtube for content uploaded by third parties. Those platforms receive enormous amounts of data and would not be able to filter its content in any meaningful way without giving up much of what makes their services, and by extension, the internet in general, so popular and successful.

3. Questions and comments by the audience

The presentations were followed by a lively debate.

One of the participants asked whether Google and CCIA had a strategy to influence the current free trade agreement (FTA) and regional trade agreement (RTA) negotiations with the intention of incorporating the free flow of information principles. Mr Echikson replied that Google does want to get this issue on the global trade agenda, which is why they had decided to co-organize the session. Google believes it is important to be transparent and make information on blocking available to the public, such as the "Global transparency report", a list of all the government requests Google receives, and the "Internet traffic report", which provides detailed information on current internet data flows.

For CCIA, Mr Black said that the priority lies in improving existing trade obligations. While he supports the inclusion of the free flow of information principle in future trade agreements, he stressed that the existing trade rules should be sufficiently clear to address the problem.

Mr Lee-Makiyama noted that many of today's internet services were not widely available when China joined the WTO in 2001. The WTO system is not designed to apply to China's information management system, but it can help to make the national information rules consistent with international trade rules. While there is room for morale, religious concerns and public order within the WTO framework, rules must be applied proportionally and without discrimination and, in cases where less trade-restrictive measures can achieve the same public policy goals, those measures must be changed.

Different views were expressed on the role of internet intermediary liability. One participant criticized the current trend to make internet intermediaries liable for content hosted on their platforms as a "shoot the messenger" approach; another held that the safe harbour principle for ISP liability was actually one of the areas where a shared understanding had emerged over the past years. He asked the panellists why the business sector did not put more emphasis on this issue, and pushed for international harmonization in this area. Mr Black replied that the industry had just recently become aware of the liability risk in that area. There was an understanding in the business sector that the safe harbour regime was a well-established principle. However, recent attempts by some businesses to go after intermediaries have made the ICT sector more aware of that risk. The panellists reiterated that making intermediaries liable for content would fail to address the problem because it does not focus on the actual infringers.

One participant pointed out that, because the WTO is a member-driven organization, he did not see great potential for it to move on this issue in the near future. Governments will be careful not to move on an issue they do not understand and where they risk to be blindsided by the rapid development of technology. However, there seems to be more scope in the case of regional trade agreements (RTAs). He asked the panellists how the free flow of information principle could be included in the current RTA negotiations. Mr Lee-Makiyama noted that there is no North-South divide on this issue. Businesses from both developing and developed economies want an agreement on this and it is important to remember that the majority of trade in ICT is South-South. Six out of the ten biggest traders in ICT services are developing countries, and there are few restrictions because



no country wants to hurt itself. Mr Lee-Makiyama described himself as highly pessimistic about some of the RTAs because many of them have the same problems as the Doha round but only a fraction of its potential gains. In addition, many RTAs are necessary to have an effect similar to that of a multilateral system.

Mr Black added that he was more optimistic about future trade agreements, as the free flow of information principle seemed to be gaining ground in the trade sector. As more countries start to see the value of the ICT sector for their economies, they will be more inclined towards harmonization. One of the participants shared Mr Black's optimism and added that the EU and United States had recently submitted a proposal to the WTO Services Council to start work on many of the issues raised during this discussion. He noted, however, that one of the sectors missing from the discussions at the moment was businesses from developing countries.

4. Conclusions

Mr Echikson noted that the free flow of information principle is a novel issue on the trade agenda. The fact that it has been put at the centre of the Public Forum was an encouraging sign as it showed how the issue was starting to get more attention.

Mr Lee-Makiyama held that trade had moved online and argued that, in order for the multilateral trade system to remain relevant, it needs to respond to that development. The WTO has a crucial role to play, and, while it goes against the instincts of WTO members to give something away for free, it is important to remember that multilateral trade agreements are not a zero-sum game, and all participants will benefit from trade liberalization.

Mr Black made the point that the well-known examples of website blocking were only the tip of the iceberg, as a much broader section of the economy is affected by data flow restrictions. The panellists expressed their support for additional trade agreements to consolidate the free flow of information principle. They made it clear, however, that most of the current data flow restrictions could be avoided if the member states fully complied with their existing WTO commitments.

Keeping the WTO rulebook up to date: Possible new approaches?

Moderator

Mr Denis Redonnet, Head of Unit, WTO,
DG Trade, European Commission

Speakers

Mr Peter Allgeier, C&M International
President; former deputy United States
Trade Representative; former Ambassador
of the United States to the WTO

Professor Dr Pieter Jan Kuijper, Professor
of the Law of International (Economic)
Organizations, Faculty of Law, University
of Amsterdam

Mr Bernard Hoekman, Director of the
International Trade Department, World
Bank

Organized by

The European Commission

Report written by

Mr Tomas Baert, Second Secretary,
Permanent Mission of the European Union
to the WTO.

Abstract

- The panel discussed why the WTO membership is finding it so difficult to update the multilateral rulebook, and what alternatives to the current “single undertaking” approach to negotiations could be considered. Questions that were addressed include:
- Are broad single undertaking rounds still capable of updating the WTO rulebook in an environment of rapidly evolving global economy?
- What alternatives to market access and regulatory issues are there? What are their advantages and challenges?
- Is the diagnosis focusing on the negotiating structures correct after all? Are the problems perceived to be ones of architecture actually about something else?
- The panellists touched in their interventions on both the politics and mechanics of multilateral trade negotiations. Among other things, they suggested that the WTO membership could explore sector-specific “critical mass plurilaterals”, which would be based on the most-favoured nation principle, to put more emphasis on the rules dimension of the multilateral negotiations and to promote the multilateralization of regional trade agreements.



1. Presentations by the panellists

(a) *Mr Denis Redonnet, Head of Unit, WTO, DG Trade, European Commission*

Introducing the session, Mr Redonnet referred to the shadow of the impasse in the Doha Development Agenda (DDA) hanging over the 2011 Public Forum. He argued that this justified a broader stakeholder discussion on the fate and future of the WTO's central negotiation and rule-making function. He invited the three panellists to consider the WTO's ability to perform this function, and wondered whether an overhaul of working methods was necessary in this respect.

(b) *Mr Peter Allgeier, C&M International President; former deputy United States Trade Representative; former Ambassador of the United States to the WTO*

Mr Allgeier saw three external and three internal factors that complicate the conclusion of current negotiations. Quoting a recent opinion poll published in the *Wall Street Journal*, Mr Allgeier saw as an important external factor the very severe decline in the public's belief that trade works for the economy. More than half of the American public believes that trade hurts the economy, whereas in 1999 a majority felt that trade helped the economy.

Secondly, he saw an absence of leadership. Few leaders are now speaking out in favour of reciprocal trade liberalization. He suggested that President Obama's National Export Initiative carries the underlying message that exports are good but imports are not. He contrasted this with 2001, when there was a strong core of ministers, from a variety of countries, who espoused trade liberalization and the WTO as something that was good for the global economy. Negotiators in Geneva now are not as empowered or credible, he opined. Part of the reason is that the political and economic bandwidth for policy-makers is too limited, as they have to compete for leaders' attention with issues like budget deficits and unemployment.

Thirdly, Mr Allgeier believes that, in view of today's complex supply chains, the traditional yardsticks for evaluating the benefits of trade liberalization no longer work. With one-third of US trade flows amounting to intra-company trade, it is very difficult for people to understand how trade is working to their benefit.

In terms of "internal factors", Mr Allgeier highlighted the breadth of the DDA undertaking. The single undertaking includes many non-market access issues and it is very difficult to obtain balance between all of these issues. The effects on governments are that so many agencies and ministries, many of which are very conservative in providing any flexibility to facilitate trade, participate in the discussions. This makes the internal negotiations even more difficult than the WTO negotiations itself.

He also referred to the "greater diversity in the economic standing of the members" to underscore in a rather low-key fashion the transformation of Sino-American economic relations in the last decade. Three areas for moving forward were suggested by Mr Allgeier:

1. Sector-specific "critical mass plurilaterals", which would be based on the most-favoured nation principle, like the Information Technology Agreement, the membership of which has increased voluntarily, and the product coverage

for which should also be expanded. Countries would basically pay a price for staying out of such agreements, rather than for joining them. Trade facilitation was mentioned as another example.

2. The WTO should be more active in promoting the multilateral character of regional trade agreements (RTAs), including by working to harmonize them. The WTO could offer for RTA partners to come together in Geneva to work and see whether agreements could be stitched together and harmonized.
3. There should be rule-making in existing committees. The rule-making part has been held hostage by the market access negotiations. Why not have ministers instruct standing committees to conduct a review of their rules and work towards updates that could be adopted at the 9th Ministerial Conference? Recognising that OCEANA is one of his current clients, Mr Allgeier suggested that fish subsidies would qualify as an area for further rule-making.

(c) Professor Dr Pieter Jan Kuijper, Professor of the Law of International (Economic) Organizations, Faculty of Law, University of Amsterdam

Professor Dr Kuijper commented on the institutional and legal framework for the WTO negotiation function, i.e. the single undertaking. Distinguishing the single undertaking as a negotiating technique and a legal technique for concluding a package, he was critical that the single undertaking formula could still work as it had in the Uruguay Round. He argued that, precisely because it had worked in the Uruguay Round, it may not work any longer. Noting that the single undertaking was “contagious”, he suggested that it is very difficult to weigh all issues against one another and also to conclude and implement all issues together, especially if one considers the various legal procedures that exist to adopt measures. He opined that linkages between issues can and do occur as a matter of political necessity, but these linkages should be left “to the market” rather than being imposed legally.

(d) Mr Bernard Hoekman, Director of the International Trade Department, World Bank

Mr Hoekman noted that the current environment complicates a forward market access liberalization agenda, but the broader implications of this, i.e. the impact on the WTO legislative function and the organization’s objective to reduce uncertainty, cannot be underestimated. While market access is very important, it is only a very small part of what is really at stake, he argued, referring to the consistent decrease of tariff barriers driven by global supply chain pressures inter alia. He argued for a re-focus on rules, among other things. He predicted an increase in judicial activism and “gap-filling” work by the Appellate Body. Current global imbalances that pose externalities on countries will add further pressure. What is holding things up is disagreement between large countries, Mr Hoekman argued, so we should not jump to the conclusion that the single undertaking is holding things up. Like Mr Allgeier, he believed that “critical mass plurilateral agreements” were an avenue to consider further, one reason being that acceptance of the most-favoured nation principle would mean that the entire membership is not to agree to waive a genuine plurilateral agreement like the Government Procurement Agreement, which is facing great difficulties in expanding its reach, he argued.



2. Conclusions

Mr Redonnet summed up some of the points that emerged during the discussion:

1. If we are going to reconfigure the approach to negotiations, it cannot be done without an understanding of the underlying causes of why the organization is underperforming in the first place. The way the politics of trade have changed, the way trade itself has changed, and the new economic realignment have all contributed to that.
2. We need to reflect more on priorities and what we want to negotiate, in particular on the mix between rules and market access sides. Rules could consist of “hard” rule-making as well as “soft” rule-making, as reflected in the suggestion that the WTO offer its good offices to harmonize free trade agreements.
3. New negotiating approaches may not represent much of an overhaul, as indicated by Professor Dr Kuijper.
4. There seems to be an array of techniques available, but it is not just an “instrument problem”; there are also political considerations behind the discussion on changing the negotiating methods. One way or the other, there will be political linkages. They remain a political fact of life.
5. If negotiating methods are changed, the question of ownership and inclusiveness will have to be reconsidered, and this too will be a political factor.
6. Maybe the single undertaking is a problem, or maybe it is not really so much of a problem at all?

Human rights and the WTO: Dispute settlement and trade policy review mechanisms

Moderator

Opening: Mr Ayuush Bat-Erdene, Chief,
Right to Development Section, Office of
the United Nations High Commissioner
for Human Rights (OHCHR)

Closing: Mr Vijay K. Nagaraj, Executive
Director, International Council on Human
Rights Policy (ICHRP)

Speakers

Ms Sanya Reid Smith, Legal Advisor and
Senior Researcher, Third World Network

Mr Hunter Nottage, Counsel, Advisory
Centre on WTO Law

Dr Andrew Lang, Senior Lecturer in Law,
London School of Economics

Dr James Harrison, Associate Professor
and Co-Director of the Centre for Human
Rights in Practice, University of Warwick,
School of Law

Organized by

OHCHR

ICHRP

Report written by

Ms Cailean MacLean, Research Intern,
ICHRP

Abstract

This session was organized to discuss possible avenues for incorporating human rights considerations into the international trading system, specifically through the WTO dispute settlement and trade policy review mechanisms, with a view to ensuring policy coherence and synergy between international trade law and international human rights law.

The key questions addressed by the panel include: Can we ensure policy coherence between international human rights and trade law with a view to better addressing challenges of global governance? What avenues exist for incorporating human rights considerations into the international trading system? Can WTO dispute settlement and trade policy review mechanisms provide opportunities to strengthen the coherence between international human rights and trade law?

At the moment the scope for international human rights law to weigh substantially within the WTO dispute settlement process is limited. In particular, its entry as “applicable law” and as a defence is limited. Potentially, it can be used as evidence or a source of interpretation of trade rules. Any consideration of international human rights law in dispute settlement is inextricably linked to the wider question of how public international law permeates the WTO and the dispute settlement and trade policy review processes. There is hesitation in raising human rights obligations as a defence, potentially due to the possibility of legitimizing human rights conditionalities.

The legislative process – political negotiation of norms among WTO members – has taken on board certain concerns that have directly emanated from human rights, such as the Kimberley Process, TRIPS and Public Health Waivers. Nevertheless, the political process within the WTO is highly unstable, faces many gridlocks and offers many challenges.



1. Presentations by the panellists

(a) *Ms Sanya Reid Smith, Legal Advisor and Senior Researcher, Third World Network*

Ms Smith pointed out that human rights bodies had taken cognizance of the potential for WTO-related obligations to negatively affect human rights. For example, the UN Special Rapporteur on the Right to Food has expressed concerns about agreements with respect to agriculture and services affecting the right to food of vulnerable populations in less developed countries.

Highlighting the case of the significant increase in the price of AIDS medication when licensed under patents, she raised the question of whether extra-territorial human rights obligations do not constrain members from enforcing certain WTO obligations when they may undermine human rights in other countries. She expressed concern over recent suggestions by US and EU trade representatives to make 2016 the deadline for the lesser-developed country (LDC) transition into full Trade-Related Intellectual Property Rights (TRIPS) Agreement compliance, despite provisions such as in Article 66.1 of the TRIPS that allows LDCs a ten-year transition period (as well as further extensions thereof upon "duly motivated request"). Such provisions, which are vital in ensuring access to medicines and safeguarding the right to health in LDCs, should also be seen as important avenues to realise the extra-territorial responsibilities of developed countries.

(b) *Mr Hunter Nottage, Counsel, Advisory Centre on WTO Law*

Mr Nottage invited critical consideration of whether dispute settlement was indeed the ideal conduit for streaming human rights issues into the WTO. Despite the clear admission by the Appellate Body in WTO Dispute DS2: "United States – Standards for Reformulated and Conventional Gasoline" that it cannot ignore public international law and that WTO law does not exist in clinical isolation, Mr Nottage noted that the threshold for considering such laws as applicable was set very high. In WTO Dispute DS291: "European Communities – Measures Affecting the Approval and Marketing of Biotech Products", the use of the precautionary principle, despite being widely referred to and applied in international legal contexts, was rejected on the grounds that it did not reflect clearly crystallized norms of general customary international law, nor was it so clarified by an authoritative international body. Are human rights law norms capable of "precise definition and content" or are they, like the precautionary principle, without a single agreed formulation and subject to many interpretations? For instance, what precisely does the "right to health" or the "right to development" mean, and which international body is actually mandated to authoritatively clarify it?

Moreover, Mr Nottage also noted that the Appellate Body had clearly stated that WTO Dispute Settlement Bodies cannot adjudicate in matters of non-WTO law – in WTO Dispute DS308: "Mexico – Tax Measures on Soft Drinks and Other Beverages", for example, Mexico's defence of a violation of a WTO norm to ensure compliance with its obligations under NAFTA was rejected. At the same time the WTO dispute settlement process is in evolution and, only recently, a panel considering a dispute between the USA and Indonesia over the import of clove cigarettes referred to the WHO Framework Convention on Tobacco Control to "corroborate and reinforce" its own understanding. Mr Nottage suggested consideration of the legislative process to advance human

rights, noting the concessions made with respect to patent exemptions in TRIPS or the Kimberley Process, rather than dispute-related jurisprudence.

(c) Dr Andrew Lang, Senior Lecturer in Law, London School of Economics

Dr Lang focused primarily on what he characterized as the tensions within WTO between functionalist and systemic integrationist approaches to law. The former prioritizes the belief that the WTO has a duty to its 1994 trade-centric mandate and leaves conflict of law issues to the political realm. The latter argues that the body should recognise itself and the WTO as a creation of international law and thus be more open to an evolutionary interdependent view of its legal rulings. Dr Lang himself attempted to balance the two, acknowledging the fidelity owed by the WTO panel and Appellate Body to its role as a trade dispute mechanism while simultaneously considering their object and purpose in approaches of law and indeed their own founding legislation.

In the current international environment, courts are confronted with greater textual and normative ambiguity than before, often with limited political guidance. What is needed is a form of openness, which is still compatible with the socio-legal reality of multiple occasionally conflicting legal regimes. This is the field in which the Appellate Body must thus establish its role. Dr Lang believes that a middle ground may be found between pure functionalist and integrationist approaches by focusing on the duties imposed by article 31.1 of the Vienna Convention on the Law of Treaties. This calls for treaties, including the founding documents of the WTO and the Appellate Body, being interpreted "in context and in the light of its object and purpose." The Appellate Body should play a more investigative role as to the reasons and rationale behind legal norms established by treaty.

Dr Lang acknowledged that this raises the spectre of judicial activism, the primary reason the court has thus avoided this teleological approach, but felt that the level of textual resources in treaty creation focuses the court on a limited, manageable approach. With this as a basis, the court can utilize its role to provide reasoned analysis of the underlying goals and purposes of WTO texts and jurisprudence and view them in the context of competing legislation. Furthermore, the Appellate Body can play the role of testing various ideas and claims against the text of relevant agreements, as well as issuing decisions which provoke responses and continued dialogue.

(d) Dr James Harrison, Associate Professor and Co-Director of the Centre for Human Rights in Practice, University of Warwick, School of Law

The final speaker, Dr Harrison, saw human rights as analytical tools for approaching justice issues in trade, particularly in regards to the WTO dispute resolution process. Much debate between human rights lawyers and trade lawyers stems from an argument over supremacy; which norms, treaties, or obligations trump others. This has often become a legalistic debate where human rights lawyers claim the supremacy of their norms while trade lawyers fail to find clear norms incompatible with trade rules. As an example, Dr Harrison spoke about *Suez v. Argentina* (ICSID Case No. ARB/97/3), an investment case concerning rising prices at foreign-owned private water companies. In the reasoning, the court barely touched on the disparity between the right to water and the right to financial returns for investors, merely noting that Argentina had an obligation to both trade and human rights law without any real exploration of the normative content of the right to water or to utilize human rights norms as problem-solving tools. What is the right to water? Under what circumstances could it allow price controls?



Human rights norms can and should be utilized as analytical tools and to distinguish between actions designed to uphold human rights guarantees and protectionism disguised in human rights language. Additionally, while trade law often seems to occupy its own world, observed violations of human rights norms can greatly undermine the legitimacy of such treaties, a situation undesirable to both proponents of trade and human rights. One example of using a human rights impact assessment is the recently concluded Canada-Colombia Free Trade Agreement (FTA). The FTA agreement was paired with required annual reports on the effect of the agreement on human rights and the environment, allowing constant analysis and feedback on trade-human rights interaction.

This raises the possibility that the WTO itself, through its internal Trade Policy Review Mechanism, could be a useful place for such analysis and monitoring.

2. Questions and comments by the audience

The questions largely focused on how to manage the conflicting norms of trade and human rights law in a WTO context:

- Do we have too much faith in the members of the WTO panel and Appellate Body in areas outside of WTO law? How can they rule on human rights issues if they are not trained in the specialized jurisprudence of human rights?
- If a country wants to restrict imports made with child labour or other unsafe and/or inhumane measures, the GATT allows these restrictions under section D, which recognizes alternative obligations under international law. Does this show a large disconnect between WTO and human rights law?
- With regard to the fragmentation of international law, there seem to be two ways of dealing with this: through a hierarchy of norms or self-reflection on its own objectives. Does the proliferation of FTAs not simply contribute to further fragmentation? How can the WTO Appellate Body cope with growing levels of international law?

3. Conclusions

The panel ended with the topic of national discretion in restricting exports on human rights grounds. Various countries read issues such as “public morals” or “public order” to promote politically expedient labour or human rights restrictions. It was hinted that this was one of the prime areas where trade and human rights concerns could clearly overlap.

The audience was informed of the OHCHR publication on the relationship between human rights and trade, expected to be launched in 2012. It was also proposed to take forward ideas in order to convene further meetings involving trade lawyers and human rights specialists.

Strategies for promoting green innovation and disseminating environmentally friendly technologies – what role for intellectual property?

Moderator

Ms Jayashree Watal, Counsellor,
Intellectual Property Division, WTO

Speakers

Mr José Romero, Chief of the Section
on Rio Conventions, Federal Office of
Environment, Switzerland

Mr Antony Taubman, Director, Intellectual
Property Division, WTO

Mr Martin Khor, Executive Director,
South Centre

Dr Dyebo Shabalala, Assistant Professor
at Maastricht University Faculty of Law

Mr Thaddeus Burns, Senior Counsel,
Intellectual Property & Trade, EMEA &
Latin America, General Electric (GE)

Organized by

Intellectual Property Division, WTO

Report written by

Mr Antony Taubman, Director, Intellectual
Property Division, WTO

Ms Jayashree Watal, Counsellor,
Intellectual Property Division, WTO

Abstract

This session aimed to discuss global efforts to encourage the development and diffusion of new, lower carbon and more energy-efficient technologies through the prism of the intellectual property (IP) system and, more particularly, in the context of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

It has been clear for some time now that dealing with climate change will require massive investment and technological efforts, including from the private sector, to disseminate existing, and develop new, breakthrough low-carbon technologies. Appropriate policies are required to create enabling environments to deal with these challenges, through more effective use of existing innovation structures and the development of new and more diverse innovation models for green technologies. At the same time, there is concern that these new environmentally friendly technologies and products may not be available to or affordable for the world's poor and vulnerable countries. Some commentators have argued that IP rights could inhibit the rapid global dissemination of green technology, while others support the view that the IP system can be adapted to meet the demands of green technology diffusion. Discussion has focused on whether the provisions of the TRIPS Agreement, and in particular the flexibilities provided thereunder, are adequate to meet the challenges raised by the development and diffusion of new technologies. Some have advocated a Doha-type declaration for climate change technologies, as previously undertaken in the case of public health.

The speakers in this session came from diverse contexts: the UNFCCC negotiations, the WTO, civil society, academia and the private sector. They were asked to share their reflections on the state of play and lessons of experience on the way ahead on this issue. Moderated by Ms Jayashree Watal, the session discussed the role of intellectual property rights/TRIPS in global efforts to encourage the development and diffusion of new, climate-friendly technologies.



1. Presentations by the panellists

(a) *Mr José Romero, Chief of the Section on Rio Conventions, Federal Office of Environment, Switzerland*

Mr Romero set the scene by explaining the historical background of the UNFCCC negotiations: the +2C target set in Cancún was largely achievable with existing public domain technologies, according to the IPCC. Hence intellectual property rights (IPRs) per se do not seem to be the major barrier. However, two main barriers remain on which action is needed: the global availability of finance, and technology transfer. The lack of enabling frameworks in developing countries deters private sector engagement in technology transfer. The funding needed was quantified by the IPCC and in the Stern Report. The problem was that enabling frameworks did not exist and, since it was largely the private sector that had the technology, it was reluctant to engage. Among the barriers to technology transfer listed by developing countries themselves, IPRs were eighth on the list in order of importance. A bottom-up approach, where specific technologies needed are listed and any IPRs identified, would be more productive. The technology needs to improve adaptation to climate change (e.g., technology for good quality doors and windows to protect against hurricanes) and instruments needed to reduce risks (such as crop insurance) also need to be considered. A new institutional framework will be needed after 2012, when the Kyoto Protocol expires.

The global community has to recognise that the emerging market countries are already doing a lot and need to capture these effects. While the United States has made it clear that it cannot accept Kyoto-type instruments, China and other emerging countries have clarified that they too want voluntary actions on the basis of the principle of common-but-differentiated-responsibilities. The EU + EFTA countries support a legally binding instrument. The question is how the WTO could help in technology transfer and how it can engage to remove barriers to the flow of investment and technology.

(b) *Mr Antony Taubman, Director, Intellectual Property Division, WTO*

Mr Taubman observed that climate negotiators had raised issues about the WTO TRIPS Agreement when discussing IP issues in the UNFCCC negotiations. While the WTO Secretariat was not, of course, an active participant in these negotiations, the issue illustrated the potential role of a technical secretariat in providing expertise and background information to support an informed debate. Mr Taubman contrasted two aspects of the current debate: “the climate of TRIPS” – a period of critical review and analysis of the public policy function and impact of IP in sensitive areas such as the environment – and “the TRIPS of climate”, the specific issues about the value and impact of IP (and patents especially) in dealing with technology diffusion and innovation to address climate change adaptation and mitigation. He said that concerns had been voiced that patents are inherently an obstacle to an effective response to climate change, and some go as far as demanding the abolition of patents altogether on environmentally friendly technologies, and other measures that would require renegotiating international IP standards.

However, within the existing standards, there are already a wide range of possibilities, including the development of new innovation structures and the judicious and strategic use of IPRs to promote green innovation and technology diffusion. The big issues are concerned with what interventions are needed: in particular, whether there is a need for new initiatives, as in the case of access to medicines, and how to manage the exercise of

IP rights in the field, whether through mandatory regulation or other forms of guidance. Technology has been the cause of anthropogenic climate change, but it is also part of the solution. It is the same with IP – its impact depends not on whether a patent exists or not, but how it is deployed in practice. Hence, the role of IP is not a simple binary question; the debate needs to be more nuanced. There is a range of choices in public, private and joint innovation structures, as well as public domain technologies. More evidence is needed on patent filing and ownership, as well as on impact.

Mr Taubman analysed the topic from several angles, including the basic rationale for IP, new forms of innovation structures and IPR management, pre-grant (grounds for refusal, fast-tracking) and post-grant (voluntary licensing, exceptions to rights, regulatory interventions) options, and market-based solutions. Climate change differs from the usual technology transfer debates in terms of the urgency and the ethical or human rights dimensions of the measures needed. The broad legal parameters of the international IP standards are reasonably clear, but this does not provide guidance for practical action. Therefore a practical, as much as a legal, debate on these issues is needed to determine when it is good policy to use IP flexibilities and when it is not.

(c) Mr Martin Khor, Executive Director, South Centre

Mr Khor said that there are two important questions: first, how serious is the problem of climate change; and second, how serious is the question of IPRs. There is not enough empirical evidence on either question but enough is known about climate science and the role of IPRs to adopt the precautionary approach that urgent appropriate measures should be taken. Even with the cautious approach taken, developing countries may need to cut per capita emissions by more than 80 per cent by 2050 in the business-as-usual scenario. The need for technology and finance is urgent – we need a societal change to enjoy life without destroying nature.

There are basically three types of technology: those in the public domain, those that are patented and those that will be patented in the future. It is true that there are many useful technologies in the public domain, but the financing and human capacity to use them is still lacking in most developing countries. This basket needs to be expanded so that there is more in the public domain – there have been calls for this from the IPCC and UNFCCC and at the Rio Summit. Governments in developed countries can do more to channel technologies into the public domain. For example, if 70 per cent of a particular technology is funded by government, then that proportion of it should be in the public domain. The Green Climate Fund, which is used to fund research and development (R&D), should ensure that the resulting technologies are in the public domain. The open source, open innovation, CGIAR (Consultative Group on International Agricultural Research) models (of which the first generation of hybrid seeds was not patented) could all be helpful models to follow. Thus there was a need to add to technologies in the public domain, especially where R&D are publicly funded. Past studies of the Montreal Protocol and recent ones on climate technologies had shown that IPRs could be a problem. It was necessary to collect case studies and evidence in the case of climate change technologies. Mr Khor said that Brazil advocated a Doha-type declaration to clarify TRIPS flexibilities (and a Paragraph 6-type solution, if necessary) in Bali. He predicted that IPRs would return to the UNFCCC agenda and suggested that the WTO should provide a forum for discussion.



(d) Dr Dyebo Shabalala, Assistant Professor at Maastricht University Faculty of Law

Dr Shabalala said that there were few legal options for developing countries in the existing TRIPS text and recommended amendments to facilitate patent revocation, compulsory licensing and other measures. He said that ensuring the ability of domestic actors to produce, adapt and innovate on and around climate technologies was essentially an issue of access to licensing at a reasonable price that makes it economically sound to produce and disseminate climate technologies. He said that the specific instruments needed would be distribution of licensing, access to know-how and trade secrets, compulsory licenses in the public interest, competition law, and working requirements. Some of the same issues that came up in Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health may come up here. He said that emerging markets play an important role as intermediary distribution and sales points between large developed countries and most developing countries. He concluded that there was a need for a systemic integration of legal analysis and interpretation at the multilateral level, especially at the WTO, in order to avoid conflicts, shared objectives and competencies.

(e) Mr Thaddeus Burns, Senior Counsel, Intellectual Property & Trade, EMEA & Latin America, General Electric (GE)

Mr Burns introduced GE's Ecomagination concept and said that the internet and the TRIPS Agreement had changed the way GE innovated. There have been two important changes since the 1990's and those were the advent of the internet and the entry into force of the TRIPS Agreement. With TRIPS, GE had moved into developing country markets, as there was more predictability and certainty of IPR regimes. However, the model is no longer one of innovation in the North and diffusion to the South. GE now has R&D centres in Brazil, China and India. This has given rise to what Mr Jeff Immelt, CEO of GE, calls "reverse innovation", where inventions made for the South are marketed later in the North. The ratio of private sector to government investment in R&D is more like 70:30, unlike the example given by Mr Khor, and IPRs are important incentives. GE has filed patents in an average of five critical jurisdictions and hence other countries are free to use these patents without legal restrictions. Moreover, there is no concentration of economic power as sectors relevant to climate change are highly competitive. Owing to the diversity of climate technologies and the fundamental differences with the pharmaceutical and chemical sectors, lessons cannot be drawn from the debates on the Montreal Protocol or access to medicines. The Montreal Protocol raised similar issues with regard to a standard-setting process, where proprietary technologies could be a problem and an obligation to share technologies on fair, reasonable, non-discriminatory terms could be important. But the climate sectors are different; for example, there are more likely to be improvement innovations (such as software to stabilize power generation). IP here is a tool to achieve customer satisfaction through licensing and not an end in itself, and does not call for the same level of scrutiny as the Montreal Protocol did. Mr Burns agreed that there was urgency but said that this was no reason to weaken the enabling environment to reduce innovation, and in fact that it should be the very opposite. Declarations on the TRIPS Agreement are likely to detract from R&D investments in this crucial sector.

2. Conclusions

The session concluded with most speakers agreeing that relevant climate technologies are largely in the public domain and important patents may, as of now, cover only incremental innovations. However, more evidence is needed not only to determine whether IPRs could be a problem in the future, but more importantly to find ways of using it better and more productively for the larger good of the all the people on this planet.



Abstract

The goal of this session was to discuss how the WTO and ILO could forge synergies that could foster better trade and employment conditions worldwide. The session discussed the potentially erosive effect of trade opening on employment, development, labour rights and working conditions. Consideration was given to how the impact of trade can be better anticipated before WTO trade liberalization agreements are adopted, how changes can be made to trade-opening proposals, and what measures can be undertaken by governments to prevent trade resulting in unanticipated negative consequences. Taking into account the results of ITUC's session last year and in light of the discussions at the G20 on coherence, this session placed the focus on the WTO's role in increasing social sustainability in trade. The following questions were addressed during the session:

- What are the effects of trade on employment and what are priority areas for research?
- What do people gain from trade? Who are the "losers and winners" of trade?
- What remedies exist for those adversely affected by trade?
- How can trade agreements become more balanced?
- Could the WTO enhance its agenda to promote inclusive and fair trade?
- How could social dialogue be promoted through the cooperation of WTO and ILO?
- Which are the priority themes for enhanced WTO-ILO work?

Trade and employment: The WTO agenda for social sustainability

Moderator

Ms Jenny Holdcroft, Director ICT,
Electrical and Electronics, Aerospace
department, International Metalworkers'
Federation (IMF)

Speakers

Mr Raymond Torres, Director of the
International Institute for Labour Studies,
International Labour Office (ILO)

Mr Victor do Prado, Deputy Head of
Cabinet, Office of the Director-General,
WTO

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

Organized by

International Trade Union Confederation
(ITUC)

Report written by

Mr Yorgos Altintzis, Policy Adviser, ITUC



1. Presentations by panellists

(a) *Ms Jenny Holdcroft, Director ICT, Electrical and Electronics, Aerospace department, International Metalworkers' Federation (IMF)*

Ms Holdcroft explained that the present session is a follow-up to last year's session, which had the same theme. The two workshops aim to explore ways to promote coherence between the work of WTO and other international organizations, especially the ILO, and to promote socially sustainable trade. Ms Holdcroft argued that labour issues could be taken up by the WTO and stressed the need for the ILO and WTO to cooperate to address issues which are on both organizations' agendas. She presented the main conclusion of the 2007 ILO-WTO joint study *Trade and Employment: Challenges for Policy Research*, which was that trade policies and labour policies do interact and greater policy coherence in the two domains could ensure that trade reforms have positive effects on both growth and employment.

(b) *Mr Raymond Torres, Director of the International Institute for Labour Studies, ILO*

Mr Torres argued that, over the last decade, the world has observed a significant increase in the number of countries participating in globalization through multilateral or regional integration. Although increasing interconnectivity and globalization create business opportunities which can potentially reduce poverty, they also increase income inequality. Over the past two decades, the share of labour incomes in terms of GDP has fallen and the share of capital income in terms of GDP has increased in the majority of countries and in most parts of the world. Unskilled workers have been particularly affected as the decline of their income share in GDP was more pronounced. Unskilled workers face difficulties in adapting to organizational and technological change. Mr Torres presented a series of statistics showing that job security is on the rise as temporary employment increased in the EU and informality rose or remained stubbornly high in many developing countries.

Trade liberalization has gone hand-in-hand with foreign direct investment, new technology and financial globalization, and it is difficult to isolate the employment effects of trade liberalization alone. However, research suggests that trade is associated with higher labour turnover. Furthermore, trade between similar countries may have less traumatizing effects with regards to labour turnover than countries engaging in asymmetric trade. Mr Torres also presented evidence that the wage share declined to a larger extent in countries with a trade surplus than in countries with trade deficits. Though no causation should be inferred, this empirical regularity suggests that certain export-led strategies may come with a price for workers.

In his policy recommendations, Mr Torres warned that there is the risk that policy-makers remain idle whatever the causal linkages are. He proposed that well-designed tax and social protection policies should be utilized to redistribute gains and support job losers; however, the current reality is that developing countries still have weak social protection systems, while in the developed world, taxation on high incomes has tended to fall. Secondly, the connection between wages and productivity should be better shaped, inter alia through social dialogue and collective bargaining. Thirdly, there should be



better coherence between trade and labour/social policies. Mr Torres stressed the need to promote respect for ILO core labour standards. The number of bilateral and regional agreements with labour provisions has increased significantly. It is important to assess the effectiveness of these labour provisions and to draw lessons in terms of how best to ensure that trade policies and ILO labour/social policies can best support each other.

(c) Mr Victor do Prado, Deputy Head of Cabinet, Office of the Director-General, WTO

Mr do Prado argued that in the WTO's legal framework, there is no contradiction between trade and employment. For example, there are WTO Agreements which make explicit references to ensuring full employment and to wages and salaries. He argued that trade increases the pie, but does not necessarily distribute it; the latter is an issue of internal policies. Mr do Prado also explained the effect of trade on employment: per capita income increases more quickly in countries open to trade and, even if some jobs are destroyed, open countries experience significant employment gains in the long run. Evidence shows that productivity also increases quicker in countries which open their markets to foreign competition. However, nothing is "black or white"; and opening to trade increases vulnerability to external shocks.

Mr do Prado said that most of the trade openings in the past 16 years took place through regional and bilateral free trade agreements rather than through the WTO. He suggested a series of policy recommendations for national governments and international organizations vis-à-vis trade and employment. Governments need to promote policy coherence within and across borders in order to provide an environment in which both jobs and trade flourish. This comprises solid institutions, including labour institutions, social policies, rule of law, infrastructure and education. International organizations can focus on conducting further research on trade and employment and on mobilizing resources for the necessary adjustment processes.

Mr do Prado also shared the results of the three joint works of ILO and WTO: a 2007 study on trade and employment, a 2009 study on trade and informal employment and a 2011 study on making globalization socially sustainable.

(d) Yorgos Altintzis, Policy Adviser, ITUC

Mr Altintzis presented the ITUC's Trade, Investment and Employment Modelling initiative. He argued that the current orthodox economic models that are used to show the benefits of trade liberalization are generally based on a range of assumptions that are unable to model the impacts on sectoral employment, production structures, the quality of jobs and other aspects of employment. The aim of the initiative is to find possible elements of a successful model that could look into these aspects. The outcomes of the initiative would allow the union movement to structure recommendations for reshaping trade in order to make it work for workers, poor people and developing countries.

Mr Altintzis offered a series of ideas for the WTO and the ILO on the inclusion of employment issues in trade affairs. First, he suggested that the missing link between employment and trade is industrial policy and policies of structural transformation. It would be helpful if the WTO and ILO worked together in delivering technical assistance and funds to developing countries to develop their comparative and competitive advantages.

Secondly, Mr Altintzis proposed that the Trade Policy Review Mechanism (TPRM) start reviewing labour standards application. The TPRM could provide technical assistance to governments aiming at improving the monitoring and application of core labour standards with a requirement of demonstrating “improved performance” from one TPR to another. To this end, the ITUC prepares reports on core labour standards violations every time a TPR starts. At the first Ministerial Conference of the WTO in Singapore, the Ministers stated: “We renew our commitment to the observance of internationally recognized core labour standards.” The fourth Ministerial Conference in Doha reaffirmed this commitment. Moreover, the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has the capacity to provide all this information and assistance in the TPRM and it should be invited to take part.

Thirdly, he proposed that the impact of trade on employment, decent work, and productivity should be researched more. The ILO Director-General Juan Somavia said at a conference in Oslo in September 2008 that the ILO could undertake analysis of all the areas of the DDA with a view to considering the decent work impact in all these areas; however, this was never implemented. Finally, in order to enhance coherence between decisions taken in different institutions by different branches of national governments, a meeting of trade ministers with labour ministers could be organized.

2. Questions and comments by the audience

- Surinamese National Assembly representative: Mexico is considered a model for growth but this growth has also led to extreme pollution in Mexico City. Does the environment lose out when trade increases?
- Panamanian parliamentarian: Increasing trade leads to informality and dependency. Employers want wages to be pegged to productivity, while employees want wages to increase for other reasons.
- Mr David Gomez, graduate student: Unskilled workers are among the most vulnerable; how can the WTO and ILO affect developed countries' efforts to close borders to Mode 4 given the issue of sovereignty?
- Belgian parliamentarian: The panel concluded that delocalization would be assisted by social protection. Belgium created social protection measures, but is being asked to eliminate these same measures in order to enhance labour market flexibility.
- Participant from Kenya: More often than not jobs are created in the formal sector with higher wages. Does informal employment grow at the same pace as formal employment?
- Mr Zdenek Malek, EESC: The financial markets offer more profits for business than the real economy. The WTO is an institution addressing trade and, hence, real economy. Is the WTO willing to do anything about the financial markets?



3. Conclusions

Mr do Prado said that knowledge of the winners and losers of trade is limited. The WTO has a mandate to open trade, but it also seeks coherence with other agendas. On productivity, he argued that multiple models are possible and that an answer would be country- and sector-specific. On social protection, he said that balance between labour market flexibility and social protection is needed. Evidence shows that countries with stronger social protection policy have suffered less from the economic crisis. On the financial markets' role, Mr do Prado said that it is a question of global governance. He suggested the WTO could play a role in a stronger, more coherent global governance, but judging from the current status of the DDA negotiations, it did not seem likely that governments would agree to increase the authority of the WTO or other international organizations in the short term.

For Mr Torres, the co-existence of high economic growth with environmental degradation and growing social inequalities highlights the need for more relevant measures of progress. On the issue of skills, he pointed out that some countries have considerable unemployment or under-employment (informal, low-skilled jobs) among graduated youth. Policies to improve skills should go hand-in-hand with policies to unlock the job quality potential. On Mode 4, he added that the free movement of migrants has so far been the weakest component of the globalization process. Because of the crisis, societal opinion in some countries has gone against migrants, but their rights should be protected. On social protection, he stressed that, besides its benefits to society and social cohesion, it can help the economy by acting as a stabilizer in times of crisis. The question is how to make social protection more effective. On financial markets, he said that world leaders had promised regulation back in 2009 but the expected regulations have by and large not materialized. Now developing countries suffer from capital volatility. Although developed countries have provided massive support to financial institutions, financial turmoil has resurfaced. The result is worsening prospects for the economy and jobs.

Strategies for overcoming the African cotton crisis at the WTO and beyond: Lessons from the past and strategies for the future

Moderator

H.E. Mr Fodé Seck, Ambassador and Permanent Representative of Senegal to the WTO

Speakers

H.E. Mr Prosper Vokouma, Ambassador, Permanent Representative of Burkina Faso to the WTO; C4 Coordinator.

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

Mr Romain Benicchio, Advocacy and Communication Officer, Oxfam International

Dr El Hadji A. Diouf, Executive Director, African Agency for Trade and Development (2ACD)

Organized by

African Agency for Trade and Development

Abstract

Ever since the African countries began to link the problems facing their cotton sector with the fall in international prices and with US subsidies, they have been trying to find solutions. Never have they questioned the problems inherent in the cotton industry at the local level. However, at the same time, the US subsidies have always been considered to be an important part of the African cotton problem. Numerous formal and informal consultations have been organized, and several inter governmental and civil society organizations have been involved.

In the end, a decision was taken to favour a sectoral initiative rather than to have recourse to the Dispute Settlement Body (DSB). The negotiations have been going on for eight years now, and the Doha Round does not appear to be producing a favourable solution for the African countries. In the meantime, Brazil, which brought its case (Dispute DS267: United States – Subsidies on Upland Cotton) before the DSB, has been successful. An arrangement has been found and Brazil is receiving compensation from the United States.

The overall objective of this session was to take stock of the African cotton issue at the WTO. More specifically, its objectives were to:

- provide the different stakeholders in the cotton issue with an opportunity to discuss practical modalities for putting an end to the African cotton crisis, at the WTO and in other relevant international forums
- offer a diagnosis of the WTO cotton negotiations, examining the obstacles, the progress that has been made, and the opportunities the Doha Round can still offer
- explore ways of referring the matter to the WTO DSB and see what there is to be gained for the African countries.



1. Presentations by the panellists

During the session, the participants identified strategies for overcoming the African cotton crisis. It was largely agreed that, in addition to pursuing the negotiations in the framework of the Doha Development Agenda (DDA), litigation before the DSB might be necessary in order to remove harmful subsidies and to obtain compensation.

All the speakers agreed that the African countries and the Cotton 4 had been successful in keeping the cotton issue at the centre of the DDA negotiations. Mr Damico even asserted that this issue was now “synonymous” with the Doha Round. However, they all noted that one mistake had been made: the association of the commercial and of the development dimension of the matter had weakened the movement. The focus should only have been commercial. The participants also largely recalled their wish for an early harvest focused on least-developed countries (LDCs) during the next WTO Ministerial Conference in December 2012. For Mr Benicchio, this would be “a step in the right direction”.

Ambassador Vokouma made various recommendations for the future. He suggested carrying on the negotiations in the framework of the DDA; leading awareness campaigns and lobbying activities aimed at the United States and the European Union; securing the support of different groups (e.g. the Africa, Caribbean and Pacific (ACP) Group of Countries, African countries, etc); and obtaining a better estimation of the issue by political leaders.

On his side, Dr Diouf called for action before the WTO DSB. This action was deemed urgent, as the United States might remove the litigious law on cotton subsidies after their condemnation following the case brought by Brazil before the DSB. It should be a collective action by African countries; not an act of animosity but a way to get compensation for the harm caused to them until now. Officials present in the room confirmed that this possibility was being discussed in political circles.

2. Questions and comments by the audience

During a series of questions and answers with the audience, potential competition from the Chinese cotton industry was confirmed by Ambassador Vokouma.

It was also specified that the pursuit of the negotiations and litigation are not mutually exclusive and need to be led in parallel.

Finally, it was established that the development question should not be abandoned, but should be pursued in other forums.

Proposal for a WTO agreement on the supply of knowledge as a public good

Moderator

Mr Sisule Musungu, President, IQsensato

Speakers

Mr James Love, Director, Knowledge Ecology International (KEI)

Mr José Estanislau do Amaral, Counsellor, Permanent Mission of Brazil to the WTO and other economic organizations in Geneva

Ms Shandana Gulzar Khan, Legal Affairs Officer, Permanent Mission of Pakistan to the WTO

Mr Antony Taubman, Director, Intellectual Property Division, WTO

Organized by

Knowledge Ecology International (KEI)

IQsensato

Report written by

Mr Thiru Balasubramaniam, Geneva Representative, KEI

Abstract

The objective of the session was to establish a new paradigm under which the WTO could host an international instrument to address the chronic under-supply of global public goods, providing a timely solution to a pressing global challenge.

The global community is confronted with an under-supply of global public goods, including, but not limited to, those involving knowledge goods. The current architecture of international trade lacks the capacity to address free riding or the general under-supply of global public goods. Mr Love presented a proposal for a WTO agreement on the supply of knowledge as a public good, and Mr do Amaral, Ms Khan and Mr Taubman responded to it. While the panellists saw this proposal as being perhaps premature for the Doha Round, they recognized its merit as an innovative solution to a global challenge and recommended that the proponents refine the concept further into an agreement with draft articles for further examination by WTO members. The proponents agreed to refine the proposal with input from interested WTO Members, academics, civil society and other stakeholders.



1. Presentations by the panellists

(a) *Mr James Love, Director, Knowledge Ecology International (KEI)*

In his opening remarks, Mr Love, presenting a proposal for a WTO agreement on the supply of knowledge as a public good, described this proposal as an agreement that would combine voluntary offers with binding commitments to supply public goods, analogous to existing WTO commitments to reduce tariffs, subsidies or liberalizing services. He suggested that it could be modelled in many respects on the WTO General Agreement on Trade in Services (GATS).

Mr Love noted that the classic definition of a global public good includes the characteristics of non-rivalry and non-excludability. He remarked that the International Task Force on Global Public Goods (GPGs) defines these as issues deemed important to the international community with the following characteristics: they cannot be adequately addressed by countries acting on an individual basis, and they must be addressed collectively on a multilateral basis by both developed and developing countries.

Mr Love stated that, while the focus of the KEI proposal was for a mechanism to address the under-supply of certain types of knowledge resources as public goods, the concepts underpinning the proposal were applicable to wide range of public goods. Mr Love posited that the reasons there exist a chronic under-supply of global public goods are manifold, ranging from sovereignty issues, countries' differing preferences and priorities, and the free rider problem. He noted that governments have greater incentives to increase the welfare and consumption of their own citizens than to contribute to the entire world.

Mr Love noted that the WTO's primary focus is on liberalizing trade in private goods where countries negotiate and aggregate binding commitments. In the WTO, the collective benefits of engaging in trade liberalization are large while the costs of exclusion from the process are prohibitive. On the interface of the WTO and knowledge, Mr Love stressed that the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement is largely about the "supply of knowledge as a private good, and not about trade liberalization", as the TRIPS Agreement is "largely about promoting the enclosure and privatization of knowledge".

The KEI proposal on a WTO Agreement on the supply of knowledge as a global public good would focus on the creation of a schedule of voluntary but binding commitments to enhance the supply of a heterogeneous set of public goods. This mechanism would be modelled in some ways on the WTO GATS (for example, a country would not have to make an offer). It would provide benefits such as allowing countries to aggregate willingness to pay or supply certain goods when dependent upon matching offers by a third party, and introducing other "asks" or counter-offer elements into broader WTO negotiations. The GATS model is appealing because it offers flexibility in terms of what types of asks or priorities (whether these be leprosy, malaria, public databases or course syllabi, etc) WTO members could set on the schedule.

Mr Love elaborated on two types of offers envisioned in the proposal: *sui generis* offers and standardized offers. He explained that provisions for *sui generis* offers were needed because, unlike tariffs or other measures similar enough to lend themselves to formulae or general approaches, many interesting and important public goods projects are by their nature so unique that general approaches are too difficult to manage. Mr Love explained

that, in some cases, the provision of standardized offers for specific public goods or norms was needed. He posited that the “existence of the standardized offer would make it more efficient to negotiate and would provide an opportunity for improving the nature of the offer, making it more useful and appealing to other WTO members, and thus more valuable as a bargaining chip”. As an example of a standardized offer, Mr Love cited the US National Institutes for Health (NIH) open access policy which required that grantees who have published academic papers place these papers in a public database for free 12 months after publication.

Mr Love provided numerous examples of offers envisioned under the proposal: collaborative funding of inducement prizes to reward open source innovation in the areas of climate change, sustainable agriculture and medicine; patent or copyright buy-outs in the areas of health and energy, governments to collectively to buy out e-book rights to access course materials in critical areas of education; biomedical research in areas of priority, such as new antibiotics; independent third-party clinical trials on medicines and vaccines; funding Wikipedia server costs; projects to improve functionality and usability of free software; open public domain tools for distance education; open access databases of satellite images or climate data; and open royalty-free licensing of government-funded research for green technology, health and agriculture.

In conclusion, Mr Love reiterated that GPGs are under-supplied, a situation that will not change without a global mechanism to address the free rider and prisoner’s dilemma issues. He stressed that the WTO should not be limited to just promoting the trade and consumption of private goods, but should be expanded to supply GPGs, especially given that the WTO possesses strong enforcement mechanisms (dispute settlement understanding) and useful models for inducing voluntary but binding offers (GATS).

(b) Mr José Estanislau do Amaral, Counsellor, Permanent Mission of Brazil to the WTO and other economic organizations in Geneva

Mr do Amaral indicated that the objectives of KEI’s GPG proposal are worth pursuing but he emphasized that the proposal needed further refinement, with the next revision taking the form of a draft treaty including draft articles and key definitions with a clear articulation of the scope. Mr do Amaral contended that the proposal contains two important suggestions, for creating more knowledge goods (supply side), and increasing access to knowledge goods (access side). He suggested that these objectives should be separated, and noted that access to existing knowledge should not have to wait for the supply of new knowledge. He posited that the WTO does not have much experience in the “supply side” of knowledge and requested KEI and IQsensato to conduct further research into alternative modes of carrying out research and development. Mr do Amaral agreed with the assumptions of the KEI proposal, which noted that governments have greater incentives to increase the private wealth of their citizens than commitments to supply global public goods; remedying this would present a difficult challenge. Amaral exhorted KEI to provide more precision in using the terms “knowledge” and “applied knowledge”. He noted that KEI would need to further develop how IPRs could be reconciled with GPGs. In conclusion, Amaral reaffirmed that the objectives of the proposal are “absolutely worth pursuing”, and he suggested that, in order to have a more concrete discussion, the current elements of the proposal need to be refined and converted into a draft treaty. He volunteered to provide drafting inputs for the next phase of the proposal.



(c) Ms Shandana Gulzar Khan, Legal Affairs Officer, Permanent Mission of Pakistan to the WTO

Ms Khan's presentation examined whether the WTO had the mandate to work on an agreement on the supply of global public goods. In terms of establishing the context, Ms Khan asked the following questions:

- Who is the "demandeur"?
- Why the WTO?
- When is the right time?
- How can it be done?

In response to the question on "demandeurs", Ms Khan quoted the WTO Director-General, Pascal Lamy:

"The world has changed. The political, economic, and social contours of the world we live in today are very different to those that existed a decade ago. As a result there is a widening gap between existing trade rules and the new realities."

In Ms Khan's view, the real "demandeur" for an instrument on GPGs is the "reality of today". She noted that "an acute lack of access, or even restrictions to public goods, is indeed the reality of the majority of the world's population".

Ms Khan asked whether there is room for an in-built mandate within the WTO for a work programme on global public goods. She noted that a "surgical splicing of the legal texts is unnecessary", but cautioned that asserting that the WTO did not have any mandate to work on public goods would be "glossing over the legal texts".

In response to the question, "does the WTO have the mandate to deliver", Ms Khan cited provisions from the Marrakesh Agreement, the General Agreement on Tariffs and Trade (GATT), GATS and the TRIPS Agreement, and asserted that, read as a whole, these agreements provide a textual basis for a WTO work programme on public goods. She concluded by noting that, once the WTO membership was confident in the proposal, including a possible legal text and possible failings and best practices, the "paradigm shift would become a reality".

(d) Mr Antony Taubman, Director, Intellectual Property Division, WTO

Mr Taubman concurred with a multilateral approach to addressing GPGs. He cautioned against conflating GPGs with the "public good". Mr Taubman noted that the classic definition of public goods did not lend itself to prioritization, and that this created difficulties in making informed choices on the financing of GPGs. He contended that a rules-based trading system, such as the WTO, predicated upon notions of non-discrimination, fairness, equity, could also be considered a public good. Design considerations of the GPG proposal need to take into account the nature of the WTO and the broader challenge of international cooperation in terms of pooling resources to supply under-supplied GPGs. Mr Taubman advised that general principles should be applied in the creation of a GPG instrument before designing standardized offers. Practical considerations included how this approach would liberate new funds and new commitments, and whether contributions

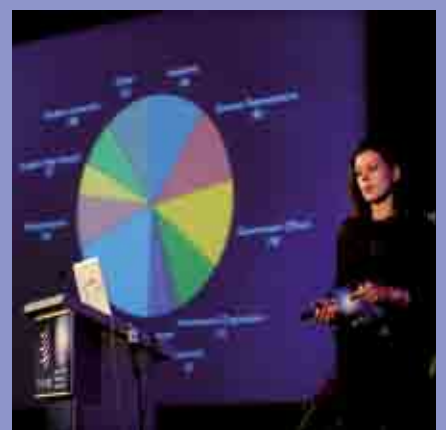
would be commensurate with the ability to pay. He acknowledged that the promise of the KEI proposal was that it provided the possibility to move beyond the zero sum game that characterizes trade negotiations. Depending on the nature of the outcome, Mr Taubman remarked that one advantage of the WTO system is that it provides a mechanism to hold countries accountable in their commitments to fund global public goods.

2. Questions and comments from the audience

Ms Rachel Marusak Hermann from IP-Watch asked Mr Love what the next step would be in the next iteration of the proposal. Mr Love answered by noting that KEI and IQsensato would seek inputs from delegates, IGOs, NGOs and others in revising the proposal into a treaty with draft articles as explicitly requested by the panellists.



V. Closing session



Seeking answers to global trade challenges

Moderator

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

Speakers

Ms Lee Ann Jackson, Counsellor, Agriculture and Commodities Division, WTO

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

Mr Patrick Rata, Counsellor, Trade and Environment Division, WTO

Mr Said El Hachimi, Counsellor, Information and External Relations Division, WTO

Organized by

Information and External Relations Division, WTO

Report written by

Information and External Relations Division, WTO

Abstract

The final session wrapped up the debates held during the three days of the Public Forum and highlighted the main questions raised in relation to each of the core sub-themes.

In relation to food security, recurring themes were changes in agriculture and food policy, such as biofuels and speculation in commodity markets, and opportunities for international collective action with a view to improved market information and clearer rules. The challenges of sustainable development were at the heart of the debate on trade in natural resources, including the search for the right ecological and economic balance for resource exploitation and accounting for carbon emissions. On the “Made in the World Initiative”, advances in measuring global value chains were discussed. Intersections between trade and investment regulations were mentioned, as well as the impact of outsourcing and offshoring on employment. Finally, on the way ahead for the multilateral trading system, there was a general sense that what were dubbed 19th-century issues (mainly related to the Doha Development Agenda) needed to be settled before moving to 21st-century issues such as climate change and sustainable energy. Proposals for unlocking the Doha Round were discussed, along with ideas on how to deal with preferential trade agreements.



1. Presentations by the panellists

(a) *Ms María Pérez-Esteve, Public Forum Coordinator, Counsellor, Information and External Relations Division, WTO*

The closing session started with an overview of the Forum by Ms Pérez-Esteve. The civil society representatives – including representatives from non-governmental and business organizations, journalists, academics, parliamentarians, and representatives from governments and inter-governmental organizations – registered to attend this year's event totalled 1,610, one of the highest attendance figures since 2001. Record numbers were registered for business representatives (200), parliamentarians (over 100, compared to about 50 in 2010) and students (260, compared to approximately 100 in previous years). Of the Forum's 46 sessions, those that attracted the most participants were the Director-General's inaugural speech (500), the plenary opening session (500), session 3 ("Made in the World: Facts and implications for trade") (150), session 7 ("State aid, subsidies and competition policy: What future role for the WTO?") (155) and high-level session 10 ("Seeking answers to global trade challenges: One-on-one interview with Pascal Lamy") (250).

Ms Pérez-Esteve mentioned the fact that there was increased coverage of the Public Forum in 2011 via the social media platforms Facebook, Twitter and YouTube prior to and during the event. As in 2010, a Twitter Fountain was set up which featured over 1,000 tweets and over 200 re-tweets. This allowed interested stakeholders to participate in the event through social media even if they could not make it to Geneva. At the time of the Public Forum there were 4,650 followers on the WTO_OMC Facebook page (now 5,108), 3,653 followers on Twitter (now 3,932), and 760 people subscribed to the YouTube channel (now 793). In addition, there were 1,677 followers on the WTO Publications Facebook page (now 1,756) and 4,108 on Twitter (now 4,272).

The closing session also hosted the award ceremony for the Public Forum's video contest and the launch of the WTO Youth Ambassador Programme. The video contest was open to participants over 18 years of age and the principle was that participants had five minutes to outline "their answers to global trade challenges" or to address one of the Forum's sub-themes.

Ms Natasha Ardiani was awarded first prize – a sponsored trip to attend the Public Forum – for her video, which was entitled: "What does made in the world mean to me?" Ms Ardiani, a student in Economic Policy at the Australian National University, Canberra, is 21 years old and comes from Indonesia. All finalists also had their videos posted on the WTO's YouTube channel. An additional prize was awarded for the most popular video, as determined by YouTube viewers. The winner of this award was Mr Lautaro Ramirez, 28 years of age from Argentina, for his short film on "Regional Integration Agreements and WTO".

The ceremony went on to announce the formal launch of the WTO Youth Ambassador Programme. The idea for the Programme originated in a video submitted by Mr Paparo from Australia on behalf of his sons, William Paparo, 15 years old, and Daniel Paparo, 13 years old. The Programme is open to undergraduate university students over 18 years old and consists of an essay or video contest. The paper or video submission must address a specific question that will be decided in advance and the winner will be invited to share his or her views and policy recommendations at a panel discussion on the issue at hand during next year's Public Forum.

A video clip of highlights from the sessions and interviews with participants was shown, and then the panellists provided their reflections on the Forum's sub-themes.

(b) Ms Lee Ann Jackson, Counsellor, Agriculture and Commodities Division, WTO

Asked to comment on the forum's debates on food security, Ms Jackson said that the issue had been discussed in seven dedicated panels as well as during the high-level sessions. The context for the debate is challenging: 950 million people are hungry today; the world population in 2050 is projected to reach nine billion; and climate change is altering conditions for agriculture. She said that the discussions highlighted two recurring themes: changes in agriculture and food policies, and opportunities for international collective action.

Referring to the changing agriculture and food policy landscape, discussants had suggested that, in a context of economic uncertainty, governments would do well to spend more on rural infrastructure and on improving farm productivity and long-term competitiveness. Biofuels are increasingly significant, and governmental policy has been creating incentives for its production through subsidies and blending mandates. However, there is concern about policies that could lead to a rapid increase in demand for particular food crops, and thus could contribute to volatility. Another topic that came up frequently in discussions was the ambiguous role of financial derivatives in the context of agricultural price volatility. The role of financial speculation on agricultural prices is highly contested; one economist said that some speculation helps to stabilize prices, but there could well be such a thing as excessive speculation.

On the second recurring theme, concerning opportunities for international collective action, it was suggested that market information systems for agriculture might help food price volatility. In this context, the new Agricultural Market Information System, hosted by the FAO, could contribute to market transparency. In terms of trade rules, export restrictions were repeatedly mentioned, with analysts suggesting that uncoordinated export restrictions exacerbated the effects of food price swings in 2007-08. Other experts recommended that the issue of export barriers be considered this December's WTO Ministerial Conference.

(c) Mr Patrick Rata, Counsellor, Trade and Environment Division, WTO

Mr Rata presented the common points raised in the five panels on natural resources trade. There was discussion of the fact that the share of natural resources in world trade is rising, and the sector has important implications for sustainable development. Finding a balance in utilizing resources without depleting either them or the environment to the point of exhaustion was another theme, as was the question of devising policies that foster eco-innovation and reduce resource consumption and the role for the WTO at this intersection.

Further points were climate change, the challenge of how to account for the emissions that result from the trade of products, and the impact of production and consumption-based account systems. The question of trade-related climate change mitigation measures was also raised, along with the potential disputes any unilateral action may cause. Among the development issues dealt with during the sessions, Mr Rata mentioned the challenge of finding the right balance between pursuing economic growth based on the exploitation of natural resources and having this growth hampered by unbalanced dependence. The



durability of the current high level of commodity prices was also discussed. Finally, Mr Rata highlighted the question of whether energy trade requires a general or specific legal framework, and the implications for WTO rules.

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

Mr Escaith said that considerable progress has been made at measuring the extent to which global value chains are producing goods that can only be described as being “Made in the World”. It has been demonstrated that a country’s industrial competitiveness now also depends on the competitiveness of all domestic suppliers, including those of services, together with the quality of imports of intermediate products. The implications for trade policy are that more and better imports of these products can boost the value added of exports, and that imported finished products may include a large proportion of exported high value domestic components. Protectionist policies may hurt domestic companies more than they help them.

Regulating trade separately from investment is often impractical and it was suggested that the absence of investment in multilateral trade rules is driving some towards bilateral and regional agreements. On the flip side, the “spaghetti bowl” of rules of origin arising from multiple regional trade agreements was also criticized. The role of government was also highlighted, particularly the fact that the right mix of policy – not least, infrastructure, human capital investment and trade facilitation – can help small developing countries lacking large domestic markets to take advantage of global supply chains.

Finally, the complex and difficult issue of the net impact of outsourcing and offshoring on employment in developed countries was heavily debated. While, on the positive side, it was noted that not all low-skilled tasks are “offshorable”, and individual functions are usually made of several tasks, some of them being not easily delocalized. Conversely, many medium-skilled jobs relying on IT could be more easily offshorable, and wage disparity may increase as the productivity of best-qualified jobs tends to benefit from outsourcing. Be that as it may, the discussants agreed that the available data was still not good enough to warrant definitive conclusions on the causality chain between “Made in the World” and employment in developed countries. For many developing countries the balance was mainly positive, but challenges remain for least-developed countries in Africa to insert themselves successfully in global supply chains.

(e) Mr Said El Hachimi, Counsellor, Information and External Relations Division, WTO

Mr El Hachimi noted that over half of the 46 sessions organized at the forum dealt with the evolution of the multilateral trading system. One aspect focused on the fate of the Doha Round. During one discussion, Director-General Pascal Lamy had stressed that negotiations do not die, they may simply not conclude. But even if the talks do not conclude, the issues they cover will need to be addressed.

A second aspect focused on what was dubbed “21st-century trade issues” and looked at the blurring of lines between trade policy and issues like food security, climate change, and currency values. The changing geopolitics of the global economy – driven above all by the rise of emerging economies – were also discussed. Some talked about potential institutional reforms for the WTO, although Pascal Lamy thought that procedural reforms

might be more achievable than fundamental institutional changes to core principles like consensus-based decision-making.

Finally, considerable attention was paid to preferential trade agreements. Many indicated the shift from tariff-based to a regulatory-based spaghetti bowl. One business representative described the proliferation of such accords as a “horror” for the private sector. Participants debated potential roles for the WTO in monitoring such agreements; some proposed the need for the WTO to elaborate a best practice preferential trade agreement to help members grapple with the wide diversity of agreements currently implemented or being negotiated.

2. Questions and comments by the audience

When the debate was opened to the audience, MIT Professor Nicholas Ashford warned that employment and purchasing concerns would be of huge importance in the decades to come. Green economic transformations that fail to deliver employment growth are unlikely to receive much support. Trade, industrialization and the nature of the industrial state need to be re-thought to ensure that large proportions of populations can affordably acquire goods and services. It is not enough for stock exchanges to show positive rates of return.

Mr Escaith sounded a historical note, observing that Karl Marx's dim predictions that capitalism's exploitation of workers would lead to its own doom were ultimately demolished by Henry Ford, who increased workers' wages so that they could afford to buy the cars they made. In the new world economy, building new governance will be necessary.

3. Conclusions

In conclusion, Ms Jackson pointed to the challenges of collective action, and suggested that the Forum provided a chance for participants to see if their own ideas were shared by others, thus facilitating the development of “collective hunches” that could point the way to solutions. Mr Rata recalled that the public forum was established to provide a voice to other stakeholders in the WTO. Mr El Hachimi highlighted the networking value of the simultaneous presence of NGOs, government officials, parliamentarians, and others. He cited the fisheries subsidies negotiations as an example of how an NGO issue had entered the WTO agenda. Ms Pérez-Esteve thanked the WTO staff, who had worked on the Forum and, above all, the public for participation, saying: “This is your forum, and we hope to see you again next year.”



Abbreviations

AMIS	Agriculture Marketing Information System
APEC	Asia-Pacific Economic Cooperation
ARV	antiretroviral drug
ASEAN	Association of Southeast Asian Nations
DDA	Doha Development Agenda
DFQF	duty-free and quota-free
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
DSM	WTO Dispute Settlement Mechanism
EC	European Commission
ECOWAS	Economic Community of West African States Community
ECT	Energy Charter Treaty
EFTA	European Free Trade Association
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FAO/WHO JMPS	FAO/WHO Joint Meeting on Pesticide Specifications
FDI	foreign direct investment
FTA	free trade agreement
G20	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. 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.

GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
GDP	gross domestic product
GHG	greenhouse gases
GPG	global public good
HIV	human immunodeficiency virus
ICT	information and communication technology
IFAD	International Fund for Agricultural Development
IFPRI	International Food Policy Research Institute
IGO	intergovernmental organization
ILO	International Labour Office
IMF	International Monetary Fund
IP	intellectual property
IPR	intellectual property rights
ISO	International Organization for Standardization
IT	information technology
LDC	least-developed country
MEA	multilateral environmental agreement
MFN	most-favoured nation
MIWI	"Made in the World Initiative"
NAFTA	North American Free Trade Agreement
NAMA	Non-agricultural market access negotiations
NFIDC	Not Food Importing Developing Countries
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries



PTA	preferential trade agreement
R&D	research and development
RTA	regional trade agreements
SADC	Southern African Development Community
SME	small and medium-sized enterprises
SOE	state-owned enterprise
SVE	small and vulnerable economy
TBT	Technical Barriers to Trade
TPP	Trans-Pacific Partnership
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WFP	World Food Programme

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WTO Public Forum 2011

The 2011 WTO Public Forum publication provides an overview of the discussions held at this year's event, which was entitled "Seeking answers to global trade challenges". Representatives from civil society, academia, business, the media, governments, parliaments and inter-governmental organizations participated. The main discussion themes in this year's Forum were food security, trade in natural resources, the "Made in the World" initiative and the challenges ahead for the multilateral trading system. Debates revolved around the responses of international trade to challenges of food security and climate change; how trade negotiations in the WTO reflect the fact that a single product is produced in many different countries and what this means for the "made in" label; and how measuring trade flows in value added terms can affect the ways in which international economics are analysed and trade policy is conducted.

The sessions held during the 2011 Public Forum triggered a frank and open debate on the principal global challenges for the multilateral trading system. The Forum also sought to identify practical and effective solutions and ways forward to enable the WTO to adapt and respond effectively to our fast-changing world. A chapter is devoted to each of the sessions held during the three-day programme.



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